



City of Florence  
A City in Motion

## City of Florence Council Regular Session

Videoconference &  
Florence City Hall  
250 Hwy 101  
Florence, OR 97439  
541-997-3437  
[www.ci.florence.or.us](http://www.ci.florence.or.us)

- Meeting materials including information on each agenda item are published at least 24 hours prior to the meeting, and can be found of the City of Florence website at [www.ci.florence.or.us/council](http://www.ci.florence.or.us/council).
- Items distributed during the meeting, meeting minutes, and a link to the meeting video are posted to the City's website at [www.ci.florence.or.us/council](http://www.ci.florence.or.us/council) as soon as practicable after the meeting.
- To be notified of City Council meetings via email, please visit the City's website at <http://www.ci.florence.or.us/newsletter/subscriptions>.

July 20, 2020

## AGENDA

5:30 p.m.

Councilors:

Joe Henry, Mayor

Woody Woodbury, Council President	Ron Preisler, Council Vice-President
Joshua Greene, Councilor	Geraldine Prociw, Councilor

With 48 hour prior notice, an interpreter and/or TDY: 541-997-3437, can be provided for the hearing impaired. Meeting is wheelchair accessible.

Proceedings will be shown live and for rebroadcast on Cable Channel 191 and online at [www.ci.florence.or.us/citymanager/public-meetings-live](http://www.ci.florence.or.us/citymanager/public-meetings-live) and will be available after the meeting on the City's Vimeo Site.

### COVID-19 UPDATE

Due to federal and state restrictions on public gatherings, the Florence City Council meetings shall be held via videoconference. Members of the public can listen and view the meeting through the 'GoToWebinar' platform at the following link <https://attendee.gotowebinar.com/register/6446041257543089164>.

Meetings are also shown live on Cable Channel 191 and online at <https://www.ci.florence.or.us/citymanager/public-meetings-live>.

**In person attendance is not allowed at City Council meetings.**

In accordance with Oregon Governor's Office Executive Order No. 20-16, to protect safety and ensure social distancing, members of the public will not be allowed to attend the City Council meeting.

Citizens wishing to express their views may submit comments in writing or verbally. For more information, please see the end of this agenda or visit the City of Florence website at [www.ci.florence.or.us/council/request-address-city-council-speakers-card](http://www.ci.florence.or.us/council/request-address-city-council-speakers-card).

**CALL TO ORDER – ROLL CALL – PLEDGE OF ALLEGIANCE**

5:30 p.m.

### PRESENTATIONS & ANNOUNCEMENTS

- Florence Area Chamber of Commerce Annual Report

#### 1. **PUBLIC COMMENTS – *Items Not on the Agenda***

This is an opportunity for members of the public to bring to the Council's attention any item not otherwise listed on the agenda. *Please see the end of this agenda for methods to provide comments on items not on the City Council agenda.*

### **City Council / Local Contract Review Board Meeting**

The Florence City Council serves as the Local Contract Review Board. This agenda serves as notice that the City Council shall be acting as both the Local Contract Review Board and the City Council for Action Item #2.

**PUBLIC HEARING & ACTION ITEMS**

*Please see the end of this agenda for methods to provide comments on public hearing items.*

**2. PUBLIC CONTRACTING RULES**

**A. PUBLIC HEARING OF THE CITY COUNCIL / LOCAL CONTRACT REVIEW BOARD**

Hear and consider verbal and written comments regarding the amendments to the City of Florence’s Local Government Public Contracting Rules.

**B. CITY OF FLORENCE PURCHASING & PUBLIC IMPROVEMENT CONTRACTS POLICIES**

Consider approval of **Resolution No. 19, Series 2020**, a joint resolution of the City Council and Local Contract Review Board opting out of the attorney generals’ model of public contracting rules and amending public contracting rules for the City of Florence.

Anne Baker  
*Administrative Services Director*

**ACTION ITEMS**

**3. SIGN CODE AMENDMENTS**

Consider approval of **Ordinance No. 8, Series 2020**, an Ordinance amending Florence City Code Title 4, Chapter 7, Sign Regulations.

Wendy FarleyCampbell  
*Planning Director*

**4. COASTAL HIGHLANDS STORMWATER PROJECT**

Consider accepting the proposal from Ray Wells, Inc. in the amount of \$467,384 to perform stormwater improvements on Willow Loop, including 18<sup>th</sup> Court, Pine Court and 16<sup>th</sup> Street, and authorizing the City Manager to proceed with a contract.

Mike Miller  
*Public Works Director*

**5. LEAGUE OF OREGON CITIES LEGISLATIVE PRIORITIES**

Consider recommending topics for the 2021 League of Oregon Cities legislative priorities.

Megan Messmer  
*City Manager AIC*

**6. AMENDMENT OF TRIBAL POLICING CONTRACT**

Consider authorizing the approval of the amendment to the agreement between the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and the City of Florence for City Police Services.

Tom Turner  
*Chief of Police*

**7. ANNUAL UPDATE AND ADJUSTMENT TO CITY FEES AND CHARGES**

Review and consider not increasing rates for the 2020-21 fiscal year in response to the economic hardships caused by the COVID-19 pandemic.

Anne Baker  
*Administrative Services Director*

**CONSENT AGENDA**

**8. SAFE ROUTES TO SCHOOL GRANT APPLICATION**

Consider approval of **Resolution No. 20, Series 2020**, a resolution establishing approval to apply for a grant from the Oregon Department of Transportation for the Safe Routes to School program and delegating authority to the City Manager or designee to sign the application.

Mike Miller  
*Public Works Director*

**9. WASTEWATER TREATMENT PLANT BLOWER REPLACEMENT**

Consider approval of a professional services agreement with Kennedy Jenks Consultants in the amount of \$87,605 for the replacement of the blower at the wastewater treatment plant.

Mike Miller  
*Public Works Director*

**10. MUNICIPAL COURT JUDGE SERVICES CONTRACT**

Consider amending the contract for Judge Richard Brissenden for Municipal Court Judge Services.

Joe Henry  
Mayor

**11. PUBLIC WORKS FACILITY EQUIPMENT BUILDING**

Consider approval of the proposal from Pacific Building Systems in the amount of \$34,300 for the purchase of the building materials, building plans, and engineered design for the foundation slab for an equipment storage building to be located at the Public Works Facility.

Mike Miller  
Public Works  
Director

**REPORT & DISCUSSION ITEMS**

**12. 2019-20 FISCAL YEAR ANNUAL AUDIT**

Hear and consider report regarding audit services for the 2019-20 audit.

Anne Baker  
Administrative  
Services Director

**13. GENERAL REPORTS – Council Question & Answer Only – No Presentations**

- May & June Committee, Commission & Volunteer Reports

**14. REPORT & DISCUSSION ITEMS**

- City Manager Reports & Discussion Items
  - Governor’s Press Release Regarding Face Coverings
- City Council Reports & Discussion Items
  - Proposed Proclamation Discussion

**COUNCIL CALENDAR**

*All meetings are held at the Florence City Hall (250 Hwy 101, Florence Oregon) unless otherwise indicated*

<b>Date</b>	<b>Time</b>	<b>Description</b>
July 3, 2020	---	Independence Day Holiday Observed <b>City Offices Closed</b>
August 3, 2020	---	City Council Work Session <b>Canceled</b>
	---	City Council Meeting <b>Canceled</b>
August 17, 2020	10:30 a.m.	City Council Work Session <i>Tentative</i>
	5:30 p.m.	City Council Meeting
September 7, 2020	---	Labor Day Holiday <b>City Offices Closed</b>
	---	City Council Work Session <b>Canceled</b>
	---	City Council Meeting <b>Canceled</b>
September 21, 2020	10:30 a.m.	City Council Work Session <i>Tentative</i>
	5:30 p.m.	City Council Meeting

## UPDATED PUBLIC MEETINGS PROCEDURES – COVID-19

Given executive orders from Governor Brown concerning COVID-19 and social distancing requirements, the City of Florence has established temporary procedures for public meetings in order to protect our volunteers, public and staff.

### **In person attendance is not allowed at City Council meetings.**

**Expressing Views to the City Council:** Citizens wishing to express their views to the City Council may do so in both written and verbal formats.

1. **Written Testimony:** Citizens wishing to express their views to the City Council are encouraged to submit written testimony in one of the following ways:
  - a. Submit written comments via email to City Recorder at [kelli.weese@ci.florence.or.us](mailto:kelli.weese@ci.florence.or.us);
  - b. Mail written comments to Florence City Hall, Attn: City Council, 250 Hwy 101, Florence, OR 97439
  - c. Drop off written comments to the City of Florence drop box located at Florence City Hall (250 Hwy 101) to the right of the main entrance.

**\*\* Note:** Written comments received at least 2 hours prior to the meeting (July 20, 2020 at 3:30 p.m.) will be distributed to the City Council, posted to the City of Florence website, and made part of the record.
2. **Verbal Testimony:** Citizens wishing to express their views to the City Council may participate in the meeting via GotoWebinar. To do so, please complete a speaker's card online at [www.ci.florence.or.us/council/request-address-city-council-speakers-card](http://www.ci.florence.or.us/council/request-address-city-council-speakers-card) at least 1 hour prior to the meeting (July 20, 2020 at 4:30 p.m.). City staff will then contact the speaker to let them know the process to participate in the meeting.
  - a. **Public Comments on items not on the agenda:** General public comments (on items not on the City Council agenda) will be allowed at each City Council meeting during the public comment agenda item. Comments will be limited to three (3) minutes per person, with a maximum of 15 minutes for all items. In practicality, this means no more than five individuals will be allowed to comment verbally. There is no limit on written public comments.
  - b. **Public Hearing Testimony:** Testimony on public hearing items will be allowed when a public hearing is held. Verbal comments will be allowed on public hearing items after staff has given their report and have allowed time for initial Council questions. In general (with some exceptions for Land Use hearings), comments are limited to five minutes per person with no limit on the number of speakers.
  - c. **Public Comments on Action Items:** Public Comments will be allowed on each action item on the City Council agenda. Verbal comments will be allowed on action items after staff has given their report and have allowed time for initial Council questions. Comments will be limited to three (3) minutes per person, with a maximum of 15 minutes for all comments on each action item. In practicality, this means no more than five (5) individuals will be allowed to comment verbally. There is no limit on written public comments.

**For more information on the City of Florence's Temporary Public Meeting Policies, visit the City of Florence website at <https://www.ci.florence.or.us/em/public-meeting-during-covid-19>.**

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 1  
Meeting Date: July 20, 2020  
Department: Mayor & Council

---

**ITEM TITLE:** PUBLIC COMMENTS – *Items Not on the Agenda*

---

**DISCUSSION/ISSUE:**

This is an opportunity for members of the audience to bring to the Council's attention any item not otherwise listed on the Agenda. *Please see end of the agenda for methods to provide comments on items not on the City Council agenda.*

---

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 2  
Meeting Date: July 20, 2020  
Department: Admin Svs Dept.

---

**ITEM TITLE:** Public Contracting Rules

---

**DISCUSSION/ISSUE:**

Section 1-8-7 of the City Code states the Contract Review Board shall adopt rules to implement Title 1, Chapter 8, City Contracts.

Council adopted the City's current Public Contract Rules by resolution on May 2, 2011. The current City Public Contract Rules are out of date when compared to Oregon Procurement Laws. ORS 279A.065(6)(b) requires public entities that adopt their own rules to review them each time the Attorney General modifies its rules.

The attached 2020 Public Contracting Rules update and replace the outdated 2010 Public Contracting Rules that were adopted by Council in 2011.

No temporary amendments are proposed to Oregon's Public Contracting Code at this time despite other accommodations issued at the federal and state level in response to COVID-19.

The following modifications have been included in the 2020 Rules:

1. Divisions 47, 48, and 49 have been modified to allow the City to consider debt to the state when assessing a contractor's qualifications
2. The City must place amounts deducted as retainage into an interest-bearing escrow account upon the contractor's election or for contracts over \$500,000
3. The City can use pricing information in A/E consultant selection procedures

---

**FISCAL IMPACT:** None

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

The above is integral to the delivery of city services consistent with the City's adopted work plan.

---

**ALTERNATIVES:**

1. Approve the resolution adopting the 2020 Public Contracting Rules, or
  2. Not approve the resolution and provide direction to staff
-

---

**RECOMMENDATION:**

1. Approve Resolution No. 19. Series 2020 adopting the 2020 Public Contracting Rules.

---

**AIS PREPARED BY:** Anne Baker, Administrative Services Department Director

---

**CITY MANAGER'S RECOMMENDATION:**  Approve                       Disapprove                       Other

Comments: *Megan Messmer*

---

**ITEM'S ATTACHED:** Resolution No. 19, Series 2020  
Findings in support of Resolution No, 19, Series 2020 (Exhibit A)  
2020 Public Contracting Rules

---

**CITY OF FLORENCE  
RESOLUTION NO. 19, SERIES 2020**

**JOINT RESOLUTION OF THE CITY COUNCIL AND LOCAL CONTRACT  
REVIEW BOARD OPTING OUT OF THE ATTORNEY GENERAL'S MODEL  
PUBLIC CONTRACTING RULES AND AMENDING PUBLIC CONTRACTING  
RULES FOR THE CITY OF FLORENCE**

**RECITALS:**

1. It is the policy of the City of Florence (City) that a sound and responsive public contracting system should allow impartial, meaningful, and open competition, preserving formal competitive selection as the standard for public contracts unless otherwise specifically exempted herein, by state law, or by subsequent ordinance or resolutions; and
2. In 2011, the City opted out of the Public Contracting Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49 (the "Model Rules") and adopted its own rules; and
3. The Public Contracting Code divides powers and duties for contracting into two categories: those that must be performed by the "Local Contract Review Board"; and those that must be performed by the "Contracting Agency"; and
4. Pursuant to ORS 279A.060, the City Council is the Local Contract Review Board for City and, as such, is authorized to act on all such matters on behalf of the City, adopt Public Contracting Rules, and establish procedures for amendment of such rules; and
5. The City recognizes it may exempt certain public improvement contracts or classes of such contracts under ORS 279C.335; and
6. The City Council additionally requests that the City's Local Contract Review Board approve the classes of special procurements set forth in the attached rules, based upon the findings set forth in Exhibit A to this Resolution.

Based on these findings,

**THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:**

1. The City Council (Council) is hereby designated to continue as the Local Contract Review Board of the City and shall have all of the rights, powers and authority necessary to carry out the provisions of Chapters 279A, 279B, and 279C (the "Public Contracting Code") and attached Rules. Except as otherwise provided in this Resolution, the definitions established in the attached Rules apply herein. The term "Contracting Agency" as used in the attached Rules includes Contracting Agency's chief administrative officer, his or her designee, or any other purchasing agent, as designated by City policy. Those individuals are hereby designated as City's Contracting Agency and may exercise all authorities, powers and

duties granted to a Contracting Agency under the Public Contracting Code and attached Rules, unless otherwise established by City policy.

2. The above recitals and Exhibit A are hereby adopted by the Council, sitting as the Local Contract Review Board, as findings of fact supporting approval of the Council's request for classes of special procurement and public improvement contract exemptions.
3. The Model Rules adopted by the Attorney General pursuant to ORS 279A.065, including those effective January 1, 2020, do not apply to City. Instead, the City hereby prescribes the following Rules, which include portions of the Attorney General's Model Rules, as the Rules of Procedure that the City will use for its public contracting: Public Contracting Rules Chapter 137, Divisions 46, 47, 48 and 49. While the numbering of these Rules reflects the numbering system of the Attorney General's Model Rules, they incorporate City changes to the Model Rules, and, therefore, are not the Attorney General's promulgated administrative rules. City exemptions are also set forth in these Rules, as numbered Exemptions 1 through 18 (E-1 through E-18). All above-referenced Rules are attached to this Resolution as Exhibit B, and incorporated herein by this reference.
4. In accordance with ORS 279A.065(6)(b), the City shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules in order to determine whether amendments are required to ensure statutory compliance.
5. Amendments to these Rules and new rules shall be adopted in accordance with this Resolution and the Public Contracting Code. Special procurement requests and approvals shall be made in accordance with Division 47 of the attached Rules and ORS 279B.085. Public improvement contract exemption procedures, including notice and public hearing requirements, shall be made in accordance with Division 49 of the attached Rules and ORS 279C.335.
6. The Model Cost Accounting Guidelines developed by the Oregon Department of Administrative Services pursuant to Section 3, Chapter 869, Oregon Laws 1979 are hereby adopted as the City's Cost Accounting System to apply to public improvement projects exceeding \$5,000 and constructed with City's own equipment or personnel. ORS 279C.310. For such public improvement projects estimated to cost more than \$200,000, or for certain road maintenance projects exceeding \$125,000, City shall also comply with the requirements of ORS 279C.305.
7. All previously adopted resolutions, including Resolution No. 6, Series 2011, establishing public contracting rules for City are hereby repealed.

ADOPTION:

DATED this 20th day of July, 2020.

\_\_\_\_\_  
Joe Henry, Mayor, Mayor  
City Council

\_\_\_\_\_  
Joe Henry, Mayor, Mayor, as President,  
for the Local Contract Review Board

ATTEST:

ATTEST:

\_\_\_\_\_  
Megan Messmer,  
AIC as City Manager

\_\_\_\_\_  
Megan Messmer, AIC as City Manager,  
as Secretary for the  
Local Contract Review Board

## EXHIBIT A

### FINDINGS IN SUPPORT OF RESOLUTION NO. 19, Series 2020 ADOPTING PUBLIC CONTRACTING CODE RULES

ORS 279B.085 and 279C.335 authorize City of Florence's (City) City Council, sitting as City's local contract review board, to approve findings submitted and exemptions requested by City Council 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 makes the following findings in support of Resolution No. 19, Series 2020, which establishes exempt classes of contracts and the solicitation methods for their award:

#### **No Findings Required**

Pursuant to ORS 279A.025 and 279A.055, the Council is not required to adopt findings with respect to the solicitation methods and awards of the following classes of contracts identified in City's Public Contracting Rules 2020, Class Exemptions:

E-4	Contracts for Price Regulated Items
E-6	Investment Contracts
E-12	Insurance, Employee Benefit
E-17	Personal Service Contracts
E-18	Liability Insurance Contracts

The above Rules govern subjects specifically authorized by state law and, therefore, require no local exemption.

#### **Specific Findings for Public Improvement Class Exemption**

The Council approves the following specific findings for the use of Request for Proposal alternative contracting method for public improvement contracts estimated to cost over \$100,000 and also finds that the establishment of this class of contracts and the method approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public improvement 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.

These conclusions are based on the following general findings:

- A. Operational, budget, and financial data. Where various criteria, which may or may not include cost, must be weighed in order to select an appropriate contractor for the desired project, the formal competitive bidding process costs of up to \$7,000 are a significant budgetary waste in that the most qualified contractor for the project may not be the lowest responsible bidder;
- B. Public benefits. Exempting contracts from competitive bidding requirements and instead utilizing statutory competitive proposal procedures will protect and preserve public funds, enable greater competition between the most qualified contractors, and result in a better product which meets the public's and City's needs;
- C. Value engineering, Specialized expertise required, Technical complexity. Only through a competitive proposal process can City weigh, evaluate and select the type of expertise needed to address the technical complexities of a particular public improvement project. Competitive proposal allow the City to determine which contractor may best provide such services. These are qualities not reflected in cost, where a determination on cost alone could forfeit these valuable and essential attributes;
- D. Public safety. Utilizing a competitive proposal process as opposed to competitive bidding can ensure high quality, more safely constructed facilities through the construction period, and after completion. Capitalizing upon design and construction planning and compatibility can also allow earlier use of public facilities even while construction continues;
- E. Market conditions. The increased availability of and need for technical expertise, value engineering, or other types of specialized expertise, as well as a need to investigate the compatibility, experience and availability of contractors require that certain public improvement contracts be awarded based upon an evaluation of a number of criteria, rather than simply cost.

**Specific Findings for Special Classes and Methods of Award for Contracts Other Than Public Improvements.**

The 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 methods approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts because such exemptions still require alternative contracting procedures, ensuring: (1) reasonable competition; (2) the best contract price for the public; and (3) a cost-effective process for both contractors and City;

2. The awarding of public contracts under these exemptions will result in substantial cost savings to City because City will avoid costs associated with unnecessary documentation and procedures, where it is unmerited by the type and/or relatively low cost of the contracts; and
3. The awarding of public contracts pursuant to any of the requested exemptions substantially promotes the public interest in a manner that could not practicably be realized by formal competitive solicitation procedures, given the fact that such exemptions facilitate smooth operation of City's administration and operations, include procedures and mechanisms to ensure the best product, service or outcome is obtained at the least cost to the public and City, and identified classes address areas of public contracting left unresolved by state statute which are essential for City's operations, such as awarding personal service contracts, purchasing used personal property, and disposing of surplus personal property.

Specifically, the Council finds:

## **E-2 – Advertising Contracts.**

**Alternate Award Process.** In City's discretion. The process selected may be competitive or non-competitive.

**Cost Savings and Other Benefits.** Size of and frequency of average advertisement (including all notices required to be published by City) does not justify the cost of solicitation. Period of time from recognition of need to advertise until advertising date is too short to issue solicitation.

**Effect on Competition.** The potential market is limited because not all advertisers work in every market. Choice of advertising medium is somewhat price sensitive, but primarily driven by location and size of circulation in comparison with City's target audience.

**No Favoritism.** Not applicable due to the lack of competitors and specialized contracting needs.

## **E-3 – Equipment Repair and Overhaul.**

**Alternate Award Process.** As needed, in City's discretion.

**Cost Savings and Other Benefits.**

1. Pre-contract pricing is difficult to obtain and cannot be relied upon.

2. City has discretion to decide whether costs of solicitation are justified in relationship to size of contract and availability of skilled technicians to repair the specific equipment.
3. Delay required for solicitation would impair City's ability to respond to equipment breakdown and be injurious to the public interest.
4. Experience with contractor is crucial because reliability over the course of several projects is important.

**Effect on Competition.** Allows contractor to be selected based on ability to provide accurate, reliable and fast service.

**Effect on Favoritism.** Favoritism will not be greater than if statutory request for proposals process is used.

#### **E-5 - Copyrighted Materials.**

**Alternate Award Process.** As needed, in City's discretion.

**Cost Savings and Other Benefits.** Necessary to allow City to acquire special needs products that are unique.

**Effect on Competition.** None. There is no competitive market for a unique product. Copyrighted materials are generally acquired from a sole-source copyright holder, as used property, or by donation.

**No Favoritism.** Not applicable due to the lack of competitors and specialized contracting needs.

#### **E-7 – Requirements Contracts.**

**Alternate Award Process.** Original contract must be based on a competitive process.

**Cost Savings and Other Benefits.** Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

**Effect on Competition.** Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years.

**Effect on Favoritism.** Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years.

## **E-8 – Office Copier Purchases.**

**Alternate Award Process.** Original contract must be based on a competitive process.

**Cost Savings and Other Benefits.** Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

**Effect on Competition.** Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years. In addition, rule requires evaluation and award based upon multiple factors, not just cost.

**Effect on Favoritism.** Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years. In addition, rule requires evaluation and award based upon set factors, in addition to cost.

**Other Factors.** Allows Contracting Agency to address emergency circumstances. Cannot anticipate when immediate replacement or repairs will be needed to ensure normal operations.

## **E-9 - Manufacturer Direct Supplies.**

**Alternate Award Process.** Subject to cost saving analysis.

**Cost Savings and Other Benefits.** Allowed only after a formal solicitation is completed and manufacturer's price is less than offers received. Cost of formal solicitation, therefore not merited.

**Effect on Competition.** None. Allowed only after assessment of manufacturer's costs to distributor within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

**Effect on Favoritism.** None. Allowed only after assessment of manufacturer's costs to distributor within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

**Other Factors.** Allowed on a contract-by-contract basis and shall not result in an ongoing price agreement, further fostering competition.

## **E-10 – Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt.**

**Alternate Award Process.** Intermediate procurement process.

**Cost Savings and Other Benefits.** Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

**Effect on Competition.** Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

**Effect on Favoritism.** Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

#### **E-11 – Hazardous Material Removal; Oil Cleanup.**

**Alternate Award Process.** Rule encourages competitive procedures to the extent reasonable under the circumstances.

**Cost Savings and Other Benefits.** Avoids unnecessary cost and delay associated with procurement procedures when most qualified available contractor required for immediate performance. Primary consideration is public safety and compliance with hazardous material laws.

**Effect on Competition.** Minimal, given competitive procedures encouraged by Rule and supporting findings describing circumstance requiring clean up.

**Effect on Favoritism.** Minimal, given competitive procedures encouraged by Rule and supporting findings describing circumstance requiring clean up.

**Other Factors.** Exemption necessary to ensure City's ability to comply with State law governing hazardous materials.

#### **E-13 – Medical and Laboratory Supplies.**

**Alternate Award Process.** Direct award to different vendors allowed, following initial competitive solicitation process.

**Cost Savings and Other Benefits.** Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

**Effect on Competition.** Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

**Effect on Favoritism.** Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

#### **E-14 – Concession Agreements.**

**Alternate Award Process.** When in City’s best interest, a competitive proposal solicitation will be used.

**Cost Savings and Other Benefits.** Allows City to take advantage of unique revenue opportunities.

**Effect on Competition.** Responds to unique opportunities for which the number of competitors may range from none to many.

**Effect on Favoritism.** No impact. Responds to unique opportunities.

**Other Factors.** Not a contract for the acquisition or disposal of goods, or services or public improvements. Most similar to personal services contract because the quality of the concession may be more important than price factors. Variation in types and sizes of concession opportunities is too great to provide a single method of solicitation. Statutory public contracting requirements may not apply. May not be a public contract. Most similar to personal services contract. Findings may not be required.

#### **E-15 – Used Personal Property, Purchase of.**

**Alternate Award Process.** Rule requires individualized ORS 279B.085 findings and an intermediate procurement process, where feasible.

**Cost Savings and Other Benefits.** Allows City to take advantage of unique opportunity to require needed goods and services for discounted prices.

**Effect on Competition.** No impact. Responds to unique opportunities.

**Effect on Favoritism.** No impact. Responds to unique opportunities.

#### **E-16 – Surplus Personal Property, Disposition of.**

**Alternate Award Process.** Any means in City’s best interest, after making individualized ORS 279B.085 findings. Items with a residual value of more than \$10,000 require local contract review board prior authorization.

**Cost Savings and Other Benefits.**

1. Avoids unnecessary solicitation expense by allowing City to determine whether cost of solicitation is justified by value of surplus property.
2. Allows City to establish programs for donation to charitable organizations.

**Effect on Competition.** No impact. Responds to unique opportunities.

**Effect on Favoritism.** No impact. Responds to unique opportunities.

**Other Factors.** Variations in the type, quantity, quality and opportunities for recycling of surplus property are too large to have this class of contracts governed by a single solicitation method.

# **PUBLIC CONTRACTING RULES**

## **2020**

# TABLE OF CONTENTS

## PUBLIC CONTRACTING RULES - 2020

### DIVISION 46

#### GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

137-046-0100 Application; Federal Law Supremacy .....	1
137-046-0110 Definitions for the Rules .....	1
137-046-0120 Policy .....	3
137-046-0130 Application of the Code and Rules; Exceptions .....	3

#### MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

137-046-0200 Affirmative Action; Limited Competition Permitted .....	3
137-046-0210 Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification.....	3

#### CONTRACT PREFERENCES

137-046-0300 Preference for Oregon Goods and Services; Nonresident Bidders .....	5
137-046-0310 Reciprocal Preferences .....	6
137-046-0320 Preference for Recycled Materials .....	6

#### COOPERATIVE PROCUREMENT

137-046-0400 Authority for Cooperative Procurements .....	6
137-046-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies.....	6
137-046-0420 Joint Cooperative Procurements .....	7
137-046-0430 Permissive Cooperative Procurements .....	7
137-046-0440 Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement .....	7
137-046-0450 Interstate Cooperative Procurements.....	8
137-046-0460 Advertisements of Interstate Cooperative Procurements.....	8
137-046-0470 Protests and Disputes .....	8
137-046-0480 Contract Amendments .....	9

**DIVISION 47**

**PUBLIC PROCUREMENTS FOR GOODS OR SERVICES GENERAL PROVISIONS**

137-047-0100 Application ..... 10  
137-047-0110 Definitions ..... 10

**SOURCE SELECTION**

137-047-0250 Methods of Source Selection..... 10  
137-047-0255 Competitive Sealed Bidding ..... 10  
137-047-0257 Multistep Sealed Bidding ..... 12  
137-047-0260 Competitive Sealed Proposals ..... 12  
137-047-0261 Procedures for Competitive Range, Multi-tiered and Multistep Proposals..... 14  
137-047-0262 Competitive Range, Discussions and Negotiations..... 14  
137-047-0263 Multistep Sealed Proposals ..... 16  
137-047-0265 Small Procurements ..... 17  
137-047-0270 Intermediate Procurements ..... 17  
137-047-0275 Sole-Source Procurements ..... 17  
137-047-0280 Emergency Procurements ..... 18  
137-047-0285 Special Procurements ..... 18  
137-047-0290 Cooperative Procurements..... 18

**PROCUREMENT PROCESS**

137-047-0300 Public Notice of Solicitation Documents ..... 18  
137-047-0310 Bids or Proposals are Offers ..... 19  
137-047-0320 Facsimile Bids and Proposals ..... 20  
137-047-0330 Electronic Procurement ..... 20

**BID AND PROPOSAL PREPARATION**

137-047-0400 Offer Preparation ..... 21  
137-047-0410 Offer Submission ..... 22  
137-047-0420 Pre-Offer Conferences ..... 22  
137-047-0430 Addenda to Solicitation Document ..... 22  
137-047-0440 Pre-Closing Modification or Withdrawal of Offers..... 23  
137-047-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers..... 24

137-047-0460 Late Offers, Late Withdrawals and Late Modifications .....	24
137-047-0470 Mistakes.....	24
137-047-0480 Time for Agency Acceptance.....	25
137-047-0490 Extension of Time for Acceptance of Offer.....	25
<b>QUALIFICATIONS AND DUTIES</b>	
137-047-0500 Responsibility of Bidders and Proposers.....	25
137-047-0525 Qualified Products Lists.....	26
137-047-0550 Prequalification of Prospective Offerors .....	26
137-047-0575 Debarment of Prospective Offerors .....	26
<b>OFFER EVALUATION AND AWARD</b>	
137-047-0600 Offer Evaluation and Award.....	26
137-047-0610 Notice of Intent to Award .....	27
137-047-0620 Documentation of Award .....	28
137-047-0630 Availability of Award Decisions.....	28
137-047-0640 Rejection of an Offer.....	28
137-047-0650 Rejection of All Offers.....	30
137-047-0660 Cancellation of Procurement or Solicitation .....	30
137-047-0670 Disposition of Offers if Procurement or Solicitation Canceled.....	30
<b>LEGAL REMEDIES</b>	
137-047-0700 Protests and Judicial Review of Special Procurements .....	31
137-047-0710 Protests and Judicial Review of Sole-Source Procurements .....	31
137-047-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations.....	31
137-047-0730 Protests and Judicial Review of Solicitations .....	32
137-047-0740 Protests and Judicial Review of Contract Award.....	33
137-047-0745 Protests and Judicial Review of Qualified Products List Decisions.....	33
137-047-0750 Judicial Review of Other Violations .....	33
137-047-0760 Review of Prequalification and Debarment Decisions .....	34
137-047-0800 Amendments to Contracts and Price Agreements .....	34
137-047-0810 Termination of Price Agreements .....	34

**DIVISION 48**

**CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIST,  
TRANSPORTATION PLANNING AND LAND SURVEYING SERVICES AND RELATED SERVICES  
CONTRACTS**

137-048-0100 Application ..... 35

137-048-0110 Definitions ..... 35

137-048-0120 [Reserved.] ..... 36

137-048-0130 Applicable Selection Procedures; Pricing Information; Disclosure of  
Proposals; Conflicts of Interest ..... 36

**SELECTION PROCEDURES**

137-048-0200 Direct Appointment Procedure ..... 37

137-048-0210 Informal Selection Procedure ..... 38

137-048-0220 Formal Selection Procedure ..... 40

137-048-0230 Ties Among Proposers ..... 44

137-048-0240 Protest Procedures ..... 44

137-048-0250 Solicitation Cancellation, Delay or Suspension; Rejection of All  
Proposals or Responses; Consultant Responsibility for Costs ..... 45

137-048-0260 Two-Tiered Selection Procedure when State Agency is Lead  
Contracting Agency ..... 45

137-048-0270 Price Agreements ..... 46

**POST-SELECTION CONSIDERATIONS**

137-048-0300 Prohibited Payment Methodology; Purchase Restrictions ..... 47

137-048-0310 Expired or Terminated Contracts; Reinstatement ..... 47

137-048-0320 Contract Amendments ..... 48

**DIVISION 49**

**GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES**

137-049-0100 Application ..... 49

137-049-0110 Policies ..... 49

137-049-0120 Definitions ..... 49

137-049-0130 Competitive Bidding Requirement ..... 49

137-049-0140 Contracts for Construction Other than Public Improvements ..... 49

137-049-0150 Emergency Contracts; Bidding and Bonding Exemptions ..... 50

137-049-0160 Intermediate Procurements; Competitive Quotes and Amendments ..... 50

**FORMAL PROCUREMENT RULES**

137-049-0200 Solicitation Documents; Required Provisions; Assignment or Transfer ..... 51

137-049-0210 Notice and Advertising Requirements; Posting ..... 53

137-049-0220 Prequalification of Offerors ..... 54

137-049-0230 Eligibility to Bid or Propose; Registration or License ..... 54

137-049-0240 Pre-Offer Conferences ..... 54

137-049-0250 Addenda to Solicitation Documents ..... 55

137-049-0260 Request for Clarification or Change; Solicitation Protests..... 55

137-049-0270 Cancellation of Solicitation Document ..... 56

137-049-0280 Offer Submissions ..... 56

137-049-0290 Bid or Proposal Security ..... 57

137-049-0300 Facsimile Bids and Proposals ..... 58

137-049-0310 Electronic Procurement ..... 58

137-049-0320 Pre-Closing Modification or Withdrawal of Offers..... 59

137-049-0330 Receipt, Opening and Recording of Offers; Confidentiality of Offers ..... 59

137-049-0340 Late Bids, Late Withdrawals and Late Modifications ..... 60

137-049-0350 Mistakes..... 60

137-049-0360 First-Tier Subcontractors; Disclosure and Substitution ..... 61

137-049-0370 Disqualification of Persons ..... 62

137-049-0380 Bid or Proposal Evaluation Criteria..... 63

137-049-0390 Offer Evaluation and Award; Determination of Responsibility..... 63

137-049-0395 Notice of Intent to Award ..... 65

137-049-0400 Documentation of Award; Availability of Award Decisions ..... 65

137-049-0410 Time for Contracting Agency Acceptance; Extension ..... 66

137-049-0420 Negotiation With Bidders Prohibited..... 66

137-049-0430 Negotiation When Bids Exceed Cost Estimate ..... 66

137-049-0440 Rejection of Offers ..... 67

137-049-0450 Protest of Contractor Selection, Contract Award..... 68

137-049-0460 Performance and Payment Security; Waiver .....	69
137-049-0470 Substitute Contractor .....	70
137-049-0490 Foreign Contractor .....	70
<b>ALTERNATIVE CONTRACTING METHODS</b>	
137-049-0600 Purpose .....	70
137-049-0610 Definitions for Alternative Contracting Methods .....	70
137-049-0620 Use of Alternative Contracting Methods .....	71
137-049-0630 Findings, Notice and Hearing .....	71
137-049-0640 General Alternative Bidding Procedures .....	72
137-049-0650 Requests for Proposals (RFP).....	73
137-049-0660 RFP Pricing Mechanisms .....	75
137-049-0670 Design-Build Contracts .....	75
137-049-0680 Energy Savings Performance Contracts (ESPC) .....	76
137-049-0690 Construction Manager/General Contractor (CM/GC) .....	78
<b>CONTRACT PROVISIONS</b>	
137-049-0800 Required Contract Clauses .....	79
137-049-0810 Waiver of Delay Damages Against Public Policy .....	79
137-049-0815 BOLI Public Works Bond .....	79
137-049-0820 Retainage .....	79
137-049-0830 Contractor Progress Payments .....	80
137-049-0840 Interest .....	81
137-049-0850 Final Inspection.....	81
137-049-0860 Public Works Contracts .....	81
137-049-0870 Specifications; Brand Name Products .....	82
137-049-0880 Records Maintenance; Right to Audit Records .....	82
137-049-0890 Contracting Agency Payment for Unpaid Labor or Supplies .....	82
137-049-0900 Contract Suspension; Termination Procedures.....	83
137-049-0910 Changes to the Work and Contract Amendments.....	83

**CLASS EXEMPTIONS**

E-1 Purpose and Statutory Authority ..... 85

E-2 Advertising Contracts ..... 85

E-3 Equipment Repair and Overhaul ..... 85

E-4 Contracts for Price Regulated Items ..... 85

E-5 Copyrighted Materials..... 85

E-6 Investment Contracts..... 85

E-7 Requirements Contracts..... 85

E-8 Office Copier Purchases..... 86

E-9 Manufacturer Direct Supplies ..... 86

E-10 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt..... 86

E-11 Hazardous Material Removal; Oil Cleanup ..... 86

E-12 Insurance, Employee Benefit ..... 86

E-13 Medical and Laboratory Supplies ..... 87

E-14 Concession Agreements ..... 87

**USED PERSONAL PROPERTY**

E-15 Used Personal Property, Purchase of ..... 87

E-16 Surplus Personal Property, Disposition of ..... 88

**PERSONAL SERVICES**

E-17 Personal Services for Other than Architect, Engineer, Photogrammetrist, Transportation Planner  
and Land Surveying Services..... 88

E-18 Liability Insurance Contracts ..... 89

## PUBLIC CONTRACTING RULES 2020

### DIVISION 46

#### GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

##### 137-046-0100

###### **Application; Federal Law Supremacy**

(1) These Public Contracting Rules (Rules) set forth the rules of procedure for Public Contracting of Contracting Agencies subject to these Rules. These Rules consist of the following four divisions:

(a) This division 46, which is applicable to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods or Services, as defined in ORS 279B.005;

(c) Division 48, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) In the event of conflict between rules in this division 46 and rules in divisions 47, 48 and 49, the rules in divisions 47, 48 and 49 take precedence over the rules in this division 46.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these rules, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.

(4) These division 46 rules become effective upon adoption, and apply to Public Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & ORS 279A.065

##### 137-046-0110

###### **Definitions for the Rules**

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Rules will have the meaning set forth in the division of the Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined there, the meaning set forth in the Code. The following terms, when capitalized in these Rules, shall have the meaning set forth below:

(1) “**Addendum**” or “**Addenda**” means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) “**Award**” means, as the context requires, either the act or occurrence of the Contracting Agency’s identification of the Person with whom the Contracting Agency will enter into a Contract following the resolution of any protest of the Contracting Agency’s selection of that Person, and the completion of all Contract negotiations.

(3) “**Bid**” means a written response to an Invitation to Bid.

(4) “**Closing**” means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(5) “**Code**” means the Public Contracting Code, as defined in ORS 279A.010.

(6) “**Competitive Range**” means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with Rules 137-047-0262 or 137-049-0650.

(7) “**Contract**” means a contract for sale or other disposal, or a purchase, lease, or other acquisition, by a Contracting Agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. “Contract” does not include grants.

(8) “**Contract Price**” means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(9) “**Contracting Agency**” means a public body authorized by law to conduct a procurement. “Contracting Agency” includes any person authorized by a Contracting Agency to conduct procurements on the Contracting Agency’s behalf.

(10) “**Contract Review Authority**” means the Local Contracting Agency’s Local Contract Review Board determined as set forth in ORS 279A.060.

- (11) **“Contractor”** means the Person with whom a Contracting Agency enters into a Contract.
- (12) **“DBE Disqualification”** means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.
- (13) **“Descriptive Literature”** means the Offeror's materials submitted to provide information concerning the products or services available in response to a Solicitation Document.
- (14) **“Electronic Advertisement”** means notice of a Contracting Agency's request for Offers, request for quotes, request for information or other document inviting participation in the Contracting Agency's Procurements available over the Internet via (a) the World Wide Web or some other Internet protocol; or (b) a Contracting Agency's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
- (15) **“Electronic Offer”** means a response to a Contracting Agency's request for Offers or request for quotes submitted to a Contracting Agency via email or through the Contracting Agency's Electronic Procurement System.
- (16) **“Electronic Procurement System”** means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.
- (17) **“Goods and Services”** or **“Goods or Services”** has the meaning set forth in ORS 279A.010(1)(j).
- (18) **“Invitation to Bid”** or **“ITB”** means all documents used for soliciting Bids in accordance with either ORS 279B.055, or 279C.335.
- (19) **“Offer”** means a written response to a Solicitation Document.
- (20) **“Offeror”** means a Person who submits an Offer.
- (21) **“Opening”** means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- (22) **“Person”** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity that has the legal capacity to enter into a contract.
- (23) **“Personal Services”** means the services or type of services performed under a Personal Services Contract.
- (24) **“Personal Services Contract”** or **“Contract for Personal Services”** means a contract primarily for the provision of services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers, unless specifically exempt from the Code. For any single contract or class of contracts, the Contracting Agency shall have the discretion to determine whether additional types of services not specifically mentioned in this definition are personal services.
- (25) **“Product Sample”** means a representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.
- (26) **“Proposal”** means a written response to a Request for Proposals.
- (27) **“Request for Proposals”** or **“RFP”** means all documents used for soliciting Proposals in accordance with ORS.279B.060, 279C.110 or Rule 137-049-0650.
- (28) **“Responsible Offeror”** (also, **“Responsible Bidder”** or **“Responsible Proposer,”** as applicable) means a Person that has submitted an Offer and meets the standards set forth in Rules 137-047-0640 or 137-049-0390(2), and that has not been debarred or disqualified by the Contracting Agency under Rules 137-047-0575 or 137-049-0370. When used alone, **“Responsible”** means meeting the aforementioned standards.
- (29) **“Responsive Offer”** (also, **“Responsive Bid”** or **“Responsive Proposal,”** as applicable) means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, **“Responsive”** means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
- (30) **“Signed”** or **“Signature”** means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.
- (31) **“Solicitation Document”** means an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or ORS Chapter 279C.
- (32) **“Specification”** means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(33) **“Work”** means 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.

(34) **“Written”** or **“Writing”** means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065

#### **137-046-0120**

##### **Policy**

Contracting Agencies subject to the Code shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.015 & ORS 279A.065

#### **137-046-0130**

##### **Application of the Code and Rules; Exceptions**

(1) Except as set forth in this section, a Contracting Agency shall exercise all rights, powers and authority related to Public Contracting in accordance with the Code and these Rules.

(2) Neither the Code nor these Rules apply to the contracts or the classes of contracts described in ORS 279A.025(2).

(3) Contracting Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program pursuant to ORS 279A.180 without following the procedures set forth in ORS 279B.050 through ORS 279B.085.

(4) Contracting Agencies otherwise subject to the Code and these Rules may enter into contracts for Goods or Services with non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200 through ORS 279A.225, or ORS 279B.050 through ORS 279B.085. However, Contracting Agencies must enter into such contracts in accordance with any applicable administrative rules promulgated by the Department of Administrative Services.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.050, ORS 279A.055, ORS 279A.065 & ORS 279A.180

### **MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES**

#### **137-046-0200**

##### **Affirmative Action; Limited Competition Permitted**

(1) Pursuant to ORS 279A.100, a Contracting Agency may limit competition on Public Contracts for Goods and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the Public Contracting Agency.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065 & ORS 279A.100

#### **137-046-0210**

##### **Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification**

(1) As set forth in ORS 279A.105, a Contracting Agency may require a contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.

(2) A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The contractor certifies in writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture the goods or complete the services under the contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a contractor's subcontractor's employees or subcontractors constitute a substantial number.

(3) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a business that is a service-disabled veteran owns.

(4) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any public contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (d) and (e) of this section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely request. The Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(d) Notice of Disqualification. The Contracting Agency shall provide Written notice of the Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service, or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

(5) **Contract and Subcontract Conditions**. If a Contracting Agency awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and 200.045(3), or awards a Contract under ORS 279A.100:

(a) The Contracting Agency must provide, as a material condition of the Contract:

(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the Award of the Contract);

(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the Award of the subcontract);

(D) That the Contracting Agency may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (5) of this rule, the Contracting Agency must verify the Contractor's and any subcontractor's compliance with subsection (5)(a) of this rule.

(c) Subparagraph (5)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the

business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (5) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.105, ORS 279A.107 & ORS 279A.110

## CONTRACT PREFERENCES

### 137-046-0300

#### **Preference for Oregon Goods and Services; Nonresident Bidders**

(1) **Award When Offers Identical.** When a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Contracting Agency shall award the Contract based on the following order of precedence:

(a) The Agency shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services or Personal Services that have been manufactured or produced in Oregon.

(b) If two or more Offerors submit identical Offers, and both offer Goods or Services or Personal Services manufactured or produced in Oregon, the Contracting Agency shall award the Contract by drawing lots among the identical Offers offering Goods or Services or Personal Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services or Personal Services manufactured or produced in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(2) **Determining if Offers are Identical.** A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services or Personal Services described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in writing, that two or more Proposals are equally advantageous to the Contracting Agency.

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

(3) **Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon.**

For the purposes of complying with section 1 of this Rule, Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Contracting Agency, any information the Contracting Agency determines is appropriate and necessary to allow the Contracting Agency to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods or Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Bidder or Proposer.

(4) **Procedure for Drawing Lots.** In any instance when this Section calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) **Discretionary Preference and Award.** Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further

preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065 & ORS 279A.128

Stats. Implemented: ORS 279A.065, ORS 279A.120 & ORS 279A.128

#### **137-046-0310**

##### **Reciprocal Preferences**

(1) When evaluating Bids pursuant to Rules 137-047-0255, 137-047-0257 or 137-049-0390, Contracting Agencies shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. A Contracting Agency may rely on the list prepared and maintained by the Department pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state bidders, and (ii) the amount of such preference.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.120

#### **137-046-0320**

##### **Preference for Recycled Materials**

(1) In comparing goods from two or more Offerors, if at least one Offeror offers goods manufactured from recycled materials, and at least one Offeror does not, a Contracting Agency shall select the Offeror offering goods manufactured from recycled materials if each of the conditions specified in ORS 279A.125(2) exists. When making the determination under ORS 279A.125(2)(d), the Contracting Agency shall consider the costs of the goods following any adjustments the Contracting Agency makes to the price of the goods after evaluation pursuant to Rule 137-046-0310.

(2) For the purposes of this Section, a Contracting Agency shall determine if goods are manufactured from recycled materials in accordance with standards established by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.125

## **COOPERATIVE PROCUREMENT**

#### **137-046-0400**

##### **Authority for Cooperative Procurements**

(1) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) Each Purchasing Contracting Agency shall determine, in Writing, whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 consistent with ORS 279A.200(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

#### **137-046-0410**

##### **Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies**

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurements administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether the participants must enter into a written agreement with the Administering Contracting Agency, or any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting Agency may, but is not required to, include provisions in the Solicitation

Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Rules.

(2) If a Contracting Agency, acting as a Purchasing Contracting Agency, enters into a Contract or Price Agreement based on a Cooperative Procurement, the Contracting Agency shall comply with the Code and these Rules, including without limitation those sections of the Code and these Rules that govern:

- (a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement,
- (b) The advertisement of the solicitation document related to the Cooperative Procurement, and
- (c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts or Price Agreements based on a Cooperative Procurement.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

#### **137-046-0420**

##### **Joint Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.210

#### **137-046-0430**

##### **Permissive Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

#### **137-046-0440**

##### **Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement**

(1) A Purchasing Contracting Agency that wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement must publish notice of its intent to do so if the Purchasing Contracting Agency estimates that it will spend in excess of \$250,000 on Goods and Services or Personal Services acquired under the Contract or Price Agreement.

(2) For purposes of determining whether a Purchasing Contracting Agency must give the notice required by Rule 137-046-0440(1), a Purchasing Contracting Agency will spend in excess of \$250,000 for Goods and Services acquired under a Contract or Price Agreement arising out of a Permissive Cooperative Procurement if:

- (a) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
- (b) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of \$250,000; or
- (c) At the time the Purchasing Contracting Agency enters into the Contract or Price Agreement, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services or Personal Services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.

(3) The notice of intent required by Rule 137-046-0440(1) shall contain the information required by ORS 279A.215(2)(b), and Agency shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). Unless the Purchasing Contracting Agency sets forth a different time period in the notice, the Purchasing Contracting Agency shall give the notice required by this Section no fewer than 7 days before the deadline for submitting comments regarding the Purchasing Contracting Agency's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(4) An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in Rules 137-046-0440(1) and (3) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the

Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.

(5) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

#### **137-046-0450**

##### **Interstate Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

#### **137-046-0460**

##### **Advertisements of Interstate Cooperative Procurements**

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the Purchasing Contracting Agency; or

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in 279B.055(4)(b) and (c).

(3) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a contract or price agreement through an Interstate Cooperative Procurement as set forth in ORS 279A.220(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

#### **137-046-0470**

##### **Protests and Disputes**

(1) If a bidder or proposer wishes to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement, or the award or proposed award of an Original Contract, the bidder or proposer shall direct the protest to the Administering Contracting Agency, and the bidder or proposer shall make such protest in accordance with ORS 279B.400 through ORS 279B.425. If the Administering Contracting Agency is not subject to the Code, then bidders or proposers shall make such protests in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.

(3) Any other protests related to a Cooperative Procurement, or disputes related to a Contract or Price Agreement arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.225

**137-046-0480**

**Contract Amendments**

A purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Rule 137-047-0800 for Goods and Service Contracts and Rule 137-049-0910 for Public Improvement Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

## PUBLIC CONTRACTING RULES 2020

### DIVISION 47

#### PUBLIC PROCUREMENTS FOR GOODS OR SERVICES GENERAL PROVISIONS

##### 137-047-0100

###### Application

These division 47 rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods or Services. These division 47 rules become effective upon adoption, and apply to Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

##### 137-047-0110

###### Definitions

(1) "**Advantageous**" means in the Contracting Agency's best interests, as assessed according to the judgment of the Contracting Agency.

(2) "**Affected Person**" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.

(3) "**Scope**" means the range and attributes of the Goods or Services described in the applicable Procurement document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

#### SOURCE SELECTION

##### 137-047-0250

###### Methods of Source Selection

Except as permitted by ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, a Contracting Agency shall Award a Public Contract for Goods or Services based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 or competitive sealed Proposals pursuant to ORS 279B.060

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.050

##### 137-047-0255

###### Competitive Sealed Bidding

(1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in 137-047-0300.

(2) **Invitation to Bid.** In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

- (E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);
- (F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3));
- (G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-047-0430);
- (b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.055, the Contracting Agency's description of its need to purchase must:
- (A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;
- (B) Outline the anticipated duties of the Contractor under any resulting Contract;
- (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
- (D) Unless the Contracting Agency for good cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the Contracting Agency is purchasing.
- (c) Bidding and Evaluation Process.
- (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
- (B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates of actual future costs based on information the Contracting Agency has available concerning future use; and
- (C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to Rule 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
- (d) Applicable preferences pursuant to ORS 279B.055(6)(b).
- (e) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385 and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).
- (f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval from the Contracting Agency. Pursuant to ORS 279B.055, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
- (A) The Contracting Agency's reduction or withholding of payment under the Contract;
- (B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
- (C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.
- (3) **Good Cause**. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:
- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance, techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- (d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the

Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.055

### **137-047-0257**

#### **Multistep Sealed Bidding**

- (1) **Generally.** A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).
- (2) **Phased Process.** Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.
- (3) **Public Notice.** When a Contracting Agency uses multistep sealed bidding, the Contracting Agency shall give public notice for the first phase in accordance with Rule 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under Rule 137-047-430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under Rule 137-047-0720.
- (4) **Procedures Generally.** In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.
- (5) **Procedure for Phase One of Multistep Sealed Bidding.**
  - (a) **Form.** A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth in Rule 137-047-0255(2), the multistep Invitation to Bid must state:
    - (A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;
    - (B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;
    - (C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;
    - (D) The criteria to be used in the evaluation of unpriced submittals;
  - (b) **Evaluation.** The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.
- (6) **Procedure for Phase Two of Multistep Sealed Bidding.**
  - (a) After the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.
  - (b) **A Contracting Agency** shall conduct phase two as any other competitive sealed Bid Procurement except:
    - (A) As specifically set forth in this Rule or the Invitation to Bid;
    - (B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.055

### **137-047-0260**

#### **Competitive Sealed Proposals**

- (1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed Proposal as set forth in Rule 137-047-0300.
- (2) **Request for Proposal.** In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:
  - (a) **General Information.**
    - (A) Notice of any pre-Offer conference as follows:
      - (i) The time, date and location of any pre-Offer conference;
      - (ii) Whether attendance at the conference will be mandatory or voluntary; and

- (iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.
- (B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Proposals);
- (C) The time, date and place of Opening;
- (D) The office where the Solicitation Document may be reviewed;
- (E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3)); and
- (F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See Rule 137-047-0430).
- (b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:
- (A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;
- (B) Outline the anticipated duties of the Contractor under any resulting Contract;
- (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
- (D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning and land surveying services or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.
- (c) Proposal and Evaluation Process.
- (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
- (B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency; and
- (C) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to Rule 137-047-0600(4)(d), the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
- (d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), 282.210, and Rules 137-046-0300 through 137-046-0330.
- (e) For Contracting Agencies subject to ORS 305.385, Proposer's certification of compliance with the Oregon tax laws in accordance with ORS 305.385, as applicable and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).
- (f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See Rule 137-047-0262.)
- (g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
- (A) The Contracting Agency's reduction or withholding of payment under the Contract;
- (B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and
- (C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.
- (3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract, and identify those contractual terms and conditions, if any, subject to negotiation per Rule 137-047-0262(3). Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under Rule 137-047-0550, but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The Contracting Agency shall not agree to any

Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(5) **Good Cause.** For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods and Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060, ORS 279A.107 & ORS 279B.130

#### **137-047-0261**

##### **Procedures for Competitive Range, Multi-tiered and Multistep Proposals**

(1) **Generally.** A Contracting Agency may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multi-step selection process that permits awards to the highest ranked proposer at any tier or step, calls for the establishment of a competitive range, or permits either serial or competitive simultaneous discussions or negotiations with one or more proposers. A Contracting Agency may employ one or more or any combination of the procedures set forth in this rule for competitive range, multi-tiered and multi-step proposals.

(2) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(3) **Exclusion Protest.** A Contracting Agency may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in Rule 137-047-0720.

(4) **Award Protest.** A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Rule 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in Rule 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

#### **137-047-0262**

##### **Competitive Range, Discussions and Negotiations**

(1) When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with Rule 137-047-0720.

(2) **Discussions.** The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposer's Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice requesting best and final Offers.

(3) **Negotiations.** Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers..

(a) The Contracting Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(C) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(4) **Terminating Negotiations.** At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(5) **Best and Final Offers.** If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct the evaluations as described in Rule 137-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

### **137-047-0263**

#### **Multistep Sealed Proposals**

(1) **Generally.** A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279.060(6)(b)(G).

(2) **Phased Process.** Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the final phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the Contracting Agency may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

(3) **Public Notice.** Whenever multistep sealed Proposals are used, public notice for the first phase shall be given in accordance with Rule 137-047-0300. Public notice is not required for the subsequent phases. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Rule 137-047-0720.

#### **(4) Procedure for Phase One of Multistep Sealed Proposals.**

(a) **Form.** Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in Rule 137-047-0260(2), the multistep Request for Proposal shall state:

(A) That un-priced technical Proposals are requested;

(B) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;

(C) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;

(D) The criteria to be used in the evaluation of un-priced technical Proposals;

(E) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical Proposals;

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal.

(G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.

(b) **Addenda to the Request for Proposal.** After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

(c) **Receipt and Handling of Un-priced Technical Proposals.** Un-priced technical Proposals need not be opened publicly.

(d) **Evaluation of Un-Priced Technical Proposals.** Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal.

(e) **Discussion of Un-priced Technical Proposals.** The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal.

During the course of such discussions, the Contracting Agency shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.

(f) **Methods of Contractor Selection for Phase One.** In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(g) **Procedure for Phase Two.** On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule. No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

### **137-047-0265**

#### **Small Procurements**

(1) **Generally.** For Procurements of Goods or Services less than or equal to \$10,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process, subject to the procurement policies of Contracting Agency.

(2) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than \$12,500.

Stat. Auth.: ORS 279A.065 & ORS 279B.065

Stats. Implemented: ORS 279B.065

### **137-047-0270**

#### **Intermediate Procurements**

(1) **Generally.** For Procurements of Goods or Services greater than \$10,000 and less than or equal to \$150,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Written Solicitations.** For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.

(3) **Negotiations.** A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.

(4) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds \$150,000 or increases the price more than twenty-five percent (25%) of the original Contract price, whichever is greater.

Stat. Auth.: ORS 279A.065 & ORS 279B.070

Stats. Implemented: ORS 279B.070

### **137-047-0275**

#### **Sole-Source Procurements**

(1) **Generally.** A Contracting Agency may Award a Public Contract without competition as a sole-source Procurement, after documenting the procurement file with findings of current market research to support the determination that the Goods or Services are available from only one seller or source. The findings shall also include:

(a) a brief description of the contract or contracts to be covered including contemplated future purchases;

(b) a description of the product or service to be purchased; and

(c) the reasons the Contracting Agency is seeking this procurement method, which shall include any of the following: (i) efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies, or services; or (ii) 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; or (iii) the particular product is for use in a pilot or an experimental project; or (iv) other findings that support the conclusion that the Goods or Services are available from only one source. ORS 279B.075(2)(d).

(2) **Public Notice.** If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS

279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give such public notice at least seven (7) Days before Award of the Contract, unless otherwise set forth in the notice.

(3) **Protest.** An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with Rule 137-047-0710.

Stat. Auth.: ORS 279A.065 & ORS 279B.075

Stats. Implemented: ORS 279B.075

#### **137-047-0280**

##### **Emergency Procurements**

A Contracting Agency may Award a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. For an Emergency Procurement of construction services that are not public improvements, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances, in conformance with ORS 279B.080(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080

#### **137-047-0285**

##### **Special Procurements**

(1) **Generally.** A Contracting Agency may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) **Public Notice.** A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract, unless a different time period is stated in the request for approval notice. Award may be made at the time of approval, contingent upon expiration of the protest period or issuance of a written disposition of any protest received.

(3) **Protest.** An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and Rule 137-047-0700.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.085

#### **137-047-0290**

##### **Cooperative Procurements**

A Contracting Agency may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and Rules 137-046-0400 through 137-046-0480.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.205

## **PROCUREMENT PROCESS**

#### **137-047-0300**

##### **Public Notice of Solicitation Documents**

(1) **Notice of Solicitation Documents; Fee.** A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule, unless exempt pursuant to Rules 137-047-0265 through 137-047-0285. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

- (a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements; or
- (b) Placing notice on the Contracting Agency's Electronic Procurement System; or
- (c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) **Advertising.** A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b).

(3) **Content of Advertisement.** All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) **Posting Advertisement for Offers.** The Contracting Agency may post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) **Fees.** The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) **Notice of Addenda.** The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with Rule 137-047-0430.

Stat. Auth.: ORS 279A.065, ORS 279B.055 & ORS 279B.060

Stats. Implemented: ORS 279B.055 & ORS 279B.060

### **137-047-0310**

#### **Bids or Proposals are Offers**

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or in the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) **Contingent Offers.** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Rule 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) **Offeror's Acknowledgment.** By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-047-0262, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60

### 137-047-0320

#### Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record, and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";
- (e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:
  - (A) Telephone number; and
  - (B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and
- (f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
  - (A) Receipt of garbled or incomplete documents;
  - (B) Availability or condition of the receiving facsimile machine;
  - (C) Incompatibility between the sending and receiving facsimile machine;
  - (D) Delay in transmission or receipt of documents;
  - (E) Failure of the Offeror to properly identify the Offer documents;
  - (F) Illegibility of Offer documents; and
  - (G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

### 137-047-0330

#### Electronic Procurement

(1) **Electronic Procurement Authorized.**

- (a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.
- (b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.
- (c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.
- (d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) **Rules Governing Electronic Procurements.** The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) **Preliminary Matters.** As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) **Offer Process.** A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with subsection 5(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) **Receipt of Electronic Offers.**

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) **Failure of the E-Procurement System.** In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in accordance with Rule 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279A.065

## BID AND PROPOSAL PREPARATION

### 137-047-0400

#### Offer Preparation

(1) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required by the Solicitation Document.

(4) **Electronic Submissions.** If the Solicitation Document permitted Electronic Offers under Rule 137-047-0330, an Offeror may submit its Offer electronically. The Contracting Agency shall not consider Electronic Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065

#### **137-047-0410**

##### **Offer Submission**

(1) **Product Samples and Descriptive Literature.** A Contracting Agency may require product samples or descriptive literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of product samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) **Identification of Offers.**

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) **Receipt of Offers.** The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065

#### **137-047-0420**

##### **Pre-Offer Conferences**

(1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rules 137-047-0255(2) or 137-047-0260(2).

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065

#### **137-047-0430**

##### **Addenda to Solicitation Document**

(1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with Rule 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with Rules 137-047-0261 through 137-047-0263. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting

Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing.”

**(3) Timelines; Extensions.**

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and Rules 137-047-0261 through 137-047-0263 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with Rule 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

Stat. Auth.: ORS 279A.065 & ORS 279B.060

Stats. Implemented: ORS 279B.060

**137-047-0440**

**Pre-Closing Modification or Withdrawal of Offers**

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rules 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) **Withdrawals.**

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Contracting Agency.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation.** The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

### **137-047-0450**

#### **Receipt, Opening, and Recording of Offers; Confidentiality of Offers.**

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

### **137-047-0460**

#### **Late Offers, Late Withdrawals and Late Modifications**

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-047-0470 or 137-047-0262.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

### **137-047-0470**

#### **Mistakes**

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers (A) or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & ORS 279B.055  
Stats. Implemented: ORS 279B.055

#### **137-047-0480**

##### **Time for Agency Acceptance**

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065

#### **137-047-0490**

##### **Extension of Time for Acceptance of Offer**

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279A.065

## **QUALIFICATIONS AND DUTIES**

#### **137-047-0500**

##### **Responsibility of Bidders and Proposers**

Before Awarding a Contract the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and Rule 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.110

**137-047-0525**

**Qualified Products Lists**

A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

**137-047-0550**

**Prequalification of Prospective Offerors**

(1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.120

**137-047-0575**

**Debarment of Prospective Offerors**

(1) **Generally.** A Contracting Agency may Debar prospective Offerors for the reasons set for the in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) **Responsibility.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) **Imputed Knowledge.** A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) **Limited Participation.** A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.130

**OFFER EVALUATION AND AWARD**

**137-047-0600**

**Offer Evaluation and Award**

(1) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and Rule 137-046-0310 for Nonresident Bidders.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Contracting Agency determines that one or more Bids are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Contracting Agency determines that one or more Proposals are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and Rule 137-046-0320.

(2) **Clarification of Bids or Proposals.** After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All

Offers, in the Contracting Agency's sole discretion, needing clarification shall be accorded such an opportunity. The Contracting Agency shall document clarification of any Offer in the Procurement file.

**(3) Negotiations.**

(a) Bids. Except as permitted by section 2 of this rule, a Contracting Agency shall not negotiate with any Bidder. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and Rule 137-047-0262. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

**(4) Award.**

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards - Bids.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & ORS 279B.060

Stats. Implemented: ORS 279B.055 & ORS 279B.060

**137-047-0610**

**Notice of Intent to Award**

(1) **Notice of Intent to Award**. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances require prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period in the Solicitation

documents. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.

(2) **Finality.** The Contracting Agency's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to Rule 137-047-0740; or

(b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

(3) If so provided in the Solicitation documents, said notice of intent to Award may be issued via facsimile or electronic data exchange.

Stat. Auth.: ORS 279A.065 & ORS 279B.135

Stats. Implemented: ORS 279B.135

### **137-047-0620**

#### **Documentation of Award**

(1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.

(2) **Contents of Award Record.** The Contracting Agency's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and Rules 137-047-0261 through 137-047-0263, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

### **137-047-0630**

#### **Availability of Award Decisions**

(1) **Contract Documents.** To the extent required by the Solicitation Document, the Contracting Agency shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) **Availability of Award Decisions.** A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Contracting Agency a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

(3) **Availability of Procurement Files.** After notice of intent to Award, the Contracting Agency shall make Procurement files available in accordance with applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055 & ORS 279B.060

### **137-047-0640**

#### **Rejection of an Offer**

(1) **Rejection of an Offer.**

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

- (F) Is not in substantial compliance with the Solicitation Document; or
- (G) Is not in substantial compliance with all prescribed public Procurement procedures.
- (c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:
- (A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;
- (B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to Rule 137-046-0210(4) (DBE Disqualification);
- (C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;
- (D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
- (E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or
- (F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:
- (i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities; and
- (ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);
- (iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);
- (iv) Is legally qualified to contract with the Contracting Agency;
- (v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state. Such certification demonstrates Offeror's compliance with such law in a credible and convenient way; and
- (vi) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.
- (2) **Form of Business Entity.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.
- (3) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-047-1610.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100, ORS 279B.110 & ORS 279B.130

### **137-047-0650**

#### **Rejection of All Offers**

(1) **Rejection.** A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) **Criteria.** The Contracting Agency may reject all Offers based upon the following criteria:

- (a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;
- (b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
- (e) The Contracting Agency cancels the Procurement or solicitation in accordance with Rule 137-047-0660; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

### **137-047-0660**

#### **Cancellation of Procurement or Solicitation**

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) **Notice of Cancellation Before Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same manner that the Contracting Agency initially provided notice of the solicitation. Such notice of cancellation shall:

- (a) Identify the Solicitation Document;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Notice of Cancellation After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

### **137-047-0670**

#### **Disposition of Offers if Procurement or Solicitation Canceled**

(1) **Prior to Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

(2) **After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:

- (a) May return Proposals in accordance with ORS 279B.060(6)(c); and
- (b) Shall keep Bids in the Procurement file.

(3) **Rejection of All Offers.** If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

## LEGAL REMEDIES

### 137-047-0700

#### **Protests and Judicial Review of Special Procurements**

(1) **Purpose.** An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) **Delivery.** Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) **Content of Protest.** The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) **Contract Review Authority Response.** The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) **Judicial Review.** An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & ORS 279B.400

Stats. Implemented: ORS 279B.400

### 137-047-0710

#### **Protests and Judicial Review of Sole-Source Procurements**

(1) **Purpose.** For sole-source Procurements requiring public notice under Rule 137-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) **Content of Protest.** The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) **Contract Review Authority Response.** The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.

(5) **Judicial Review.** Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.075

### 137-047-0720

#### **Protests and Judicial Review of Multi-Tiered and Multistep Solicitations**

(1) **Purpose.** An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest

is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) **Basis for Protest.** An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the Contracting Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) **Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) **Content of Protest.** The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) **Contracting Agency Response.** The Contracting Agency shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under Rule 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under Rule 137-047-0660.

(6) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

### **137-047-0730**

#### **Protests and Judicial Review of Solicitations**

##### **(1) Purpose.**

(a) A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(b) **Specific Special Procurements.** Notwithstanding section 1(a) of this rule, a Person may not protest, challenge, or review approval of a Special Procurement except in conformance with ORS 279B.400.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.

(3) **Content of Protest.** In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under Rule 137-047-0430 or cancel the Procurement or solicitation under Rule 137-047-0660.

(5) **Extension of Closing.** If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider and respond to the protest.

(6) **Clarification.** Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(7) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & ORS 279B.405  
Stats. Implemented: ORS 279B.405

#### **137-047-0740**

##### **Protests and Judicial Review of Contract Award**

(1) **Purpose.** An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first.

(3) **Content of Protest.** An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).

(4) **Contracting Agency Response.** The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & ORS 279B.410  
Stats. Implemented: ORS 279B.410 & ORS 279B.415.

#### **137-047-0745**

##### **Protests and Judicial Review of Qualified Products List Decisions**

(1) **Purpose.** A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's Goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) **Delivery.** Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) **Content of Protest.** The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

(5) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.115

#### **137-047-0750**

##### **Judicial Review of Other Violations**

Any violation of ORS chapter 279A or 279B by a Contracting Agency for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.420

### **137-047-0760**

#### **Review of Prequalification and Debarment Decisions**

Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.425

### **137-047-0800**

#### **Amendments to Contracts and Price Agreements**

(1) **Generally.** A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.;

(b) These Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract; and

(C) The renegotiated Contract will not increase or extend the total term of the original contract by more than one (1) year. Also, if multiple contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than one (1) year longer than the longest term of any of the prior Contracts.

(e) If the Contract is the result of a Cooperative Procurement, the amended Contract may not materially change the terms, conditions, and prices of the Original Contract.

(2) **Small or Intermediate Contract.** A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to sections 1 or 2 of this rule, provided also that the total increase in Contract price does not exceed the amount set forth in Rule 137-047-0265 for small Procurements and Rule 137-047-0270 for intermediate Procurements.

(3) **Emergency Contract.** A Contracting Agency may amend a Contract Awarded as an emergency Procurement if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.

(4) **Price Agreements.** A Contracting Agency may amend or terminate a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) As permitted by this rule;

(c) If the circumstances set forth in ORS 279B.140(2) exist; or

(d) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

### **137-047-0810**

#### **Termination of Price Agreements**

(1) A Contracting Agency may terminate a Price Agreement as follows:

(a) As permitted by the Price Agreement.

(b) If the circumstances set forth in ORS 279B.140(2) exist; or

(c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279B.140

## PUBLIC CONTRACTING RULES 2020

### DIVISION 48

#### CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIST, TRANSPORTATION PLANNING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

##### 137-048-0100

###### Application

These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services under Contracts, and set forth the following procedures:

- (a) Procedures through which Contracting Agency selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
- (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by a Local Government.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

##### 137-048-0110

###### Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and Rule 137-046-0110, the following definitions apply to these division 48 rules:

- (1) "**Consultant**" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.
- (2) "**Estimated Fee**" means Contracting Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.
- (3) "**Price Agreement**," for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include price or Consultant compensation information, with:
  - (a) No guarantee of a minimum or maximum purchase; or
  - (b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.
- (4) "**Project**" means all components of a Contracting Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- (5) "**Transportation Planning Services**" are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- (6) "**Related Services**" means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services,

material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

### **137-048-0120**

[Reserved.]

### **137-048-0130**

#### **Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest**

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agency shall follow the applicable selection procedure under either Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). In following the Direct Appointment Procedure under Rule 137-048-0200, Contracting Agency may base its selection of a consultant on any information available to Agency.

(2) When selecting Consultants to perform Related Services, Contracting Agency shall follow either its Division 47 or Division 48 rules, as determined in its sole discretion.

(3) A Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of Rule 137-048-0270 (Price Agreements).

(4) Contracting Agency may use electronic methods to screen and select a Consultant in accordance with the procedures described in Rule 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and Section (1) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and Section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and Divisions 46, 47 and 49 of these Rules that match the predominant purpose of the Contract.

(6) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals submitted under these Division 48 Rules.

(b) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agency may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agency may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant.

(c) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(7) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agency may not:

(a) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract from a Contractor or an affiliate of a Contractor who is a party to the Public

Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services; or

(b) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services.

(8) The requirements of ORS 279C.307 and Section (7) of this rule apply in the following circumstances, except as provided in Section (9) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (8)(a) of this rule.

(9) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in Rule 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.100-279C.125

## **SELECTION PROCEDURES**

### **137-048-0200**

#### **Direct Appointment Procedure**

(1) Contracting Agency may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Contracting Agency finds that an Emergency exists; or

(b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or

(c) The following requirements are met:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project

as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Contracting Agency used either the formal selection procedure under Rule 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract.

(d) Continuation of Project With Extensive Estimated Fee. Where a Project is being continued under subsection 1(c) of this rule, and the Estimated Fee is expected to exceed \$250,000, the Contracting Agency must make written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(A) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and,

(B) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) Contracting Agency may select a Consultant for a Contract under this rule from any and all Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110 & ORS 279C.115

### **137-048-0210**

#### **Informal Selection Procedure**

(1) Contracting Agency may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.

(2) If using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and/or qualifications, Contracting Agency shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Consultant's specialized experience, capabilities and technical competence, which may be demonstrated with Consultant's proposed approach and methodology to meet the project requirements;

(ii) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(iii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;

(iv) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

- (v) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;
  - (vi) A Consultant's geographic proximity to and familiarity with the physical location of the Project;
  - (vii) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;
  - (viii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
  - (ix) If the Contracting Agency complies with the additional requirements of Section (3) of this Rule or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.
  - (F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
  - (G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and
  - (H) A sample form of the Contract.
- (b) Provide a Request for Proposals to a minimum of three (3) prospective Consultants drawn from any and 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. If three (3) prospective Consultants cannot reasonably be located, Contracting Agency shall document its efforts in writing and provide the RFP to those Consultants that were located.
- (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals.
- (3) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
- (a) States in the RFP:
    - (A) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
    - (B) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:
      - (i) Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and
      - (ii) The relative weight in points or percentages the Contracting Agency will give each factor;
    - (C) An estimate of the cost of services the Contracting Agency seeks in the procurement;
    - (D) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
  - (b) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
  - (c) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
    - (A) Must include:
      - (i) A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
      - (ii) A reasonable estimate of hours that the Consultant will require to perform the services sought.
    - (B) May include, at the Contracting Agency's request, additional pricing information that is limited to:
      - (i) A description of each task proposed by Consultant;
      - (ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
      - (iii) A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
  - (d) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultants does not wish to provide a price proposal.
  - (f) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.
- (4) If Contracting Agency does not cancel the RFP after it reviews and ranks each Consultant, Contracting Agency will begin negotiating a Contract with the highest ranked Consultant. Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (a) The Consultant's scope of services, performance obligations and performance schedule;
  - (b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

- (c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (5) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Consultant, if the Contracting Agency and Consultant are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Consultant, and if necessary, with the third ranked Consultant, in accordance with Section (4) of this rule, and as limited by Section (3) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any of the Consultants do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under Rule 137-048-0220 (Formal Selection Procedure).
- (6) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under Rule 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110

### **137-048-0220**

#### **Formal Selection Procedure**

- (1) Contracting Agency shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agency's discretion.
- (2) When using the formal selection procedure Contracting Agency shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.
- (a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as desired by Contracting Agency to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.
- (A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.
- (B) Contracting Agency shall include a brief description of the following items in the advertisement:
- (i) The Project;
  - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;
  - (iii) How and where Consultants may obtain a copy of the RFQ or RFP; and
  - (iv) The deadline for submitting a Proposal or response to the RFQ or RFP.
- (b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in Rule 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.
- (3) Request for Qualifications Procedure. Contracting Agency may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.
- (a) A Contracting Agency shall include the following, at a minimum, in each RFQ:
    - (A) A brief description of the Project for which the Contracting Agency is seeking Consultants;
    - (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;
    - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
    - (D) The deadline for submitting a response to the RFQ;
    - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;
    - (F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;
    - (G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

- (H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.
- (b) A Contracting Agency may not request pricing policies, cost proposals, or other pricing information in the RFQ, but may request for any or all of the following:
- (A) A statement describing Consultants' general qualifications and related performance information;
  - (B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;
  - (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
  - (D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;
  - (E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;
  - (F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;
  - (G) Consultants' geographic proximity to and familiarity with the physical location of the Project;
  - (H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
  - (I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
  - (J) Consultants' ability to assist Contracting Agency in complying with the solar energy technology requirements of ORS 279C.527; and
  - (K) Any other information Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.
- (c) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:
- (A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
  - (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
  - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.
- (d) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.
- (e) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.
- (4) Formal Selection of Consultants Through Request for Proposals. Contracting Agency shall use the procedure described in this Section (4) of this rule when issuing an RFP for a Contract described in Section (1) of this rule.
- (a) RFP Required Contents. Contracting Agency using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:
- (A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.
  - (B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:
    - (i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
    - (ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;
    - (iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
    - (iv) The recent, current and projected workloads of the staff and resources referenced in subsection (4)(a)(B)(iii), above;

- (v) The proportion of time Proposers estimate that the staff referenced in subsection (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance;
- (vii) References and recommendations from past clients;
- (viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;
- (ix) Status and quality of any required license or certification;
- (x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;
- (xi) Results from interviews, if conducted;
- (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (xiii) If the Contracting Agency complies with the additional requirements of Section (4)(b) of this Rule, or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and
- (xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.
- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
- (D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;
- (E) The date and time Proposals are due, and the delivery location for Proposals;
- (F) Reservation of the right to seek clarifications of each Proposal;
- (G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;
- (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;
- (I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;
- (K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
- (L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
- (M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (N) Where applicable, a statement requiring design compliance with ORS 279C.527, regarding green energy technology; and
- (O) A sample form of the Contract.
- (b) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
  - (A) States in the RFP:
    - (i) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
    - (ii) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:
      1. Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and

2. The relative weight in points or percentages the Contracting Agency will give each factor;
    - (ii) An estimate of the cost of services the Contracting Agency seeks in the procurement;
    - (iii) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
- (B) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
- (C) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
- (i) Must include:
    1. A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
    2. A reasonable estimate of hours that the Consultant will require to perform the services sought.
  - (ii) May include, at the Contracting Agency's request, additional pricing information that is limited to:
    1. A description of each task proposed by Consultant;
    2. A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
    3. A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
- (D) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultant does not wish to provide a price proposal.
- (E) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.
- (c) RFP Evaluation Committee. The Contracting Agency shall either establish a committee or designate an individual to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agency with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of an evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. If formed, the Contracting Agency shall designate a member of the evaluation committee as the evaluation committee chairperson.
- (A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;
- (d) If the Contracting Agency does not cancel the RFP after completing the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (A) The Consultant's scope of services, performance obligations and performance schedule;
  - (B) Payment methodology, Consultant's rates and number hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
  - (C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (e) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with subsection (4)(d), and as limited by subsection (4)(b) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065  
 Stats. Implemented: ORS 279C.110 & ORS 279C.527

### 137-048-0230

#### Ties Among Proposers

(1) If Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this Section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under Rules 137-048-0210(4) or 137-048-0220(4)(c), as applicable.

(2) If Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in Rule 137-046-0300 (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.105 & ORS 279C.110

### 137-048-0240

#### Protest Procedures

(1) **RFP Protest and Request for Change.** Pursuant to ORS 279C.110(8), Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection.** Pursuant to ORS 279C.110(8), Consultants may protest Contracting Agency's Consultant selection for award, as follows:

(a) Single Award. In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of the selection notice that the Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests.** A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & 279C.110

### **137-048-0250**

#### **Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs**

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (Rule 137-048-0200), the Informal Selection Procedure (Rule 137-048-0210), or the Formal Selection Procedure (Rule 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents. In the event of any such cancellation, Contracting Agency shall return Proposals to Proposers and keep a list of returned Proposals in the Solicitation file, in accordance with ORS 279C.107.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279C.110

### **137-048-0260**

#### **Two-Tiered Selection Procedure when State Agency is Lead Contracting Agency**

(1) If the Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) **Tier One.** The State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP pursuant to its own rules or, if permitted by state, by these Division 48 rules applicable selection procedures described in from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors, and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) **Tier Two.** In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110 & ORS 279C.125

### **137-048-0270**

#### **Price Agreements**

(1) Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with Rule 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agency may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) Solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion. In accordance with Rule 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information requested for Price Agreements with any Division 48 Consultant may include the number of hours proposed for the services required, expenses, hourly rates, the number of hours, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of Rule 137-048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) A clearly defined statement of work and performance schedule for any deliverables;

(b) The payment methodology, Consultant rates and number of hours, and a maximum, not-to-exceed price for the services required under the work order or task order that is fair and reasonable to the Contracting Agency, as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the services; and

- (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
- (d) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065, ORS 279C.110 & ORS 279C.120

## **POST-SELECTION CONSIDERATIONS**

### **137-048-0300**

#### **Prohibited Payment Methodology; Purchase Restrictions**

- (1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:
  - (a) Consultant's costs under the Contract plus a percentage of those costs; or
  - (b) A percentage of the Project construction costs or total Project costs.
- (2) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract in which:
  - (a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
  - (b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.
- (3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:
  - (a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see Rules 137-049-0670 and 137-049-0680); or
  - (b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

### **137-048-0310**

#### **Expired or Terminated Contracts; Reinstatement**

- (1) If Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:
  - (a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or
  - (b) Terminated Contracts. If Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.
- (2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:
  - (a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;

- (b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and
- (c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

### **137-048-0320**

#### **Contract Amendments**

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

## PUBLIC CONTRACTING RULES 2020

### DIVISION 49

#### GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

##### 137-049-0100

###### Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Rules).

(3) These division 49 Rules become effective upon adoption, and apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

##### 137-049-0110

###### Policies

In addition to the general Code policies set forth in ORS 279A.015, the ORS 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these division 49 rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.300 & ORS 279C.305

##### 137-049-0120

###### Definitions

(1) "**Conduct Disqualification**" means a Disqualification pursuant to ORS 279C.440.

(2) "**Disqualification**" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with Rule 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) "**Foreign Contractor**" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 137-049-0480.

(4) "**Notice**" means any of the alternative forms of public announcement of Procurements, as described in Rule 137-049-0210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.110

##### 137-049-0130

###### Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required by these Rules, or pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see Rules 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

##### 137-049-0140

###### Contracts for Construction Other than Public Improvements

(1) **Procurement Under ORS Chapter 279B.** Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(6) and Rule 137-049-0150, may be procured and amended as general trade services under the provisions of ORS Chapter 279B and division 47 Rules, rather than under the provisions of ORS Chapter 279C and these division 49 rules.

(2) **Application of ORS Chapter 279C.** Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.320

### **137-049-0150**

#### **Emergency Contracts; Bidding and Bonding Exemptions**

(1) **Emergency Declaration.** A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall thereafter be kept on file as a public record.

(2) **Competition for Contracts.** Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Emergency Contract Modification.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See Rule 137-049-0815 and BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080, ORS 279C.320 & ORS 279C.380

### **137-049-0160**

#### **Intermediate Procurements; Competitive Quotes and Amendments**

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to exceed \$5,000 and not to exceed \$100,000 may be Awarded in accordance with this rule.

(2) **Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes.** Contracting Agencies shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required.** Contracting Agencies shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a written record of the effort made to obtain those quotes.

(5) **Award.** If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a written record of the basis for Award.

(6) **Price Increases.** Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to Rule 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments.** Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule and Rule 137-049-0910. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.412.

## FORMAL PROCUREMENT RULES

### 137-049-0200

#### **Solicitation Documents; Required Provisions; Assignment or Transfer**

(1) **Solicitation Document.** Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information.

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See Rule 137-049-0300 regarding facsimile Bids or Proposals and Rule 137-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 137-049-0360. For timing issues relating to Addenda, see Rule 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.";

- (K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered and in good standing with the Construction Contractors Bd, or is licensed by the State Landscape Contractors Bd, as specified in Rule 137-049-0230;
- (L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
- (M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-049-0440(3));
- (N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-049-0250); and
- (O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 137-049-0360.
- (P) Where applicable, a statement requiring compliance with ORS 279C.527, green energy technology.
- (b) Evaluation Process:
- (A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b) and may reject for good cause all Offers after finding that doing so is in the public's interest;
- (B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;
- (C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;
- (i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;
- (ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of Rule 137-049-0650 and 279C.400 to 279C.410; and
- (c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:
- (A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- (B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
- (C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- (D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- (E) Payment of claims by public officers (ORS 279C.515(1));
- (F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
- (G) Person's right to file a complaint with the Construction Contractors Bd for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- (H) Hours of labor in compliance with ORS 279C.520;
- (I) Environmental and natural resources regulations (ORS 279C.525);
- (J) Payment for medical care and attention to employees (ORS 279C.530(1));
- (K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));
- (L) Maximum hours, holidays and overtime (ORS 279C.540);
- (M) Time limitation on claims for overtime (ORS 279C.545);
- (N) Prevailing wage rates (ORS 279C.800 to 279C.870);
- (O) BOLI Public Works bond (ORS 279C.830(3));
- (P) Retainage (ORS 279C.550 to 279C.570);
- (Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);  
(S) Notice of claim (ORS 279C.605);  
(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and  
(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Bd or licensed by the State Landscape Contractors Bd in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) **Assignment or Transfer Restricted.** Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.110(4), ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055

### **137-049-0210**

#### **Notice and Advertising Requirements; Posting**

(1) **Notice and Distribution Fee.** A Contracting Agency may furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice may indicate where, when, how and for how long the Solicitation Document may be obtained; generally describe the Public Improvement project or Work; and may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

- (a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;
- (b) Placing Notice on the Contracting Agency's Electronic Procurement System; or
- (c) Placing Notice on the Contracting Agency's Internet Web site.

(2) **Advertising.** Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the exempted the Solicitation is otherwise exempt from the advertisement requirement under these rules or pursuant to a competitive bidding exemption adopted under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines that Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(d) All advertisements for Offers shall set forth:

- (A) The Public Improvement project;
- (B) The office or website where Contract terms, conditions and Specifications may be reviewed;
- (C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;
- (D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;
- (E) The name, title and address of the Contracting Agency Person authorized to receive Offers;
- (F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360 & ORS 200.035

### **137-049-0220**

#### **Prequalification of Offerors**

(1) **Prequalification.** Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) **Mandatory Prequalification.** A Contracting Agency may require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. The Contracting Agency shall determine prequalification status in accordance with 279C.430. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification and establish the time for submitting the prequalification application. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) **Permissive Prequalification.** A Contracting Agency may prequalify a Person for the Contracting Agency's Solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a Solicitation to that list.

(2) **Prequalification Presumed.** If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) **Standards for Prequalification.** A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency.

(See, Rule 137-049-0390(2) regarding standards of responsibility.)

(4) **Notice of Denial.** If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.430 & ORS 279C.435

### **137-049-0230**

#### **Eligibility to Bid or Propose; Registration or License**

(1) **Construction Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Bd at the time the Offer is made.

(2) **Landscape Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Bd at the time the offer is made.

(3) **Noncomplying Entities.** The Contracting Agency shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 671.530 & ORS 701.055

### **137-049-0240**

#### **Pre-Offer Conferences**

(1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.

(2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

- (3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **Contracting Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 137-049-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279C.365 & ORS 279C.370

### 137-049-0250

#### **Addenda to Solicitation Documents**

- (1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda or in the Solicitation Document.
- (2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Rule 137-049-0210(1). The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available (see Rule 137-049-0200(1)(a)(N)). For example, "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's Web site. Addenda may be downloaded off the Contracting Agency's Web site. Offerors should frequently check the Contracting Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."
- (3) **Timelines; Extensions.** The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
- (4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-049-0260, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-049-0260, whichever date is later. The Contracting Agency shall consider only an Offeror's request for change or protest to the Addendum; the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Contracting Agency's receipt of request for change or protests as set forth in Rule 137-049-0260(2) and (3).

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279C.395 & ORS 279A.065

### 137-049-0260

#### **Request for Clarification or Change; Solicitation Protests**

- (1) **Clarification.** Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.
- (2) **Request for Change.**
- (a) **Delivery.** An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing;
- (b) **Content of Request for Change.**
- (A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.
- (B) An Offeror shall mark its request for change as follows:
- (i) "Contract Provision Request for Change"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) **Protest.**

(a) **Delivery.** An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing;

(b) **Content of Protest.**

(A) An Offeror's Written protest shall include:

- (i) A detailed statement of the legal and factual grounds for the protest;
- (ii) A description of the resulting prejudice to the Offeror; and
- (iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

- (i) "Contract Provision Protest"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) **Contracting Agency Response.** The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under Rule 137-049-0260 or cancel the Solicitation under Rule 137-049-0270.

(5) **Extension of Closing.** If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345 & ORS 279C.365

**137-049-0270**

**Cancellation of Solicitation Document**

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the Solicitation file.

(2) **Notice of Cancellation.** If the Contracting Agency cancels a Solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with Rule 137-049-0210(1). Such notice of cancellation shall:

- (a) Identify the Solicitation;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Disposition of Offers.**

(a) **Prior to Offer Opening.** If the Contracting Agency cancels a Solicitation prior to Offer Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.

(b) **After Offer Opening.** If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395

**137-049-0280**

**Offer Submissions**

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive Solicitations, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-049-0410. The Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with Proposer. See Rule 137-049-0650 on Requests for Proposals and Rule 137-049-0290 on Bid or Proposal Security.

(2) **Responsive Offer.** A Contracting Agency may Award a Contract only to a Responsible Offeror with a Responsive Offer.

- (3) **Contingent Offers.** Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to Rule 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- (4) **Offeror's Acknowledgement.** By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-049-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.
- (5) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- (6) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- (7) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required under the Solicitation Document.
- (8) **Facsimile or Electronic Submissions.** If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.
- (9) **Product Samples and Descriptive Literature.** A Contracting Agency may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- (10) **Identification of Offers**
- (a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.
- (b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (11) **Receipt of Offers.** The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

### **137-049-0290**

#### **Bid or Proposal Security**

- (1) **Security Amount.** If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(4) and ORS 279C.385.
- (2) **Requirement for Bid Security (Optional for Proposals).** Unless a Contracting Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(5). The Contracting Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).
- (3) **Form of Bid or Proposal Security.** A Contracting Agency may accept only the following forms of Bid or Proposal security:
- (a) A surety bond from a surety company authorized to do business in the State of Oregon;
- (b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
- (c) A cashier's check or Offeror's certified check.
- (4) **Return of Security.** A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or

Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.385 & ORS 279C.390

### **137-049-0300**

#### **Facsimile Bids and Proposals**

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency shall not authorize facsimile Offers unless the Contracting Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions to be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a request for quotes) the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine.";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer.";
- (e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:
  - (A) Telephone number; and
  - (B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and
  - (f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
    - (A) Receipt of garbled or incomplete documents;
    - (B) Availability or condition of the receiving facsimile machine;
    - (C) Incompatibility between the sending and receiving facsimile machine;
    - (D) Delay in transmission or receipt of documents;
    - (E) Failure of the Offeror to properly identify the Offer documents;
    - (F) Illegibility of Offer documents; and
    - (G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

### **137-049-0310**

#### **Electronic Procurement**

(1) **General.** Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1) and Rule 137-049-0210(2)(b), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures.** In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with Rule 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C

requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation.** Nothing in this rule shall be construed as prohibiting Contracting Agency from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

### **137-049-0320**

#### **Pre-Closing Modification or Withdrawal of Offers**

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rule 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

#### **(2) Withdrawals**

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation.** The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360(2), ORS 279C.365, ORS 279C.375 & ORS 279C.395

### **137-049-0330**

#### **Receipt, Opening and Recording of Offers; Confidentiality of Offers**

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) **Availability.** After Opening, the Contracting Agency shall make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

### 137-049-0340

#### Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. A Contracting Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-049-0350 or 137-049-0390.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

### 137-049-0350

#### Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375 & ORS 279C.395

### **137-049-0360**

#### **First-Tier Subcontractors; Disclosure and Substitution**

(1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed \$100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

- (a) Five percent of the total Contract Price, but at least \$15,000; or
- (b) \$350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline and Bid Opening.** For each ITB to which this rule applies, the Contracting Agency shall:

- (a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
- (b) Open Bids publicly immediately after the Bid Closing; and
- (c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) **Bidder Instructions and Disclosure Form.** For the purposes of this rule, a Contracting Agency in its Solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is estimated by the Contracting Agency to be greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

- (1) The subcontractor's name,
- (2) The category of Work that the subcontractor would be performing, and
- (3) The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see Rule 137-049-0360)."

(4) **Submission.** A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) **Contracting Agency Role.** Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) **Substitution.** Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies

do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.370, ORS 279C.585, ORS 279C.590 & ORS 279C.835

### 137-049-0370

#### Disqualification of Persons

(1) **Authority.** A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

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

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

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns in awarding a subcontract under a Contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify.** The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

- (e) Include a reference to the particular sections of the statutes and rules involved;
  - (f) State the proposed Disqualification period; and
  - (g) State that the Person may be represented by legal counsel.
- (3) **Hearing.** The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.
- (4) **Notice of Disqualification.** The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
- (a) The effective date and period of Disqualification;
  - (b) The grounds for Disqualification; and
  - (c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.110, ORS 279C.440, ORS 279C.445 & ORS 279C.450

### **137-049-0380**

#### **Bid or Proposal Evaluation Criteria**

- (1) **General.** A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See Rule 137-049-0390, and Rules for Alternative Contracting Methods at Rules 137-049-0600 to 137-049-0690.
- (2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.
- (a) **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.
- (b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See Rule 137-049-0350(2)(b).
- (3) **Proposal Evaluation Criteria.** If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See Rules 137-049-0650, 137-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

### **137-049-0390**

#### **Offer Evaluation and Award; Determination of Responsibility**

- (1) **General.** If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract, see ORS 279C.375(3)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120) education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple Contract awards when specified in the ITB.
- (2) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information

that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

- (a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
- (b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
- (c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under Rule 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;
- (d) Is legally qualified to contract with the Contracting Agency;
- (e) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the Work specified in the Contract;
- (f) Is covered by liability insurance and other insurance in amounts the Contracting Agency requires in the Solicitation Documents;
- (g) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128;
- (h) Has made the disclosure required under ORS 279C.370; and
- (i) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting Agency Determinations.** Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions.**

(a) The Contracting Agency may require an Offeror to submit Product Samples, descriptive literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) **Evaluation of Bids.** The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

- (a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with Rule 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
- (b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
- (c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.
- (7) **Evaluation of Proposals.** See Rule 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.365, ORS 279C.375 & ORS 279C.395

### **137-049-0395**

#### **Notice of Intent to Award**

- (1) **Notice.** At least seven days before the Award of a Public Improvement Contract, unless the Contracting Agency determines that seven days is impractical and documents its reasons therefore in the procurement file, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post, electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under \$5,000), intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).
- (2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.
- (3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:
- (a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
- (b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.
- (4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reason for the determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

### **137-049-0400**

#### **Documentation of Award; Availability of Award Decisions**

- (1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Solicitation file.
- (2) **Contents of Award Record for Bids.** The Contracting Agency's record shall include:
- (a) All submitted Bids;
- (b) Completed Bid tabulation sheet; and
- (c) Written justification for any rejection of lower Bids.
- (3) **Contents of Award Record for Proposals.** Where the use of Requests for Proposals is authorized as set forth in Rule 137-049-0650, the Contracting Agency's record shall include:
- (a) All submitted Proposals.
- (b) The completed evaluation of the Proposals;
- (c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
- (d) If the Contracting Agency permitted negotiations in accordance with Rule 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.
- (4) **Contract Document.** The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.
- (5) **Bid Tabulations and Award Summaries.** Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations

of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) **Availability of Solicitation Files.** The Contracting Agency shall make completed Solicitation files available for public review at the Contracting Agency.

(7) **Copies from Solicitation Files.** Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

#### **137-049-0410**

##### **Time for Contracting Agency Acceptance; Extension**

(1) **Time for Offer Acceptance.** An Offeror's Bid, or Proposal submitted as a Firm Offer (see Rule 137-049-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

(2) **Extension of Acceptance Time.** A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

#### **137-049-0420**

##### **Negotiation With Bidders Prohibited**

(1) **Bids.** Except as permitted by ORS 279C.340 and Rule 137-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with Rule 137-049-0910.

(2) **Requests for Proposals.** A Contracting Agency may conduct discussions or negotiations with Proposers only in accordance with the requirements of Rule 137-049-0650.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.340 & ORS 279C.375

#### **137-049-0430**

##### **Negotiation When Bids Exceed Cost Estimate**

(1) **Generally.** In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 137-049-0360 do not apply to negotiations under this rule.

(2) **Definitions.** The following definitions apply to this administrative rule:

(a) **"Cost Estimate"** means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) **"Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Rule 137-049-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) **"Project"** means a Public Improvement.

(d) **"Value Engineering"** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

- (3) **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.
- (4) **Scope of Negotiations.** Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.
- (5) **Discontinuing Negotiations.** The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.
- (6) **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.
- (7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & ORS 279A.065  
 Stats. Implemented: ORS 279C.340

#### **137-049-0440**

##### **Rejection of Offers**

###### **(1) Rejection of an Offer.**

- (a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.
- (b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:
- (A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
  - (B) Takes exception to terms and conditions (including Specifications);
  - (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
  - (D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;
  - (E) Is late;
  - (F) Is not in substantial compliance with the Solicitation Documents;
  - (G) Is not in substantial compliance with all prescribed public Solicitation procedures.
- (c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:
- (A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;
  - (B) Has been Disqualified;
  - (C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
  - (D) Is listed as not qualified by the Construction Contractors Bd, if the Contract is for a Public Improvement;
  - (E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
  - (F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
  - (G) Has failed to provide the certification required under section 3 of this rule;
  - (H) Is not Responsible. See Rule 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.
- (2) **Form of Business.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and Rule 137-049-0370.
- (3) **Certification of Non-Discrimination.** The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-049-0395.

(5) **Rejection of all Offers.** A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(6) **Criteria for Rejection of All Offers.** The Contracting Agency may reject all Offers upon a Written finding that:

- (a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
- (b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;
- (e) The Contracting Agency cancels the Solicitation in accordance with Rule 137-049-0270; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.105, ORS 279A.110, ORS 279C.375, ORS 279C.380 & ORS 279C.395,

#### **137-049-0450**

##### **Protest of Contractor Selection, Contract Award**

(1) **Purpose.** An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Notice of Competitive Range.** Unless otherwise provided in the RFP, under Rule 137-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

- (a) Seven (7) Days after the date of the notice, unless otherwise provided therein; or
- (b) Until the Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award.** The Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided in Rule 137-049-0395.

##### **(4) Right to Protest Award.**

(a) To protest an Award, an adversely affected or aggrieved Offeror must submit to the Contracting Agency a Written protest within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

- (A) Because their Offers were nonresponsive; or
- (B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

##### **(5) Right to Protest Competitive Range.**

(a) An adversely affected or aggrieved Proposer may submit to the Contracting Agency a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven Days

after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at Rule 137-049-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests.** The head of the Contracting Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision.** If a protest is not settled, the head of the Contracting Agency, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award.** The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380, ORS 279C.385 & ORS 279C.460

### **137-049-0460**

#### **Performance and Payment Security; Waiver**

(1) **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the Contracting Agency's Contract Review Authority exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.380(5). Under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see Rule 137-049-0815 and BOLI rules at OAR 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts.** A Contracting Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond.** The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full contract price.

(4) **Time for Submission.** The apparent successful Offeror must promptly furnish the required performance security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380 & ORS 279C.390

**137-049-0470**

**Substitute Contractor**

If the Contractor provided a performance bond, the Contracting Agency, in its sole discretion, may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.370, ORS 279C.375, ORS 279C.380 & ORS 279C.390

**137-049-0490**

**Foreign Contractor**

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.120

**ALTERNATIVE CONTRACTING METHODS**

**137-049-0600**

**Purpose**

Rules 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. Alternative Contracting Methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. To the extent any such Alternative Contracting Methods (with the exception of CM/GC) are utilized within the competitive bidding process set forth at ORS 279C.335(1), Rules 137-049-0600 to 137-049-0690 are advisory only and need not be followed.

Stat. Auth.: ORS 279C.335, ORS 279A.065 & ORS 351.086

Stats. Implemented: ORS 279C.335, ORS 279C.337, ORS 279A.065 & ORS 351.086

**137-049-0610**

**Definitions for Alternative Contracting Methods**

The following definitions shall apply to these 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) "**Alternative Contracting Methods**" means innovative Procurement techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting *and* CM/GC forms of contracting, which are specifically addressed in these 137-049-0600 to 137-049-0690 rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements are identified under these 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(2) "**Construction Manager/General Contractor (or "CM/GC")**" has the meaning set forth in ORS 279C.332(2).

(3) **“Construction Manager/General Contractor Method (or “CM/GC Method)”** means the Alternative Method which involves a Contracting Agency’s selection of a CM/GC to perform CM/GC Services for a project or projects.

(4) **“Construction Manager/General Contractor Services (or CM/GC Services)”** has the meaning set forth in ORS 279C.332(3).

(5) **“Design-Build”** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(6) **“Guaranteed Maximum Price (or “GMP)”** has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, “Guaranteed Maximum Price” (or “GMP”) means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.332, ORS 279C.335 & ORS 279A.065

### **137-049-0620**

#### **Use of Alternative Contracting Methods**

(1) **Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Contracting Agency rules. Use of Alternative Contracting Methods may be directed by a Contracting Agency’s Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and these 137-049-0600 to 137-049-0690 rules. See Rule 137-049-0630 regarding required Findings and restrictions on class exemptions. Contracting Agency’s Contract Review Authority has duly adopted class exemptions for the use of Requests for Proposals (RFP) and ESPC forms of contracting and authorized Contracting Agency to approve use of these alternative solicitation and contracting methods in accordance with Rules 137-049-0600 to 137-049-0690, as applicable.

(2) **Post-Project Evaluation.** Per ORS 279C.355 the Contracting Agency shall prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency’s best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Contracting Agency’s Contract Review Authority within 30 Days of the date the Contracting Agency “accepts” the Public Improvement project, as defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. The evaluation shall address:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.355 & ORS 351.086

### **137-049-0630**

#### **Findings, Notice and Hearing**

(1) **“Cost Savings” and Other Substantial Benefits Factors.** When Findings are required under ORS 279C.335(2)(b) to exempt a Contract or class of Contracts from the competitive bidding requirements, the “substantial cost savings and other substantial benefits” criterion at 279C.335(2)(b) requires consideration of the type, cost and amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the local contract review board need not consider nor address that factor.

(2) **Required Information.** The statutory definition of “Findings” at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a Contracting

Agency's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and either 279C.335(2)(b) or 279C.335(2)(c).

(3) **Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, Contracting Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c).

(4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed for Alternative Contracting Methods by specifying: (a) the manner in which an RFP process will be utilized; (b) that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method; (c) that competition will be encouraged; and (d) that Award will be made based upon identified selection criteria and an opportunity to protest that Award provided.

(5) **Class Exemptions.** In making the findings supporting a class exemption the Contracting Agency shall clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279.335(3). Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values, method of procurement, or other factors that distinguish the limited and related class of Projects from a Contracting Agency's overall construction program. The Contracting Agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria of ORS 279C.335(2).

(6) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency shall give notice and hold a public hearing as required by ORS 279C.335(4). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's draft Findings.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335 & ORS 279A.065

### **137-049-0640**

#### **General Alternative Bidding Procedures**

(1) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS 279C.305.

(2) **Evaluation Factors.**

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include any factors required by ORS 279C.337 and OAR 137-049-0690.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and Rules 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Rule 137-049-0650. Terms that may be negotiated consist of details of Contract

performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065 & ORS 351.086

### **137-049-0650**

#### **Requests for Proposals (RFP)**

##### **(1) Generally.**

(a) Contracting Agency may utilize the following RFP process for public improvement contracts to allow flexibility in both proposal evaluation and contract negotiation, subject to ORS 279C.400 to 279C.410, Rules 137-049-0200 to 137-049-0480, and 137-049-0640 to 137-049-0660, unless other applicable statutes or rules control a Contracting Agency's use of competitive proposals for public improvement contracts.

(b) Contracting Agency may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation or distribution of a Request for Proposals. ORS 279C.410(9).

(2) **Solicitation Documents.** In addition to the Solicitation Document requirements of Rule 137-049-0200, Public Improvement Contract Requests for Proposals shall include:

(a) Whether Contracting Agency reserves the right to Award to and Contract with more than one Proposer.

(b) All evaluation factors that will be considered by the Contracting Agency when evaluating the proposals, including the relative importance of price and any other evaluation factors. Evaluation factors may include, but are not limited to, such considerations as price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions.

(c) The method of contractor selection, which may include, but is not limited to, Award without negotiation, negotiation with the highest ranked Proposer, competitive negotiations, multiple-tiered competition designed to either identify a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of these methods;

(d) All required contractual terms and conditions. The Request for Proposals also may: (i) identify those contractual terms or conditions that Contracting Agency reserves, in the Request for Proposals, for negotiation with Proposers; (ii) request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals; and (iii) contain or incorporate the form and content of the contract that the Contracting Agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with Proposers.

##### **(3) Evaluation of Proposals.**

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process outlined in subsections (5)(b) and (6) of this rule do not apply to this limited negotiation.

(b) Discussions; Negotiations. The Contracting Agency shall evaluate Proposals and, if applicable, establish the Competitive Range, before conducting discussions or negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency may establish a negotiation committee which may include members with legal, technical or negotiating expertise.

(c) Cancellation/Rejection. Cancellation of the Solicitation or rejection of proposals shall be in accordance with ORS 279C.395.

##### **(4) Competitive Range; Protest; Award.**

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the Solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating that a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Notice/Protests. Notice of Competitive Range and Award, and associated protest rights will be as established in Rule 137-049-0450.

(c) After the protest period provided in accordance with Rule 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency *may* commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the Solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. Written notice of intent to Award and associated protest rights are as established in Rule 137-049-0450. After the protest period expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations.

(6) **Negotiations**.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

- (A) Initial determination of the Competitive Range; or
- (B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.
- (b) Conducting Negotiations.
- (A) Scope. The Contracting Agency may negotiate:
  - (i) The statement of Work;
  - (ii) The Contract Price as it is affected by negotiating the statement of Work; and
  - (iii) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals.
- (c) Terminating Negotiations. The Contracting Agency may terminate negotiations with any Proposer at any time, if the Contracting Agency reasonably believes that:
  - (A) The Proposer is not discussing or negotiating in good faith; or
  - (B) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
- (d) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has either:
  - (A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or
  - (B) Completed at least one round of negotiations with all Proposers in the Competitive Range.
- (7) **Post Project Evaluation.** For projects over \$100,000, Contracting Agency shall complete a post project evaluation in compliance with ORS 279C.355 and Rule 137-049-0620(3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 to ORS 279C.410

#### **137-049-0660**

##### **RFP Pricing Mechanisms**

- (1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive bidding. Alternatively, a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract may be negotiated.
- (2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as life cycle costing.
- (3) A Guaranteed Maximum Price (GMP) *may be* used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.
  - (a) If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.
  - (b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.
- (4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

#### **137-049-0670**

##### **Design-Build Contracts**

- (1) **General.** The Design-Build form of contracting, as defined in Rule 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Contracting Agency must be able to reasonably anticipate the following types of benefits:
  - (a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) **Authority.** Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules. See particularly Rule 137-049-0620 on "Use of Alternative Contracting Methods" and Rule 137-049-0680 pertaining to ESPCs.

(3) **Selection.** Design-Build selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b) and (c).

(4) **QBS Inapplicable.** Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(5) **Licensing.** If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(6) **Performance Security.** ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) **Contract Requirements.** Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:

(a) **Design Services.** The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.

(c) **Risk Allocation.** The Contract shall clearly identify the extent to which the Contracting Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) **Warranties.** The Contract shall clearly identify any express warranties made to the Contracting Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) **Honoraria.** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the Contracting Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

### 137-049-0680

#### Energy Savings Performance Contracts (ESPC)

(1) **Generally.** These 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agency to enter into ESPCs outside the competitive bidding requirements of ORS 279C.334. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method

provided for by these 137-049-0600 to 137-049-0690 rules, the Contracting Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any Contracting Agency not subject to all the requirements of ORS 279C.335.

(2) **ESPC Contracting Method.** The ESPC form of contracting, as defined at Rule 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Contracting Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs. Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, Measurement and Verification (M & V) services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;

(f) Integrating cost-effective Energy Conservation Measures (ECMs) into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority.** Contracting Agency may utilize the ESPC form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules.

(4) **No Findings Required.** A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding process of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Contracting Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in 137-049-0600 to 137-049-0690 of these rules.

(5) **Selection.** ESPC contracts may be directly awarded or solicited via an informal or formal RFP process. ESPC selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b), and (c). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, prior to award, potential awardees must identify any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) **QBS Inapplicable.** Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) **Licensing.** If the ESCO is not an Oregon licensed design professional, the Contracting Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related services" include conventional design services, commissioning services, training services for the Contracting Agency's operations and maintenance staff, and any similar Personal Services provided by the ESCO's Energy Savings Guarantee are not included in these 279C.380(1)(a) "design and related services." Nevertheless, a Contracting Agency may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee, if the Contracting Agency so provides in the RFP.

(9) **Contracting Requirements.** Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) **General ESPC Contracting Practices.** An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Contracting Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) **Design-Build Contracting Requirements in ESPCs.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Rule 137-040-0560(7) above.

(c) **Pricing Alternatives.** The Contracting Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, which a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Contracting Agency, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) **Permitted ESPC Scope of Work.** The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these 137-049-0600 to 137-049-0690 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

### **137-049-0690**

#### **Construction Manager/General Contractor (CM/GC)**

Contracting Agency shall use a Construction Manager/General Contractor (CM/GC) form of contracting, as defined in Rule 137-049-0610(3), only in accordance with ORS 279C.337 and OAR 137-049-0690.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.337 & ORS 279C.380(2)

## CONTRACT PROVISIONS

### 137-049-0800

#### Required Contract Clauses

Contracting Agencies shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 137-049-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.505 to ORS 279C.545 & ORS 279C.800 to 279C.870

### 137-049-0810

#### Waiver of Delay Damages Against Public Policy

Contracting Agencies shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from a Contracting Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.315

### 137-049-0815

#### BOLI Public Works Bond

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth. ORS 279A.065

Stats. Implemented: ORS 279C.830

### 137-049-0820

#### Retainage

(1) **Withholding of Retainage.** Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond, security, or other instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond, security, or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) **Deposit in interest-bearing accounts.** Either upon election of the Contractor pursuant to ORS 279C.560(5) or as required when the contract price exceeds \$500,000 pursuant to ORS 279C.570(2), a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, or interest-bearing escrow account pursuant to ORS 279C.570(2). Earnings on such an account shall accrue to the Contractor from the date the Contractor's related payment request is fully approved by the Contracting Agency, until the date the retainage is paid to the Contractor. For purposes of this Section, a payment of retainage is deemed to be "paid" by a Contracting Agency when

the payment is transmitted to the Contractor or otherwise applied against an obligation of the Contractor under the Contract.

(4) **Alternatives to cash retainage.** In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) **Recovery of Costs.** Pursuant to ORS 279C.560(3), a Contracting Agency may reduce the final payment to recover from the Contractor all additional costs incurred as a result of Contractor's election to:

(i) submit an alternative to cash retainage pursuant to section (4) of this rule; or (ii) to deposit cash retainage in an interest-bearing account pursuant to section (3) of this rule for Contracts not in excess of \$500,000 by reducing the final payment.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & ORS 279C.845

Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420

### 137-049-0830

#### Contractor Progress Payments

(1) **Request for progress payments.** Each month the Contractor shall submit to the Contracting Agency its Written request for a progress payment based upon an estimated percentage of Contract completion. At the Contracting Agency's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Contracting Agency will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the Contracting Agency for any cause; and (iv) less the appropriate amount of retainage.

(2) **Progress payments do not mean acceptance of Work.** Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570

### 137-049-0840

#### Interest

- (1) **Prompt payment policy.** A Contracting Agency shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.
- (2) **Interest on progress payments.** Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Contracting Agency approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.
- (3) **Interest on final payment.** Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.
- (4) **Settlement or judgment interest.** In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570

### 137-049-0850

#### Final Inspection

- (1) **Notification of Completion; inspection.** The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.
- (2) **Acknowledgment of acceptance.** When the Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570(8)

### 137-049-0860

#### Public Works Contracts

- (1) **Generally.** ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.
- (2) **Required Contract Conditions.** As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:
  - (a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).
  - (b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
  - (c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).
  - (d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
  - (e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.
  - (f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).
- (3) **Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:
  - (a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):
    - (A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or,  
(C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 – ORS 279C.870

### **137-049-0870**

#### **Specifications; Brand Name Products**

(1) **Generally.** The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) **Equivalents.** A Contracting Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345

### **137-049-0880**

#### **Records Maintenance; Right to Audit Records**

(1) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Contracting Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit.** A Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit.** The Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030, ORS 279C.375, ORS 279C.380 & ORS 279C.440

### **137-049-0890**

#### **Contracting Agency Payment for Unpaid Labor or Supplies**

(1) **Contract incomplete.** If the Contract is still in force, the Contracting Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If a Contracting Agency

chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) **Contract completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The Contracting Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.515

### **137-049-0900**

#### **Contract Suspension; Termination Procedures**

(1) **Suspension of Work.** In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency.** A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative.** The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

(6) Application of this rule does not apply to suspension of the work or termination of the Contract as a result of Contractor's violation of any provision of law or Contract term.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

### **137-049-0910**

#### **Changes to the Work and Contract Amendments**

(1) **Definitions for Rule.** As used in this rule:

(a) "**Amendment**" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) "**Changes to the Work**" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

(2) **Changes Provisions.** Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) **Change Order Authority.** Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments.** Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work reasonably related to the work described in the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with applicable legal requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279C.335 & ORS 279C.400(1)

## **PUBLIC CONTRACTING RULES - 2020**

### **CLASS EXEMPTIONS**

#### **E-1 Purpose and Statutory Authority**

These rules establish classes of public contracts which are exempt from the formal competitive solicitation requirements of the Public Contracting Code. These exemptions may be used by Contracting Agency without additional findings of fact except as otherwise set forth herein. These exemptions are in addition to all contracting exemptions as set forth in the Code and Contracting Agency's Public Contracting Rules, Divisions 46, 47, 48, and 49. Additional contracts or classes of contracts may be expressly exempted from competitive solicitation requirements by ordinance or resolution of Contracting Agency pursuant to Contracting Agency Rules and ORS 279B.085 or 279C.335.

#### **E-2 Advertising Contracts**

Contracting Agency may purchase advertising without a competitive process, regardless of dollar value and including that intended for the purpose of giving public or legal notice.

#### **E-3 Equipment Repair and Overhaul**

Contracting Agency may enter into a public contract for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment, if required for efficient utilization of such equipment.

#### **E-4 Contracts for Price Regulated Items**

Contracting Agency may, regardless of dollar value and without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

#### **E-5 Copyrighted Materials**

Contracting Agency may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one supplier available within a reasonable purchase area for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new books, periodicals, workbooks, curriculum materials, reference materials, audio and visual media, and non-mass-marketed software.

#### **E-6 Investment Contracts**

Contracting Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by Contracting Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or Constitution.

#### **E-7 Requirements Contracts**

(1) For purposes of this rule, "Requirements Contract" means a contract whereby the Contracting Agency has agreed to purchase as much of an identified Good or Service at a predetermined price as it requires to meet an anticipated need. Contracting Agency may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at particular prices, provided the original contract is let by a competitive procurement process.

- (2) Purchase may also be made at prices established by a requirement contract or other agreement between another public body and a contractor, if the requirement contract was established by a competitive procurement process.
- (3) The term of any requirement contract, including renewals, shall not exceed five years.

**E-8 Office Copier Purchases**

- (1) Contracting Agency may enter into multiple requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such contracts shall otherwise conform to the requirements of Public Contracting Rule E-7.
- (2) In exercising this exemption, Contracting Agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

**E-9 Manufacturer Direct Supplies**

Contracting Agency may purchase goods directly from a manufacturer without a competitive solicitation process if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis, and are not requirements contracts.

**E-10 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt**

Contracting Agency is exempt from formal competitive procurement requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if Contracting Agency conducts an intermediate procurement and Contracting Agency awards the Contract to the Offeror offering the least expensive goods, and retains written justification for the purchase made.

**E-11 Hazardous Material Removal; Oil Cleanup**

Contracting Agency may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, and such DEQ order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-205 to 340-122-360. In exercising its authority under this exemption Contracting Agency shall:

- (a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
- (b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;
- (c) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

**E-12 Insurance, Employee Benefit**

Contracting Agency may purchase employee benefit insurance without a competitive solicitation process, regardless of dollar amount.

### **E-13 Medical and Laboratory Supplies**

Contracting Agency is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;
- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

### **E-14 Concession Agreements**

(1) A concession agreement is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned or controlled by Contracting Agency, and under which the concessionaire makes payments to Contracting Agency based, in whole or in part, on the concessionaire's sales revenues. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

(2) Concession agreements are not required to be competitively bid. However, when it is in Contracting Agency's best interests to do so and in Contracting Agency's sole discretion, Contracting Agency may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

## **USED PERSONAL PROPERTY**

### **E-15 Used Personal Property, Purchase of**

(1) Subject to the provisions of this rule, Contracting Agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if it has determined that the purchase will be unlikely to encourage favoritism or substantially diminish competition, and will either result in cost savings to Contracting Agency or the public, or otherwise promote the public interest in a manner that could not be realized by a formal competitive solicitation process.

(2) "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of Contracting Agency purchase. "Used personal property or equipment" generally does not include property or equipment if Contracting Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(3) For purchases of used personal property or equipment, Contracting Agency shall, where feasible, obtain three competitive quotes, unless Contracting Agency has determined and documented that a purchase without obtaining competitive quotes will be unlikely to encourage favoritism or substantially diminish competition and will either result in substantial cost savings to Contracting Agency or the public, or otherwise promote public interest in a manner that could not be realized by a formal competitive solicitation process.

#### **E-16 Surplus Personal Property, Disposition of**

(1) Contracting Agency may dispose of surplus personal property by any means determined to be in the best interest of Contracting Agency, including but not limited to: transfer to other departments; donation to other government agencies, or non-profit organizations; negotiated or advertised sale; trade; auction; liquidation through commercially recognized third party liquidator; or destruction.

(2) Prior to surplus property, Contracting Agency must find that the chosen disposition will substantially promote the public interest in a manner that could not practicably be realized by a competitive solicitation process and either that the disposition will result in a cost savings to Agency or will probably result in a higher net return than if the property were sold by a competitive solicitation process.

(3) All items of personal property having a residual value of more than \$10,000 are subject to prior authorization of the Contract Review Authority.

### **PERSONAL SERVICES**

#### **E-17 Personal Services for Other than Architect, Engineer, Photogrammetrist, Transportation Planner, and Land Surveying Services**

(1) Either the following procedures or those set forth in Contracting Agency's Public Contracting Rules, Division 47, will be used to retain the services of independent contractors, other than architects, engineers, land surveyors, or other professionals otherwise exempt from these Rules or the Code.

(2) Nothing in this section shall apply to the employment of regular Contracting Agency employees unless otherwise approved by the Contract Review Authority or its designee, or personal service contract.

(3) Unless otherwise approved by Contracting Agency, personal service contracts shall require the contractor to defend, indemnify, and hold harmless Contracting Agency, its officers, agents and employees from and against any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to indemnification and defense under the Oregon Tort Claims Act.

(4) Unless otherwise approved by Contracting Agency, all personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least Contracting Agency's tort liability limits, naming Contracting Agency as an additional named insured during the life of the contract.

(5) All personal service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. Contracting Agency's Attorney's Office will prepare model contract provisions for use in Contracting Agency personal service contracts.

- (6) The following procedure shall be observed in the selection of personal service contractors:
- (a) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, Contracting Agency may negotiate a contract for such services with any qualified contractor it selects.
  - (b) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, Contracting Agency shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.
  - (c) Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate Contracting Agency employee or by an interview committee.
  - (d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, Contracting Agency may select the prospective contractor, and shall prepare a personal service contract.
- (7) The above provisions regarding selection procedures do not apply to extensions, amendments, modifications or supplements to executed personal service contracts.
- (8) Criteria to be considered in the evaluation and selection of a personal service contractor may include, but is not limited to:
- (a) Total cost of services to Contracting Agency.
  - (b) Specialized experience in the type of work to be performed.
  - (c) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
  - (d) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.
  - (e) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
  - (f) Any other factors relevant to the particular contract.
- (9) The selection procedures described in this section may be waived by Contracting Agency, in its discretion, where an emergency exists that could not have been reasonably foreseen which requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of these selection procedures.
- (10) Contracting Agency or its designee is authorized to sign all personal service contracts, unless otherwise established by Contracting Agency policy.
- (11) Nothing contained in this section shall preclude Contracting Agency from complying with provisions of Federal or State law that require Contracting Agency to utilize a different selection or contracting procedure.

#### **E-18 Liability Insurance Contracts**

Contracts for insurance where either the annual or aggregate premium exceeds \$10,000 must be let using one of the following procedures:

- (1) Agent of Record: Contracting Agency may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility.

(a) Prior to the selection of an agent of record, Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such a selection. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website. Any such notice shall generally describe the nature of the insurance that the Contracting Agency will require.

(b) Any appointment period shall not exceed five years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(c) In selecting an agent of record, Contracting Agency shall select the agent(s) most likely to perform the most cost-effective services.

(2) Specific Proposals for Insurance Contracts: Contracting Agency may solicit proposals from licensed insurance agents or licensed insurers for the purpose of acquiring specific insurance contracts subject to the following conditions:

(a) Contracting Agency shall make reasonable efforts to inform known insurance agents or insurers in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website.

(b) Contracting Agency shall select an agent or insurer on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 3  
**Meeting Date:** July 20, 2020  
**Department:** Planning

---

**ITEM TITLE:** Amendment to FCC 4-7--Sign Regulations, Related to the Sign District Map

---

**DISCUSSION/ISSUE:**

In April 2011 the City of Florence updated and moved the existing sign code from Florence City Code Title 10: Zoning Regulations to Title 4: Building Regulations. Moving the sign code from the zoning regulations to the building regulations eliminated its land use affiliation and associated state land use processing regulations.

FCC 4-7 includes Section 36: "AMENDMENTS: Amendments to the sign code shall be made by the City Council after consideration of a recommendation by an advisory body such as the Planning Commission." Planning Commission (PC) met on June 23<sup>rd</sup> and reviewed and recommended Council approve the proposed amendment to the sign code. The proposal requests consideration of a modification to the City of Florence Sign District Map on page 36 of FCC 4-7. Since the map's adoption in 2011 there have been a number of annexations of property into the city that are not included in the map and thus not directly regulated by this FCC. The GIS Tech, Jason Sievers, created an updated map for City Council's consideration. It is attached to this AIS.

---

**FISCAL IMPACT:**

Changing the Sign District Map financially impacts the City by remedying a code consistency problem thus reducing staff time explaining the problem to affected residences and businesses.

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

This proposal supports Goal 1 City Service Delivery and Goal 4 Communication and Trust.

---

**ALTERNATIVES:**

1. Adopt Ordinance 8, 2020 revising the Sign District Map
2. Amend the changes and recommend as revised.
3. Recommend denial of Ordinance 8, 2020

---

**PC RECOMMENDATION:** Amend the Sign District Map in FCC Title 4 Chapter 7

**STAFF RECOMMENDATION:** Concur with PC's recommendation

---

**AIS PREPARED BY:** Wendy Farley Campbell, Planning Director

---

**CITY MANAGER'S RECOMMENDATION:**  Approve       Disapprove       Other  
Comments: *Megan Messmer*

---

**ITEM'S ATTACHED:** Ordinance 8, Series 2020  
Exhibit A-City of Florence Sign District Map  
Attachment 1: City of Florence Zoning Map Proposed and Existing

---

**CITY OF FLORENCE  
ORDINANCE NO. 8, SERIES 2020**

**AN ORDINANCE AMENDING FLORENCE CITY CODE TITLE 4: BUILDING REGULATIONS,  
CHAPTER 7: SIGN REGULATIONS, CITY OF FLORENCE SIGN DISTRICTS MAP.**

RECITALS:

1. The City of Florence Sign District Map contained in Florence City Code (FCC) Title 4 Chapter 7 does not reflect the annexations of property and zone changes performed since the map's adoption in 2011 and thus needs amending.
2. In accordance with FCC 4-7 Section 37 Planning Commission met on June 23, 2020, reviewed the proposed amendment, and recommended approval to the City Council.
3. City Council met on July 20, 2020 to consider the recommendation and receive public testimony.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. Florence City Code Title 4 Chapter 7: Sign Regulations, is amended as shown in Exhibit A.
2. This Ordinance shall become effective 30 days after adoption.
3. The City Recorder is authorized to administratively correct any reference errors contained herein or in other provisions of the City Code to the provisions added, amended, or repealed herein.

ADOPTION:

First Reading on the 20<sup>th</sup> day of July 2020.

Second Reading on the \_\_\_\_ day of \_\_\_\_\_ 2020.

This Ordinance is passed and adopted on the \_\_\_\_ day of \_\_\_\_ 2020.

AYES	0
NAYS	0
ABSTAIN	0
ABSENT	0

\_\_\_\_\_  
Joe Henry, Mayor

Attest:

\_\_\_\_\_  
Kelli Weese, City Recorder

Ordinance 8, Series 2020  
Exhibit A

CITY OF FLORENCE, OREGON  
**Sign Districts**



- City Limits
- Urban Growth Boundary

**Sign Districts**

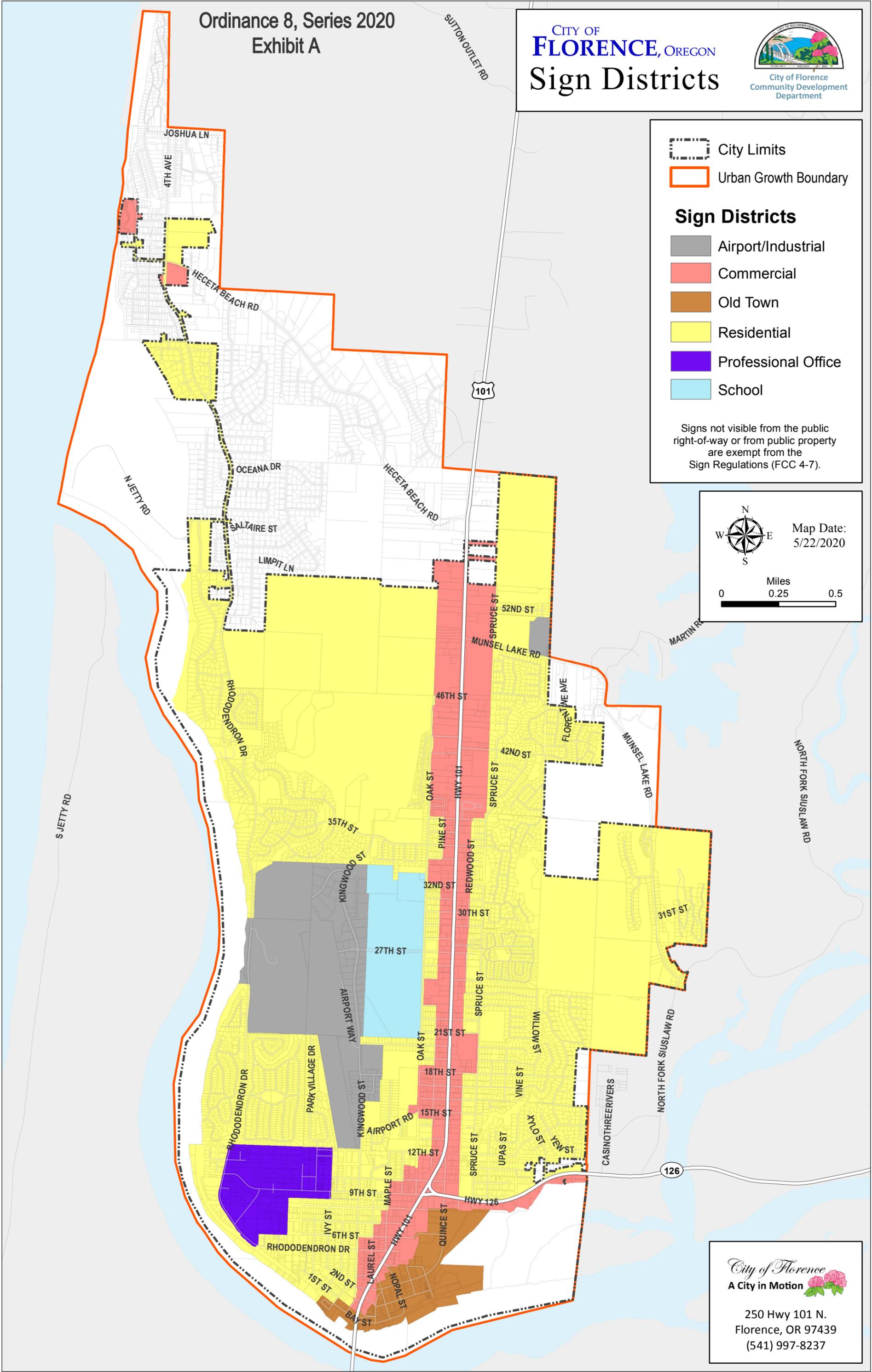
- Airport/Industrial
- Commercial
- Old Town
- Residential
- Professional Office
- School

Signs not visible from the public right-of-way or from public property are exempt from the Sign Regulations (FCC 4-7).



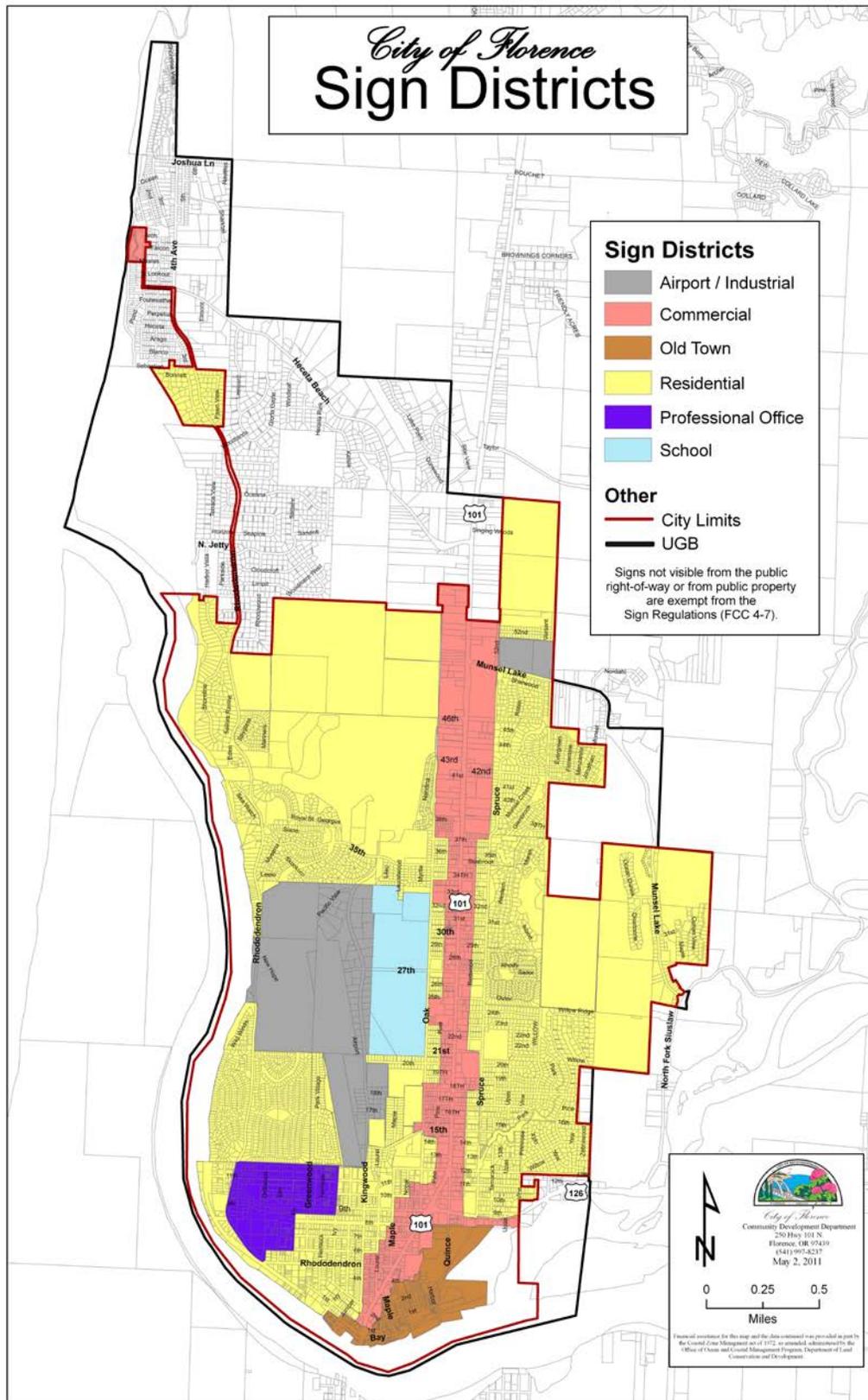
Map Date:  
5/22/2020

Miles  
0 0.25 0.5



250 Hwy 101 N.  
Florence, OR 97439  
(541) 997-8237

**EXISTING TITLE 4 CHAPTER 7 SIGN DISTRICT MAP  
PC JUNE 23, 2020 ACTION ITEM**



---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO: 4**  
Meeting Date: July 20, 2020  
Department: Public Works

---

**ITEM TITLE:** Accept the low bid as submitted by Ray Wells, Inc. Coastal Highlands Phase II Stormwater Improvements Project.

---

**DISCUSSION/ISSUE:**

On July 9, 2020, bids were opened and publicly read aloud for the Coastal Highlands Phase II Stormwater Improvements Project, Project No. SW01-2020. The bid results are as follows:

<u>Bidder</u>	<u>Amount</u>
Ray Wells, Inc.	\$467,384
Crader Enterprises, Inc.	\$652,688
Laskey Clifton Corp	\$699,522.85
K&E Excavation	\$759,873
Upper Rogue Excavation	\$847,088

This project includes all labor, equipment and materials necessary for the Coastal Highlands Phase II Stormwater Improvements Project located on Willow Loop including 18<sup>th</sup> Court; Pine Court and 16<sup>th</sup> Street.

The project includes installation of 330 lineal feet of 18-inch PVC PS46 pipe; 1,693 lineal feet of 12-inch PVC SDR35 pipe; 2,445 lineal feet of 6-inch PVC SDR35 perforated pipe with fabric; 542 lineal feet of 6-inch HDPE flexible perforated pipe with fabric; one 18-inch Tideflex check valve; 10 (ten) 48-inch diameter manholes; 14 Type 3 catch basins; 25 cleanouts; 1,905 lineal feet of HMAC trench patch; 2,625 square feet of concrete driveway repair; 818 lineal feet of sidewalk; 20 cubic yards of 8"-12" riprap (rock); 159 cubic yards of 1-1/2" clean drain rock; demolition and site preparation; and landscape restoration.

The Contractor that submitted the lowest qualified quote is Ray Wells, Inc. and has completed similar projects with very good results. Public Works has verified, in accordance with ORS 279C.375, that the contractor has had no disciplinary action by the Construction Contractor's Board (CCB); nor is the contractor listed on the Oregon Bureau of Labor and Industries (BOLI) ineligible list or the Federal Excluded Parties List System (EPLS).

---

**FISCAL IMPACT:**

The low bid of \$467,384 is \$163,767 under the engineer's estimate of \$631,151. In the 2019-21 biennium budget, we budgeted a total of \$850,000 for engineering services and construction of the Coastal Highlands Phase II Stormwater Improvement Project in the stormwater capital budget.

Ray Wells, Inc. is the responsive low bidder that can perform the work. Funding for this project is included in the FY2019-21 biennium Stormwater capital improvement budget and is fully funded. Additionally, funding for this project was included in the Financial Budget and Forecast report dated June 8, 2020.

<b>Specific Available Funds</b>			<b>Budget</b>		
Stormwater System Expansion			\$850,000		
Less engineering services for project			<\$54,670>		
<b>Available for Construction</b>			<b>\$795,330</b>		

<b>Fund</b>	<b>Available Funds</b>	<b>Engineers Estimate (EE)</b>	<b>Bid</b>	<b>Bid Over/(Under) Available Funds</b>	<b>Bid Over/(Under) EE</b>
Stormwater	\$795,330	\$631,151	\$467,384	(\$327,946)	(\$163,767)

The original engineer's estimate when we put together the FY 2019-21 were based on much higher oil prices and extensive utilization of round drain rock for the infiltration galleries. As we progressed in the design and made modifications to the plans, the original engineer's estimate was reduced by \$150,000.

As we reviewed the bid results, the second lowest bid was only slightly higher than the engineers revised estimate. Although groundwater is not a factor during the project, some of the bidders may have included some dewatering for the project.

The bid from Ray Wells, Inc. is a result of extensive local knowledge of the underground conditions in this area as well as having direct experience constructing streets and utilities within this area. As a result, we received a very favorable bid from a local contractor.

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

- City Service Delivery – improving, maintaining and enhancing our infrastructure as feasible.
- Livability & Quality of Life – implementing the City’s 2019-21 Capital Improvement Program.
- Economic Development – constructing modern stormwater facilities that will eliminate problematic localized flooding during extreme high groundwater events coupled with extreme weather (rain) patterns.
- Communication & Trust – strengthening citizen trust by cooperatively working with residents for the common good.
- Financial & Organizational Sustainability –constructing infrastructure that supports current and future needs.

---

**ALTERNATIVES:**

1. Award contract to Ray Wells, Inc.
2. Do not award bid.
3. Reject bids and re-scope the project.

---

**RECOMMENDATION:**

Staff recommends that the City Council accept the proposal from Ray Wells, Inc. and authorize the City Manager to proceed with a construction contract.

---

**AIS PREPARED BY:** Mike Miller, Public Works Director

---

**CITY MANAGER’S RECOMMENDATION:**  Approve       Disapprove       Other

Comments:

*Megan Messmer*

---

**ITEM’S ATTACHED:** Coastal Highlands Phase II Stormwater Improvements Project Location Map

# Coastal Highlands Phase 2 Stormwater Improvements



---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 5  
**Meeting Date:** July 20, 2020  
**Department:** Administration

---

**ITEM TITLE:** League of Oregon Cities Legislative Priorities

---

**DISCUSSION/ISSUE:**

The League of Oregon Cities (LOC) is a government entity formed by an intergovernmental agreement by Oregon's incorporated cities. One of LOC's primary support services it supplies to Cities is advocacy for cities on the activities of the Oregon legislature, state boards, commissions and agencies.

To that end, the LOC annually prepares legislative priorities to utilize as a strategy for advocating for Oregon Cities over the next legislative cycle. LOC has met with seven policy committees to identify and propose specific actions as part of the LOC's effort to develop a pro-active legislative agenda for the 2021 session. Each City is being asked to review the recommendations of the policy committees (Attachment 1) and provide input to the LOC.

Enclosed is Attachment 1, which includes a recommended list of priorities and explanation for each. At the July 20<sup>th</sup> City Council meeting, the Council may consider providing Florence's recommendations for the LOC priorities for the coming year. The LOC has requested the City provide a recommendation for a top four priorities for the upcoming year.

---

**FISCAL IMPACT:**

Recommendations toward LOC legislative priorities incur staff time for compilation of recommendations and submittal to LOC.

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

Many LOC recommended advocacy priorities directly impact the City Council Goals and items on the City's Work Plan.

---

**ALTERNATIVES:**

1. Recommend four top priorities for LOC 2021 Legislative Session
2. Do not recommend priorities for LOC 2021 Legislative Session

---

**RECOMMENDATION:**

Recommend priorities for the LOC 2021 Legislative agenda.

---

**AIS PREPARED BY:** Megan Messmer, AIC City Manager

---

**CITY MANAGER'S RECOMMENDATION:**  Approve  Disapprove  Other  
Comments: *Megan Messmer*

---

**ITEM'S ATTACHED:** Attachment 1 – 2021 LOC Policy Recommendations Letter

---



June 5, 2020

Dear Chief Administrative Official:

For the past three months, seven policy committees have been working to identify and propose specific actions as part of the LOC's effort to develop a pro-active legislative agenda for the 2021 session. They have identified legislative objectives as set forth in the enclosed ballot and legislative recommendation materials. These objectives span a variety of issues and differ in the potential resources required to seek their achievement. Therefore, it is desirable to prioritize them in order to ensure that efforts are focused where they are most needed.

While the attached ballot reflects the top policies developed in each of the policy committees, each undertook a broad look at a range of issues impacting cities. Many issues reflect the LOC's ongoing mission to support cities' work and their home rule authority to develop and use a variety of tools to meet the needs of residents. Each city is being asked to review the recommendations of the policy committees and provide input to the LOC Board of Directors as it prepares to adopt the LOC's 2021 legislative agenda. After your city council has had the opportunity to review the proposals and discuss them with your staff, please return the enclosed ballot indicating the top four issues that your city council would like to see the LOC focus on during the 2021 session. **The deadline for response is August 7, 2020.** The board of directors will then review the results of this survey of member cities, along with the recommendations of the policy committees, and determine the LOC's 2021 legislative agenda.

Your city's participation and input will assist the board in creating a focused set of specific legislative targets that reflect the issues of greatest importance to cities. If you have individual questions about the ballot topics do not hesitate to reach out to committee members who serve on the seven policy committees. Thank you for your involvement, and thanks to those among you who gave many hours of time and expertise in developing these proposals.

Do not hesitate to contact me or Jim McCauley, Legislative Director, with additional questions.

Sincerely,

Mike Cully  
Executive Director

Jim McCauley  
Legislative Director

## INSTRUCTIONS

Each city should submit one form that reflects the consensus opinion of its city council on the **top four** legislative priorities for 2021. Here are the ways to submit your ballot. **Ballots in any form must be submitted by August 7, 2020.**

1. Fill out the online survey that has been sent to your city's chief administrative official; or
2. Fill out the attached hard copy form and return it to the LOC at the address or fax number provided below. Simply place an **X or check mark** in the space to the right of the city's top four legislative proposals. The top four do not need to be prioritized.

Return hard copy ballots to:

Jenna Jones  
League of Oregon Cities  
1201 Court St. NE, Suite 200  
Salem, OR 97301  
Fax – (503) 399-4863  
[jjones@orcities.org](mailto:jjones@orcities.org)

**Thank you for your participation.**

Please mark 4 boxes with an X or check mark that reflects the top 4 issues that your city recommends be added to the priorities for the LOC's 2021 legislative agenda.

City of: \_\_\_\_\_

**Legislation**

<b>A. Beer and Cider Tax Increase</b>	
<b>B. Broadband Infrastructure and Technical Assistance Funding</b>	
<b>C. Building (Reach) Code – Energy Efficiency Local Option</b>	
<b>D. COVID-19 Economic Recovery Investments</b>	
<b>E. Digital Equity and Inclusion</b>	
<b>F. Expedited Siting for Shelter and Affordable Housing</b>	
<b>G. Green Energy/Renewables – Expanded Local Option</b>	
<b>H. Housing and Services Investment</b>	
<b>I. Increased Budgetary Flexibility During Budgetary Emergency</b>	
<b>J. Infrastructure Financing and Resilience</b>	
<b>K. Local Climate Action Planning Resources</b>	
<b>L. Local Energy Generation Project Support</b>	
<b>M. Local Speed Setting Authority</b>	
<b>N. Long Term Transportation Infrastructure Funding</b>	
<b>O. Low-Income Energy Efficiency and Affordability Programs</b>	
<b>P. Marijuana Tax Local Rate Limitation Increase</b>	
<b>Q. Mental Health Service Delivery</b>	
<b>R. Municipal Broadband and Municipal Pole Protection</b>	
<b>S. New Mobility Services</b>	
<b>T. Photo Enforcement Safety Cameras</b>	
<b>U. Property Tax Reform</b>	
<b>V. Reducing Wastewater Impacts from Wipes and Other “Non-Flushables”</b>	
<b>W. Right-of-way/Franchise Fees Authority Preservation</b>	
<b>X. State Highway Funds Formula</b>	
<b>Y. Tort Liability Reform</b>	
<b>Z. Water Utility Rate and Fund Assistance</b>	

**In addition to your ranking of the priorities shown above, please use this space to provide us with any comments (supportive or critical) you may have on these issues, or thoughts on issues or potential legislative initiatives that have been overlooked during the committee process.):**

**You are reviewing the hard copy of the ballot. There are hyperlinks in the digital copy that may provide more background information. You can find the digital version with hyperlinks by going to this web address: [https://www.orcities.org/download\\_file/1038/0](https://www.orcities.org/download_file/1038/0). It is best opened in Google Chrome.**

## **A. Beer and Cider Tax Increase**

### **Legislation:**

The League proposes increasing the state taxes on beer and cider to assist with rising public safety costs, improve public health, reduce alcohol consumption by minors, and provide alcohol tax equity with wine and liquor.

### **Background:**

Oregon's tax has not been increased since 1978 and is currently \$2.60 per barrel which equates to about 8 cents on a gallon of beer. The tax is by volume and not on the sales price, meaning the tax is less than 5 cents on a six-pack. Oregon has the lowest beer tax in the country, and to get to the middle of the states Oregon would need to raise the tax to \$30.00 per barrel or 54 cents per six pack (a more than 10-fold increase). Given recent challenges to the craft brewing industry tied to bar and restaurant closures it may be appropriate to delay or phase-in the increase. Cities are preempted from imposing alcohol taxes. In exchange, cities receive approximately 34% of the state alcohol revenues, but the state takes 50% of beer and wine taxes off the top prior to this distribution. Cities have significant public safety costs related to alcohol consumption, and the beer tax does not come close to covering its fair share of these costs.

*Presented by the Finance and Taxation Committee*

## **B. Broadband Infrastructure and Technical Assistance Funding**

### **Legislation:**

Seek additional state support and funding for increased broadband infrastructure deployment and technical assistance.

### **Background:**

The deployment of broadband and telecommunications networks and services (public and/or private) throughout Oregon is critical to economic development, education, health and safety and the ability of residents to be linked to their governments. Research shows areas of the state either not served or underserved by competitive broadband technology. A significant barrier to the deployment of broadband infrastructure is funding. Cities need additional funding and support from various sources, including the state and federal government, allocated for increased or new, reliable, low latency broadband infrastructure that reaches speeds of at least 25 Mbps download and 3 Mbps upload or any updated speed standards as adopted by the FCC. Many federal grant programs require localities to have a broadband strategic plan in place before they are eligible for funds. Therefore, there is a need for funding sources to help cities with technical assistance as well as infrastructure.

*Presented by the Telecom, Broadband & Cable Committee*

## **C. Building (Reach) Code – Energy Efficiency Local Option**

### **Legislation:**

The LOC will pursue/support legislation to allow communities to adopt the Reach Code as the mandatory residential or commercial building code within the city's jurisdictional boundaries. The Reach Code would represent a building energy code that would be at least 10 percent more efficient than the statewide building code. Under this proposal, cities would be able to adopt the more efficient Reach Code or would continue to use the standard statewide building code as the base code.

**Background:**

Under current state law, cities are preempted from adopting local building codes. Instead, development is subject to statewide codes, including for new residential and commercial development. In 2009, legislation was passed to implement a new, optional code (Reach Code) that would allow developers to exceed statewide codes and streamline the construction of higher-performance buildings through efficiencies gained in the building exterior envelope as well as heating, ventilation, air conditioning, piping insulation and lighting. The Reach Code is optional for builders to use, but a local government can't mandate a builder to use it. This legislative recommendation would allow a city to adopt the Reach Code within their jurisdiction in order to promote additional energy efficiency for new residential and commercial structures. If a city does not wish to adopt the Reach Code, the statewide code would remain in place. The LOC Energy & Environment Committee discussed whether this recommendation would impact housing costs and believes that long-term cost savings may be gained through increased energy efficiency in newly built units. Ultimately, the decision on whether to utilize the standard code or the enhanced (Reach) code would be at the discretion of the city.

*Presented by the Energy and Environment Committee*

**D. COVID-10 Economic Recovery Investments****Legislation:**

The League will advocate for continued economic recovery strategies and investments for small business and workforce assistance in response to the economic impacts of the COVID-19 pandemic.

**Background:**

The COVID-19 pandemic has had a devastating impact on Oregon's small businesses and workforce. While the federal government and the state have made recent investments to support small business, these resources have yet to meet current needs and more resources will be needed to support long term economic recovery for Oregon's communities. The League will work in coordination with economic development partners to advocate for continued investments to support long-term recovery and economic development.

*Presented by the Community Development Committee*

**E. Digital Equity and Inclusion****Legislation:**

Support legislation and policies that are inclusive and equitable to all, individuals and communities, so that they have the information technology capacity needed for full participation in our society, democracy and economy.

**Background:**

Connectivity is crucial to modern life. It is being relied on more for how people do business, learn, and receive important services like healthcare. As technology has evolved, the digital divide has become more complex and nuanced. It is no longer about the existence of technology in certain places. Now, the discussion of the digital divide is framed in terms of whether a population has access to hardware, to the Internet, to viable connection speeds and to the skills and training they need to effectively use it. The LOC will partner with schools, healthcare, and other stakeholders to ensure technologies are relevant, available, affordable, and accessible to the diverse populous and communities of Oregon. Additionally, the LOC will advocate for digital literacy programs to help learn these new technologies.

*Presented by the Telecom, Broadband & Cable Committee*

## **F. Expedited Siting for Shelter and Affordable Housing**

### **Legislation:**

The League will pursue legislation to expedite the siting of emergency shelter and other affordable housing that follows the intent of the 2020 shelter siting bill (HB 4001) but retains more local decision making in the process. The League will pursue this priority in coordination with affordable housing partners and other land use stakeholders.

### **Background:**

The League worked closely with city and county partners during the 2020 session to gain improvements to HB 4001, which sought to preempt all local siting and zoning regulations and the land use appeals process, for approving the siting of emergency shelters for a one-year period. HB 4001 received strong legislative support in 2020. Draft omnibus legislation for a potential future special session has included the text of HB 4001 and the League expects to see HB 4001 reintroduced in the 2021 session.

This priority will empower cities and counties to proactively introduce alternative legislation, similar to existing statute in California, which requires jurisdictions to identify places where shelters can locate instead of mandating that jurisdictions allow shelters to be sited anywhere. The California model requires cities and counties to accommodate their need for emergency shelters on sites where the use is allowed without a conditional use permit and requires cities and counties to treat transitional and supportive housing projects as a residential use of property.

*Presented by the Community Development Committee*

## **G. Green Energy/Renewables – Expanded Local Option**

### **Legislation:**

The LOC will pursue/support policies that increase local control opportunities for cities that want to establish a community-scale green energy program. This program would be optional for cities that choose to pursue it. Cities who choose to, would be allowed to adopt resolutions that would opt-in residential, commercial, and industrial customers to a voluntary renewable energy option if it is provided by an investor owned utility that serves the city and its electric customers. Under this proposed program, a city would be able to pursue a more aggressive green energy portfolio and would better position cities to meet local climate action goals.

### **Background:**

Under current law, customers of investor-owned utilities can opt-in to voluntary renewable energy options for their customers. These options allow customers to invest in additional green energy generation. In 2019, the state of Utah passed legislation (SB 411) that allows cities and counties to opt-in to programs on a community-scale basis, while still allowing individual customers to opt-out. Under this proposal, any city within the territory of an investor-owned utility, would be able to pursue this option for community-scale renewable energy (net-100% renewable).

*Presented by the Energy and Environment Committee*

## **H. Housing and Services Investment**

### **Legislation:**

The League will support increased investments for affordable housing, homeless assistance, and related services including funding for: shelter, homeless services, case management, rent assistance, the development and preservation of affordable housing, and permanent supportive housing.

**Background:**

Cities large and small were facing escalating homelessness rates before the COVID-19 pandemic and the current economic downturn will only increase the number of Oregonians facing eviction or experiencing homelessness. State general fund programs like the Emergency Housing Assistance (EHA) and State Homeless Assistance Program (SHAP) have seen record investments in previous legislative sessions. The legislative emergency board also voted recently to dedicate \$12M in general funds to support rent assistance and safe shelter in response to COVID-19.

Oregon's lack of available housing, high rents and high home prices are causing housing instability and homelessness to increase. The Legislature has made record investments in recent years to fund the LIFT affordable housing program and preserve Oregon's existing affordable housing infrastructure. These programs are funded through general obligation bonds and lottery backed bonds.

Permanent Supportive Housing is a key strategy for ending chronic homelessness that reduces downstream costs to public systems like public safety, emergency health care and corrections. The 2019 Legislature invested over \$50M to stand up a three-pronged permanent supportive housing program that includes 1) development costs to build, 2) rent assistance to keep units deeply affordable, and 3) wrap around services that are key to ensuring residents' long-term stability. The state should continue investing in this model to bring more Permanent Supportive Housing across the state and ensure that the housing developed with the original \$50M continues receive the necessary ongoing funding for rent assistance and supportive services.

*Presented by the Community Development Committee*

**I. Increased Budgetary Flexibility During Budgetary Emergency****Legislation:**

The League proposes relaxing budgetary constraints in state law so that cities may better be able to withstand revenue losses related to natural disasters and public health emergencies. These losses will inevitably force many cities to cut services and lay off staff, the legislature can reduce the effect of losses by increasing flexibility for use of funds during and after a declared emergency.

**Background:**

Cities anticipate a tremendous loss in revenue due to the COVID-19 pandemic. Reduced revenues already include losses to lodging taxes, gas taxes, park fees, development fees, parking fees, utility charges, and so on. Further out, there is widespread concern that there will be impacts to the real estate market going into 2021, and by extension a reduction in 2021-22 property tax revenues. Cities want maximum flexibility in using funds that are subject to statutory limitations but will negotiate terms on individual funding sources including payback requirements if necessary. This flexibility should apply during and after declared emergencies, including both the current pandemic and future natural disasters.

*Presented by the Finance and Taxation Committee*

**J. Infrastructure Financing and Resilience****Legislation:**

The League will advocate for an increase in the state's investment in key infrastructure funding sources, including, but not limited to, the Special Public Works Fund (SPWF), Brownfield Redevelopment Fund, and Regionally Significant Industrial Site loan program. The advocacy will include seeking an investment and set aside through the SPWF for seismic resilience planning and related infrastructure improvements to make Oregon water and wastewater systems more resilient.

**Background:**

Cities continue to face the challenge of how to fund infrastructure improvements (both to maintain current and to build new). Increasing state resources in programs that provide access to lower rate loans and grants will assist cities in investing in vital infrastructure. Infrastructure development impacts economic development, housing, and livability. The level of funding for these programs has been inadequate compared to the needs over the last few biennia and the funds are depleting and unsustainable without significant program modifications and reinvestments. This priority will focus on maximizing both the amount of funding and the flexibility of the funds to meet the needs of more cities across the state to ensure long-term infrastructure investment.

*Presented by the Community Development Committee*

**K. Local Climate Action Planning Resources****Legislation:**

The LOC will seek grant funding and technical assistance resources for cities to pursue, adopt or expand local climate action plans. In addition, the LOC will pursue opportunities to work with the Oregon Climate Change Research Institute (through Oregon State University) to provide cities and counties with local/regional data that can better inform the adoption and implementation of climate adaptation and mitigation at the local level.

**Background:**

According to the Oregon Department of Energy's 2018 Biennial Energy Report (BER), since the early 1990s, major international and U.S. scientific assessments have concluded that both climate change mitigation and adaptation efforts are necessary in response to climate change. The BER goes on to explain that adaptation is often thought of as actions "to prepare for and adjust to new conditions, thereby reducing harm or taking advantage of new opportunities or simply to reduce society's vulnerability to climate change impacts." Local climate action plans, adopted by cities or counties, can help communities better understand how climate change will impact their communities, and can provide localized solutions to help mitigate against the impacts of climate change. The LOC is aware of fourteen cities that have adopted local climate action plans. There are other cities that are interested in doing the same but that do not have the financial and/or staffing resources that are necessary.

*Presented by the Energy and Environment Committee*

**L. Local Energy Generation Project Support****Legislation:**

The LOC will support/pursue funding, technical assistance and other tools that make local energy generation more feasible for cities to pursue.

**Background:**

Local energy generation projects can better position cities to pursue and achieve local climate action goals, address capacity constraints of existing electric transmission lines, and can help cities respond to individual businesses that may be seeking green energy options. The types of local energy generation projects discussed by the committee include, but are not limited to, small-scale hydropower, in-conduit hydropower, methane capture, biomass and solar. Such projects are not intended to conflict with existing low-carbon power purchase agreements but can position cities to pursue local climate action goals and supplement energy needs through renewable generation. Under this recommendation, the LOC will work to identify barriers and potential solutions to local energy generation and will pursue funding assistance for feasibility studies and project implementation.

*Presented by the Energy and Environment Committee*

## **M. Local Speed Setting Authority**

### **Legislation:**

Support legislation that provides legislative authority for ODOT to delegate local speed setting authority to Oregon cities that meet state criteria. I Improve safety and speed limit consistency in Oregon cities by establishing a clear delegation process that is consistent with recently adopted statewide speed zone rules. (OAR 734-020-0014, 734-020-0015, and 734-020-0016). This will be permissive legislation allowing cities to opt-in and thus will not be a mandate.

### **Background:**

The state of Oregon and cities across the state are all committed to improving safety on our streets. National and international research has shown that setting appropriate speed limits on city streets is a critical tool for improving safety and saving lives. During the 2020 legislative session, HB 4103 gained widespread support for setting up a collaborative process with ODOT and cities that opt into a process for gaining local speed setting authority. Despite strong support, HB 4103 did not pass due to the legislative clock running out. Going forward, LOC will work with safety advocates and cities and use HB 4103 from the 2020 session as a template for legislation in 2021. Delegated authority should be made available to all cities that meet ODOT's criteria; participation by cities is permissive (not required). Cities should be able to determine speeds that are adequate and safe for their communities, working within the OAR speed zone framework. This will improve safety and make speed setting more consistent across local government jurisdictions.

*Presented by the Transportation Committee*

## **N. Long Term Transportation Infrastructure Funding**

### **Legislation:**

Support expansion and consideration of revenue-generating options to fund multimodal transportation infrastructure, which includes state and local facilities. Support state and local projects that are part of the Statewide Transportation Improvement Program.

### **Background:**

Oregon has made two significant state-wide transportation investments in the last 15 years. In 2009 the Jobs and Transportation Act (JTA). This was a successful effort from local governments and the business community to invest in maintenance and capacity building projects state-wide. In 2017, HB 2017 established Oregon's first ever comprehensive, multimodal, transportation investment with what is known as "Keep Oregon Moving," which was a \$5.3 billion package. Although HB 2017 will not have its full funding until 2024 LOC and other transportation advocates will need to constantly explore other sources of revenue including a possible future replacement of Oregon's gas tax with a road user charge system. Oregon has been pioneering a vehicle miles traveled (VMT) tax within the MyOReGo pilot program. The program is voluntary and can provide several benefits to users. Ultimately the long-term structure for transportation investment may well take on a similar structure.

*Presented by the Transportation Committee, endorsed by the Community Development Committee*

## **O. Low-Income Energy Efficiency and Affordability Programs**

### **Legislation:**

The LOC will provide support for programs that seek to expand upon low-income energy and heating assistance programs, including programs targeted to make energy more affordable for rental properties. In addition, the LOC will work to support programs that provide for energy bill payment assistance and expand opportunities for low-income Oregonians to access resources for home weatherization.

**Background:**

According to Oregon Housing & Community Services, approximately 396,182, or about 25 percent of all households, are considered energy-burdened because of their energy-related expenditures (as of 2018). A household is considered energy burdened if six percent or more of its gross income is consumed by energy-related expenses. In recent years, legislation has been introduced in Oregon that would have provided additional assistance to low-income homeowners and renters that struggle with energy affordability. Unfortunately, legislation did not pass. The need for such assistance has increased as a result of the economic hardships resulting from COVID-19. In addition to bill payment assistance, there is a need for programs that will support low-income home weatherization in order to make energy bills more affordable in the long-term.

*Presented by the Energy and Environment Committee*

**P. Marijuana Tax Local Rate Limitation Increase****Legislation:**

The League proposes increasing the current 3% cap on local marijuana taxes. This would give local voters greater choice in choosing a rate that reflects their needs or their community.

**Background:**

Retailers licensed by the Oregon Liquor Control Commission (OLCC) are required to charge a state-imposed retail sales tax of 17 percent for all recreational marijuana sold. Cities and counties (unincorporated areas only) may also impose a local retail sales tax of up to 3%, subject to voter approval. Tax rates for recreational marijuana vary widely across the states, but the total Oregon tax burden at a maximum of 20% is the lowest of West Coast states. Washington imposes a 37% state excise tax, but with a state sales tax of 6.5% and local rates of up to 1.9% the total rate can reach over 45%. California has a retail tax of only 15%, but with a state sales tax of 7.5% and local taxes up to 15.25% the total rate can reach up to 37.75%. Oregon consistently ranks among the lowest of the states for marijuana prices. Cities are sensitive to the desire to not push consumers to the black market and will work with the legislature on an increased cap that balances that concern with local revenue needs.

*Presented the Finance and Tax Committee*

**Q. Mental Health Service Delivery****Legislation:**

Support the delivery of mental health services in order to reduce negative police interactions and ensure that those in need receive the help they require.

**Background:**

The Committee and the LOC membership have prioritized the delivery of mental health services periodically over the last 5 years. Items contained in this priority have included crisis intervention training for police officer, mobile police and social worker teams to proactively work with people in danger of going into crisis, jail diversion, mental health courts and greater access to care. In the immediate past short session, the LOC worked with its coalition partners to obtain \$9 million in additional funding for aid-and-assist, community care and jail diversion but was unsuccessful due to a lack of quorum.

While the measurements are subjective and not in general agreement, most surveys of behavioral health and alcohol and drug addiction service availability place Oregon near or at the bottom of state rankings. As a result, Oregon ranks third in the nation for alcohol related deaths, and above the national average in suicides. Anecdotally, most police chiefs that have participated in LOC conversations on this topic report a growing number of calls for service stemming from people in mental health crisis. The COVID-19 pandemic has exacerbated some of these issues with Portland Police Bureau reporting a 41% increase in suicide related calls (including attempts and threats) over this time last year. This priority would include but not be limited to:

Investment: The stark truth is that Oregon has never financially supported mental health services at a level commensurate with need. More beds and more capacity will allow for greater delivery. The spending plan may be complicated but many advocates bristle at the idea of “mental health reform” when it’s never been funded as a priority. The League does not have a specific number at this time but is in conversation with partners to develop one.

Decimalization of Mental Illness: People suffering from mental illness that interact with the criminal justice system typically spend more time incarcerated and suffer a disruption in treatment. Jail diversion has been something the League has advocated for in previous sessions and but will require changes in law, training and investments.

Workgroups Outcomes: There are currently several workgroups developing behavioral health reform plans that have yet to be completed, much of that work has been interrupted by COVID 19. LOC staff can update the Committee on these their work continues but cannot make recommendations on them now.

Alcohol Availability: The prevalence of cheap and potent alcoholic beverages that are produced and sold for the express purpose of achieving rapid intoxication has been a concern for Oregon Recovers, an advocacy group for those recovering from addiction. OLCC sells several 750 ml bottles for under \$10 and some as low as \$5. Creating a minimum price per international unit of alcohol has had an impact on consumption of cheap, potent beverages in Scotland and is believed to have had an impact on consumption there. Raising the price of low cost but high-volume products would also increase city shared revenue and provide additional funding for behavioral health services.

Mental Health Parity: Oregon and the federal government have enacted statutes to ensure that mental health services are treated as a health issues in a manner identical to physical health by health insurers. The legislative intent behind these laws has not been met as evidence by reports of denied coverage. Ensuring effective parity would increase treatment an access.

*Presented by the General Government/Human Resources Committee, endorsed by the Community Development Committee*

## **R. Municipal Broadband and Pole Protection**

### **Legislation:**

Oppose legislative efforts to restrict existing municipal authority to provide broadband services, and own and operate poles in the rights-of-way.

### **Background:**

As the public grows more dependent on the Internet for expanding parts of their lives, community choices for gaining access at a reasonable price, for both consumers and producers, are dwindling. Some municipalities choose to become service providers themselves. Municipal broadband is sometimes the only way to bring high speed internet to a community and it can serve as an access point to neighboring communities. Additionally, municipal broadband adds competition to the market and can help lower prices for community members. As there is a push for more connectivity and bridging the digital the divide, the LOC will protect localities rights to be internet service providers for their own communities. Additionally, as more and more small cell and 5G technology is deployed in the rights-of-way, the LOC will protect the right of municipalities to own, operate and regulate attachments that are allowed on their poles.

*Presented by the Telecom, Broadband & Cable Committee*

## S. New Mobility Services

### **Legislation:**

Support for a variety of new mobility services that promote a safe, sustainable, and equitable multimodal transportation system, while preserving local government's authority to regulate services and ensure they best serve the local context.

### **Background:**

Transportation mobility has been rapidly changing over the last few years. The emergence of ridesharing services such as Transportation Network Companies (TNCs) now provide the public with more options to get from point “a” to point “b.” New platforms continue to emerge such as scooters, shared bikes, electric delivery tricycles for package delivery and the possibility of future driverless delivery and vehicle fleets. Cities must have the flexibility to address the impacts of emerging technologies on their communities such as increased congestion and air pollution while protecting consumers and maintaining a safe transportation network that recognizes the unique needs of individual communities.

*Presented by the Transportation Committee*

## T. Photo Enforcement Safety Cameras

### **Legislation:**

Support continuation and expansion of fixed speed and red-light cameras and mobile speed radar state-wide to improve public safety in high-crash corridors. Explore changes that enable more streamlined processing of citations. Allow for local governments to form IGA’s with other local governments to facilitate the use of safety cameras and mobile radar in their communities.

### **Background:**

The Oregon Transportation Safety Action Plan sets a goal of no deaths or life-changing injuries on Oregon’s transportation system by 2035. In 2015, the Oregon Legislature granted the city of Portland the authority to implement a fixed speed safety camera program (HB 2621). Portland’s fixed speed camera systems have been operating on “urban high crash corridors” for the past several years. Data collected at these locations shows a distinct change in driver behavior that has reduced the risk of collisions (See PBOT Report). Under existing statutes, photo radar is allowed in the cities of Albany, Beaverton, Bend, Eugene, Gladstone, Medford, Milwaukie, Oregon City, Portland and Tigard. LOC’s goal is to bring this authority state-wide providing all cities with the choice of operating speed radar in their communities to improve safety and reduce the risk of high-speed crashes.

*Presented by the Transportation Committee*

## U. Property Tax Reform

### **Legislation:**

The League of Oregon Cities proposes that the Legislature refer a constitutional measure and take statutory action to reform the property tax system as part of the 2021 session. With the passage of the Corporate Activities Tax Oregon has taken a step towards long term financial stability at the state and school district level, but local budgetary challenges persist and the legislature must take action to allow cities and other local governments to adequately fund the services that residents demand.

### **Background:**

The property tax system is broken and in need of repair due to Measures 5 and 50, which are both now over 20 years old. The current system is inequitable to property owners and jurisdictions alike, is often inadequate to allow jurisdictions to provide critical services, removes all local choice, and is incomprehensible to the majority of taxpayers. Local governments and schools rely heavily on property tax revenues to pay for services and capital expenses. Therefore, the League will take a leadership role in forming coalitions to help draft and advocate for

both comprehensive and incremental property tax reform option packages. The League will remain flexible to support all legislation that improves the system, with a focus on a property tax package that includes, but may not be limited to these elements:

- To restore local choice, a system that allows voters to adopt tax levies and establish tax rates outside of current limits and not subject to compression (requires constitutional referral).
- To achieve equity, a system that has taxpayers' relative share tied to the value of their property, rather than the complex and increasingly arbitrary valuation system based on assessed value from Measure 50 (requires constitutional referral).
- To enhance fairness and adequacy, a system that makes various statutory changes, some of which would adjust the impact of the above changes. For example, as a part of comprehensive reform the League supports a new reasonable homestead exemption (percentage of RMV with a cap) but also supports limiting or repealing various property tax exemptions that do not have a reasonable return on investment.

*Presented by the Finance and Tax Committee, endorsed by the Community Development Committee*

## **V. Reducing Wastewater Impacts from Wipes and Other “Non-Flushables”**

### **Legislation:**

The LOC will work with other stakeholders, including the Oregon Association of Clean Water Agencies address challenges resulting from wipes and other non-flushable items. Legislation pursued will likely focus on requirements for manufacturers to clearly label product packaging to indicate that the product should not be flushed, however, the LOC will additionally explore other viable opportunities to address the public health, environmental and economic challenges resulting from improper disposal of these products.

### **Background:**

In recent years, public wastewater systems have experienced significant increases in sewer line clogs, environmental impacts, infrastructure impacts and costs associated with wipes being flushed down toilets. Most wipes don't break down when flushed, and even wipes that are labeled as “flushable” can clog pipelines and pumps and can cause sewage overflows in residences and the environment. The COVID-19 pandemic has made this challenge even worse due to shortages of toilet paper and increased use of disinfecting wipes. The EPA and other national organizations, as well as statewide and local wastewater agencies, are working to get the message out to avoid costly as well as environmental impacts of wipes in our sewer and treatment systems. In March of 2020, the state of Washington passed legislation requiring manufacturers to label products with a “do not flush” logo if the product does not meet national “flushability” standards (i.e. breaking down in the sewer system).

*Presented by the Water/Wastewater Committee*

## **W. Right-of-Way/Franchise Fees Authority Preservation**

### **Legislation:**

Oppose legislation that, in any way, preempts local authority to manage public rights-of-way and cities' ability to set the rate of compensation for the use of such rights-of-way.

### **Background:**

In its commitment to the protection of Home Rule and local control, the LOC consistently opposes restrictions on the rights of cities to manage their own affairs. From time to time, in the context of public rights-of-way management authority discussions, legislative proposals to restrict this authority arise. Efforts to restrict local authority often include proposals for a statewide right-of-way access policy and compensation system as well as limiting the ability of cities to charge fees of other government entities. This is contrary to local government management authority; the ability to enter into agreements with users of the right-of-way either by agreement/contract or ordinance; to set terms of right-of-way use and to set the rate of compensation. In recent

years the FCC has passed rulemaking through various orders like the Small Cell Orders (FCC 18-133 and FCC 18-111) and the Cable Franchising Order (FCC 19-80) that erode cities' right-of-way and franchising authority. Local governments around the U.S. are fighting these orders in court. There is a fear that the language of these orders will be codified in state legislatures. This would mean if the orders are overturned in court at the federal level, they will still impact cities in states that have passed laws codifying the orders.

*Presented by the Telecom, Broadband & Cable Committee*

## **X. State Highway Funds Formula**

### **Legislation:**

Consider opening the state highway fund distribution formula to allow for an additional percentage to cities. Currently the split is 50-30-20 with the State receiving 50%, Counties receiving 30% and the balance going to Cities 20%.

### **Background:**

Oregon has had a distribution formula for the state highway fund for decades. This fund combines the revenues generated from the state's gas tax, weight-mile tax on heavy trucks, licenses, fees, and bond proceeds. Approximately 77 percent of the total revenue collected by Oregon Department of Transportation (ODOT) is from state sources, while only 23 percent comes from federal sources. During the 2017 session base level funding for the least populated counties was established along with a \$5 million-dollar small city fund for cities under 5,000 in population with a maximum award of \$100,000 and no match requirement. LOC will engage with other transportation interests to determine if there is adequate support to advance legislation that would revisit the current 50-30-20 distribution.

*Presented by the Transportation Committee*

## **Y. Tort Liability Reform**

### **Legislation:**

COVID-19 and existing federal court decisions have added risk exposure to cities in areas where their authority has been limited or have not received adequate support. This priority seeks to ensure that cities are not held liable in these areas.

### **Background:**

CIS has already had a COVID related claim filed against it for a COVID related exposure. While there may be many legitimate reasons for a person to seek damages related to the outbreak, local governments have been hampered by inadequate supplies of PPE, testing capability, direct financial support, and legislative relief.

Additionally, the Boise decision that prevents cities from enforcing no camping rules and ordinances subject cities to additional tort liability. The ruling holds that if a person has no place else to go, a city must allow them to sleep somewhere. While there is a logical basis for the core of the ruling, if a city allows a person to sleep in an area that is not designed for camping, such as a park, the person may seek damages. Please note that recreational users of parks may not seek damages due to Oregon's recreational immunity statute that were corrected in 2017.

Finally, in previous sessions, legislation has been introduced but not passed to require cities to permit shelters in areas where they may not be appropriate and "codify" the Boise decision in state law. This legislation did not include immunity from tort liability while removing city authority.

*Presented by the General Government/Human Resources Committee*

## Z. Water Utility Rate and Fund Assistance

### **Legislation:**

The League will work during the 2021 legislative session to provide water utility funding assistance for ratepayers that are experiencing ongoing or recent economic hardships. In addition, the LOC will work to identify opportunities for additional investments in public infrastructure, including water supply, wastewater treatment, stormwater management, green infrastructure opportunities and resilience for water systems. Finally, the LOC Water & Wastewater Policy Committee has identified a need for additional, targeted grant funding assistance that will benefit smaller communities. This includes additional funding to conduct rate studies, feasibility studies and funding to help communities comply with new regulatory requirements, including the requirement to include a seismic risk assessment and mitigation plan within regular water master plan updates.

### **Background:**

In response to economic impacts associated with the spread of COVID-19, many of Oregon's drinking water and wastewater utility providers have offered additional assistance to ratepayers. The LOC is aware that most water utility providers have temporarily ceased water service shut offs (disconnections) for non-payment or past due bill collection during this period of economic hardship. Impacts associated with residential ratepayer revenue losses and decreased water consumption from businesses that have either closed or limited operations has resulted in revenue losses for many Oregon water utility providers. Some water utilities have outstanding debt from prior infrastructure investments and have expressed concerns that reductions in revenue may impact the ability to make the ongoing debt payments. In addition, the economic hardships that are being experienced by many Oregonians, especially in low-income and minority communities, will be ongoing; highlighting the need for additional ratepayer assistance investments that focuses on equity and our most vulnerable populations.

The LOC will work to identify funding for water utility ratepayer assistance and will work to establish a framework for the distribution of funds and will seek to ensure that this crisis does not exacerbate existing inequities, especially for Black, Indigenous, other Communities of Color and for rural Oregonians.

In addition, while COVID-19 has created unique revenue challenges for water utility providers, a key issue that most cities continue to face is how to fund infrastructure improvements (including maintaining, repairing and replacing existing infrastructure and building new infrastructure to address capacity and regulatory requirements). Increasing resources in programs that provide access to lower-rate loans and infrastructure-specific grants will assist cities in investing in vital infrastructure improvements which will also help bolster economic recovery. Infrastructure development impacts economic development, housing, and livability. The level of funding for these programs has been inadequate compared to the needs over the last few biennia and the funds are depleting and unsustainable without significant program modifications and reinvestments.

The LOC will pursue additional funding through the state's Special Public Works Fund, which provides funding assistance through Business Oregon for a variety of public infrastructure needs and will explore state bonding capacity opportunities for water-specific infrastructure needs. In addition, LOC will pursue funding for small communities that face regulatory and operational challenges. Examples of small-community funding assistance opportunities may include expanded grant opportunities through existing funding programs and additional funding assistance to help communities with regulatory compliance and engage in utility best practices, including rate studies.

*Presented by the Water/Wastewater Committee, endorsed by the Community Development Committee*

## Acknowledgements

*Thank you to all that participated in the policy committee process.*

### **Community Development Committee**

Brian Latta, Dallas (*Chair*)  
Timothy Rippe, Forest Grove (*Vice-Chair*)  
Tom Armstrong, Portland  
Michael Boquist, La Grande  
Barbara Bull, Corvallis  
Steve Clements, La Grande  
Katy Dunsmuir, Estacada  
Len Goodwin, Veneta  
Allen Hobson, Winston  
Kelly Madding, Ashland  
Hilary Norton, Halsey  
Heather Richards, McMinnville  
Scot Siegel, Lake Oswego  
Michael Sykes, Scappoose  
Derrick Tokos, Newport  
Ryan Wells, Cornelius  
Kenna West, Willamina  
John Williams, West Linn  
Steve Wright, Seaside  
Stacy Cowan, Portland  
Erik Kancler, Bend  
Ethan Nelson, Eugene  
Eric Noll, State, Portland  
Anne Davies, Lane Council of Governments  
Spencer Parsons, Beery, Elsner & Hammond  
Ariel Nelson, LOC

### **Energy & Environment Committee**

Steve Uffelman, Prineville (*Chair*)  
Kathryn Hyzy, Milwaukie (*Vice-Chair*)  
Thomas Brownson, Astoria  
Steve Dahl, Drain  
Steve Forrester, Prineville  
Jerry Gillham, Sutherlin  
Tonya Graham, Ashland  
Scott Hill, McMinnville  
Theresa Kohloff, Lake Oswego  
Vinh Mason, Portland  
Sandra Spelliscy, Talent  
Biff Traber, Corvallis  
Stacy Cowan, Portland  
Jennifer Joly, OMEU  
Tracy Rutten, LOC

### **Finance & Taxation Committee**

Don Hudson, Tualatin (*Chair*)  
Paul Chalmers, Pendleton (*Vice-Chair*)  
Martha Bennett, Lake Oswego  
David Bodway, Sherwood  
Nancy Brewer, Corvallis  
Thomas Brownson, Astoria  
Gretchen Buehner, King City  
Barbara Bull, Corvallis  
Katy Dunsmuir, Estacada

Jessica Eden, Portland  
Joseph Gall, Sherwood  
Peter Hall, Haines  
Bessie Johnson, Albany  
Suzanne Lineen, Hillsboro  
Heidi Lueb, Tigard  
Anthony Martin, Hillsboro  
Brian McDowell, Union  
Seth Reeser, Wood Village  
Tim Rosener, Sherwood  
Byron Smith, Hermiston  
Jim Snyder, Phoenix  
Andrew Struthers, Corvallis  
Tyler Wallace, Portland  
Kenna West, Willamina  
Steve Wright, Seaside  
Eric Chambers, Gresham  
Ethan Nelson, Eugene  
Eric Noll, Portland  
Carol Samuels, Piper Sandler & Co.  
Mark Gharst, LOC

### **General Government/Human Resources Committee**

Jake Boone, Cottage Grove (*Chair*)  
Aaron Cubic, Grants Pass (*Vice-Chair*)  
David Allen, Newport  
David Bodway, Sherwood  
Jerry Gillham, Sutherlin  
Mark Gissiner, Eugene  
Jeff Groth, Sherwood  
Cathy Henson, Portland  
Allen Hobson, Winston  
Bessie Johnson, Albany  
Heidi Lueb, Councilor, Tigard  
Stephanie Moran, Junction City  
Lisa Morgan, Prineville  
Ethan Nelson, Eugene  
Jim Snyder, Phoenix  
Steve Uffelman, Prineville  
Tyler Wallace, Portland  
Stacy Cowan, Portland  
Eric Noll, Portland  
Scott Winkels, LOC

### **Telecom, Broadband and Cable Committee**

Peter Truax, Forest Grove (*Chair*)  
Ryan Zink, Salem (*Vice-Chair*)  
Pam Berrian, Eugene  
Steve Callaway, Hillsboro  
Len Goodwin, Veneta  
Anne Hill, Portland  
Robert Kellogg, Tualatin  
Marilyn Morton, Independence  
Elisabeth Perez, Portland  
Seth Reeser, Wood Village  
Heather Richards, McMinnville  
Tim Rosener, Sherwood  
Byron Smith, Hermiston

Pam Vaughan, Corvallis  
Nancy Wyse, Corvallis  
Maja Haium, Portland  
Jennifer Joly, OMEU  
Eric Noll, Portland  
Reba Crocker, ROW Consultants LLC  
Anne Davies, Pricipal Attorney, Lane Council of Governments  
Spencer Parsons, Beery, Elsner & Hammond  
Chris Tamarin, Buisness Oregon  
Jenna Jones, LOC

### **Transportation Committee**

Ken Woods, Dallas (*Chair*)  
Timm Slater, North Bend (*Vice-Chair*)  
Mike Bisset, McMinnville  
Tom Boyatt, Springfield  
Gretchen Buehner, King City  
Steve Callaway, Hillsboro  
Shoshana Cohen, Portland  
Joseph Gall, Sherwood  
Scott Hill, McMinnville  
Rob Inerfeld, Eugene  
Robert Kellogg, Tualatin  
Theresa Kohloff, Lake Oswego  
Jamie Kranz, Troutdale  
Brian Latta, Dallas  
Keith Mays, Sherwood  
Walt Perry, Jefferson  
Michael, Quilty, Central Point  
Timothy Rippe, Forest Grove  
Tim Rosener, Sherwood  
Michael Sykes, Scappoose  
Biff Traber, Corvallis  
Julie Warncke, Salem  
John Williams, West Linn  
Stacy Cowan, Portland  
Kayla Hootsmans, ODOT  
Jim McMauley, LOC

### **Water/Wastewater Committee**

Jason Pulley, Salem (*Chair*)  
Niki Iverson, Hillsboro (*Vice Chair*)  
Alice Brawley-Chesworth, Portland  
Steve Dahl, Drain  
Tim Gross, Newport  
Jan Lee, Sandy  
Brian McDowell, Union  
Sara Petrocine, Portland  
Paul Rheault, Bend  
Dean Sawyer, Newport  
Julie Smitherman, Ashland  
Eric Noll, Portland  
Susie Smith, ACWA  
Tracy Rutten, LOC

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 6  
Meeting Date: July 20, 2020  
Department: Police Department

---

**ITEM TITLE:** Amendment of Tribal Policing Contract

---

**DISCUSSION/ISSUE:**

Since July 2008, CTCLUSI and the City have operated under a police service agreement for the City to provide police services to the Hatch Tract and the Three Rivers Casino. The 2008 agreement called for the Tribes to pay the City the equivalent of \$10,000 per month. Effective July 2011 the parties entered into an amendment to the 2008 agreement that made some changes to the services provided and increased the equivalent monthly payment to roughly \$11,000 per month. The amendment also called for a yearly increase in the payment amount to account for police officer wage increases. In 2018, the monthly payment had increased to roughly \$12,800 per month. Beginning in late 2018, the Tribes expressed a desire to re-work the payment terms of the agreement due to a decrease in the number of 9-1-1 calls to the Tribes' property and the Tribes' financial hardship in making the payments to the City. The City worked over a number of months to meet and discuss the issues surrounding the ongoing agreement and the payment terms. As both parties will agree, progress on the negotiations was very slow. During the negotiations, the Tribes stopped paying its quarterly payments, but the City continued to provide police services to the Tribes' property.

The Tribes have now approved a proposal that would compensate the City at a rate of \$6,417.04 per month, which is 50% of the rate charged in 2018. The Tribes will also make payments for the period of time between December of 2018 and June of 2020 at the rate of \$6,417.04 per month. While this is technically a 50% reduction in these over-due payments, it is an overall payment of \$128,340.70 which staff believes is acceptable compensation for the services provided during the applicable time period. The Tribal police have been a good community partner and staff believes that the Tribes' proposal is a fair resolution to the ongoing negotiations.

The proposed reductions are consistent with the reductions in other police service contracts that the Tribes have with other cities. The Tribes have expressed on several occasions through this twenty-month period that their only other alternative to this payment reduction was to cancel the contract completely. Canceling the police services contract does not serve our community. Even if the contract were cancelled, the City would still respond to the Tribes in an emergency cover situation due to our proximity. The City would not receive any compensation under that scenario. Additionally, the Tribal police cover our City police personnel frequently and having this current assistance is often essential in keeping our community, citizens, and visitors safe.

---

Approving the proposal from the Tribes as set out in the Second Amendment puts in place the ongoing payments, as well as the payments for past services. Approving the proposal also continues the working relationship between FPD and Tribal Police that is for the benefit of the whole community. Failing to approve the proposal puts in real jeopardy receiving the past payments and also jeopardizes the partnership that FPD and Tribal Police have developed over the last many years.

---

**FISCAL IMPACT:**

The adopted biennium budget included payments from the Confederated Tribes for this contract of \$70,000 for each of the fiscal years (2019-20 and 2020-21) in the biennium. Based on the initial negotiations, it was assumed that an amendment would be forthcoming at the proposed 50% rate of the original contract.

Per the proposed amendment, the city would receive a total of \$198,928.14 in payments from the Confederated Tribes for the 2019-21 biennium. While this is not what is currently owed to the City under the previous contract terms, it is \$58,928.14 more than what is in the current biennium budget and \$198,928.14 more than was forecasted in the June budget presentation to Council. Ongoing, the annual contract amount will be \$77,000 per the proposed amendment.

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

Goal 1: City Service Delivery – Public Safety: Police

- Sustain and improve the delivery of cost effective and efficient services to the citizens of Florence and our visitors.

Goal 2: Livability and Quality of Life

- Sustain and improve the City's livability and quality of life for Florence residents and visitors.

---

**ALTERNATIVES:**

1. Accept the Second Amendment of Tribal Policing Contract.
2. Not accept the Second Amendment of Tribal Policing Contract.

---

**RECOMMENDATION:**

Accept the Second Amendment to the agreement between the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians and the City of Florence for City Police Services to the Hatch Tract and the Three Rivers Casino, and authorize the Mayor to sign the Agreement on behalf of the City.

---

**AIS PREPARED BY:** Tom Turner, Chief of Police

---

---

**CITY MANAGER'S  
RECOMMENDATION:**

Approve

Disapprove

Other

Comments:

*Megan Messmer*

---

**ITEM'S ATTACHED:**

Attachment 1 – Second Amendment to Tribal Policing Contract

---

**SECOND AMENDMENT  
TO  
THE AGREEMENT BETWEEN  
THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW  
INDIANS  
AND  
THE CITY OF FLORENCE  
FOR CITY POLICE SERVICES TO THE HATCH TRACT AND  
THE THREE RIVERS CASINO**

This SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS AND THE CITY OF FLORENCE FOR CITY POLICE SERVICES TO THE HATCH TRACT AND THE THREE RIVERS CASINO (the “**Second Amendment**”) is made effective as of July 31, 2020 (the “**Effective Date**”), by and between THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS (the “**Tribe**”), a federally recognized Indian tribe, and THE CITY OF FLORENCE (the “**City**”), a local unit of government under the laws of the State of Oregon. The Tribe and the City are sometimes referred to singly herein as a “**Party**” and collectively herein as the “**Parties**”.

**Recitals**

- A. On June 30, 2008, the Parties executed THE AGREEMENT BETWEEN THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS AND THE CITY OF FLORENCE FOR CITY POLICE SERVICES TO THE HATCH TRACT AND THE THREE RIVERS CASINO (the “**Agreement**”).
- B. On July 5, 2011, the Parties executed the AMENDMENT TO THE AGREEMENT BETWEEN THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS AND THE CITY OF FLORENCE FOR CITY POLICE SERVICES TO THE HATCH TRACT AND THE THREE RIVERS CASINO (the “**First Amendment**”).
- C. Circumstances have changed since the Parties executed the First Amendment; specifically, the actual call volumes from the Three Rivers Casino and the Hatch Tract to the City Police Department have been significantly less than the Parties anticipated.

**Agreement**

In consideration of the foregoing premises and the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Item 17 of the First Amendment is hereby stricken in its entirety and replaced with the following:**

Item 17: Cost to the Tribe.

Effective August 1, 2020, the Parties agree that the Tribe shall pay \$6,417.04 per month in consideration for the Police Services to be provided by the City pursuant to this Agreement, which shall be due on the first of each month.

Full payment provided under this Section 17 shall constitute payment of corresponding fiscal year period amounts due to the City by the Tribal Police under the PSAP User Agreement.

The Parties agree that, as of July 1, 2020, the Tribe owes \$256,681.40 in back payments. Given actual call volumes, the Parties agree to reduce the back payment amount to \$128,340.70, which shall be paid in twelve monthly installments beginning on August 1, 2020 until paid in full.

**Item 18 of the First Amendment is hereby stricken in its entirety and replaced with the following:**

Item 18. Term of the Contract. The Agreement shall terminate on July 31, 2021. The Agreement shall automatically renew for an additional 5 years starting August 1, 2021 and ending July 31, 2026. The automatic renewal shall not occur if either Party notifies the other Party in writing to the contrary no later than January 1, 2021.

*[Signature pages follow]*

**Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Debbie Bossley, Tribal Council Chair

**City of Florence**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Joe Henry, Mayor

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 7  
**Meeting Date:** July 20, 2020  
**Department:** Admin Svs Dept.

---

**ITEM TITLE:** Annual update and adjustment to City Fees and charges.

---

**DISCUSSION/ISSUE:**

June 3, 2019 the City Council approved a resolution that increased fees and charges for the 2019-20 fiscal year. The City’s fiscal policies include an annual review of fees and charges, with proposed changes submitted for consideration by Council.

The Stay Home, Stay Safe order from the Governor in response to the COVID-19 pandemic has caused economic hardship to the City of Florence and its residents. The Florence City Council has voiced its concern with raising rates during the pandemic.

In alignment with Council’s concerns, the attached fee schedule does not contain fee increases of the CPI (2.3%) or the budgeted estimate (2%) for the 2020-21 fiscal year.

Should Council choose to not increase rates for the 2020-21 fiscal year, future increases will need to account for the foregone increase this fiscal year as well as the CPI increase. Rates that will be hit hardest will be Water and Wastewater fees. It is expected that Water will lose \$44,000 and Wastewater \$66,000 (based on the budgeted increase of 2%) during the 2020-21 fiscal year.

With the projected losses from the COVID Stay Home, Stay Safe order from the Governor and not increasing the rates for the 2020-21 fiscal year, it is estimated that for the 2021-22 fiscal year, utility rates for the major utility funds will need to be raised 4.3 and 5.2 percent for Water and Wastewater respectively, which includes the budgeted 2% CPI increase. The following shows what the increases would be based on an ‘average’ residential and commercial customer using 500 cubic feet and 6,000 cubic feet, respectively:

<b>Customer</b>	<b>Current Rate</b>	<b>2% Increase</b>	<b>Net Increase Over Current</b>	<b>4.3% Water/5.2% WW</b>	<b>Net Increase Over Current</b>
Residential	\$98.28	\$100.31	\$2.03/month	\$102.77	\$4.49/month
Commercial	\$650.90	\$663.36	\$12.46/month	\$681.95	\$31.05/month

The attached fee schedule does include corrections to several fees. The fees noted below were missed in the 2019-20 fiscal year update and are increased 1.3%, which was the implemented increase for the 2019-20 fiscal year:

- Review of sand management plan on page 27 and page 44 (\$150.00 to \$151.95)
  - Illuminated signs on page 41 (\$131.00 – 263.00 to \$132.70 – 266.42)
  - Non-illuminated signs on page 42 (\$101.30 – 196.52 to \$102.62 – 199.07)
-

---

**FISCAL IMPACT:**

The adopted budget included scheduled increases based on an assumed CPI as outlined above. Anticipated material losses in revenue for the major utility funds due to the foregone scheduled increases are as follows:

- Water (\$44,000)
- Wastewater (\$66,000)

In addition, not implementing the scheduled fee increases outlined in the adopted budget within other programs will also impact those funds.

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

Fee adjustments provide incremental and necessary funding, consistent with the adopted budget, to sustain and improve the City's operations and protect its investment in its infrastructure and are consistent with the City's adopted fiscal policies.

---

**ALTERNATIVES:** Council may direct staff to increase rates and present a resolution at the next Council Meeting.

---

**RECOMMENDATION:**

Staff recommends approving the fee schedule as presented.

---

**AIS PREPARED BY:** Anne Baker, Administrative Services Department Director

---

**CITY MANAGER'S RECOMMENDATION:**  Approve  Disapprove  Other

Comments:

*Megan Messmer*

---

**ITEM'S ATTACHED:** Attachment 1 – Attachment Exhibit A

---

# City of Florence, Oregon

## Fee Schedule

Fiscal Year 2021 rates effective July 1, 2020, unless otherwise noted

<b>Table of Contents</b>	<b>Page</b>
Airport	
<i>Hangar ground leases</i>	1
<i>Tie-down fees</i>	1
<i>Courtesy car rental</i>	1
City-wide	
<i>Administrative fees</i>	1
<i>City records - copies</i>	2
<i>City attorney fees</i>	3
<i>Lien Searches</i>	3
<i>Staff billing rates - full cost recovery</i>	3
Florence Events Center	
<i>Flat floor room rental</i>	3
<i>Theater</i>	4
<i>FEC ticketing fee</i>	4
Licenses/miscellaneous permits	
<i>City business licenses</i>	4
<i>Liquor license</i>	6
<i>Sidewalk cafes</i>	7
<i>Appeal fee</i>	7
Municipal Court	
<i>Citations/penalties</i>	7
<i>Municipal court</i>	8
Public Safety	
<i>Police records - copies</i>	8
<i>Alarm response reinstatement</i>	9
Public Works	
<i>Plan review</i>	9
<i>Permit fees</i>	9
<i>Inspection fees</i>	10
<i>Other inspection fees</i>	10
<i>Yard debris disposal</i>	10
Utilities	
<i>Service charges</i>	11
<i>Stormwater</i>	11
<i>Street maintenance</i>	11
<i>Wastewater</i>	12
<i>Water</i>	12
<i>Connection fees</i>	13
<i>Administrative fees</i>	14

**Table of Contents, continued****Page**

System development charges	
<i>Stormwater</i>	14
<i>Street</i>	14
<i>Wastewater</i>	15
<i>Water</i>	16
<i>SDC exemptions - affordable housing</i>	16
<i>SDC collection deferral</i>	16
Communtiy Development	
<i>Planning fees</i>	17
Staff review - no public notice	17
Staff review - with public notice	18
Planning Commission - no public notice	18
Planning Commission - public hearing	18
Planning Commission and Council public hearings	19
Citizen-initiated legislative amendment	20
Appeal of staff decision to planning commission	20
Appeal of Planning Commission decision to City Council	20
Vacation of right-of-way	20
Additional review fees	20
<i>Building permits and related fees</i>	21
One and two-falmily dwelling; new and additions - structural permit fee table	21
Other inspection fees	22
Phased projects	23
Deferred submittals	24
Investigation fees	24
One and two-falmily dwelling; alterations - structural permit fee table	26
Commercial, multi-family and industrial new buildings; additions and alterations - structural fee table	27
Mechanical fee schedule; new construction, additions, and alterations	29
One and two family dwellings	29
Commercial, multi-family, and industrial projects	30
Commercial, multi-family, and industrial - mechanical valuations table	31
New one and two-family dwellings - plumbing permit fee schedule	32
New one and two-family dwellings; alterations, multi-family, commercial, and industrial - plumbing permit fee schedule	33
Other miscellaneous plumbing inspections and fees	34
Multi-purpose residential fire sprinkler system - plumbing permit fee schedule	35
Medical gas piping systems - plumbing permit fee schedule	35
Electrical permit fee schedule	35
Other miscellaneous electrical inspections and fees	38
Sign fee schedule	39
Manufactured home placement permits	42
Other city-regulated fees	
Taxi rates	43
Bus fare fees - Rhody Express	43

## Airport

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Hangar ground leases</i>						
Commercially owned hangars (per square foot)	Square foot	0.2418	0.2449	0.2449	- .00	0.0%
Privately owned hangars (per square foot)	Square foot	0.2418	0.2449	0.2449	- .00	0.0%
<i>Tie-down Fees</i>						
Overnight Tie-down fee	per night	5.00	7.00	7.00	-	0.0%
Monthly Tie-down fee	per month	60.0000	75.0000	75.0000	- .00	0.0%
<i>Courtesy car rental</i>						
Flat fee		Donation		5.00	N/A	N/A
<i>Fuel</i>	Public Works Director establishes price per gallon per market fuel prices					

## City - wide

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Administrative fees</i>						
Administrative fee for insufficient funds - returned items of any type	Per item	35.00	35.50	35.50	-	0.0%
Late fee on past due charges - of any type except those covered by agreements or contracts	Past due balance	1.0%/month, \$3.00 minimum	1.0%/month, \$3.00 minimum	1.0%/month, \$3.00 minimum	N/A	N/A
Collections fee	Per account turned over to collection agency	25.00	25.25	25.25	-	0.0%
Payment arrangements fee	Per payment arrangement agreement	25.00	25.25	25.25	-	0.0%

## City - wide, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>City records - copies (applies to all City functions)</i>						
Copies of City documents - black and white (1st 5 pages free)	8.5"x11" and 8.5"x14" - per page	0.25	0.25	0.25	-	0.0%
Copies of City documents - black and white (1st 5 pages free)	11"x17" - per page	0.40	0.40	0.40	-	0.0%
Copies of City documents - color	8.5"x11" and 8.5"x14" - per page	0.75	0.75	0.75	-	0.0%
Copies of City documents - color	11"x17" - per page	1.00	1.00	1.00	-	0.0%
Certified copies	Per page	2.00	2.05	2.05	-	0.0%
Documents taken to outside printer for reproduction		actual cost plus staff time	actual cost plus staff time	actual cost plus staff time	N/A	N/A
Business license list		20.00	20.25	20.25	-	0.0%
Scanning documents	8.5"x11" and 8.5"x14" - per page	0.25	0.25	0.25	-	0.0%
Scanning documents	11"x17" - per page	0.40	0.40	0.40	-	0.0%
Geographical Information System (GIS) maps - outline only	8.5"x11" and 8.5"x14" - per page	5.26	5.33	5.33	-	0.0%
Geographical Information System (GIS) maps - outline only	11"x17" - per page	7.37	7.47	7.47	-	0.0%
Geographical Information System (GIS) maps - additional data layers	8.5"x11" and 8.5"x14" - per page	12.62	12.78	12.78	-	0.0%
Geographical Information System (GIS) maps - additional data layers	11"x17" - per page	17.88	18.11	18.11	-	0.0%
Geographical Information System (GIS) maps - individual parcels	8.5"x11" and 8.5"x14" - per page	15.77	15.98	15.98	-	0.0%
Geographical Information System (GIS) maps - individual parcels	11"x17" - per page	21.03	21.30	21.30	-	0.0%

## City - wide, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>City Records - Copies (applies to all City functions), continued</i>						
Geographical Information System (GIS) maps -large format	Outline - 42"x72" - per page	26.29	26.63	26.63	-	0.0%
Geographical Information System (GIS) maps -large format	Additional data layers - per page	42.07	42.62	42.62	-	0.0%
Geographical Information System (GIS) maps -aerial photo	8.5"x11" and 8.5"x14" - per page	26.29	26.63	26.63	-	0.0%
Geographical Information System (GIS) maps -aerial photo	11"x17" - per page	31.55	31.96	31.96	-	0.0%
Geographical Information System (GIS) maps -aerial photo	Large format - up to 42"x72" - per page	63.10	63.92	63.92	-	0.0%
Copy of audio and video recording of a meeting	Per meeting	26.29	26.63	26.63	-	0.0%

### City attorney fees

Actual cost      Actual cost      Actual cost      N/A      N/A

### Lien Searches

10.00      10.00      35.00      25.00      N/A

### Staff billing rates - full cost recovery

Clerical	Hourly	46.00	47.00	47.00	-	0.0%
Technician	Hourly	61.00	62.00	62.00	-	0.0%
Senior Technician	Hourly	77.00	79.00	79.00	-	0.0%
Supervisor	Hourly	94.00	96.00	96.00	-	0.0%
Manager	Hourly	112.00	114.00	114.00	-	0.0%
Department Head	Hourly	138.00	141.00	141.00	-	0.0%
City Manager	Hourly	163.00	166.00	166.00	-	0.0%

## Florence Events Center

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Flat floor room rentals</i>						
One Room	8 hours	195.00	198.00	198.00	-	0.0%
Two Rooms	8 hours	310.00	315.00	315.00	-	0.0%
Three Rooms	8 hours	485.00	492.00	492.00	-	0.0%
Four Rooms	8 hours	615.00	623.00	623.00	-	0.0%
Five Rooms	8 hours	740.00	750.00	750.00	-	0.0%
Five Rooms with Use of Lobby	8 hours	995.00	1,008.00	1,008.00	-	0.0%
Green Room	8 hours	115.00	117.00	117.00	-	0.0%

## Florence Events Center, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### Flat floor room rentals, continued

Board Room	8 hours	95.00	97.00	97.00	-	0.0%
------------	---------	-------	-------	-------	---	------

### Theater

Performances & Friday/Saturday Rehearsals	8 hours	740.00	750.00	750.00	-	0.0%
Monday-Thursday Rehearsal with stage lights	8 hours	335.00	340.00	340.00	-	0.0%
Monday-Thursday Rehearsal without stage lights	8 hours	155.00	158.00	158.00	-	0.0%

All room and theater fees include set up and custodial. Any time beyond 8 hours is charged on a pro-rated basis.

FEC ticketing fee	Per ticket	3.25	3.25	3.25	N/A	N/A
	0-12 tix			comp	N/A	N/A
Comp - \$0	Ticket Value			1.00	N/A	N/A
\$.01 - \$39.99	Ticket Value			3.75	N/A	N/A
\$40.00 - \$49.99	Ticket Value			4.50	N/A	N/A
\$50.00 - \$99.99	Ticket Value			5.50	N/A	N/A
\$100.00 +	Ticket Value			10.50	N/A	N/A

## Licenses/Miscellaneous Permits

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### City business licenses

Business License Application Fee - charged to all license classification types	Initial application	10.00	10.00	10.00	-	0.0%
Classification 1 - Businesses, non-profit organizations, trades, occupations, and professions dealing in retail sale or trade of merchandise and or services at a permanent location.	Per year, if paid by December 31 of year before license year	82.00	82.00	84.00	-	0.0%

## Licenses/Miscellaneous Permits, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>City business licenses, continued</i>						
Classification 2 - Occupations, tradesman or contractors dealing contractual services or installation of merchandise or materials at, in or on properties not the principal location, or base of operation, of the contractor or installer.	For up to six months	41.00	42.00	42.00	-	0.0%
Classification 2 - Occupations, tradesman or contractors dealing contractual services or installation of merchandise or materials at, in or on properties not the principal location, or base of operation, of the contractor or installer.	Per year, if paid by December 31 of year before license year	82.00	84.00	84.00	-	0.0%
Classification 2 - Temporary license fee	For up to six months	41.00	42.00	42.00	-	0.0%
Classification 3 - Home occupations as defined in Title 10, Chapter 1	Per year	46.00	47.00	47.00	-	0.0%
Classification 3 - Temporary license fee	For up to six months	26.00	27.00	27.00	-	0.0%
Classification 4 - Merchant Police, Security Services, and Solicitors	Per year, if paid by December 31 of year before license year	82.00	84.00	84.00	-	0.0%
Classification 4 - Temporary license fee	For up to six months	44.00	45.00	45.00	-	0.0%
Classification 5 - Temporary license fee - Peddlers and Transient Merchants	For up to six months	41.00	42.00	42.00	-	0.0%

## Licenses/Miscellaneous Permits, continued

Fee Description	Unit	FY 2018	FY 2019	FY 2020	Change	% Change
<i>City business licenses, continued</i>						
Classification 6 -Temporary license fee for the Rhododendron Festival Period as defined in FCC 3-1-8-6		21.00	22.00	22.00	-	0.0%
Classification 7 - Master Vendors and Vendors	Master Vendor fee is \$0.00	21.00	22.00	22.00	-	0.0%
Classification 8 - Used Merchandise Dealer	Per year, if paid by December 31 of year before license year	82.00	84.00	84.00	-	0.0%
Classification 8 - Temporary license fee	For up to six months	41.00	42.00	42.00	-	0.0%
Classification 9 - Medical Marijuana Facility (No temporary status available)	Per year	150.00	152.00	152.00	-	0.0%
Business License Renewal Penalty (payments made after January 20th)	Fees due	50%	50%	50%	N/A	N/A
<i>Liquor license</i>						
Temporary/Special Event Liquor License	Flat fee	25.00	26.00	26.00	-	0.0%
Change of Name, which does not affect a change in ownership, location or serving privileges.	Flat fee	25.00	26.00	26.00	-	0.0%
Liquor License Annual Renewals	Flat fee	25.00	26.00	26.00	-	0.0%

## Licenses/Miscellaneous Permits, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Liquor license, continued</i>						
New Liquor License Application	Flat fee	105.00	107.00	107.00	-	0.0%
Change of: Ownership; Service Address or Serving Privilege	Flat fee	80.00	82.00	82.00	-	0.0%
<i>Sidewalk cafes</i>	Flat fee	25.00	26.00	26.00	-	0.0%
<i>Street Closures for Special events</i>	<i>\$100 due at time of application. Upon approval by City Council, balance shall be due.</i>	250.00	254.00	254.00	-	0.0%
Appeal fee - in event of application being denied administratively by City Manager	Non-refundable. If applicant wins appeal, fee may be applied to Street Closure Fee	150.00	152.00	152.00	-	0.0%

## Municipal Court

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Citations/penalties</i>						
Parking Violation of Prohibited Parking	Per occurrence	35.00	35.50	35.50	-	0.0%

## Municipal Court, continued

Fee Description	Unit	FY 2018	FY 2019	FY 2020	Change	% Change
<i>Municipal court</i>						
Suspension Fee	Per transaction	15.00	15.00	15.00	-	0.0%
Warrant Fee	Per transaction	50.00	50.00	50.00	-	0.0%
Expungement Fee	Per transaction	252.00	252.00	252.00	-	0.0%
Re-Open Fee	Flat fee	20.00	20.00	20.00	-	0.0%
Jury Fee	If trial canceled after arrival of jurors	150.00	150.00	150.00	-	0.0%
Extended Diversion Fee	Per transaction	50.00	50.00	50.00	-	0.0%
Extended Probation Fee	Per transaction	50.00	50.00	50.00	-	0.0%
Probation Violation Fee	For each show cause judgment	25.00	25.00	25.00	-	0.0%
Jail Inmate Booking		55.00	55.00	55.00	-	0.0%
Traffic Safety Course		40.00	40.00	40.00	-	0.0%

## Public Safety

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Police records - copies</i>						
Reports	Per report	20.00	21.00	21.00	-	0.0%
Log Entries (no charge to those seeking a court protective order)	Per record	10.00	11.00	11.00	-	0.0%
Citation Copies	Per copy	10.00	11.00	11.00	-	0.0%
Audio Tapes	Applicant supplies tapes	20.00	21.00	21.00	-	0.0%
Video Tapes	Applicant supplies tapes	50.00	51.00	51.00	-	0.0%

## Public Safety, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Police records - copies, continued*

Photos	Minimum, additional charge to cover processing costs	10.00	11.00	11.00	-	0.0%
--------	--	-------	-------	-------	---	------

### *Alarm response reinstatement*

First Reinstatement on record		85.00	85.00	85.00	-	0.0%
Second Reinstatement on record		170.00	170.00	170.00	-	0.0%
Third Reinstatement on record		270.00	275.00	275.00	-	0.0%

## Public Works

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Plan review*

Project Cost	\$0 - \$100,000	0.5%	0.51%	0.51%	-	0.0%
Project Cost	\$100,001 - \$250,000	0.5%	0.51%	0.51%	-	0.0%
Project Cost	> \$250,000	0.5%	0.41%	0.41%	-	0.0%
Subsequent review of any revisions to the original construction drawings	Flat fee	105.00	106.37	106.37	-	0.0%
Review of original and/or any revisions by City Engineer	City Engineer Cost	100.0%	100.0%	100.0%	N/A	N/A

### *Permit fees*

Basic Permit Fee	Per Application	42.00	42.55	42.55	-	0.0%
Right of way work	Lineal foot	1.58	1.60	1.60	-	0.0%
Water/Sewer Line Inspection (per service)	Per service	76.00	77.00	77.00	-	0.0%

## Public Works, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Permit fees, continued</i>						
Street/Curb/Sidewalk Inspection (per hour, one hour minimum)	Per hour, one hour minimum	85.00	87.00	87.00	-	0.0%
<i>Inspection fees</i>						
Street Lights	Per fixture	27.83	28.19	28.19	-	0.0%
Water Main	Per lineal foot	0.69	0.70	0.70	-	0.0%
Water Services	Per fixture	75.70	76.68	76.68	-	0.0%
Fire Hydrants	Per fixture	85.22	86.33	86.33	-	0.0%
Sewer Mains (pressure or gravity)	Per lineal foot	0.69	0.70	0.70	-	0.0%
Sewer Laterals	Per fixture	75.70	76.68	76.68	-	0.0%
Sewer Manholes	Per fixture	71.50	72.43	72.43	-	0.0%
Storm Main Lines	Per lineal foot	0.69	0.70	0.70	-	0.0%
Storm Manhole	Per fixture	71.51	72.44	72.44	-	0.0%
Storm Catch Basins	Per fixture	27.31	27.67	27.67	-	0.0%
Storm Lateral Lines	Per lineal foot	0.69	0.70	0.70	-	0.0%
Storm Retention or Detention Facility	Per facility	262.91	266.33	266.33	-	0.0%
Street with or without Curb	Per lineal foot	1.58	1.60	1.60	-	0.0%
<i>Other inspections fees</i>						
Inpections outside of normal business hours	Hourly - minimum two hours	Billing Rate	Billing Rate	Billing Rate	N/A	N/A
Inpections for which no fees is specifically indicated	Hourly - minimum one hour	Billing Rate	Billing Rate	Billing Rate	N/A	N/A
<i>Yard debris disposal</i>						
Standard Pickup Load or Less	Per load	11.00	11.00	11.00	-	0.0%
Small Utility Trailer (single axel) or Less	Per load	11.00	11.00	11.00	-	0.0%
Medium Utility Trailer (10-12 feet in length)	Per load	16.00	16.00	16.00	-	0.0%

## Public Works, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Yard debris disposal, continued</i>						
Large Utility Trailer (greater than 12-18 feet in length)	Per load	21.00	21.00	21.00	-	0.0%
For loads larger than a large utility trailer (20 plus cubic yards)	20 cubic yards	21.00	21.00	21.00	-	0.0%
	<i>each additional cubic yard</i>	5.00	5.00	5.00	-	0.0%

## Utilities

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Service charges*

Rates Per Billing Cycle

### *Stormwater*

#### *Single family residential*

Less than 6,500 square foot of property area	Flat rate	5.61	5.68	5.68	-	0.0%
6,500-9,000 sq ft	Flat rate	6.74	6.83	6.83	-	0.0%
Greater than 9,000 sq ft	Flat rate	7.86	7.96	7.96	-	0.0%

#### *Multi-family and Commercial*

Minimum charge (up to 6,500 sq ft)	Flat base rate	8.62	8.73	8.73	-	0.0%
Cost of impervious surface greater than 6,500 sq ft	Per square foot	0.001250	0.001266	0.001266	0.000000	0.0%

### *Street maintenance*

<i>Residential - each unit containing a kitchen and toilet.</i>	<b><i>Per dwelling unit</i></b>	<b>6.50</b>	<b>6.60</b>	<b>6.60</b>	-	0.0%
<i>Multi-family residential - each unit containing a kitchen and toilet.</i>	Per dwelling unit	6.50	6.60	6.60	-	0.0%
<i>Commercial</i>	Base charge per business location	6.50	6.60	6.60	-	0.0%
<i>Commercial</i>	Rate per trip over 10 trips/day	0.05	0.05	0.05	-	0.0%

## Utilities, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Wastewater</i>						
Residential - single family residential	Flat rate	53.96	54.66	54.66	-	0.0%
Residential - multi-family	Consumption	0.08	0.0781	0.0781	-	0.0%
Viking Concrete	Flat rate	195.03	197.57	197.57	-	0.0%
<i>Commercial rates</i>						
I & I and Demand combined	Per cubic foot	0.07711	0.07811	0.07811	-	0.0%
Greentrees & Coast Village	Per cubic foot	Transition to a			-	-
<i>Other individual rates</i>						
Mobile Waste Disposal	Per gallon	0.11030	0.11173	0.11173	-	0.0%
<i>Water</i>						
<i>Single family residential</i>	<b>Base charge</b>	<b>19.16</b>	<b>19.41</b>	<b>19.41</b>	-	<b>0.0%</b>
<i>Commodity (volume) tiered rates for residential</i>						
0 - 1,500 cubic feet	Per cubic foot	0.02128	0.02156	0.02156	-	0.0%
1,501 - and greater cubic feet	Per cubic foot	0.23400	0.23704	0.23704	-	0.0%
Well rehab fee - all customers - per account	Flat fee	Included in base charge				
<i>Commercial</i>						
3/4 - inch	Base charge		19.41	19.41	-	0.0%
1 - inch	Base charge		25.93	25.93	-	0.0%
1 1/2 inch	Base charge	81.51	82.57	82.57	-	0.0%
2 - inch	Base charge	125.94	127.58	127.58	-	0.0%
3 - inch	Base charge	381.60	386.56	386.56	-	0.0%
4 - inch	Base charge	480.74	486.99	486.99	-	0.0%
6 - inch	Base charge	1,967.99	1,993.57	1,993.57	-	0.0%
Greentrees West	Base charge	1,967.99	2,164.79	2,164.79	-	0.0%
8 - inch commercial	Base charge	5,832.71	5,908.54	5,908.54	-	0.0%
Fire Standby	Base charge	8.02	8.12	8.12	-	0.0%
Irrigation Only Meter 3/4	Base charge	19.16	19.41	19.41	-	0.0%
Irrigation Only Meter 1 - inch			25.93	25.93	-	0.0%
Irrigation Only Meter 1 1/2 inch	Base charge	81.51	82.57	82.57	-	0.0%
Irrigation Only Meter 2 - inch	Base charge	125.94	127.58	127.58	-	0.0%
Commodity (volume) rates for commercial:	Per cubic foot	0.02	0.02	0.02	-	0.0%

## Utilities, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Water, continued</i>						
Bulk water sales		-	-	-	-	0.0%
Residential	Per CCF	2.13	2.16	2.16	-	0.0%
Commercial	Per CCF	2.13	2.16	2.16	-	0.0%
<i>Connection fees</i>						
<b>Wastewater Connection Fees</b>						
Residential & Commercial-stubbed to property line	Per connection	221.90	224.78	224.78	-	0.0%
Residential & Commercial-if unpaved street opening required	Per connection	440.64	446.37	446.37	-	0.0%
Residential & Commercial-if paved street opening required	Per connection	887.59	899.13	899.13	-	0.0%
Multi-Family-for second unit only	Per connection	172.47	174.71	174.71	-	0.0%
Multi-Family-per unit after second	Per connection	114.63	116.12	116.12	-	0.0%
<b>Water Connection Fees</b>						
3/4" Residential (w/ Premise Isolation)	Per connection	746.67	756.38	756.38	-	0.0%
3/4" Commercial	Per connection	625.73	633.86	633.86	-	0.0%
1" Residential (w/ Premise Isolation)	Per connection	841.32	852.26	852.26	-	0.0%
1" Commercial	Per connection	688.83	697.78	697.78	-	0.0%
1 1/2-inch Meter	Per connection	946.48	958.78	958.78	-	0.0%
2-inch Compound Meter	Per connection	2,145.35	2,173.24	2,173.24	-	0.0%
2-inch Turbo Meter with Strainer	Per connection	1,598.50	1,619.28	1,619.28	-	0.0%
Water Connection Fee if water main needs to be tapped	Amount per connection plus	Meter connection fee plus time and materials	Meter connection fee plus time and materials	Meter connection fee plus time and materials	N/A	N/A

## Utilities, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Connection fees, continued</i>						
Industrial	Per connection	1,145.24	1,160.13	1,160.13	-	0.0%
Water Connection Relocation Fee	Flat fee plus time and materials	210.33	213.06	213.06	-	0.0%
<i>Administrative fees</i>						
Shut-off notice for failure to pay account after notice	Per transaction	5.00	5.00	5.00	-	0.0%
Duplicate billing to property owner or property manager - if account becomes past due	Per instance	2.00	2.00	2.00	-	0.0%
Turn-off service for non-payment, or upon request of customer	Per occurrence	20.00	20.50	20.50	-	0.0%
Turn-on service	Per occurrence	20.00	20.50	20.50	-	0.0%
Establish service, includes turn-on service	Per occurrence	20.00	20.50	20.50	-	0.0%

## System Development Charges

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Stormwater System Development Charge</i>						
Single family residential	Per dwelling unit or equivalent	2,313.00	2,367.60	2,367.60	-	0.0%
<i>All other uses (except single family dwellings)</i>						
	Per net acre	12,742.00	13,042.81	13,042.81	-	0.0%
	Per gross acre	9,557.00	9,782.62	9,782.62	-	0.0%

### *Street System Development Charge*

All development categories shall be assigned a generated trip index based upon the Institute of Transportation Engineers Trip Generation Manual, current edition, as determined by the Public Works Director or designee.

Per generated vehicle trip	102.00	104.41	104.41	-	0.0%
----------------------------	--------	--------	--------	---	------

## System Development Charges, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	-------------

### Wastewater System Development Charge

Water and Wastewater SDC's DUE's are determined as follows:

Single family dwelling - 1.0 DUE; Single family residence up to 3 attached Units - 1.0 DUE per unit; Multiple family dwelling - four or more units - 0.4 DUE per apartment unit; Prepared food & beverage establishments - 1.0 DUE per 1,000 square feet GROSS building area; Offices, clinics, salons, fraternal organizations, service organizations - 0.2 DUE per 1,000 GROSS building area.

Per dwelling  
unit or  
equivalent

5,029.00

5,147.72

5,147.72

-

0.0%

Commerical, retail, industrial - 0.2 DUE per 1,000 GROSS building area up to 5,000 square feet and 0.05 per 1,000 square feet above 5,000 square feet; Care facility, nuring home - 0.2 DUE per bed; Laundromat - 0.5 DUE per washing machine; Campground, RV Park, Mobile Home Park - 0.4 DUE per space; Service Station without store - 1.0 DUE; Service Station with store - 2.0 DUE; Church - 0.2 DUE per 1,000 square feet GROSS building area.

## System Development Charges, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Water System Development Charge</i>						
Buildings - see below for Water and Sewer, plus Landscape irrigation applies to all maintained landscaping or vegetated area with irrigation, either permanent or mobile, other than single family dwelling (up to 3 attached units) - All lawn gras areas - 1.0 DUE per 2,500 square feet, all shrubbery or native vegetation - 1.0 DUE per 4,000 square feet.	Per dwelling unit or equivalent	4,015.00	4,109.78	4,109.78	-	0.0%

### *System Development Charge exemptions - affordable housing (The current exemption sunsets on June 30, 2019. Council will consider extending it at a later meeting.)*

Single-family dwelling unit - interior living space (excluding garages, but including unfinished basements)	Exemption percentage, i.e., % of SDC not charged
< 1,000 sq. ft.	60% exemption
1,000-1,199 sq. ft.	50% exemption
1,200-1,399 sq. ft.	40% exemption
1,400-1,599 sq. ft.	30% exemption
1,600-1,799 sq. ft.	20% exemption
New Accessory Dwelling Units as defined in FCC 10-2	100% exemption

### *System Development Charge collection deferral*

Deferral option. For the assessment of charges pursuant to Section 9-1-4-A related to new construction, the charges may be deferred at the request of the property owner until final building occupancy is requested.

Payment upon conveyance. In the event that the real property on which the fees have been deferred is sold or otherwise conveyed, the charges deferred shall become immediately due and payable to the City. Sale includes selling, conveying or assigning any or all of the property or the owner's interest in the property.

Enforcement. The deferred charges shall be a lien upon the property until paid in full. In addition, the owner shall be required to execute a request for and a consent to an enforcement agreement in the amount of the charges deferred on each property for which a deferral is requested. The request and consent shall be made on a form prepared by the City. Upon receipt, the City shall record the enforcement agreement in the City's lien docket. The enforcement agreement shall authorize the City to withhold setting a water meter on the property for which a deferral has been requested, or, if the property is already receiving water service, to remove the water meter pursuant to Section 4-1-5-7, and withhold service to their property until the deferred charges have been paid in full.

## Community Development

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Planning fees</i>						
<i>Staff review with no public notice - Type I</i>						
Design Review or Change of Use	Each	314.00	318.08	318.08	-	0.0%
DMV Review Form	Each	10.00	10.13	10.13	-	0.0%
Expansion, Change of Use, Remodel	0	26.00	26.34	26.34	-	0.0%
Within Limited Industrial & Pacific View Business Park Zone Districts	Each	26.00	26.34	26.34	-	0.0%
Final Minor Partition Map	Each	158.00	160.05	160.05	-	0.0%
Flood Plain Permit	Each	105.00	106.37	106.37	-	0.0%
Landscape Plan Minor Modification	Each	26.00	26.34	26.34	-	0.0%
Land Use Compatibility Statement	Each	53.00	53.69	53.69	-	0.0%
Lot Line Adjustment	Each	105.00	106.37	106.37	-	0.0%
Other Review	Each	26.00	26.34	26.34	-	0.0%
Parking Lot Construction or Resurfacing (calculated as a commercial building permit based on valuation determined by multiplying square footage by "per square foot cost factor). Application fee in addition to any other land use approvals.						
Planned Unit Development Required Application Conference	Each	105.00	106.37	106.37	-	0.0%
Preliminary Investigation for Prime Wildlife Overlay Revised or Supplemental Plan (required as a Condition of Approval)	Per plan	158.00	160.05	160.05	-	0.0%
Site Investigation Report - Phase I	Each	568.00	575.38	575.38	-	0.0%
Stormwater or Parking	Each	476.00	482.19	482.19	-	0.0%
Written Code Analysis or Letter of Zoning Compliance	Each	188.00	190.44	190.44	-	0.0%
Written Code Analysis or Letter of Zoning Compliance (research of past approvals required)	> 15 min	staff time	staff time	staff time	N/A	N/A

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Planning fees, continued</i>						
<i>Staff review with public notice</i>						
Administrative Design Review		210.00	212.73	212.73	-	0.0%
Landscape Plan Major Modification		210.00	212.73	212.73	-	0.0%
Special Use Permit		631.00	639.20	639.20	-	0.0%
Vegetation Clearing Permit		473.00	479.15	479.15	-	0.0%
Mural permits		526.00	532.84	532.84	-	0.0%
<i>Planning Commission - no public notice</i>						
Major Partition Final Plat		1,262.00	1,278.41	1,278.41	-	0.0%
Subdivision Final Plat		1,683.00	1,704.88	1,704.88	-	0.0%
<i>Planning Commission - public hearing</i>						
Conditional Use Permit (CUP) without Design Review		421.00	426.47	426.47	-	0.0%
Conditional Use Permit and Design Review - Base fee		1,577.00	1,597.50	1,597.50	-	0.0%
<i>Plus \$50/1,000 square foot of floor area &gt; 10,000 square feet</i>						
Design Review		1,472.00	1,491.14	1,491.14	-	0.0%
<i>Plus \$50/1,000 square foot of floor area &gt; 10,000 square feet</i>						
Extention of Approval Period		526.00	532.84	532.84	-	0.0%
Final Development Plan for PUD		2,629.00	2,663.18	2,663.18	-	0.0%
<i>(Application fee in addition to Public Works fees for Public Improvement Plans)</i>						
Modification to Subdivision Regulations	Per each modification	315.00	319.10	319.10	-	0.0%
Preliminary Planned Unit Development - base fee	Base fee	3,944.00	3,995.27	3,995.27	-	0.0%
Plus per acre > 10 acres	per acre > 10 acres	158.00	160.05	160.05	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Planning fees, continued</i>						
<i>Planning Commission - public hearing, continued</i>						
Restoration of Nonconforming Building/Use		421.00	426.47	426.47	-	0.0%
Site Investigation Report - Phase II (In addition to CUP fee) <i>(required for reductions in setback to Munsel Creek, other drainages, and active dunes)</i>		526.00	532.84	532.84	-	0.0%
Tentative Minor Partition Plan		1,577.00	1,597.50	1,597.50	-	0.0%
Tentative Major Partition Plan	Base fee	2,103.00	2,130.34	2,130.34	-	0.0%
Tentative Subdivision Plan	Base fee	2,103.00	2,130.34	2,130.34	-	0.0%
Additional per lot fee	Per lot	53.00	53.69	53.69	-	0.0%
Variance	Per variance requested	1,367.00	1,384.77	1,384.77	-	0.0%
Waiver of Side Yard Setback	Per occurrence	421.00	426.47	426.47	-	0.0%

### *Planning Commission and Council public hearings*

Annexation & Zoning of Annexed Areas  
Plan Designation Map Amendment  
*Applicant also responsible for any County fees for co-adoption*

25% or 60% of actual cost incurred for staff time, materials, publication notices, and other expenses billed monthly. To initiate the process and review of application, the applicant is required to pay a filing fee of \$1,750.

Zone Change		2,629.00	2,663.18	2,663.18	-	0.0%
Zone Change and Plan Designation Map Amendment < 5 acres		3,155.00	3,196.02	3,196.02	-	0.0%

Zone Change and Plan Designation Map Amendment => 5 acres

25% or 60% of actual cost incurred for staff time, materials, publication notices, and other expenses billed monthly. To initiate the process and review of application, the applicant is required to pay a filing fee of \$1,750.

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Planning fees, continued</i>						
<i>Citizen-initiated legislative amendment</i>						
<i>Applicant also responsible for any County fees for co-adoption</i>						
<i>Appeal of staff decision to Planning Commission</i>		368.00	372.78	372.78	-	0.0%
<i>Appeal of Planning Commission decision to City Council</i>		526.00	532.84	532.84	-	0.0%
<i>If appeal involves a Site Investigation Report - Phase II, applicant is required to pay City's cost to obtain professional review of Report.</i>						
<i>Vacation of right-of-way (plus cost of land)</i>		3,155.00	3,196.02	3,196.02	-	0.0%
<i>Additional review fees</i>						
<i>Consultant Review (pass through charge)</i>		Actual cost	Actual cost	Actual cost	N/A	N/A
<i>Applications or documents necessitating review from consultants (i.e., city engineer, city attorney, etc.) shall be charged the consultant cost to the City. The City will bill the applicant for charges incurred.</i>						
<i>Continuance requested by Applicant or Applicant submission of new information</i>						
<i>Requiring a revised staff report</i>		1/3 original application fee	1/3 original application fee	1/3 original application fee	N/A	N/A
<i>Requiring a revised staff report and renote</i>		1/2 original application fee	1/2 original application fee	1/2 original application fee	N/A	N/A

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Planning fees, continued</i>						
<i>Additional review fees, continued</i>						
Expedited Processing		Actual consultant cost and/or staff billing rate times 1.25	Actual consultant cost and/or staff billing rate times 1.25	Actual consultant cost and/or staff billing rate times 1.25	N/A	N/A
Review of Performance Agreement and Financial Security		105.20	106.57	106.57	-	0.0%
Pre-Application Conference	Per hour	Staff time	Staff time	Staff time	N/A	N/A
<i>If a related land use application is submitted within 3 months of conference, up to one hour of conference time will be deducted from land use application fee.</i>						
Review of Covenants and Easements (not shown on a plat)		53.00	53.69	53.69	-	0.0%
Staff Time for Research or other Assistance		Staff time	Staff time	Staff time	N/A	N/A
Recording fees		Actual cost	Actual cost	Actual cost	N/A	N/A
Traffic Impact Study, staff review		157.70	159.75	159.75	-	0.0%

### *Building permits and related fees*

All Building Permit Fees are based upon valuation as determined by multiplying the square footage of the dwelling, garage, carport, and covered walks and patios by the "per square foot cost factor" identified in the Building Valuation Data Table

*One and two-family dwelling, new and additions - structural permit fee table*

#### **Fee Based on Valuation**

\$0 to \$25,000 valuation (for the first \$2,000)	Base fee	76.40	76.40	76.40	-	0.0%
<i>each additional \$1000 or fraction thereof above \$2,000</i>	<i>per \$1,000 value</i>	6.95	6.95	6.95	-	0.0%
\$25,001 to \$50,000 valuation (for the first \$25,000)	Base fee	236.25	236.25	236.25	-	0.0%
<i>each additional \$1000 or fraction thereof above \$25,000</i>	<i>per \$1,000 value</i>	6.15	6.15	6.15	-	0.0%
\$50,001 to \$100,000 valuation (for the first \$50,000)	Base fee	390.00	390.00	390.00	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building permits and related fees, continued</i>						
<i>One and two-family dwelling, new and additions - structural permit fee table, continued</i>						
<i>each additional \$1000 or fraction thereof above \$50,000</i>	<i>per \$1,000 value</i>	4.90	4.90	4.90	-	0.0%
\$100,001 to \$500,000 valuation (for the first \$100,000)	Base fee	635.00	635.00	635.00	-	0.0%
<i>each additional \$1000 or fraction thereof above \$100,000</i>	<i>per \$1,000 value</i>	2.90	2.90	2.90	-	0.0%
\$500,001 to \$1,000,000 valuation ( for the first \$500,000)	Base fee	1,795.00	1,795.00	1,795.00	-	0.0%
<i>each additional \$1000 or fraction thereof above \$500,000</i>	<i>per \$1,000 value</i>	2.05	2.05	2.05	-	0.0%
\$1,000,001 and over valuation (for the first \$1,000,000)	Base fee	2,820.00	2,820.00	2,820.00	-	0.0%
<i>each additional \$1,000 or fraction thereof above \$1,000,000</i>	<i>per \$1,000 value</i>	1.40	1.40	1.40	-	0.0%
Minimum Fee	Minimum fee	76.40	76.40	76.40	-	0.0%
Structural Plans Review Fee	Percentage (%)	65% of buildir	65% of buildi	65% of build	N/A	N/A
State Surcharge	Percentage (%)	12% of buildir	12% of buildi	12% of build	N/A	N/A
<i>Other inspection fees</i>						
<i>Applies to</i>						
<i>* One &amp; two family dwelling structural &amp; mechanical</i>						
<i>* Commercial, multi-family &amp; industrial structural &amp; mechanical</i>						
<i>* Manufactured home placement</i>						
1. Inspection outside of normal business hours (minimum charge-two hours)	Per hour*	76.40	76.40	76.40	-	0.0%
2. Re-inspection fees assessed under provisions of Building Division Administrative Rules Section 309.10	Per hour*	76.40	76.40	76.40	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building permits and related fees, continued</i>						
<i>Other inspection fees, continued</i>						
3. Inspections for which no fee is specifically indicated (minimum charge - one half hour)	Per hour*	76.40	76.40	76.40	-	0.0%
4. Additional plans review required by changes, additions, or revisions to proposed or approved plans (minimum charge - one hour)	Per hour*	76.40	76.40	76.40	-	0.0%
* Or total hourly cost to the City, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages, and fringe benefits of the employees involved.						
<i>Phased projects</i>						
Applies to						
* One & two family structural & mechanical						
* Commercial, multi-family & industrial structural						
There shall be a minimum plans review phasing fee of \$150 for each separate phased portion of the project. In addition, a plans review phasing fee shall be charged in an amount equal to ten percent of the total project building permit fee calculated in accordance with OAR 918-050-100 through 110 not to exceed an additional \$1,500 for each phase.	Percentage (%)	10% of total project building permit fee, not to exceed \$1,500 for each phase	10% of total project building permit fee, not to exceed \$1,500 for each phase	10% of total project building permit fee, not to exceed \$1,500 for each phase	N/A	N/A
Minimum fee	Minimum fee	150.00	150.00	150.00	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building permits and related fees, continued</i>						
<i>Deferred submittals</i>						
<i>Applies to</i>						
<i>* One &amp; two family structural &amp; mechanical</i>						
<i>* Commercial, multi-family &amp; industrial structural &amp; mechanical</i>						
<p>The plans review fee for processing deferred plan submittals shall be an amount equal to sixty-five percent (65%) of the building permit fee calculated in accordance with OAR 918-050-110(2) and (3) using the value of the particular deferred portion of the project with a minimum fee of \$115. This fee is in addition to the project plans review fee based on total project value.</p>						
	Percentage (%)	65% of building permit fee	65% of building permit fee	65% of building permit fee	N/A	N/A
Minimum fee	Minimum fee	115.00	115.00	115.00	-	0.0%

### *Investigation fees*

*Applies to:*

*\* One & two family structural & mechanical*

*\* Commercial, multi-family & industrial structural & mechanical*

*\* Manufactured home placement*

*\* Plumbing & Electrical*

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
(For commencement of work before obtaining a permit.) Actual or average cost of investigation to ensure the unpermitted work complies with the state building code. Permits for emergency repairs obtained within five business days after commencement of the repair are not subject to the "investigative fee."	Actual or average cost	Actual or average cost of investigation	Actual or average cost of investigation	Actual or average cost of investigation	N/A	N/A
Address Assignment Fee (each address)	Each address	45.00	45.59	45.59	-	0.0%
Review of Sand Management Plan		150.00	150.00	151.95	1.95	1.3%
Site Inspection Fee* (Simple Site)						
New construction		150.00	151.95	151.95	-	0.0%
New garages, carports, and accessory structures		75.00	75.98	75.98	-	0.0%
Site inspection Fee* (Complex Site**)						
New Construction		225.00	227.93	227.93	-	0.0%
New garages, carports, and accessory structures		150.00	151.95	151.95	-	0.0%
* Services are for planning review of plans and site inspections (to ensure compliance with zoning code and conditions of approval resulting from land use decisions. Items considered include landscaping, grading, parking, and lighting.						
** Complex site is one as listed in Florence City Code 10-7 or 10-19.						

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>One and two-family dwelling, alterations - structural fee permit table</i>						
\$0 to \$2,000 valuation (for the first \$500)	Base fee	76.40	76.40	76.40	-	0.0%
<i>each additonal \$100 or fraction thereof</i>	<i>per \$100 value</i>	<i>0.57</i>	<i>0.57</i>	<i>0.57</i>	-	<i>0.0%</i>
\$2,001 to \$25,000 valuation (for the first \$2,000)	Base fee	84.95	84.95	84.95	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>12.50</i>	<i>12.50</i>	<i>12.50</i>	-	<i>0.0%</i>
\$25,001 to \$50,000 valuation (for the first \$25,000)	Base fee	372.45	372.45	372.45	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>9.00</i>	<i>9.00</i>	<i>9.00</i>	-	<i>0.0%</i>
\$50,001 to \$100,000 valuation (for the first \$50,000)	Base fee	597.45	597.45	597.45	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>6.15</i>	<i>6.15</i>	<i>6.15</i>	-	<i>0.0%</i>
\$100,001 to \$500,000 valuation (for the first \$100,000)	Base fee	904.95	904.95	904.95	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>4.95</i>	<i>4.95</i>	<i>4.95</i>	-	<i>0.0%</i>
\$500,001 to \$1,000,000 valuation (for the first \$500,000)	Base fee	2,884.95	2,884.95	2,884.95	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>4.15</i>	<i>4.15</i>	<i>4.15</i>	-	<i>0.0%</i>
\$1,000,001 to \$10,000,000 valuation (for the first \$1,000,000)	Base fee	4,959.95	4,959.95	4,959.95	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>2.75</i>	<i>2.75</i>	<i>2.75</i>	-	<i>0.0%</i>
Minimum Fee	Minimum fee	76.40	76.40	76.40	-	0.0%
Structural Plans Review Fee	Percentage (%)	65% of buildir	65% of buildir	65% of build	N/A	N/A
State Surcharge	Percentage (%)	12% of building permit fee	12% of building permit fee	12% of building permit fee	N/A	N/A

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Building Permits and Related Fees, continued*

#### *One and two-family dwelling, alterations - structural fee permit table, continued*

Fire and Life Safety Plans Review Fee	Percentage (%)	40% of building permit fee	40% of building permit fee	40% of building permit fee	N/A	N/A
<i>Review of Sand Management Plan Site Inspection Fee* (Simple Site)</i>		150.00	151.95	151.95	-	0.0%
Commercial		150.00	151.95	151.95	-	0.0%
Residential		75.00	75.98	75.98	-	0.0%
<i>Site inspection Fee* (Complex Site**)</i>						
Commercial		225.00	227.93	227.93	-	0.0%
Residential		150.00	151.95	151.95	-	0.0%

\* Services are for planning review of plans and site inspections to ensure compliance with zoning code and conditions of approval resulting from land use decisions. Items considered include landscaping, grading, parking, and lighting.

\*\* Complex site is one as listed in Florence City Code 10-7 or 10-19.

#### *Commercial, multi-family, and industrial; new buildings, additions, and alterations - structural fee table*

\$0 to \$2,000 valuation (for the first \$500)	Base fee	76.40	76.40	76.40	-	0.0%
<i>each additional \$100 or fraction thereof</i>	<i>per \$100 value</i>	2.75	2.75	2.75	-	0.0%
\$2,001 to \$25,000 valuation (for the first \$2,000)	Base fee	117.65	117.65	117.65	-	0.0%
<i>each additional \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	11.10	11.10	11.10	-	0.0%
\$25,001 to \$50,000 valuation (for the first \$25,000)	Base fee	372.95	372.95	372.95	-	0.0%
<i>each additional \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	8.35	8.35	8.35	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>Commercial, multi-family, and industrial; new buildings, additions, and alterations - structural fee table, continued</i>						
\$50,001 to \$100,000 valuation (for the first \$50,000)	Base fee	581.70	581.70	581.70	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>5.90</i>	<i>5.90</i>	<i>5.90</i>	-	<i>0.0%</i>
\$100,001 to \$500,000 valuation (for the first \$100,000)	Base fee	876.70	876.70	876.70	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>4.40</i>	<i>4.40</i>	<i>4.40</i>	-	<i>0.0%</i>
\$500,001 to \$1,000,000 valuation (for the first \$500,000)	Base fee	2,636.70	2,636.70	2,636.70	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>3.85</i>	<i>3.85</i>	<i>3.85</i>	-	<i>0.0%</i>
\$1,000,001 to \$10,000,000 valuation (for the first \$1,000,000)	Base fee	4,561.70	4,561.70	4,561.70	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>2.50</i>	<i>2.50</i>	<i>2.50</i>	-	<i>0.0%</i>
\$10,000,000 and over valuation (for the first 10,000,000)	Base fee	27,061.70	27,061.70	27,061.70	-	0.0%
<i>each additonal \$1000 or fraction thereof</i>	<i>per \$1,000 value</i>	<i>2.40</i>	<i>2.40</i>	<i>2.40</i>	-	<i>0.0%</i>
Minimum Fee	Minimum fee	76.40	76.40	76.40	-	0.0%
Structural Plans Review Fee	Percentage (%)	65% of building permit fee	65% of building permit fee	65% of building permit fee	N/A	N/A
State Surcharge	Percentage (%)	12% of building permit fee	12% of building permit fee	12% of building permit fee	N/A	N/A
Fire and Life Safety Plans Review Fee	Percentage (%)	40% of building permit fee	40% of building permit fee	40% of building permit fee	N/A	N/A

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Building Permits and Related Fees, continued*

*Commercial, multi-family, and industrial; new buildings, additions, and alterations - structural fee table, continued*

Address Assignment Fee (each address)	Each address	45.00	45.59	45.59	-	0.0%
Review of Sand Management Plan		150.00	151.95	151.95	-	0.0%
Site Inspection Fee* (Simple Site)		350.00	354.55	354.55	-	0.0%
Site inspection Fee* (Complex Site**)		450.00	455.85	455.85	-	0.0%

\* Services are for planning review of plans and site inspections to ensure compliance with zoning code and conditions of approval resulting from land use decisions. Items considered include landscaping, grading, parking, and lighting.

\*\* Complex site is one as listed in Florence City Code 10-7 or 10-19.

### *Mechanical fee schedule - new construction, additions, and alterations; one and two-family dwellings*

Air Handling Units	Per appliance	28.60	28.60	28.60	-	0.0%
Air conditioning	Per appliance	40.00	40.00	40.00	-	0.0%
Alteration of Existing HVAC System	Per appliance	28.60	28.60	28.60	-	0.0%
Heat Pump	Per appliance	52.25	52.25	52.25	-	0.0%
Install/Replace Furnace (including duct work)						
Up to 100,000 btu	Per appliance	40.00	40.00	40.00	-	0.0%
Over 100,000 btu	Per appliance	47.00	47.00	47.00	-	0.0%
Install/Replace/Relocate Heaters Suspended, Wall or Floor Mounted	Per appliance	40.00	40.00	40.00	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Building Permits and Related Fees, continued*

*Mechanical fee schedule - new construction, additions, and alterations; one and two-family dwellings, continued*

Appliance Vent other than Furnace (per appliance)	Per appliance	28.60	28.60	28.60	-	0.0%
Dryer Exhaust	Per appliance	28.60	28.60	28.60	-	0.0%
Hood	Per appliance	28.60	28.60	28.60	-	0.0%
Exhaust Fan Connected to a Single Duct	Per appliance	20.00	20.00	20.00	-	0.0%
Gas Piping: 1 to 4 Outlets	Base fee	12.25	12.25	12.25	-	0.0%
<i>Additional Outlets (each)</i>	<i>Per outlet</i>	<i>3.50</i>	<i>3.50</i>	<i>3.50</i>	-	0.0%
Broiler/Compressor	Per appliance	28.60	28.60	28.60	-	0.0%
Masonry Fireplace	Per appliance	80.00	80.00	80.00	-	0.0%
Wood, Pellet, or Gas Stoves or Inserts, including flu	Per appliance	28.60	28.60	28.60	-	0.0%
Other	Per appliance	20.00	20.00	20.00	-	0.0%
Minimum Fee	Minimum fee	76.40	76.40	76.40	-	0.0%
Mechanical Plan Review	Percentage (%)	25% of mechanical permit fee	25% of mechanical permit fee	25% of mechanical permit fee	N/A	N/A
State Surcharge	Percentage (%)	12% of mechanical permit fee	12% of mechanical permit fee	12% of mechanical permit fee	N/A	N/A

### *Mechanical Fee Schedule for New Construction or Additions or Alterations to Commercial, Multi-family, and Industrial Projects*

\$0 to \$500 valuation	Flat fee	76.40	76.40	76.40	-	0.0%
\$501 to \$5,000 valuation (for the first \$500)	Base fee	76.40	76.40	76.40	-	0.0%
<i>each additional \$100 or fraction thereof</i>	<i>per \$100 value</i>	<i>2.60</i>	<i>2.60</i>	<i>2.60</i>	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>Mechanical Fee Schedule for New Construction or Additions or Alterations to Commercial, Multi-family, and Industrial Projects, continued</i>						
\$5,001 to \$10,000 valuation (for the first \$5,000)	Base fee	193.40	193.40	193.40	-	0.0%
each additonal \$1000 or fraction thereof	per \$1,000 value	2.40	2.40	2.40	-	0.0%
\$10,001 to \$50,000 valuation (for the first \$10,000)	Base fee	205.40	205.40	205.40	-	0.0%
each additonal \$1000 or fraction thereof	per \$1,000 value	2.20	2.20	2.20	-	0.0%
\$50,001 to \$100,000 valuation (for the first \$10,000)	Base fee	293.40	293.40	293.40	-	0.0%
each additonal \$1000 or fraction thereof	per \$1,000 value	2.15	2.15	2.15	-	0.0%
\$100,001 and over (for the first \$100,000)	Base fee	400.90	400.90	400.90	-	0.0%
each additonal \$1000 or fraction thereof	per \$1,000 value	2.00	2.00	2.00	-	0.0%
Minimum Fee		76.40	76.40	76.40	-	0.0%
Mechanical Plan Review	Percentage (%)	25% of mechanical permit fee	25% of mechanical permit fee	25% of mechanical permit fee	N/A	N/A
State Surcharge	Percentage (%)	12% of mechanical permit fee	12% of mechanical permit fee	12% of mechanical permit fee	N/A	N/A
<i>Commercial, multi-family, and industrial - mechanical valuations table</i>						
Gas Piping 1 to 4 Outlets		500.00	500.00	500.00	-	0.0%
Each Additional Outlet		100.00	100.00	100.00	-	0.0%
Exhaust Fan Connected to Single Duct		600.00	600.00	600.00	-	0.0%
Exhaust System apart from Heating or A/C Air Handling Units up to 10,000 cfm; altering Existing System, Hood, Vent for appliance other than Furnace, Wood Stove Fireplace, Dryer Exhaust, Other		1,000.00	1,000.00	1,000.00	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>Commercial, multi-family, and industrial - mechanical valuations table, continued</i>						
Install/Replace Furnace up to 100,000 btu Install/Replace/Relocate Heaters (suspended, wall, or floor-mounted); Install/Replace/Relocate Heaters (suspended, wall, or floor-mounted); Boiler/Compressors up to 3 hp, Absorption Units up to 100,000 btu		1,300.00	1,300.00	1,300.00	-	0.0%
Install/Replace Furnace over 100,000 btu		1,500.00	1,500.00	1,500.00	-	0.0%
Air Handling Units over 10,000 cfm, Heat Pump, Domestic Incinerator		2,200.00	2,200.00	2,200.00	-	0.0%
Boiler/Compressors up to 15 hp, Absorption Units up to 500,000 btu		2,300.00	2,300.00	2,300.00	-	0.0%
Boiler/Compressors up to 30 hp, Absorption Units up to 1,000,000 btu		3,100.00	3,100.00	3,100.00	-	0.0%
Boiler/Compressors up to 50 hp, Absorption Units up to 1,750,000 btu		4,600.00	4,600.00	4,600.00	-	0.0%
Commercial/Industrial Incinerator		6,200.00	6,200.00	6,200.00	-	0.0%
Boiler/Compressors over 50 hp, Absorption Units over 1,750,000 btu		6,700.00	6,700.00	6,700.00	-	0.0%
<i>New one and two-family dwellings - plumbing permit fee schedule</i>						
Includes 100 feet for each utility connectio nand no plan review fee						
Additional site utilities are per the schedule below						
1 Bathroom		365.00	365.00	365.00	-	0.0%
2 Bathrooms		548.00	548.00	548.00	-	0.0%
3 Bathrooms		639.00	639.00	639.00	-	0.0%
<i>Each Additional Kitchen and/or Bathroom</i>		<i>152.00</i>	<i>152.00</i>	<i>152.00</i>	-	<i>0.0%</i>

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Building Permits and Related Fees, continued*

*New one and two-family dwelling; alterations, all multi-family, commercial, and industrial projects - plumbing permit fee schedule*

#### **Fixture or Item**

Absorption Valve	Per fixture	26.50	26.50	26.50	-	0.0%
Back Flow Preventer	Per fixture	26.50	26.50	26.50	-	0.0%
Backwater Valve	Per fixture	26.50	26.50	26.50	-	0.0%
Basins/Lavatories/Sinks	Per fixture	26.50	26.50	26.50	-	0.0%
Clothes Washer	Per fixture	26.50	26.50	26.50	-	0.0%
Dishwasher	Per fixture	26.50	26.50	26.50	-	0.0%
Drinking Fountain(s)	Per fixture	26.50	26.50	26.50	-	0.0%
Ejectors/Sump	Per fixture	26.50	26.50	26.50	-	0.0%
Expansion Tank	Per fixture	26.50	26.50	26.50	-	0.0%
Fixture/Sewer Cap	Per fixture	26.50	26.50	26.50	-	0.0%
Floor Drains/Floor Sinks/Hub Drains	Per fixture	26.50	26.50	26.50	-	0.0%
Garbage Disposal	Per fixture	26.50	26.50	26.50	-	0.0%
Hose Bib	Per fixture	26.50	26.50	26.50	-	0.0%
Ice Maker	Per fixture	26.50	26.50	26.50	-	0.0%
Interceptor/Grease Trap	Per fixture	26.50	26.50	26.50	-	0.0%
Primer(s)	Per fixture	26.50	26.50	26.50	-	0.0%
Roof Drain (Commercial)	Per fixture	26.50	26.50	26.50	-	0.0%
Solar Units (potable water)	Per item/unit	62.00	62.00	62.00	-	0.0%
Sump	Per fixture	26.50	26.50	26.50	-	0.0%
Tub/Shower/Shower Pan	Per fixture	26.50	26.50	26.50	-	0.0%
Urinal	Per fixture	26.50	26.50	26.50	-	0.0%
Water Closet	Per fixture	26.50	26.50	26.50	-	0.0%
Water Heater	Per fixture	26.50	26.50	26.50	-	0.0%

Interior Mainline Piping - same fee schedule as exterior piping

#### **Premise Site Utilities**

The fees for exterior lines are in addition to the other fees.

Catch Basin/Area Drain	Per fixture	26.50	26.84	26.84	-	0.0%
------------------------	-------------	-------	-------	-------	---	------

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>New one and two-family dwelling; alterations, all multi-family, commercial, and industrial projects - plumbing permit fee schedule , continued</i>						
<b>Premise Site Utilities, continued</b>						
Dry wells/Leach Line/Trench Drain	Per fixture	40.00	40.00	40.00	-	0.0%
Footing Drain	Per fixture	68.00	68.00	68.00	-	0.0%
Manufactured Home Utilities	Per fixture	65.00	65.00	65.00	-	0.0%
Manholes	Per fixture	68.00	68.00	68.00	-	0.0%
Rain Drain Connector	Per fixture	26.50	26.50	26.50	-	0.0%
Sanitary Sewer - 1st 100 feet	1st 100 feet	81.00	81.00	81.00	-	0.0%
Each additional 100 feet	each additional 100 feet	61.00	61.00	61.00	-	0.0%
Sewer Cap	Per item/unit	72.00	72.00	72.00	-	0.0%
Storm Sewer - 1st 100 feet	1st 100 feet	81.00	81.00	81.00	-	0.0%
Each additional 100 feet	each additional 100 feet	61.00	61.00	61.00	-	0.0%
Storm Water Retention, Detention or Infiltration Facility	Per item/unit	73.00	73.00	73.00	-	0.0%
Water Service - 1st 100 feet	1st 100 feet	81.00	81.00	81.00	-	0.0%
Each additional 100 feet	each additional 100 feet	61.00	61.00	61.00	-	0.0%
<i>Other miscellaneous plumbing inspections and fees</i>						
Inspection of existing plumbing	Per hour	76.40	76.40	76.40	-	0.0%
Specially requested inspections	Per hour	76.40	76.40	76.40	-	0.0%
Minimum fee	Flat fee	76.40	76.40	76.40	-	0.0%
Plan review	Percentage of Plumbing Permit Fee	25%	25%	25%	N/A	N/A
State surcharge	Percentage of Plumbing Permit Fee	12%	12%	12%	N/A	N/A

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>Multi-purpose residential fire sprinkler systems - plumbing permit fee schedule</i>						
Square Footage of Dwelling (including garage) Permit/Plan Review Fee						
0 - 2,000 Square feet	Flat fee	136.15	136.15	136.15	-	0.0%
2,001 - 3,600 Square feet	Flat fee	173.25	173.25	173.25	-	0.0%
3,601 - 7,200 Square feet	Flat fee	235.10	235.10	235.10	-	0.0%
Greater than 7,200 Square feet	Flat fee	297.00	297.00	297.00	-	0.0%
<i>Medical gas piping systems - plumbing permit fee schedule</i>						
\$1.00 - \$500 valuation	Flat fee	76.40	76.40	76.40	-	0.0%
\$501 - \$2,000 valuation	Base fee	76.40	76.40	76.40	-	0.0%
Each additional \$100 or portion thereof	per \$100 value	5.00	5.00	5.00	-	0.0%
\$2,001 - \$25,000 valuation	Base fee	151.40	151.40	151.40	-	0.0%
Each additional \$1,000 or portion thereof	per \$1,000 value	18.00	18.00	18.00	-	0.0%
\$25,001 - \$50,000 valuation	Base fee	565.40	565.40	565.40	-	0.0%
Each additional \$1,000 or portion thereof	per \$1,000 value	14.00	14.00	14.00	-	0.0%
\$50,001 - \$100,000 valuation	Base fee	915.40	915.40	915.40	-	0.0%
Each additional \$1,000 or portion thereof	per \$1,000 value	9.00	9.00	9.00	-	0.0%
\$100,001 and over valuation	Base fee	1,365.40	1,365.40	1,365.40	-	0.0%
Each additional \$1,000 or portion thereof	per \$1,000 value	8.00	8.00	8.00	-	0.0%
Minimum fee	Flat fee	76.40	76.40	76.40	-	0.0%
<i>Electrical permit fee schedule</i>						
<b>New Residential</b>						
Single or multi family , per dwelling unit. Includes attached garage. Service included.						
1,000 square feet or less	Base fee	180.00	180.00	180.00	-	0.0%
Each additional 500 sq. ft. or portion thereof	per 500 sq. ft.	38.00	38.00	38.00	-	0.0%
Limited energy Install 1 & 2 Family, when in conjunction with home wiring permit	Flat fee	38.00	38.00	38.00	-	0.0%
Limited energy Install Multi-family, when in conjunction with home wiring permit	Flat fee	38.00	38.00	38.00	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>Electrical permit fee schedule, continued</i>						
<b>New Residential, continued</b>						
Each Manufactured Home or Modular Dwelling Service and/or Feeder	Per Unit	103.00	103.00	103.00	-	0.0%
<b>Services or Feeders</b>						
Installation, alteration or relocation						
200 amps	Flat fee, per unit	103.00	103.00	103.00	-	0.0%
201 to 400 amps	Flat fee, per unit	131.00	131.00	131.00	-	0.0%
401 to 600 amps	Flat fee, per unit	175.00	175.00	175.00	-	0.0%
601 amps to 1,000 amps	Flat fee, per unit	263.00	263.00	263.00	-	0.0%
Over 1,000 amps or volts	Flat fee, per unit	480.00	480.00	480.00	-	0.0%
Reconnect only	Flat fee, per unit	78.00	78.00	78.00	-	0.0%
<b>Temporary Services or Feeders</b>						
Installation, alteration or relocation						
200 amps or less	Flat fee, per unit	76.00	76.00	76.00	-	0.0%
201 amps to 400 amps	Flat fee, per unit	122.00	122.00	122.00	-	0.0%
401 amps to 600 amps	Flat fee, per unit	152.00	152.00	152.00	-	0.0%
Over 600 amps or 1,000 volts (see above)						
<b>Branch Circuits</b>						
Branch Circuits						
a. The fee for branch circuits with the purchase of service or feeder fee		6.00	6.00	6.00	-	0.0%
b. The fee for branch circuits without the purchase of service or feeder fee						
	1st brance circuit	77.00	77.00	77.00	-	0.0%
	Each additional	8.00	8.00	8.00	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>Electrical permit fee schedule, continued, continued</i>						
<b>Branch Circuits, continued</b>						
First branch circuit		77.00	77.00	77.00	-	0.0%
Each additional branch circuit		8.00	8.00	8.00	-	0.0%
<b>Miscellaneous</b>						
Service or feeder not included						
Each pump or irrigation circle	Per unit	65.00	65.00	65.00	-	0.0%
Each sign or outline lighting	Per unit	65.00	65.00	65.00	-	0.0%
Signal circuit(s) or a limited energy panel alteration or extension	Per circuit	65.00	65.00	65.00	-	0.0%
<b>Required Inspections</b>						
One and Two-Family Dwellings	Flat fee	110.00	110.00	110.00	-	0.0%
Apartment Houses	Base fee for first 3 units of housing	160.00	160.00	160.00	-	0.0%
Apartment Houses (fee for each dwelling unit in excess of 3)	Per unit of housing above 3	10.00	10.00	10.00	-	0.0%
Hotels/Motels	Base fee for first 5 sleeping rooms	160.00	160.00	160.00	-	0.0%
Hotels/Motels (fee for each sleeping room in excess of 5)	Per each sleeping room in excess of 5	5.00	5.00	5.00	-	0.0%
All other occupancies one and two stories in height up to 10,000 sq. ft.	Base fee	160.00	160.00	160.00	-	0.0%
Fee for each additional 1000 sq. ft.	Overage fee	10.00	10.00	10.00	-	0.0%
All other occupancies 3 stories in height and above (+20 for each story	Base fee	160.00	160.00	160.00	-	0.0%
Fee for each story in excess of 3	Overage fee	20.00	20.00	20.00	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>Electrical permit fee schedule, continued, continued</i>						
<b>Master Permit (Industrial Plant) Program Fees</b>						
Registration	Per facility	100.00	100.00	100.00	-	0.0%
Each additional off-site location	Per facility	100.00	100.00	100.00	-	0.0%
Inspection, plan review, and administrative activities (per hour or fraction of hour)	Hourly rate	110.00	110.00	110.00	-	0.0%
<b>Master Permit/Facilities Permit Program</b>						
Inspection, plan review, and administrative activities (per hour or fraction of hour, minimum - 1 hour)	Hourly rate	142.00	142.00	142.00	-	0.0%
<b>Plan Review Fees</b>						
Plan Review	% of Permit fee	25% of the permit fee	25% of the permit fee	25% of the permit fee	N/A	N/A
<b>Appeal Fees</b>						
One and Two-Family Dwellings	Per appeal	100.00	100.00	100.00	-	0.0%
All other occupancies	Per appeal	200.00	200.00	200.00	-	0.0%
Each appeal item over 4	Per appeal	50.00	50.00	50.00	-	0.0%
<i>Other miscellaneous electrical inspections and fees</i>						
Inspections Outside Normal Business Hours	Per hour or fraction thereof	150.00	150.00	150.00	-	0.0%
Reinspections	Per inspection	75.00	75.00	75.00	-	0.0%
Inspections beyond those covered by original permit	Per inspection	75.00	75.00	75.00	-	0.0%
Other inspections not specifically identified elsewhere	Per hour or fraction thereof	110.00	110.00	110.00	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Building Permits and Related Fees, continued*

#### *Other miscellaneous electrical inspections and fees, continued*

Additional plans review for changes, additions, or revisions to approved plans.	Plan review time 1/2 hour or less	55.00	55.00	55.00	-	0.0%
Plan review time of more than 1/2 hour	Per hour or fraction thereof	110.00	110.00	110.00	-	0.0%

#### **Permit Reinstatement Processing Fee**

Fee for renewal of a permit that has been expired for six months or less provided no changes have been made in the original plans and specifications for such work. A permit may be renewed only once. The renewal fee shall be equal to the amount required for a new permit.

Amount per Electrical Permit Schedule	Amount for new permit	Amount for new permit	Amount for new permit	N/A	N/A
---------------------------------------	-----------------------	-----------------------	-----------------------	-----	-----

#### *Sign fee schedule*

##### **Illuminated (Electric) Signs**

Fascia, freestanding, wall, marquee, projecting signs or reader boards with direct (neon), internal or changing image lighting, words or other electrical components.

Up to 20 square feet	Flat fee	131.00	131.00	132.70	1.70	1.3%
Over 20 square feet and up to 40 square feet	Flat fee	163.00	163.00	165.12	2.12	1.3%
Over 40 square feet and up to 60 square feet	Flat fee	188.00	188.00	190.44	2.44	1.3%
Over 60 square feet and up to 80 square feet	Flat fee	206.00	206.00	208.68	2.68	1.3%
Over 80 square feet and up to 100 square feet	Flat fee	225.00	225.00	227.93	2.93	1.3%
Over 100 square feet and up to 120 square feet	Flat fee	250.00	250.00	253.25	3.25	1.3%
Over 120 square feet and up to 140 square feet	Flat fee	263.00	263.00	266.42	3.42	1.3%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
<i>Building Permits and Related Fees, continued</i>						
<i>Sign fee schedule, continued</i>						
<b>Non-Illuminated Signs</b>						
Fascia, freestanding, wall, marquee or projecting signs without direct or internal lighting or other electrical components.						
Up to 20 square feet	Flat fee	100.00	101.30	102.62	1.32	1.3%
Over 20 square feet and up to 40 square feet	Flat fee	138.00	139.79	141.61	1.82	1.3%
Over 40 square feet and up to 60 square feet	Flat fee	163.00	165.12	167.27	2.15	1.3%
Over 60 square feet and up to 80 square feet	Flat fee	169.00	171.20	173.43	2.23	1.3%
Over 80 square feet and up to 100 square feet	Flat fee	175.00	177.28	179.58	2.30	1.3%
Over 100 square feet and up to 120 square feet	Flat fee	188.00	190.44	192.92	2.48	1.3%
Over 120 square feet and up to 140 square feet	Flat fee	194.00	196.52	199.07	2.55	1.3%
<b>Wall Painted Signs, Adhered Signs</b>						
These are based on the square footage, and shall be computed the same way as fee is charged for sign permits (i.e., vinyl, paper or similar material)						
<b>Additional Plan Review Fee</b>						
Plan Review Time 1/2 hour or less	Flat fee	55.00	55.00	55.00	-	0.0%
Plan Review Time Greater than 1/2 hour	Hourly rate or fraction thereof	105.00	105.00	105.00	-	0.0%
<b>Appeals and Adjustments</b>						
Appeal Fees	Per appeal	200.00	202.60	202.60	-	0.0%
Adjustment Fees	Per adjustment	750.00	759.75	759.75	-	0.0%

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Building Permits and Related Fees, continued*

#### *Sign fee schedule, continued, continued*

#### **Re-Inspections or Inspections Outside of Normal Business Hours**

Other Inspections Not Specifically Identified Elsewhere	Per hour or fraction thereof	76.40	76.40	76.40	-	0.0%
---	------------------------------	-------	-------	-------	---	------

#### **Investigation Fee For commencement of work before obtaining a sign permit**

Equal to permit fee or the actual investigation costs per hour, whichever is greater, plus \$250.00	Per hour	105.00	105.00	105.00	-	0.0%
---	----------	--------	--------	--------	---	------

#### **Permit Reinstatement Processing Fee**

Fee for renewal of a permit that has expired shall be equal to the cost of a new permit	Amount per Sign Permit Schedule	Amount for new permit	Amount for new permit	Amount for new permit	N/A	N/A
---	---------------------------------	-----------------------	-----------------------	-----------------------	-----	-----

#### **Structural Alteration**

Structural alterations will be subject to a New Build Permit and a Plan Review Fee of 65% of the Building Permit Fee.	Per Building Permit Fee Schedule	N/A	N/A			
---	----------------------------------	----------------------------------	----------------------------------	----------------------------------	-----	-----

#### **Signs that Require a Building Permit are, but not limited to:**

- Fascia signs over 400 pounds
- All projecting signs
- All freestanding signs over 6 feet in height

All pitched roof signs

#### **Temporary Banners**

Registration of all banners must be made at the Building Department.

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Building Permits and Related Fees, continued*

#### *Sign fee schedule, continued, continued*

#### **Consultant Review**

Applications or documents necessitating review from consultants (i.e., city attorney, oighting consultant, etc.) shall be charged the consultant cost to the City. The City will bill the applicant for charges incurred as a pass-through charge.

#### *Manufactured home placement permits*

Manufactured Home Placement Fee	Flat fee	475.50	475.50	475.50	-	0.0%
---------------------------------	----------	--------	--------	--------	---	------

State Surcharge Fee	Percentage %	12% of Manufactured Home Placement Fee	12% of Manufactured Home Placement Fee	12% of Manufactured Home Placement Fee	N/A	N/A
---------------------	--------------	--	--	--	-----	-----

New Site Utilities (100 feet ea. Water, sewer, and rain drain)	Flat fee	243.00	243.00	243.00	-	0.0%
--	----------	--------	--------	--------	---	------

State Surcharge Fee	Percentage %	12% of New Site Utilities Fee	12% of New Site Utilities Fee	12% of New Site Utilities Fee	N/A	N/A
---------------------	--------------	-------------------------------	-------------------------------	-------------------------------	-----	-----

#### **Additional Fees that may Apply**

Address Assignment Fee (each address)	Each address	45.00	45.00	45.00	-	0.0%
---------------------------------------	--------------	-------	-------	-------	---	------

Review of Sand Management Plan	Per plan	150.00	150.00	151.95	1.95	1.3%
--------------------------------	----------	--------	--------	--------	------	------

Reinsertion of Manufactured Dwelling	Per inspection	76.40	76.40	76.40	-	0.0%
--------------------------------------	----------------	-------	-------	-------	---	------

Inspection outside normal business hours	Per hour	76.40	76.40	76.40	-	0.0%
--	----------	-------	-------	-------	---	------

Inspections for which no fee is specifically indicated	Per hour	76.40	76.40	76.40	-	0.0%
--	----------	-------	-------	-------	---	------

Site Inspection Fee* (Simple Site) New Construction on Simple Site	Per inspection	150.00	151.95	151.95	-	0.0%
--	----------------	--------	--------	--------	---	------

## Community Development, continued

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Building Permits and Related Fees, continued*

#### *Manufactured home placement permits, continued*

##### **Additional Fees that may Apply, continued**

Site inspection Fee* (Complex Site**) New Construction on Complex Site	Per inspection	225.00	227.93	227.93	-	0.0%
--	----------------	--------	--------	--------	---	------

\* Services are for planning review of plans and site inspections to ensure compliance with zoning code and conditions of approval resulting from land use decisions. Items considered include landscaping, grading, parking, and lighting.

\*\* Complex site is one as listed in Florence City Code 10-7 or 10-19.

**All accessory buildings or structures must be permitted separately**

Appeal Fee - Under Section 4-1-5-17 of FCC		500.00	512.00	512.00	-	0.0%
--	--	--------	--------	--------	---	------

## Other city-regulated fees

Fee Description	Unit	FY 2019	FY 2020	FY 2021	Change	% Change
-----------------	------	---------	---------	---------	--------	----------

### *Taxi Rates*

#### *River Cities Taxi*

Minimum charge (meter drop)	Meter drop minimum fee	2.50	2.50	2.50	-	0.0%
Mileage rate	Per mile	2.50	2.50	2.50	-	0.0%
Increments (per 1/10)	Per .1 mile	0.25	0.25	0.25	-	0.0%
Wait time (per hour)	Wait time/per hour	24.00	24.00	24.00	-	0.0%
Extra Charges (bikes/pets)	Per bike/pet	1.00	1.00	1.00	-	0.0%

### *Bus Fare Fee for the Rhody Express*

Cash Fare per one-way trip	Per one-way trip	1.00	1.00	1.00	-	0.0%
Per Day with transfers (utilizing a day pass)	Per day with transfers	2.00	2.00	2.00	-	0.0%

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 8  
Meeting Date: July 20, 2020  
Department: Public Works

---

**ITEM TITLE:** Authorize Staff to Submit a Grant Application for the FY2021-2022 Safe Routes to School Infrastructure Grant Program.

---

**DISCUSSION/ISSUE:**

In June 2020, the City submitted a Letter of Intent (LOI) to ODOT Safe Routes to School Program. We received confirmation and notification from ODOT that our LOI has been accepted and that we have until 11:59 pm August 31, 2020 to submit an actual grant application.

The Safe Routes to School (SRTS) programs aim to create safe, healthy, convenient, and fun opportunities for children to use active transportation for the school commute. These initiatives promote livable, vibrant communities, increase physical activity, and improve unsafe walking, biking, and skating conditions throughout the community. This includes a commitment to providing safe bicycle and pedestrian infrastructure and reducing crash rates in all communities, including those with low-income families and non-English speakers.

ODOT has advised the applicants that they received 107 Letters of Intent for the SRTS Competitive Infrastructure Program Grant. The 107 Letters of Intent equates to approximately \$75 million in requests for \$26 million in available funding.

Projects can vary, however the grant program is targeting safety projects on public right-of-ways which are consistent with transportation system plans; supported by the school district; are within a one-mile radius of a Title I school (Siuslaw Elementary, Middle and High schools are Title I schools); and that positively affects the ability of children to walk and bike to school. Title I schools are those that have 40% or more low income students that are receiving reduced or free meals. Project examples include sidewalks, median refuge islands, rectangular rapid flashing beacons, bike lanes, curb ramps with extensions, advanced warning signage, and intersection illumination to name a few.

There is a 40% cash match for the grant funds, however that is reduced to 20% when the project is within a city of 5,000 people or fewer, or is near a Title I school, or is within a "Priority Safety Corridor". Based on the criteria our match would be reduced to a minimum of 20% since our schools are Title I schools.

Our project will include the replacement and in a number of locations the realignment of the curb ramps at the street intersection along Oak Street between 21<sup>st</sup> and 34<sup>th</sup> streets. The curb ramps in this area do not meet current ADA standards, and in a number of locations, the actual crosswalk location is offset from the intersection and does not align with the other street features.

---

We believe that we have a grant application that will be very competitive and compete well with the other 107 projects seeking funding. Our project meets the following criteria:

- ✓ High percentage of students receiving free/reduced lunch
- ✓ Affects elementary or middle school students (project will benefit multiple schools)
- ✓ Ability for project to be completed within five years
- ✓ Project proximity to the school

With our project meeting most if not all of the criteria, we should have a very good chance in being funded through this program.

Additionally, all of the curb ramps have already been designed and engineered. This makes the project shovel ready, and if our grant application is selected for funding, we can rapidly move into construction.

---

### **FISCAL IMPACT:**

This is the first step in a multi-step process. If the grant application is approved by the Oregon Department of Transportation (ODOT), staff will bring forward a request for Council to accept the grant.

If the City is ultimately selected for the grant, we would have a minimum match of 20%. Our grant application will be for a total project of \$450,000, with a corresponding a 20% match requirement, our match is \$90,000.

---

### **RELEVANCE TO ADOPTED CITY WORK PLAN:**

- City Service Delivery – improving the delivery of cost effective and efficient services by leveraging grant proceeds.
- Livability & Quality of Life – being responsive to our community’s needs with safe, efficient, effective and sustainable service delivery.
- Economic Development – by maintaining and enhancing safety of our transportation system will attract additional uses from the region which may increase tourism and dollars spent within the community.
- Communication & Trust – strengthening citizen trust by cooperatively working with established community associations for the common good of the community.
- Financial & Organizational Sustainability – leveraging grant proceeds to complete transportation safety enhancements for the City.

---

### **ALTERNATIVES:**

1. Submit grant application for the SRTS Grant Program.
  2. Do not authorize staff to submit a grant.
-

---

**RECOMMENDATION:**

Staff recommends that the City Council authorize staff to submit a Safe Routes to School Infrastructure Competitive Grant for safety enhancements to our pedestrian systems along Oak Street between 21<sup>st</sup> and 34<sup>th</sup> Streets.

---

**AIS PREPARED BY:** Mike Miller, Public Works Director

---

**CITY MANAGER'S RECOMMENDATION:**  Approve       Disapprove       Other

Comments:

*Megan Messmer*

---

**ITEM'S ATTACHED:** **Attachment 1** – Resolution No. 20, Series 2020

---

**CITY OF FLORENCE  
RESOLUTION NO. 20, SERIES 2020**

**A Resolution Establishing Approval to Apply for a Grant from the Oregon Department of Transportation for Safe Routes to School (SRTS) Program and Delegating Authority to the City Manager or Designee to sign the Application**

RECITALS:

1. The Oregon Department of Transportation is accepting grant applications for the SRTS Competitive Construction Program.
2. The City of Florence desires to participate in this grant program to the greatest extent possible as a means of improving pedestrian safety along Oak Street between 21<sup>st</sup> and 34<sup>th</sup> streets.
3. ODOT has developed a list of criteria that places emphasis on projects that serve Tier 1 schools and provides safe routes to schools.
4. The City of Florence has already completed the necessary engineering work and the project, if grant funded is awarded, can be readily be advertised for construction in a very short period of time.
5. The City of Florence has available local matching funds to fulfill its share of obligation related to this grant application should the grant funds be awarded.
6. The City of Florence will provide adequate funding for on-going operations and maintenance of these facilities should the grant funds be awarded.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE RESOLVES AS FOLLOWS:

1. The City Council demonstrates its support for the submittal of a grant application to the Oregon Department of Transportation Safe Routes to School (SRTS) Competitive Construction Program to complete pedestrian safety improvements along Oak Street between 21<sup>st</sup> and 34<sup>th</sup> streets.
2. This Resolution takes effect immediately upon adoption.

ADOPTION:

This Resolution is passed and adopted on the 20th day of July, 2020.

\_\_\_\_\_  
Joe Henry, Mayor

Attest:

\_\_\_\_\_  
Kelli Weese, City Recorder

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 9  
Meeting Date: July 20, 2020  
Department: Public Works

---

**ITEM TITLE:** Accept fee proposal from Kennedy Jenks Consultants of \$87,605 for engineering professional services for aeration blower replacement.

---

**DISCUSSION/ISSUE:**

As part of the FY2019-21 Biennium budget process, Public Works identified the need to replace one of the aeration blowers at the wastewater treatment plant. This is an important and large capital reinvestment into the wastewater plant.

Proper aeration and blower selection are two of the most important considerations at the wastewater treatment plant. Aeration energy consumption typically consumes 60% of all electrical usage. Properly sized and configured blowers can offset some of the energy requirements. To ensure the most effective results, having a professional engineer that specializes in wastewater treatment will allow us to select the proper size, type and layout of the new blower equipment.

Blowers create air flow (flow rate). The total blower system creates pressure (back pressure) through resistance to air flow. By combining the flow rate and back pressure, you can identify the actual operating air flow. Optimal energy use is achieved when the pressure in headers is just sufficient to overcome the static pressure.

While the purpose of the blower is to create additional air flow, the purpose of blower controls is to provide the correct air flow at any time, which in turn provides enhanced aeration efficiency. Besides matching the air flow to existing demands in the most efficient manner, the blower control system also monitors and makes further adjustments, such as running the smallest number of machines and running them within their best range of efficiency.

Providing for the correct oxygen level at any moment requires automatic flow adjustments. Blower systems must therefore be most efficient, stable and adaptable to changing conditions. Various solutions can address these fluctuations, including throttling suction, adjusting speed drives or cycling different blowers. The overall goal is to offer adaptive oxygen supply at an affordable energy cost.

The engineering consultant team will prepare design documents consisting of drawings and technical specifications; prepare bidding documents; and provide an opinion of probable construction cost. The design is based on preliminary blower selection that has already been completed.

---

Included as part of the design services are mechanical, structural, and electrical designs for the new equipment. Additionally, bidding and construction services are also included in the scope of work from the engineer.

Kennedy Jenks Consultants was chosen for this project due to their intimate knowledge of our wastewater treatment plant. They recently completed the engineering design for the Harbor Vista sewer collection and pump station, and have provided engineering support for our biosolids, NPDES permitting, and process evaluations at the City Wastewater Treatment Plant. Kennedy Jenks Consultants has been providing the City quality work products.

The proposal from Kennedy Jenks Consultants is a time and expense reimbursement basis in a not to exceed amount of \$87,605.

The preliminary schedule for the project is:

- Notice to proceed to Kennedy Jenks Consultants July 21, 2020
- Detailed Design, including review and bid documents August 25, 2020
- Bidding phase, with bid opening tentatively scheduled September 14, 2020
- Construction completion May 30, 2021

The above schedule is preliminary and can be modified. Staff has reviewed the proposed scope of services, including the work tasks and fees, and finds the proposal to be adequate and within reason for a project of this scope.

---

#### **FISCAL IMPACT:**

The engineering fee proposal from Kennedy Jenks Consultants is \$87,605. Funding for this project was included in the Financial Budget and Forecast report dated June 8, 2020. There is adequate funding available to complete both the engineering services and installation of the new blower.

<b>Specific Available Funds</b>	<b>Budget</b>
Wastewater Equipment Capital Outlay	\$350,000
Less engineering services for project	<\$87,605>
<b><i>Available for Construction</i></b>	<b><i>\$262,395</i></b>

During the 2019-21 biennium we specifically targeted \$350,000 for the replacement of the aeration blower during the second year of the biennium. After the engineering services is completed, we have \$262,395 available for the purchase and installation of the new blower, electrical controls, and modifications to the blower building. \$262,395 is more than adequate for the remainder of the project.

---

**RELEVANCE TO ADOPTED COUNCIL GOALS:**

- City Service Delivery – improving, maintaining and enhancing our infrastructure as feasible.
- Livability & Quality of Life – implementing the City’s 2019-21 Capital Improvement Program while being responsive to our community’s needs with efficient, effective and sustainable service delivery.
- Economic Development – providing capital reinvestment into the wastewater treatment plant further enhancing the community’s initial investment in wastewater treatment.
- Communication & Trust – strengthening citizen trust by providing cost effective and efficient equipment in the operations of the wastewater treatment plant.
- Financial & Organizational Sustainability – purchasing specialized equipment that supports current and future needs.

---

**ALTERNATIVES:**

1. Accept the engineering service proposal from Kennedy Jenks Consultants.
2. Reject the proposal from Kennedy Jenks Consultants and request a proposal from another qualified firm.
3. Reject proposal and do not proceed with project.

---

**RECOMMENDATION:**

Staff recommends that the City Council accept the engineering services proposal from Kennedy Jenks Consultants and authorize the City Manager to proceed with a professional services contract.

---

**AIS PREPARED BY:** Mike Miller, Public Works Director

---

**CITY MANAGER’S RECOMMENDATION:**  Approve       Disapprove       Other

Comments:

*Megan Messmer*

---

**ITEMS ATTACHED:** None

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 10  
Meeting Date: July 20, 2020  
Department: Admin Svs Dept.

---

**ITEM TITLE:** Municipal Court Judge Annual Performance and Contract Review.

---

**DISCUSSION/ISSUE:**

On June 16, 2020 Mayor Joe Henry and Councilor Woodbury met with Municipal Court Judge Richard Brissenden to review his contract. During the agenda item portion of the regular Council meeting, Mayor Henry will provide a synopsis of the meeting with Judge Brissenden along with any comments that Councilor Woodbury may have. The City Council will then consider the compensation amendment of the Personal Services Contract for Municipal Court Judge.

Comments from Mayor Henry:

From my perspective it is difficult to evaluate the performance of the Judge or the Court from the standpoint of administration of the law. In my visits to the court it has been my observation that the Judge performs the services outlined in the contract in an exemplary manner and that our Municipal Court remains a strong part of what makes Florence a safe place to live in a world where that cannot be said in many places. I believe another indicator of the performance of the court is the extremely low incidence of complaints from persons going through the court system.

Issues that were discussed included a number of frustrations with the ability of the court to function as it has in the past during the COVID-19 crisis and the measures that the court is working on to connect with the community.

Areas of concern include the lack of personal contact during this time, which is creating a strain on managing repayment plans, follow-up on probation, and the ongoing communication with people that have been making progress through the court system.

Because of the indefinite timeline for resuming normal court operations the Judge and staff are working on a system to utilize remote technology in order to resume more normal operations. Possibly the GoToMeeting technology that the City has utilized can be adapted for use by the Court.

The Judge stated that he appreciates the support that he has received from the City Council and the regular visits by City Councilors. He also stated that he is satisfied with the structure of the present contract, but would be amenable to a longer-term contract with CPI increase built in. He feels that his present reimbursement for expenses is adequate.

Council President Woodbury has reviewed this narrative and concurs with the findings.

I would recommend that we go with a 2-year contract to coincide with our biennial budget.

Council President Woodbury and I recommend that the personal services contract with Judge Brissenden be extended for a 3-year period to coincide with our biennial budget and that the compensation due under the contract be increased by 1.5% effective July 1, 2020 and that compensation be re-evaluated annually.

---

**FISCAL IMPACT:**

Amendment to the Personal Services Contract for Municipal Court Judge will increase the monthly retainer to implement a 1.5% increase to the monthly retainer for the 2020-2021 fiscal year retroactive to July 1, 2020. This adjustment will increase the retainer from \$5,803 to \$5,890 (\$87 per month or \$1,044 for the fiscal year).

The next two fiscal years' retainer will be adjusted by the All Cities CPI-W, March to February, of the previous year. The increase will begin on July 1 of each of the 2021-22 and 2022-23 fiscal years with the cell phone and travel allowances remaining \$100 and \$250 respectively.

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

Goal 1: City Service Delivery

---

**ALTERNATIVES:** The Council may choose to:

1. Approve Amendment 6 to the Municipal Court Judge Contract, or;
2. Direct Mayor Henry and Councilor Woodbury to renegotiate, or;
3. Do not approve Amendment 6 to the Municipal Court Judge Contract.

---

**RECOMMENDATION:**

Staff recommends approving Amendment 6 to the Municipal Court Judge Contract.

---

**AI'S PREPARED BY:** Anne Baker, Administrative Services Department Director

---

**CITY MANAGER'S RECOMMENDATION:**  Approve  Disapprove  Other  
Comments: *Megan Messmer*

---

**ITEM'S ATTACHED:** Attachment – Amendment No. 6 to the Contract for the professional services of the Municipal Court Judge

---

## **AMENDMENT TO PERSONAL SERVICES CONTRACT**

### **AMENDMENT NO. 6 Municipal Court Judge**

This **Amendment No. 6 to the Personal Services Contract for Municipal Court Judge** is entered into effective July 1, 2020 between the City of Florence, a municipal corporation, acting by and through its duly authorized City Council (“City”) and Richard B Brissenden (“Brissenden”) and amends the Personal Services Contract between City and Brissenden effective July 1, 2014 for Municipal Court Judge services (“Contract”).

The City and Brissenden previously entered into the Personal Services Contract for Municipal Court Judge services for the Florence Municipal Court as outlined in the Contract.

The parties wish to amend the compensation due under the Contract to implement a rate adjustment for the following fiscal years:

- Fiscal Year 2020-21, increase of 1.5%, effective July 1, 2020. This will amend the monthly compensation from \$5,803 per month to \$5,890 per month.
- Fiscal Years 2021-22 and 2022-23, increase by the All Cities CPI-W for March to February of the previous year.

#### **Amendment 6**

The Contract is revised as follows:

Section 4, Compensation, is replaced with the following:

The City shall pay Brissenden a monthly retainer of \$5,890 effective July 1, 2020. The City will also pay Brissenden \$100 per month as a cell phone allowance for 24/7 contact availability, and \$250 per month travel allowance for commuting and personal expenses related to the function and position of Florence Municipal Judge. Payment of the retainer, cell phone, and travel allowance will be made on the last day of each month. City shall not withhold from the compensation paid Brissenden for state or federal income tax.

The monthly retainer will be increased by the All Cities CPI-W for March to February of the previous year for each of the fiscal years 2021-22 (effective July 1, 2021) and 2022-23 (effective July 1, 2022). If the All Cities CPI-W for March shows a negative number, monthly compensation will stay the same. In applying the All Cities CPI-W for March, the monthly compensation change will be rounded to the nearest whole dollar. The cell phone and travel allowances will remain \$100 and \$250 per month, respectively.

In all other respects, the Contract shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed in the County of Lane, State of Oregon, on the date indicated below.

By: \_\_\_\_\_  
Richard B. Brissenden

Date: \_\_\_\_\_

**CITY OF FLORENCE**

By: \_\_\_\_\_  
Joe Henry, Mayor

Date: \_\_\_\_\_

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 11  
**Meeting Date:** July 20, 2020  
**Department:** Public Works

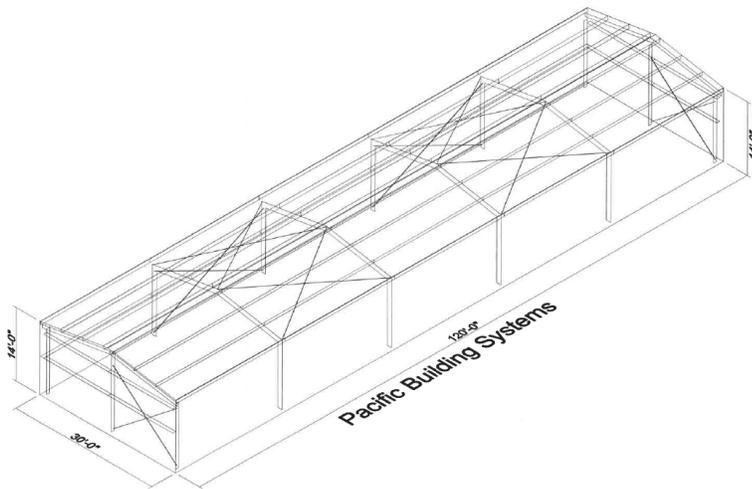
---

**ITEM TITLE:** Approve the purchase of materials and engineered drawings for a 30' x 120' equipment building at Public Works in the amount of \$34,300.

---

**DISCUSSION/ISSUE:**

As part of our approved FY2019-21 biennium budget, Public Works identified and secured funding for the addition of a large three-sided equipment and vehicle storage building to protect the large investment in specialized equipment from our harsh coastal environment. The first such building is a 30-foot-wide by 120-foot-long three-sided metal building. This building would be located along the western property line starting next to the outdoor material storage bunkers to the southern stormwater facility.



The current maintenance/warehouse building is a Pacific Building Systems (PBS) structure. Public Works solicited a proposal from PBS for the building materials, building plans and engineered design for the foundation slab. Cost of the materials and engineered plans is \$34,300.

By going with PBS, the siding and roofing material will ensure that the new building will match the existing maintenance/warehouse building.

The City will still need to hire a contractor to install the concrete foundation and an erector to install the building. These costs are in addition to the \$34,300 for the building material and engineered plans.

---

**FISCAL IMPACT:**

The cost from PBS for the building materials (metal siding, metal roofing, metal posts and beams, torsional and cross bracing) and engineered plans (building and concrete foundation/slab) is \$34,300.

This is the first in step in a several step process. Once Council approves the purchase of the materials and engineered plans from PBS, Public Works will solicit proposals from local concrete contractors to excavate and install the concrete foundation. Once the concrete foundation and

---

slab has cured, the City will need to hire a metal building erector to install the building, and an electrician to install lights and outlets.

<b>Items</b>	<b>Costs</b>
Materials and plans	\$34,300
Concrete foundation and slab	\$75,000
Erector (construction of the building)	\$35,000
Electrical	\$5,700
<b><i>Total cost of building</i></b>	<b><i>\$150,000</i></b>

The costs to install the concrete foundation and slab, including the actual building (erecting) of the building and electrical systems is estimated to be an additional \$115,700.

Funding for this project was included in the Financial Budget and Forecast report dated June 8, 2020. There is adequate funding available to complete the purchase of materials, engineered drawings, excavation and installation of the concrete foundation and slab, actual building of the structure, and electrical systems (lights and outlets).

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

- City Service Delivery – improving, maintaining and enhancing our infrastructure as feasible.
- Livability & Quality of Life – being responsive to our community’s needs with efficient, effective and sustainable service delivery.
- Communication & Trust – strengthening citizen trust by protecting the community’s investment in specialized equipment and vehicles by providing shelter from our harsh coastal environmental conditions.
- Financial & Organizational Sustainability – constructing infrastructure that supports current and future needs.

---

**ALTERNATIVES:**

1. Do not purchase building materials and engineered plans from PBS.
2. Direct staff to prepare a formal Request for Proposals for the construction of a new equipment and vehicle storage facility.

---

**RECOMMENDATION:**

Staff recommends that the City Council authorize the City Manager or designee to proceed with a contract for building materials and plans for a 30’ x 120’ three-sided metal building from PBS in the amount of \$34,300.

---

**AIS PREPARED BY:** Mike Miller, Public Works Director

---

---

**CITY MANAGER'S  
RECOMMENDATION:**

Approve  
Comments:

Disapprove

Other

*Megan Messmer*

---

**ITEM'S ATTACHED:**

None

---

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 12  
Meeting Date: July 20, 2020  
Department: Admin Svs Dept.

---

**ITEM TITLE:** FY 2019-20 AU-C 260 Communication

---

**DISCUSSION/ISSUE:**

The City has engaged Merina +Co. to perform its 2019-20 fiscal year audit. As our auditors, Merina +Co. is required to communicate with those charged with governance in an audit of financial statements. The objectives of this communication are:

- Communicate clearly with those charged with governance the responsibilities of the auditor regarding the financial statement audit and an overview of the planned scope and timing of the audit
- Obtain from those charged with governance information relevant to the audit
- Provide those charged with governance with timely observations arising from the audit that are significant and relevant to their responsibility to oversee the financial reporting process
- Promote effective two-way communication between the auditor and those charged with governance

The attached letter is communication from Merina +Co. detailing their responsibilities, planned scope, and timing of their audit of the City's 2019-20 financial statements.

---

**FISCAL IMPACT:**

None

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

NA

---

**ALTERNATIVES:** NA

---

**RECOMMENDATION:**

Receive Letter

---

**AI5 PREPARED BY:** Anne Baker, Administrative Services Department Director

---

---

**CITY MANAGER'S  
RECOMMENDATION:**

Approve

Disapprove

Other

Comments:

*Megan Messmer*

---

**ITEM'S ATTACHED:**

Attachment 1 – Communication letter from auditors

---

July 10, 2020

To the Honorable Mayor and City Council  
City of Florence

We are engaged to audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Florence for the year ended June 30, 2020. Professional standards require that we provide you with the following information related to our audit.

Our Responsibilities under U.S. Generally Accepted Auditing Standards, *Government Auditing Standards* and the Uniform Guidance

As stated in our engagement letter dated April 27, 2020, our responsibility, as described by professional standards, is to express opinions about whether the financial statements approved by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our responsibility is to plan and perform the audit to obtain reasonable, but not absolute, assurance that the financial statements are free from material misstatement. Our audit of the financial statements does not relieve you or management of your responsibilities.

In planning and performing our audit, we will consider the City of Florence's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinions on the financial statements and not to provide assurance on the internal control over financial reporting. We will also consider internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with the Uniform Guidance.

As part of obtaining reasonable assurance about whether the City of Florence's financial statements are free of material misstatement, we will perform tests of its compliance with certain provisions of laws, regulations, contracts, and grants. However, providing an opinion on compliance with those provisions is not an objective of our audit. Also in accordance with the Uniform Guidance, we will examine, on a test basis, evidence about the City of Florence's compliance with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Compliance Supplement applicable to each of its major federal programs for the purpose of expressing an opinion on the City of Florence's compliance with those requirements. While our audit will provide a reasonable basis for our opinion, it will not provide a legal determination on the City of Florence's compliance with those requirements.

Generally accepted accounting principles provide for certain required supplementary information (RSI), which includes the management's discussion and analysis, schedule of the proportionate share of the net pension liability, schedule of contributions - pension, schedule of the proportionate share of OPEB – RHIA, schedule of contributions to OPEB – RHIA, schedule of changes in total OPEB liability and related ratios – implicit rate subsidy, and schedules of contributions to OPEB – implicit rate subsidy, to supplement the basic financial statements. Our responsibility with respect to the items listed above, and which supplements the basic financial statements, is to apply certain limited procedures in accordance with generally accepted auditing standards. However, the RSI will not be audited and, because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance, we will not express an opinion or provide any assurance on the RSI.

We have been engaged to report on required supplementary information other than the items listed above, and other supplementary information, such as combining schedules, budgetary comparison schedules, and schedule of changes in assets and liabilities, which accompany the financial statements but are not RSI. Our responsibility for this supplementary information, as described by professional standards, is to evaluate the presentation of the supplementary information in relation to the financial statements as a whole and to report on whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole.

We have not been engaged to report on introductory section, which accompany the financial statements but are not RSI. Our responsibility with respect to this other information in documents containing the audited financial statements and auditor's report does not extend beyond the financial information identified in the report. We have no responsibility for determining whether this other information is properly stated. This other information will not be audited, and we will not express an opinion or provide any assurance on it.

We gave significant consideration to the preparation of financial statements, which may reasonably be thought to bear on independence, in reaching the conclusion that independence has not been impaired.

#### Planned Scope and Timing of the Audit

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested.

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Material misstatements may result from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. We will generally communicate our significant findings at the conclusion of the audit. However, some matters could be communicated sooner, particularly if significant difficulties are encountered during the audit where assistance is needed to overcome the difficulties or if the difficulties may lead to a modified opinion. We will

also communicate any internal control related matters that are required to be communicated under professional standards.

Tonya Moffitt is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

This information is intended solely for the use of the Honorable Mayor, City Council and management of the City of Florence and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

A handwritten signature in blue ink that reads "Merina+Co".

Merina+Co  
Tualatin, Oregon  
*Focused on Your Wants and Understanding Your Needs*

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 13  
Meeting Date: July 20, 2020  
Department: Various

---

**ITEM TITLE:** GENERAL REPORTS – *Council Question & Answer Only – No Presentations*

---

- May & June Board & Committee Reports

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:**  
Meeting Date: July 20, 2020  
Department: All

**ITEM TITLE:** Commission, Committee & Volunteers Report – May 2020

**DISCUSSION/ISSUE:**

**Airport Volunteers**

Department: Public Works

Staff: Mike Miller – Public Works Director

Volunteers from the Airport Volunteer Group is in standby mode until restrictions related to COVID-19 are lifted.

**Audit Ad-Hoc Committee**

Department: Finance

Staff: TBD

No report.

**Budget Committee**

Department: Finance

Chairperson: TBD

No report.

**Community & Economic Development Committee**

Department: Administration

Chairperson: Robbie Wright

No report.

**Environmental Management Advisory Committee (EMAC)**

Department: Planning

Chairperson: Katie Prosser

EMAC did not meet in the month of May. PW did hang the Tree City flag on the City Hall flag pole in celebration of the City's recent announcement of recognition. Also, Britte Kirsch EMAC member provided an amazing city newsletter article for the June edition that meets the city's obligation to educate the local residents and business on the Opportunity to Recycle and otherwise reduce their waste. Thank you Britte!

**Florence Events Center Volunteers / Friends of the FEC**

Department: Florence Events Center

President: Kirk Mlinek

No Report.

### Florence Urban Renewal Agency

Department: Administrative

Staff: Kelli Weese – City Recorder / Eco.  
Devo.

The Florence Urban Renewal Agency met on May 27, 2020 to adopt the COVID-19 public meeting policies. In addition, the agency heard reports from staff regarding the ReVision Florence project, the Quince Street Marketing and the quarterly financial report.

### Florence Urban Renewal Agency Budget Committee

Department: Finance

Staff: TBD

No report.

### Parks Volunteers

Department: Public Works

Staff: Mike Miller – Public Works Director

- Old Town Park (Gazebo Park): One (1) volunteer provided a total of 3 hours of labor picking up litter, pruning vegetation, weeding, and sweeping leaves from the plaza.
- Adopt-A-Street Program: Rhododendron Drive 35<sup>th</sup> to Sebastian Street (2.2 miles). Two volunteers spent a total of 20 hours picking up litter along Rhododendron Drive which resulted in approximately 36 pounds of trash being removed from the right-of-way.
- Miller Park Restroom/Concession Building Project: One (1) volunteer provided 60 hours of labor helping to install electrical conduit during the month of May
- River Beach Access Park: Due to COVID-19 restrictions there were no volunteer activity from Resurrection Lutheran Church
- Singing Pines Park: Due to COVID-19 restrictions there were no volunteer activity from Shoreline Christian Church.

<b>Planning Commission</b>	
<u>Department:</u> Planning	<u>Staff:</u> Wendy FarleyCampbell – Planning Director
<p>Planning Commission met April 14<sup>th</sup> to hold a public hearing on an application from Florence Elks Lodge #1858 to rezone three of their tax lots at 1686 12<sup>th</sup> Street from High Density Residential to Commercial, consistent with the properties’ assigned Comprehensive Plan designation of Commercial. The Planning Commission voted 7-0 to recommend approval to the City Council.</p> <p>Planning Commission also met on April 28<sup>th</sup> to hold a public hearing on an application from the Oregon Coast Humane Society for a conditional use permit application to continue placement of a temporary mobile building unit for storage use at 1193 Bay Street. The Planning Commission voted 7-0 to approve.</p> <p>Planning Commission did not meet in the month of May. Their next meeting is June 9 where they will hold a hearing on the DevNW final PUD and Plat.</p>	

<b>Police Auxiliary</b>	
<u>Department:</u> Police	<u>Director:</u> Len Larson
No report.	

<b>Police Reserve Officers</b>	
<u>Department:</u> Police	<u>Staff:</u> Tom Turner – Police Chief
Program not active	

<b>Public Arts Committee</b>	
<u>Department:</u> Administrative	<u>Chairperson:</u> Harlen Springer and <u>Vice-Chairperson</u> Jo Beaudreau

**Art that Bring Me Comfort**  
[youtube.com/watch?v=UNYcC4WvqO4](https://www.youtube.com/watch?v=UNYcC4WvqO4)

*Mentioned in Emails below:*

- How to Look at Public Art: [youtube.com/watch?v=MNO14EzuPM4](https://www.youtube.com/watch?v=MNO14EzuPM4)
- Why Murals: [youtube.com/watch?v=TS1oPqP2qyY](https://www.youtube.com/watch?v=TS1oPqP2qyY)
- Where the 1960;s “Psychedelic” Look Came From [youtube.com/watch?v=9vuql2v2IRs](https://www.youtube.com/watch?v=9vuql2v2IRs)
- Art & Empathy [youtube.com/watch?v=zOW4YVEaTKI](https://www.youtube.com/watch?v=zOW4YVEaTKI)

**PAC Narrative City Council Report for May 2020**

*Email to PAC Members on Monday, May 11, 2020:*  
 To: The PAC,

As we communicated recently ( and was in the paper a week ago) the nominations for the Governor's Arts Awards are now open. These are very prestigious awards designed to honor individuals and organizations that have made significant contributions to the arts in Oregon. And the City of Florence Public Arts Committee has been nominated !!

The awards are VERY competitive, but PAC has done some great things and.....you never know. The decisions will be made by July 13. (Historically, about 4-6 awards are given)

Very Exciting!

Stay safe and healthy,

Harlen

Included are Older emails that are still current:

*Email to PAC Members in Monday, April 13th, 2020:*

Hello Fellow PAC Members!

Hope this e-mail finds you happy and healthy during this strange, new, difficult and changing time.

Jo and I wanted to provide you with an update on PAC activities like "Art Exposed" and then share some thoughts about how we can all stay engaged during this period.

#### **PAC Activities**

First, an update on PAC activities. You should have received the note from Kelli regarding the cancellation of the April 27 meeting. Our next scheduled meeting is May 11, but that is obviously subject to new guidelines related to the virus. We will continue to keep you posted.

#### **Art Exposed**

Regarding " Art Exposed," since the final selections must be made at a public meeting and since we wanted to keep the artists informed for their own planning, we advised the finalists that we would make final decisions at our July 27 meeting. This gives us adequate time to access the COVID-19 situation, and provide public outreach and input.

This means that the art would actually be installed in September and early October. Since the contracts for the current artists expire in May and June, we have advised them that they can display their art until September and we will give them an additional \$250.00 for this extra time. All of them have agreed to this. We have also contacted all the finalists with the new dates to ensure that their artwork will be available and we have begun hearing back from them (so far, all have agreed). We will have all responses back by the end of this week.

During the discussions with the current artists, a new opportunity has been presented to us. Jesse Swickard, the artist who has two pieces on display has offered us a REALLY good deal to purchase both his pieces. They are:

1. West Coast Overlook ( Tall sculpture located in the Rain Garden - List price = \$7,500)
2. Sitting Wave Part II ( Sitting Bench located near River Roasters - List price = \$2,800)

He has offered to sell us both these pieces for a total price of \$1,900.

By policy, we need to make this decision as a committee in a public meeting, so please be thinking about this so we can vote on it when we get together next. Also be thinking about potential locations. I have advised Jesse of our process and he understands that the decision will happen as soon as we can.

### **Bridge Steps**

We also will re-visit the Bridge Steps project later this year as we still have work to do with ODOT to finalize it. To that end, I am attaching an article that appeared in the Register Guard on Sunday featuring Jessilyn Brinkerhoff, who is the artist we selected to complete the Bridge Steps.

### **Continued Engagement**

While we can't physically meet right now, it is important that we all stay engaged with the arts and the community and keep thinking about ways to help PAC prosper.

- Continue having conversations on the phone/Zoom about the Arts and your feelings and thoughts
- Read through the PAC binder - what else should we be doing?
- Which Sub-Committee interests you?
- Have you finalized your vote on the "Art Exposed" finalists?
- Have you seen articles/videos that would be appropriate to share with the Committee?

The PAC is committed to the continuing education of all our members and the community. To that end, we began showing videos at our meetings to help us better understand Public Art. Here are a couple of them:

*How to Look at Public Art:* <https://www.youtube.com/watch?v=MNO14EzuPM4>

*Why Murals:* <https://www.youtube.com/watch?v=TS1oPqP2qyY>

Please take the time to view them and think about how you feel about the ideas expressed.

We'd also like to share with you some other activities to do or think about for our next email. Share with us your favorite Public Art Work from around the world (or locally?) with an image of it. Share your short response to Jo (jbeaux@gmail.com) and we will share our responses in the next email check in.

### *Some Fun Things to Do*

Make some Art! Here is a link to A Novel Call for Art, a simple way to stay active for yourself: <https://www.facebook.com/events/927329441054734/> & Jo is happy to share her month of April Art Challenge: <https://www.facebook.com/events/244911633314670/>

So, Stay safe and healthy and we will see you soon.

Harlen and Jo

*Email to PAC Members on Monday, April 30th, 2020:*

Hello fellow PAC'ers!

Hope you are doing well and being creative at home!

As we continue into additional quarantine time, we wanted to continue checking in and touching base with you. We'd like to share some information since our last email.

As you know from Kelli's recent e-mail, the May 11th PAC meeting has been cancelled. Our next scheduled meeting is June 22, and we will keep you updated on that.

### **Continuing Education**

Here are some fun and interesting Continuing Education Videos:

*Where the 1960;s "Psychedelic" Look Came From*

<https://www.youtube.com/watch?v=9vuql2v2IRs>

*Art & Empathy*

<https://www.youtube.com/watch?v=zOW4YVEaTKI>

### **Inspiration**

We have a pinterest board for keeping ideas for the future, feel free to add: <https://pin.it/3j0Vpwm>

Included on the Pinterest profile are some additional boards which include past joint DRT (Downtown Revitalization Team)/PAC project ideas/inspiration as well as some items about beautification/art ideas with the Chamber. This is new to the profile as of this week.

If you have trouble adding or seeing, make sure you have a pinterest account and contact Jo to help troubleshoot.

### **"Art Exposed" Follow Up**

From our last email, all the current "ArtExposed" artists have been contacted and we have been working out a contract extension for them, as well as future logistics for the current call. We are still planning to make a decision on the finalists for the new pieces at our meeting on July 27.

We will also be discussing the possible purchase of two of the pieces, (per our last e-mail) at our next meeting.

### **Deeper look into PAC SubCommittees**

A part of the success of PAC is working in SubCommittees. We hope that you've been able to review your Welcome Binder. Currently, here are a few of the SubCommittees and their descriptions of tasks. Please take a peek and brainstorm additional ideas, questions, etc.... We can always add or subtract depending on the projects we are working on. Some SubCommittees have already laid out some groundwork and simple ideas to continue moving forward.

- Siuslaw Bridge Steps
- Art Exposed/ ReVision Art Exposed
- Featured Pieces
- Marketing and Public Outreach
- Grant Writing
- Fundraising
- Art Inventory and Maintenance Planning
- PAC Master Plan
- Mural Code

Additional details located on page 65 to 70 of the 111 page PDF HERE: [https://www.ci.florence.or.us/sites/default/files/fileattachments/public\\_art\\_committee/meeting/packets/14691/2.24\\_pac - materials distributed - committee training.pdf](https://www.ci.florence.or.us/sites/default/files/fileattachments/public_art_committee/meeting/packets/14691/2.24_pac_-_materials_distributed_-_committee_training.pdf)

### **Fresh Impressions**

There is typically an annual show that the Florence Events Centers Gallery Committee helps put on and this year since the FEC is closed, the show was put online. Please take a peek at what our amazing youth are doing!

Link to Gallery: <https://bit.ly/2020FreshImpressionsVirtualShow>

### **Just to Keep you in the Loop**

Here is a link to the April 2020 City Council Committee Report. We send these reports each month: <https://docs.google.com/document/d/1chNypvYfQ2qcbYPxmcf67qmH3-98eXIJMedN3NrtkQI/edit?usp=sharing>

### **Governor's Arts Awards**

The Governor has announced a "Call for Nominations" for the 2020 Governor's Arts Awards. It is open to any individual, organization or community in Oregon that has made outstanding contributions to the Arts in the state. Please be thinking about individuals or organizations that deserve this recognition. The deadline for nominations is May 26. [www.oregonartscommission.org/call-nominations-2017-oregon-arts-awards](http://www.oregonartscommission.org/call-nominations-2017-oregon-arts-awards).

So, stay safe and healthy and engaged in the Arts. We look forward to seeing you soon. If you have any questions, please get in touch.

Harlen and Jo

*Email to PAC Members on Thursday, May 21st, 2020:*

To: The PAC;

First, as always, I hope you are staying safe and healthy.

Great News! - We're going to have a meeting!

While the June meeting is cancelled, please **mark your calendars for our next meeting on Monday, July 27th at 4:00.**

Due to safety precautions, this will be a "virtual" meeting, so just be sure you have access to a computer or phone at that time - exact details will follow. I am attaching a sheet on "Best Practices for Virtual meetings."

We have some major topics to discuss so the meeting will "roughly" go like this:

- 5:30 - 6:30 - Discussion/decision on the finalists for the 5 locations for "Art Exposed." We are having this discussion at 5:30 to encourage participation/input from the public and we will instruct them on how to do this virtually.

If there are any other topics that you wish to include in the meeting, please contact me.

Finally, as part of our "Continuing Education" program, here is a link to "Art that brings me comfort."

<https://www.youtube.com/watch?v=UNYcC4WvqO4>

Stay safe and healthy. Have a great Memorial Day weekend. **SEE YOU ON JULY 27TH**

Harlen and Jo

### **Additional References from Natative & More Information**

#### **Art Exposed**

Call for the next round of ArtExposed ended in January 2020. Twenty-Six amazing applications from locals and around the country, including Canada were submitted. The March 2020 PAC Meeting has been postponed which was when PAC was going to be moving forward with which works would rise to the final positions. Artists have been contacted. PAC has moved the dates of making final decisions once COVID-19 has subsided, and we are on Hold for this project until November 2020.

Finalist Information HERE:

<https://www.ci.florence.or.us/bc-pac/art-exposed-program-finalists>

Program Information HERE: <https://www.ci.florence.or.us/bc-pac/art-exposed-florences-rotating-outdoor-art-gallery>

**iSpy**

iSpy showcases some art around town on Social Media asking people to call out the location or if they know about the work to share it! In the comments through dialog, information is shared.



## Art Quest Project on Hold



Holidays are a great time for Questing!

Box monitors - Please check your Quests before Thanksgiving to make sure they are in good shape for all the folks who will be heading outside to "walk off" their pumpkin pie. Bring extra plastic bags to waterproof box contents for the winter.

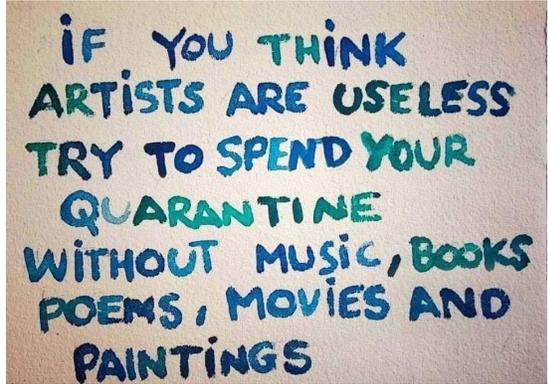
### Anatomy of a Quest Box



You Love Comment Share

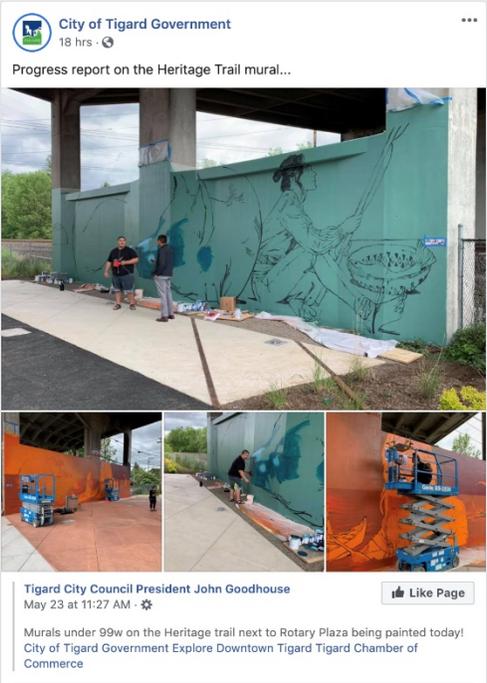
## ... Other Community Public Arts WOW!

People from around the world are doing and encouraging each other to be creative. Multiple local and beyond groups have popped up encouraging people to be creative!



## City of Tigard Government - Heritage Trail Mural Update

Murals under 99w on the Heritage trail next to Rotary Plaza being painted today! [City of Tigard Government Explore Downtown Tigard](#) [Tigard Chamber of Commerce](#) - Learn More: [facebook.com/CityofTigard/](https://facebook.com/CityofTigard/)



## Murals Untouched in Protests



## Or Expressions Added



Someone put red paint on the "Serve and Protect" sculpture at the Salt Lake City police building and it is such a powerful statement.

"Good art should disturb the comfortable and comfort the disturbed." -C.A.C.

## Our Community Public Arts WOW!

Fresh Impressions Youth Art Exhibition is still up

Gallery Site:

<https://bit.ly/2020FreshImpressionsVirtualShow>

## Chamber Rhody Photo Contest

Let's do this! Share your favorite Rhody Days photo memories - both old and new and enter win! Just because we had to cancel the Rhododendron Festival, doesn't mean that we can't have a blast while remembering the past! Post your pictures here!

Winners will be chosen from every decade. Those photos will then move on to final judging, to determine the overall best "Blast from the Past" photo.

To enter our contest, post your photos here on this event page by: Thursday, May 14th at 5 pm.

We look forward to reminiscing with you!

Learn More Here: <https://www.facebook.com/events/536049653700168/>

## Local Artists & Creator Highlights

### Deborah Cray Art

Local Artist on display at BackStreet gallery hasn't let COVID-19 stop her creativity. Check out her online work here:

<https://www.facebook.com/deborahcrayart>



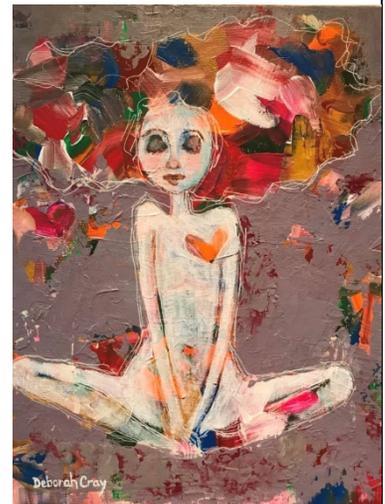
### Mythical Muse

Local Artist Tamerah Phillips' show at the Florence Events Center has been cancelled due to COVID-19, but she still is working on her art and is creating an online gallery.

Learn more here:

<https://www.facebook.com/taphillipsartist>

↳



Craig B. Shreeve

Local photographer Craig Shreeve has been posting his amazing photography with simple & kind words to the public on social media.

'The River Crossing'

Siuslaw Bridge.

Everybody stay healthy.



**PAC Member & Local Artist, Denise Tarvin**

Working with local business, Stitch & Sole, jewelry line Hyedee Lynn Designs by Denise Tarvin, is creating new designs and getting them out in public. She is also a member of FRAA and actively displays art at the Gallery. She also does commission work. See more of her work on Instagram & <https://www.facebook.com/Hyedeelynn/>

**Internationally known Artist Kyle Lind Making Art HERE**



**Local Art Group - The Painty Rag**

Since local artists are not able to meet up and be creative together, one group has been meeting virtually 1 to 2x per week. They've even created a website to share information: [thepaintyrag.wordpress.com](http://thepaintyrag.wordpress.com)



### Rose & Crown Apothecary

Creative Arts come in various mediums! Local Apothecary uses local and sustainable practices bringing over 30 years on knowledge to their products! They are passionate about connecting people to the healing power of nature and inspiring conscious self-care through plant medicine & ritual. Their mission is to support the sacred connection between plants and people, because the plants need us as much as we need them. AND they

are proud to be a family-owned, small batch, seed-to-shelf, women-run, earth-centered business. They have a shared professional background in health care and plant medicine spans over 30 years. This experience is expressed through herbal offerings formulated with wisdom, joy, intention, and love. Learn more: [roseandcrownapothecary.com/](http://roseandcrownapothecary.com/)

### Dragon Art Masks

If you need to wear a mask, how about one done by an illustrator you know? I am having fun seeing my illustrations on all kinds of products. I have been adding designs weekly. Some of the illustrations you have seen before, and some are being designed just for this site. I am especially excited by dragon dresses and curtains. I



am planning a bathroom remodel with something fun. Please think about artists you know, check out my site, and follow me. Each follow helps me promote my work, so thank you in advance. And don't worry, Dragon Art is still helping in the production of local mask making. We have been donating materials and equipment since march.

Learn More: [https://www.redbubble.com/i/mask/The-Stranger-by-KassyKeppol/49060486.9G0D8?asc=u&fbclid=IwAR1fDJ921vmPLn135v7rqL\\_7Qk1GEIH-0mQmbGhCOT8tdYV3\\_R96yATRg4k](https://www.redbubble.com/i/mask/The-Stranger-by-KassyKeppol/49060486.9G0D8?asc=u&fbclid=IwAR1fDJ921vmPLn135v7rqL_7Qk1GEIH-0mQmbGhCOT8tdYV3_R96yATRg4k)  
[facebook.com/dragonartco](https://www.facebook.com/dragonartco)

### Local Artist is Seeking Funds for a Mural

The title of the mural is "Legends & Lore of Sea & Shore". Michael F. Woods will integrate local themes of the Florence coastline, a sea lion, schooner, mermaid (the magic) and the Heceta lighthouse (to be enlarged)

in the background. It will be a place people can stop and take photos. It will proudly display "Florence Oregon".



Link for Go Fund Me: [https://www.gofundme.com/f/magical-mural-4-florence?utm\\_source=facebook&utm\\_medium=social&utm\\_campaign=p\\_cp+share-sheet&fbclid=IwAR1qX1LijYlwPJGg3HfjiV8ijXa1WeOVzvUOeu\\_GHOhBT2Lpfl3OvcmE\\_M](https://www.gofundme.com/f/magical-mural-4-florence?utm_source=facebook&utm_medium=social&utm_campaign=p_cp+share-sheet&fbclid=IwAR1qX1LijYlwPJGg3HfjiV8ijXa1WeOVzvUOeu_GHOhBT2Lpfl3OvcmE_M)

**Culinary**

**Local Eats** are developing creative ways and yummy foods to continue to feed our community. Many local restaurants are closed, but some have developed specials, limited menus, special holiday food packages that are easy Take Out/Home options.



**Florence Farmers Market** 1st Day is May 12th! They’ve developed a online ordering system and safe pick up system to limit COVID-19 transmissions while helping feed our community. Visit their website to learn more and download the app: [florencefarmersmarket.org](http://florencefarmersmarket.org)



**Jerry’s Place** is making art in the parking lot! They are also “going to figure out the Oreos, and Twinkies, the Onion Blossoms, Elephant ears and Indian Tacos. (I haven't had an Indian Taco since I left the Neah Bay and the Makahs), corn dogs wrapped in curly fries! Specials will start Thursday while they last. Watch for future posts for exact dates for each. If you try them all you won't need a Loop-d-Loop to want to barf. Please dine responsibly.

Check out the pictures below, If you want to add to our parking lot art, we have more chalk

Remember: Keep Calm and Jerry On! and Let's Rhody” Learn more: [facebook.com/JerrysPlaceFlorence](https://facebook.com/JerrysPlaceFlorence)

**CROW Dress Up you Pet Challenge**

It's time for a new and fur-bulous challenge! We hope to receive lots of entries, so please play along. You have a week and a half to accomplish the challenge. Think of how many smiles you and your pet can create in our community. Learn more:

[facebook.com/crowtheatrekids/](https://facebook.com/crowtheatrekids/) & Inspiring Others

C.R.O.W. Yesterday at 1:56 PM · 🌐  
The mirror holds all of the amazing possibilities.....it is all within you.  
#theartsreallydomatter



**CROW "Dress Up Your Pet" Costume Challenge!**

Let's do something fun to break up the monotony of COVID19!

C.R.O.W. is challenging all kids and adults (yes, that includes YOU!) to dress up your sweet, unsuspecting animal friend as one of the characters from our previous (or current) shows. This means that you can pick any character from:

- Beauty & the Beast
- The Music Man
- The Little Mermaid
- Once Upon A Mattress
- Shrek
- The Addams Family
- Tarzan
- The Wiz
- Mary Poppins



**THERE IS A PRIZE!** First place will win the top prize of a \$25 gift card to Mini Pet Mart. The top two runners up will receive a pet toy or bag of treats for your little darling.

We will share pictures of all of the entries we receive on our C.R.O.W. Facebook page, and will send them out all by email to our list of 1,000+ supporters and fans. Your adorable fluff ball can be FAMOUS!

All entries are due by Sunday, June 7th (end of day). Please send your photo submission to [crowtheatrekids@yahoo.com](mailto:crowtheatrekids@yahoo.com), and please include your pet's name with your entry.

C.R.O.W. does not discriminate based on fur color, belly size, claw length, nose wetness, appearance of scales, growl volume, or fluffy tails. This contest is open to all #crowfamily members, and we encourage everyone to play along! #thepetsreallydomatter

# 113th Rhododendron Festival Virtual Grand Floral Parade



Sunday, May 17, 2020



A City in Motion

## Virtual Rhody Parade

A creative and inspiring way to involve and have our community be active and safe! See the Virtual Parade Here:

[vimeo.com/419517334](https://vimeo.com/419517334)

## City Scavenger Hunt

Another incredible way to involve people, encourage participation, social distancing and help people feel more normal in this unprecedented time. Learn More:

[facebook.com/events/230621641598324/](https://facebook.com/events/230621641598324/)

**FLORENCE MAY 2020  
SCAVENGER HUNT**

PHYSICAL DISTANCING EDITION  
MAY 1<sup>ST</sup> - JUNE 1<sup>ST</sup>

COMPLETE MISSIONS | EARN POINTS | HAVE FUN!

Download the **goosechase** iOS or Android app.  
Find the "Florence May 2020 Scavenger Hunt" game.

**STAY HOME. SAVE LIVES.**

## Lane County Artist Relief Fund



[Lane Arts Council](#) created the Lane County Artist Relief Fund to provide critical aid to local artists struggling financially as a result of the shutdown. Any individual who receives income as a contracted artist or teaching artist, lives in Lane County, and has lost income due to COVID-

19 safety measures is eligible to apply. Artists can apply for up to \$250 in support every 30 days.

Like others across the world, our community is reeling from the effects of both a public health emergency and an economic shutdown. Local artists, in particular, are being deeply impacted by social isolation measures. Artists typically earn their living through gigs, pop-up markets, and contract work. If these events are cancelled, their income is lost. Artists have shared that they are already feeling financially insecure and worry about how they will get by in this challenging time.

Local artist and founder of Wheelhaus Arts, David Placencia, shared "We as artists depend on the sales of our art to make money. My opportunities have all been cancelled. Now my art is stacked up in my studio."

Lane Arts Council Teaching Artist Maiya Becker stated “I was scheduled to teach over 800 students at 3 schools during the remainder of March and April. I don’t anticipate that these residencies will be rescheduled for this school year. Losing this work will have a significant impact on me and my family. Like many, the stress of having no income compounds the stress of COVID-19.”

The success of this fund is completely dependent on community support. Many have already stepped up to give generously, to spread the word to community members and artists in need, and to amplify the call for much-needed donations through their own networks.

Full information, including the artist application for the fund and the link to donate, can be found at [lanearts.org/lane-county-artist-relief-fund](http://lanearts.org/lane-county-artist-relief-fund).



### ***A Novel Call for Art***

A Novel Call for Art was created locally for people to share their experiences. Other businesses and nonprofits contacted to join the effort.

Siuslaw News Link:

[https://thesiuslawnews.com/article/artists-prepare-for-a-novel-call-for-art?fbclid=IwAR3VLroaWom3AC\\_ITyl-6oLTkrnkb5KWCyl7G00ZNnxJQDrYl6SV4F9uBQ](https://thesiuslawnews.com/article/artists-prepare-for-a-novel-call-for-art?fbclid=IwAR3VLroaWom3AC_ITyl-6oLTkrnkb5KWCyl7G00ZNnxJQDrYl6SV4F9uBQ)

### ***Donor of Art Materials***

A donor is working with the Middle School & BeauxArts Fine Art Materials to get Art Materials into the Hands of our Students. All of the Middle School Art students (91) received matching watercolor and pencil sets and a journal. Plans to display art created during COVID-19 is in the works.

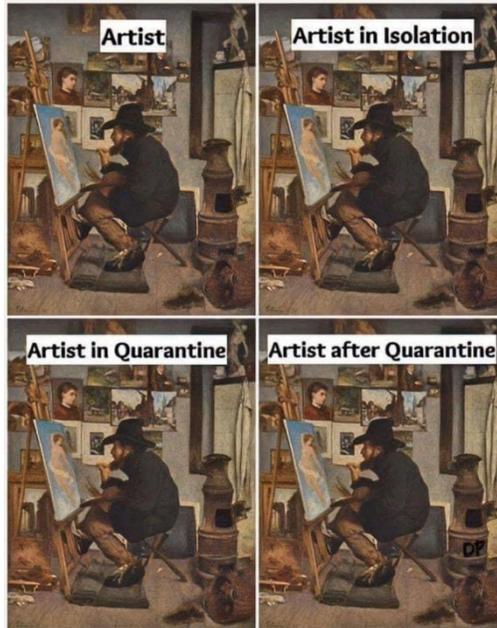
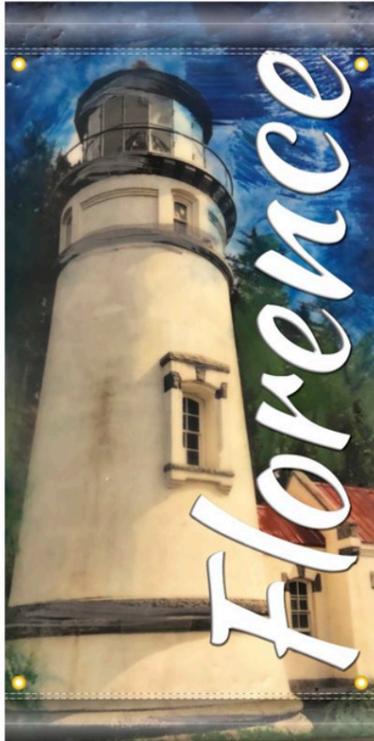
**Various Local Artists** have posted free tutorials/worksheets online and have been encouraging all to participate with what they have.

- **Beautification For Florence Committee** via Chamber is doing what they can from home, working on Spacemaking Parklets & Banners connecting areas of Florence Uptown to Old Town on 101. Two PAC Members are directly involved in helping these projects move forward. (See Photo).
- **Florence Regional Arts Alliance**
  - Closed doors. Planning to Open for Phase 1 June 1st
  - John Leasure Art Demos Online Example HERE: [https://www.youtube.com/watch?v=soG4BP5uZkE&feature=youtu.be&fbclid=IwAR23o0aYnGNAmE8mlk0ccFsroCkRni5HLbFjiT\\_sh-nYHmFLbR7L-1yLNsg](https://www.youtube.com/watch?v=soG4BP5uZkE&feature=youtu.be&fbclid=IwAR23o0aYnGNAmE8mlk0ccFsroCkRni5HLbFjiT_sh-nYHmFLbR7L-1yLNsg)

- **Florence Events Center**
  - Closed doors until TBA due to COVID-19
  - FFEC Renaming Contest - Results & Info TBA
  - No FEC Gallery Committee Meeting until TBA
  
- **SeaCoast Entertainment** at Florence Events Center
  - TBA
  
- **CROW**
  - Mary Poppins opening night was going to be April 17th. Stage is empty due to COVID-19. In response, and to everyone's spirits, CROW asked the cast and crew to submit a short video of one of the hardest songs in the production. They've put together a video: <https://youtu.be/Gbl4nck9b6k> (See Image Below)
  - Dress Your Pet Up Challenge - See info Above
  
- **City Light Cinema** - Closed doors until TBA due to COVID-19
  - BUT doing a "Virtual Cinema"
    - Learn more HERE: [https://mailchi.mp/citylightscinemas/now-playing-at-city-lights-cinemas-apr-21-1374737?e=152b61289c&fbclid=IwAR3AT7GRCrk\\_WJIDBdPi8-NnXrGb6tqSULMvuSHVY5gpfB0UdcpLeKd86D0](https://mailchi.mp/citylightscinemas/now-playing-at-city-lights-cinemas-apr-21-1374737?e=152b61289c&fbclid=IwAR3AT7GRCrk_WJIDBdPi8-NnXrGb6tqSULMvuSHVY5gpfB0UdcpLeKd86D0)
  
- **Siuslaw Library District**
  - Closed doors until TBA due to COVID-19
  - Working on Social Distance pick up & drop off, testing last week of May
  
- **Siuslaw Viewfinders Club**
  - Doing Monthly themes - May is SAND
  - Newsletter HERE - TBA
  
- **KXCR** - [Featured Artist Radio Show](https://kxcr.net/show/featured-artist/) - [kxcr.net/show/featured-artist/](https://kxcr.net/show/featured-artist/)
  - Reruns of Featured Artist due to COVID-19
  
- **Three Rivers Activities**
  - Opening in Phase 1 end of May
  
- **Chamber of Commerce/Visitors Center** - Closed doors until TBA due to COVID-19
  - **Artist of the Month** - Nope, due to COVID-19
  - **It's Flower Basket Time (See photo)! Can you believe it?**  
Usually, we are well into our fundraising for our beautiful baskets, we are just starting and need your help and support. These baskets bring smiles and joy to our locals and all who visit our community. A price increase was scheduled, due to the current crisis the Chamber has kept the \$85/basket price for this year. Sponsor a basket or donate to the program



[here:](https://florencechamber.us6.list-manage.com/track/click?u=6e8bc5c899a3f386ccd0c2ca0&id=fa460c814f&e=853b14181f) <https://florencechamber.us6.list-manage.com/track/click?u=6e8bc5c899a3f386ccd0c2ca0&id=fa460c814f&e=853b14181f>



**Transportation Committee (TC)**

Department: Planning

Chairperson: Bob Steele

No Report.

**FISCAL IMPACT:**

The fiscal impact of the committees and volunteer groups varies depending on their scope of work. Staff time is allocated to support the committees, and ensure committees comply with Oregon public meetings laws by preparing and posting agendas and minutes and/or digital recordings for meetings.

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

Goal 1: Deliver efficient and cost-effective city services.

**AIS PREPARED BY:** Report written by Committee members and/or City of Florence staff and compiled by Kelli Weese, City Recorder

---

**CITY MANAGER'S RECOMMENDATION:**     Approve                       Disapprove                       Other  
Comments:

---

**ITEM'S ATTACHED:**    None

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:**  
Meeting Date: July 20, 2020  
Department: All

**ITEM TITLE:** Commission, Committee & Volunteers Report – June 2020

**DISCUSSION/ISSUE:**

**Airport Volunteers**

Department: Public Works

Staff: Mike Miller – Public Works Director

Volunteers from the Airport Volunteer Group is in standby mode until restrictions related to COVID-19 are lifted.

**Audit Ad-Hoc Committee**

Department: Finance

Staff: TBD

No report.

**Budget Committee**

Department: Finance

Chairperson: TBD

No report.

**Community & Economic Development Committee**

Department: Administration

Chairperson: Robbie Wright

No report.

**Environmental Management Advisory Committee (EMAC)**

Department: Planning

Chairperson: Katie Prosser

EMAC canceled.

**Florence Events Center Volunteers / Friends of the FEC**

Department: Florence Events Center

President: Kirk Mlinek

No Report.

**Florence Urban Renewal Agency**

Department: Administrative

Staff: Kelli Weese – City Recorder / Eco.  
Devo.

The Florence Urban Renewal Agency met on June 30, 2020 to adopt updated COVID-19 public meeting policies, audited financial statements, and a resolution declaring tax increment. In addition, the agency heard reports concerning the ReVision Florence project and the Quince Street property marketing.

Florence Urban Renewal Agency Budget Committee	
<u>Department:</u> Finance	<u>Staff:</u> TBD
No report.	

Parks Volunteers	
<u>Department:</u> Public Works	<u>Staff:</u> Mike Miller – Public Works Director
<ul style="list-style-type: none"> <li>• Old Town Park (Gazebo Park): One (1) volunteer provided a total of 6 ½ hours of labor picking up litter, pruning vegetation, weeding, cleaning signs, and sweeping leaves from the plaza.</li> <li>• Adopt-A-Street Program: Rhododendron Drive 35<sup>th</sup> to Sebastian Street (2.2 miles). Two volunteers spent a total of 16 hours picking up litter along Rhododendron Drive which resulted in approximately 33 pounds of trash being removed from the right-of-way.</li> <li>• Exploding Whale Park (formerly River Beach Access Park): Four (4) volunteers from Resurrection Lutheran Church provided a total of 4 hours of labor picking up litter and trash from the park, including the new expansion area.</li> <li>• Singing Pines Park: Due to COVID-19 restrictions there were no volunteer activity from Shoreline Christian Church.</li> </ul>	

Planning Commission	
<u>Department:</u> Planning	<u>Staff:</u> Wendy FarleyCampbell – Planning Director
No Report.	

Police Auxiliary	
<u>Department:</u> Police	<u>Director:</u> Len Larson
No report.	

Police Reserve Officers	
<u>Department:</u> Police	<u>Staff:</u> Tom Turner – Police Chief
Program not active	

Public Arts Committee	
<u>Department:</u> Administrative	<u>Chairperson:</u> Harlen Springer and <u>Vice-Chairperson</u> Jo Beaudreau
<p><b>Art That Was Never Finished:</b> - <a href="https://www.youtube.com/watch?v=-VDVo9akCiQ">youtube.com/watch?v=-VDVo9akCiQ</a></p> <p><b>PAC Narrative City Council Report for June 2020</b></p> <p><i>*Email Paragraph Snippets/Updates from Past Months are included as updates to keep Council reminded of Current PAC Items.</i></p>	

## **Art Exposed**

Regarding " Art Exposed," since the final selections must be made at a public meeting and since we wanted to keep the artists informed for their own planning, we advised the finalists that we would make final decisions at our **July 27 meeting**. This gives us adequate time to access the COVID-19 situation, and provide public outreach and input.

This means that the art would actually be installed in September and early October. Since the contracts for the current artists expire in May and June, we have advised them that they can display their art until September and we will give them an additional \$250.00 for this extra time. All of them have agreed to this. We have also contacted all the finalists with the new dates to ensure that their artwork will be available and we have begun hearing back from them (so far, all have agreed). We will have all responses back by the end of this week.

During the discussions with the current artists, a new opportunity has been presented to us. Jesse Swickard, the artist who has two pieces on display has offered us a REALLY good deal to purchase both his pieces. They are:

1. West Coast Overlook ( Tall sculpture located in the Rain Garden - List price = \$7,500)
2. Sitting Wave Part II ( Sitting Bench located near River Roasters - List price = \$2,800)

He has offered to sell us both these pieces for a total price of \$1,900.

By policy, we need to make this decision as a committee in a public meeting, so please be thinking about this so we can vote on it when we get together next. Also be thinking about potential locations.

**Finalist Information HERE:** - <https://www.ci.florence.or.us/bc-pac/art-exposed-program-finalists>

**Program Information HERE:** <https://www.ci.florence.or.us/bc-pac/art-exposed-florences-rotating-outdoor-art-gallery>

## **Bridge Steps**

We also will re-visit the Bridge Steps project later this year as we still have work to do with ODOT to finalize it. To that end, I am attaching an article that appeared in the Register Guard on Sunday featuring Jessilyn Brinkerhoff, who is the artist we selected to complete the Bridge Steps.

## **Continued Engagement**

While we can't physically meet right now, it is important that we all stay engaged with the arts and the community and keep thinking about ways to help PAC prosper.

- Continue having conversations on the phone/Zoom about the Arts and your feelings and thoughts
- Read through the PAC binder - what else should we be doing?
- Which Sub-Committee interests you?
- Have you finalized your vote on the "Art Exposed" finalists?

- Have you seen articles/videos that would be appropriate to share with the Committee?

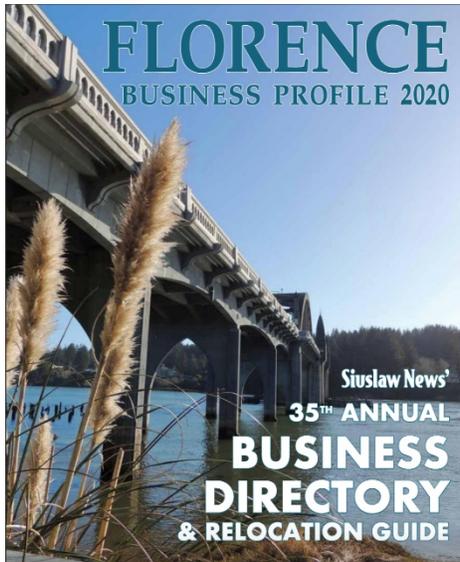
**Additional References from Narrative & More Information**

**Other Community Public Arts WOW!**

People from around the world are doing and encouraging each other to be creative. Multiple local and beyond groups have popped up encouraging people to be creative. The national stage is also a place to look for new ideas and ways of working with the Public, Arts and Policy.

**Arts & Economic Development**

City of Florence has developed a weekly business resource email that help local businesses of various times - these



communications that have been developed are creative and innovative resources.

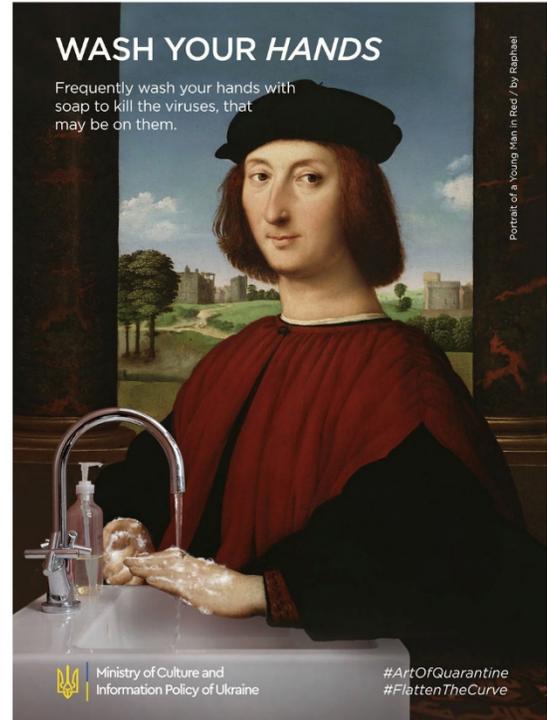
**Chamber Business Profile**

The Florence Area Chamber Profiles our area businesses and also highlights the Arts. Read Edition HERE: [https://issuu.com/siuslawnews/docs/2020\\_business\\_profile\\_is\\_suu](https://issuu.com/siuslawnews/docs/2020_business_profile_is_suu)

**Power of Chamber**

The Florence Area Chamber has published a Power of the Chamber and how local business and creatives are contributing to our community. Read Here: [https://issuu.com/siuslawnews/docs/chamber\\_2020](https://issuu.com/siuslawnews/docs/chamber_2020)

Raphael, Portrait Of A Young Man



## Florence Plein Air Opportunities

An open group of artists have been doing impromptu social distancing Plein Air around the City of Florence. Siuslaw News Coverage:

<https://thesiuslawnews.com/article/plein-air-art-along-the-port>



Artists participating in the Plein Air art sessions use watercolor, pen and ink, acrylics, colored pencils and other mediums. The next session is tomorrow June 25 beginning at 10 a.m.

### Plein Air art along the port

A second session of socially distanced art will take place tomorrow.

The Thursday, June 25, 2020 other artists for a "Social Distancing Plein Air Session" at 10 a.m. at the Port of Seaside.

Hosted by the artist by Seaside, owner of Seaside Fine Art Materials & Gallery, the session is a chance to make art while social distancing from other art participants.

"Using plein air techniques, people in the Seaside Region are able to enjoy scenic views back to their local region," Seaside said. "With all the safety history, creative talent and local resources, a small group of artists participated in a social distancing plein air experience last Friday morning – before the world picked up."

People participating have been practicing various degrees of social distancing and people are asked to respect boundaries of others.

Seaside offers these tips for those who wish to join:

- Use restrooms before you arrive since the nearest facilities are located in Old Town.
- Bring all materials you think you'll need, along with some extra. Plein air art artists travel light and get creative with their choice of materials.
- Bring masks and other PPE (personal protection equipment) items.
- Bring water and a snack.
- Wear sunscreen and consider a hat or sun umbrella to shade your face.
- There are trashcans nearby, but people must clean up their own mess.
- Consider bringing a folding chair. Some benches are available at the port, but they are not suitable for safe social distancing.
- Wear layers of clothing, including a removable jacket, as the weather can be unpredictable.

For more information, visit Seasidearts on Facebook.



## Exploding Whale Park

Exploding Whale Memorial Park has been finally announced to the public! This event happened 50 years ago this November. This event and other creative ways of marketing can help our local economy. This event was one of the original "viral" events before "viral" was thing. Other media outlets beyond our local area have picked up the story about the park name.

Read more here:

[https://thesiuslawnews.com/article/newest-park-gets-official-sign-as-parks-reopen?fbclid=IwAR2KcHranAWxNq8N1rKQYUj9y2gkPP\\_BIOu4v1kbbHn9OEj4yXsMqLYzT0](https://thesiuslawnews.com/article/newest-park-gets-official-sign-as-parks-reopen?fbclid=IwAR2KcHranAWxNq8N1rKQYUj9y2gkPP_BIOu4v1kbbHn9OEj4yXsMqLYzT0)



## CROW Dress Up you Pet Challenge

It's time for a new and fur-bulous challenge! We hope to receive lots of entries, so please play along. You have a week and a half to accomplish the challenge. Think of how many smiles you and your pet can create in our community. Learn more: [facebook.com/crowtheatrekids/](https://facebook.com/crowtheatrekids/)

How CROW's repertoire of theater and dance is on hold during the pandemic

Siuslaw News Coverage 6/6/2020:  
[https://thesiuslawnews.com/article/covid-and-crow-kids?fbclid=IwAR13IR2vR3VJ8TChqS3WbDEZQmun-hy8WRRdSbyLuTHYt\\_gxUfCdd0QwJ6g](https://thesiuslawnews.com/article/covid-and-crow-kids?fbclid=IwAR13IR2vR3VJ8TChqS3WbDEZQmun-hy8WRRdSbyLuTHYt_gxUfCdd0QwJ6g)

C.R.O.W. 2 hrs

We are excited to announce the winners of C.R.O.W.'s "Dress Up Your Pet Costume Challenge." According to the rules, owners were to submit a pic of their little darling, dressed up to represent one of C.R.O.W.'s previous shows.

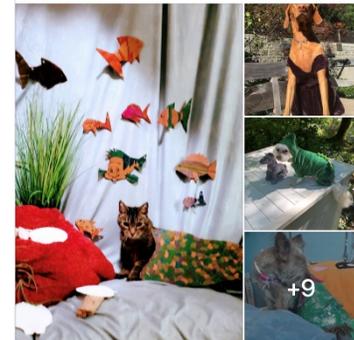
We received 12 great entries! First place won a \$25 gift card to Mini Pet Mart. The top two runners up each won a fun toy to make their day a little less "ruff".

Congratulations and thank you to everyone who entered. Please scroll down to see the top three winners, and all of our wonderful fuzzy applicants.

First place: Forest the Mercat as "Ariel" in Little Mermaid Runners Up: Gracie the dog as "Princess Winnifred" in Once Upon a Mattress, and Yankee/Shark Bait as "Dragon" in Shrek. (first three pictures below)

Amidst the chaos in our world, it is our hope that this brings a smile. Pet lovers know that our furry friends are there for us to lean on and snuggle in challenging times.

#thepetsreallydomatter



## Mapleton Students Show Creativity and Brilliance

6/20/2020 Siuslaw News Coverage, <https://thesiuslawnews.com/article/mapleton-schools-annual-art-show-moves-online>

Mapleton isn't in the City Limits of Florence, but their community uses and participates in our Region, City of Florence Business and community. The Art teacher informed PAC that she was inspired to create this virtual show by the Fresh Impressions Virtual Show in March/April

**Call to Artists**  
**Central Coast Connection**  
**Phone Book Cover Art**  
*This year's theme: Coastal Locale*  
*scenery, buildings, people, areas of interest*  
 Photography Only

Winner will receive  
 \$300 cash award  
 Deadline for submission  
 July 15, 2020



Photography for 2019 edition  
 by Curt Peters

Artwork for 2020 edition  
 by Mike Wood

Details and to enter:  
<http://fraaoregon.org>  
 Sponsored by Pacific Publishing and FRAA

## Call for Phone Book Cover Art

Florence Regional Arts Alliance (FRAA) and Pacific Publishing are happy to announce this year's photography contest for the cover of the 2021 Edition Central Coast Connection Business Directory & Phone Book. Deadline to apply is July 15th. Learn more [HERE:](http://www.fraaoregon.org/central-coast-entry-instructions.html?fbclid=IwAR3VlliTTgigD-RDyH1W2TVWdjEA09Imv1u8KTJ01eGt-EiTYhQtmi3fGGA)

[http://www.fraaoregon.org/central-coast-entry-instructions.html?fbclid=IwAR3VlliTTgigD-](http://www.fraaoregon.org/central-coast-entry-instructions.html?fbclid=IwAR3VlliTTgigD-RDyH1W2TVWdjEA09Imv1u8KTJ01eGt-EiTYhQtmi3fGGA)

[RDyH1W2TVWdjEA09Imv1u8KTJ01eGt-EiTYhQtmi3fGGA](http://www.fraaoregon.org/central-coast-entry-instructions.html?fbclid=IwAR3VlliTTgigD-RDyH1W2TVWdjEA09Imv1u8KTJ01eGt-EiTYhQtmi3fGGA)

**Various Local Artists** have posted free tutorials/worksheets online and have been encouraging all to participate with what they have.

- **Beautification For Florence Committee** via Chamber is doing what they can from home, working on Spacemaking Parklets & Banners connecting areas of Florence Uptown to Old Town on 101. Two PAC Members are directly involved in helping these projects move forward. (See Photo).
- **Florence Regional Arts Alliance**
  - Opening June 5th
- **Florence Events Center**
  - Closed doors until TBA due to COVID-19
  - FFEC Renaming Contest - Results & Info TBA
  - No FEC Gallery Committee Meeting until TBA
- **SeaCoast Entertainment** at Florence Events Center
  - TBA
- **CROW**
  - Dress Your Pet Up Challenge - See info Above

## Students show 'creativity and brilliance'



Mapleton schools' annual art show moves online

This year, Mapleton School District's annual Sheri Tate art show has moved to an online platform. People can view some of the art and projects produced by Mapleton students at <https://www.gmapletonschools.k12.or.us/art2020>.

All school year, including during students' home schooling under COVID-19, students worked with district art teacher Justice Nelson on a variety of art. "Welcome to the virtual 2020 Sheri Tate art show. We hope that you will take the time to look through for a more sampling of the creativity and brilliance of our Mapleton students."

According to the website, not every student was able to be included this year due to the COVID-19 shutdown, though efforts have been made to contact all students and families. "We celebrate the creativity and hard work of ALL of our students. We have made every effort for accuracy and representation," the district stated.

In the Sheri Tate, categories included Kindergarten, first and second grades, third and fourth grades, fifth and sixth grades, middle school and high school. Kindergarten produced collages, including mixed media and paper paintings, as well as drawings, coloring pages and cut-outs. Work was inspired by Sheri and Frank Kralik.

First and second grades  
 by ART 20

From top: 5-6 grade watercolor and ink by 56; 3-4 grade mixed media by K2 Middle school Sheri's the Tea, 2017 exhibition Sheri's the Tea, paper by P1 7-8 grade oil paint by 41



- **City Light Cinema** - Closed doors until TBA due to COVID-19, Opening in July
  - BUT doing a “Virtual Cinema”
    - Learn more HERE: [https://mailchi.mp/citylightscinemas/now-playing-at-city-lights-cinemas-apr-21-1374737?e=152b61289c&fbclid=IwAR3AT7GRcrk\\_WJIDBdPi8-NnxrGb6tqSULMvuSHVY5gpfB0UdcpLeKd86D0](https://mailchi.mp/citylightscinemas/now-playing-at-city-lights-cinemas-apr-21-1374737?e=152b61289c&fbclid=IwAR3AT7GRcrk_WJIDBdPi8-NnxrGb6tqSULMvuSHVY5gpfB0UdcpLeKd86D0)
- **Siuslaw Library District**
  - Closed doors until TBA due to COVID-19
  - Book returns are safely collected & processed
  - Books can be requested and picked up at Library
  - Continued Online Services
  - Subscribed to CreativeBug (See Image)
- **Siuslaw Viewfinders Club**
  - Doing Monthly themes - June is TBA
  - Newsletter HERE - TBA
- **KXCR** - [Featured Artist Radio Show](https://www.kxcr.net/show/featured-artist/) - [kxcr.net/show/featured-artist/](https://www.kxcr.net/show/featured-artist/)
  - Reruns of Featured Artist due to COVID-19
- **Three Rivers Activities**
  - Reopened with restrictions, more info: <https://thesiuslawnews.com/article/casino-reopens-with-new-safety-measures>
- **2nd Saturday**
- **BackStreet Gallery**
  - Preps to Reopen
  - Featured Artists
    - Mark Anderson, John Leasure, Colleen McKnight, Meredith Draper, Judy Fleagle
    - - see below
- **Chamber of Commerce/Visitors Center** - Closed doors until TBA due to COVID-19
  - **Artist of the Month** - Nope, due to COVID-19

## Transportation Committee (TC)

Department: Planning

Chairperson: Bob Steele

We will not have any TC meetings in July or August. I will continue to keep everyone up to date with monthly reports. Beginning in September, we will meet on line. The details of this will be in my next update in July.

The City has received an assessment of the City of Florence's existing Transportation System Plan (TSP) from the State of Oregon's Transportation Growth Management Program staff. The City is now proceeding with the preparation of an application for the funding to update the current TSP.

A Transportation System Plan subcommittee consisting of Gary Plunkett and myself has been created to review the City's Transportation Growth Management (TGM) grant application. The application timeline is as follows:

- TGM draft due and out to interested parties – July 17
  - Community Development Department staff
  - TC subcommittee
  - ODOT reviewer
- Review meeting – July 21
- TGM edits by Sarah Moehrke – July 22
- TGM final grant due – July 31

Letters of support for updating the grant

Received:

- Travel Lane County
- Siuslaw School District

Currently requested and awaiting:

- Peace Harbor Hospital
- Lane council of Governments

To be confirmed:

- Lane Transit District
- Lane County
- Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

Of note, Sarah Moehrke is in the process of transitioning to a new position. Roxanne Johnson is our new Staff Ex-Officio.

---

**FISCAL IMPACT:**

The fiscal impact of the committees and volunteer groups varies depending on their scope of work. Staff time is allocated to support the committees, and ensure committees comply with Oregon public meetings laws by preparing and posting agendas and minutes and/or digital recordings for meetings.

---

**RELEVANCE TO ADOPTED CITY WORK PLAN:**

Goal 1: Deliver efficient and cost-effective city services.

---

**AIS PREPARED BY:** Report written by Committee members and/or City of Florence staff and compiled by Kelli Weese, City Recorder

---

**CITY MANAGER'S RECOMMENDATION:**  Approve  Disapprove  Other  
Comments:

---

**ITEM'S ATTACHED:** None

---

---

**AGENDA ITEM SUMMARY**  
**FLORENCE CITY COUNCIL**

**ITEM NO:** 14  
Meeting Date: July 20, 2020  
Department: Various

---

**ITEM TITLE:** REPORT & DISCUSSION ITEMS

---

- City Manager Reports & Discussion Items
- City Council Reports & Discussion Items
  - Proposed Proclamation Discussion

PROCLAMATION COMMITTING TO  
COMMUNITY CLIMATE AWARENESS AND PREVENTION

WHEREAS, the Oregon Coast is a vulnerable and highly affected area that will be severely impacted by the scientifically proven disruption of our climate, and

WHEREAS, climate change will have a profound influence on the residents of and visitors to Florence which include sea level rise, dune erosion, seasonal temperature changes, increased forest fires, acidic ocean waters resulting in the harming of local crab and fish industries and chemical alterations in ocean and estuarine environments, and economic losses, along with increased cost of living; and

WHEREAS, the City of Florence has committed to reducing the causes of greenhouse gas emissions through the implementation of energy conservation, alternative transportation options, including electric and hybrid vehicles, building efficiencies, and has reduced the city's ecological footprint through waste reduction and recycling strategies, ban on polystyrene products, planting native landscapes and managing wastewater treatment facilities, including the reduction in methane; and

WHEREAS, it is important for the City of Florence to be among the leading cities on the Oregon Coast to seek solutions to protect our quality of life.

NOW THEREFORE, we the City Council of the City of Florence, Oregon, do hereby encourage the residents of and visitors to the City of Florence to better understand the impacts of climate disruption and how it affects our community, environment, and ecosystems. We further urge residents and visitors to promote and engage in solutions to improve energy efficiency, maintaining a cleaner, healthier community and a sustainable economy, and to address this important critical and timely concern for our generation and generations to come.