

**EXHIBIT “B” TO ORDINANCE NO. 5936 (as amended)**  
**PUBLIC CONTRACTING RULES**  
**CITY OF HILLSBORO CITY MANAGER**

1. Title.

These rules are the Public Contracting Rules of the City of Hillsboro. Each rule may be cited or referenced as “PCR.”

2. Definitions.

As used in these rules, the following words and phrases have the meanings given in this section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words that are not defined in this section shall have the meaning set forth in the Oregon Public Contracting Code. If not defined there, the words shall be given their common and ordinary meaning.

“Award” means the selection of a person to provide goods, services or public improvements under a public contract. The award of a public contract is not binding on the City until the contract is executed, delivered to the City and ratified by the mayor and attested by the city recorder.

“Bid” means a binding, sealed written offer to provide goods, services or public improvements for a specified price or prices.

“City” means the City of Hillsboro, Hillsboro Economic Development Council and any of its boards, commissions and agencies.

“Concession agreement” means 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 real property owned or managed by the City, and under which the concessionaire makes payments to the City based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license or lease for the use of premises.

“Contract price” means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

“Contract review board” means the city council, Hillsboro Economic Development Council or the utilities commissions for contracts made under its authority.

“Cooperative procurement” means a procurement conducted by or on behalf of more than one contracting agency.

“Debarment” means a declaration by the purchasing agent under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the City's public contracts for a prescribed period of time.

“Disposal” means any arrangement for the transfer of property by the City under which the City relinquishes ownership.

“Emergency” means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

“Energy savings performance contract” means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

“Finance contracts” means contracts or other documents entered into, issued or established in connection with: the incurring of debt by the City, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited; the making of program loans and similar extensions or advances of funds, aid or assistance by the City to a person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements; the investment of funds by the City as authorized by law, or banking, money management or other predominantly financial transactions of the City that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the purchasing agent.

“Findings” mean the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

“Goods and services” or “goods or services” mean supplies, equipment, materials and services other than professional services and any personal property including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the City is authorized by law to procure. “Goods and services” or “goods or services” include combinations of any of the items identified in this definition.

“Grant” or “grant agreement” means an agreement under which the City is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

“GSA” means the United States General Services Administration or its successor.

“Hillsboro Economic Development Council” means the Hillsboro Economic Development Council operating under the authority of ORS 457.010, ORS 457.020 and Ordinance No. 3829.

“Informal solicitation” means a solicitation made in accordance with rules adopted by the purchasing agent to a limited number of potential contractors, in which the solicitation agent attempts to obtain at least three quotes or proposals.

“Invitation to bid” means a publicly advertised request for competitive sealed bids.

“Model Rules” means the rules adopted by the Attorney General pursuant to ORS 279A.065.

“Offeror” means a person who submits a bid, quote or proposal to enter into a public contract with the City.

“Oregon Public Contracting Code” means ORS chapters 279A, 279B and 279C.

“Person” means a natural person or any other private or governmental entity, having the legal capacity to enter into a binding contract.

“Proposal” means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to price. A proposal may be made in response to a request for proposals or under an informal solicitation.

“Personal services contract” means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of 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, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The purchasing agent shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

“Professional Services Contract” means a Personal Services Contract as defined above and as provided for in the Oregon Public Contracting Code.

“Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition by the City of personal property, services, including professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

“Public improvement” means a project for construction, reconstruction or major renovation on real property by or for the City. "Public improvement" does not include projects for which no funds of the City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection, or emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

“Purchasing agent” or “city manager” means the city manager or a designee appointed by the city manager to exercise the authority of the purchasing agent under the City of Hillsboro Public Contracting Regulations.

“Quote” means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

“Request for proposals” means a publicly advertised request for sealed competitive proposals.

“Schedule of signature authority means a schedule adopted as part of the Public Contracting Rules for the City of Hillsboro that sets out the procurement method and execution authority for classes of public contracts by dollar amounts. The “specified amount” in the schedule of signature authority is the dollar amount of a contract above which more formal procurement processes are required.

“Services” includes all types of services (including construction labor) other than professional services.

“Solicitation” means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the City with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the City requests, receives and evaluates potential contractors and awards public contracts.

“Solicitation agent” means, with respect to a particular solicitation or contract, the city manager or employee delegated responsibility for conducting the solicitation and preliminarily awarding the contract.

“Solicitation documents” includes all informational materials issued by the City for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

“Special procurement” has the meaning provided in ORS 279B.085 and HMC 2.16.070.

“Surplus property” means personal property owned by the City which is no longer needed for use by the City.

“Telecommunication services” means two way switched access and transport of voice communications but does not include: (a) services provided by radio common carrier, (b) one-way transmission of television signals, (c) surveying, (d) private telecommunication networks, or (e) communications of the City which take place on the City's side of on-premises equipment.

“Trade Services” means a contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, laundry and landscape maintenance. This also includes trade-related activity that requires a specific license to perform the work, e.g., repair and/or maintenance of all types of equipment or structures. Trade Services do not include those services that the Purchasing Agent deems to be Professional Services.

### 3. Professional Service Contracts.

#### 3.1. The following contracts are professional service contracts:

3.1.1. Contracts for services performed as an independent contractor in a professional capacity, including but not limited to, the services of an accountant, attorney, architectural or land use planning consultant, physician or dentist, registered professional engineer, appraiser or surveyor, passenger aircraft pilot, aerial photographer, timber cruiser, information services consultant or broadcaster;

3.1.2. Contracts for services as an artist in the performing or fine arts, including but not limited to, persons identified as photographer, filmmaker, painter, weaver or sculptor;

3.1.3. Contracts for services of a specialized, creative and research-oriented, noncommercial nature;

3.1.4. Contracts for services as a consultant; and

3.1.5. Contracts for educational and human custodial care services.

#### 3.2. The following contracts are not professional service contracts:

3.2.1. Contracts, even though in a professional capacity, if predominately for a product, e.g., a contract with a landscape architect to design a garden is for professional services, but a contract to design and supply all the shrubs and trees, is predominately for a tangible product;

3.2.2. A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, laundry and landscape maintenance service contracts; and

3.2.3. Contracts for a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

3.3. The following services may be procured by the City without a competitive process:

- 3.3.1. Contracts for employee benefit insurance;
- 3.3.2. Contracts for legal services;
- 3.3.3. Contracts in which the rates for the services being purchased are established by federal, state, county or other local regulatory authority, and either all eligible contractors (e.g. all licensed facilities in the City) are awarded funds, or an alternate process for soliciting and approving qualified contractors is approved in advance by the purchasing agent;
- 3.3.4. Contracts for which a non-City funding source, e.g. grant, federal or state, identifies the contractor or contractors;
- 3.3.5. Escalation clauses providing cost of living increases over the term of the contract are excluded from the limitations of PCR 3.4 and 3.5, if the escalation was part of the original RFP/Waiver and Contract;
- 3.3.6. Cost of living and/or blanket funding increases received from the State of Oregon for client services that exceed the limitations of PCR 3.4 and 3.5 are exempt from further competitive process;
- 3.3.7. Contracts for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing of funds is contracted pursuant to duly enacted statute, ordinance, charter, or constitution, or other finance contracts;
- 3.3.8. Multi-year contracts for professional services that do not exceed a five (5) year term on a project specific basis, if:
  - 3.3.8.1. The professional service is in support of an on-going multi-year capital construction program, including but not limited to road construction and reconstruction;
  - 3.3.8.2. Proposals are solicited and contractor selection is conducted in a manner similar to the request for proposals process. The solicitation document shall indicate the maximum number of multi-year contracts to be awarded for each professional service category, the ranking criteria for contractor selection and describe the process and criteria for project specific selections; and
  - 3.3.8.3. The project specific selection process requires consideration of factors that promote efficient use of public resources and do not discourage competition, such as experience in the specific fields or technology relevant to the project; the magnitude and complexity of the services anticipated to be needed for the specific

project; access to the specific skills and equipment required; familiarity with the project; availability and ranking in the initial selection process. The rationale for each project specific selection shall be documented;

3.3.9. Hospitalization, medical and dental services;

3.3.10. Software maintenance services; and

3.3.11. Professional service contracts with other public agencies and federal agencies.

3.4. Except as otherwise provided by rule or by a waiver, professional service contracts anticipated to exceed the specified amount in the schedule of signature authority shall be awarded pursuant to the request for proposal process.

3.5. For professional service contracts to a single vendor or to multiple vendors providing similar services, anticipated not to exceed the specified amount in the schedule of signature authority, the informal quote method to evaluate alternative proposers shall be used when practicable. The purchasing agent may award a professional service contract for less than the specified amount in the schedule of signature authority by direct appointment without competition from a qualified pool as established under PCR 9.

3.6. Professional service contracts for which the solicitation agent estimates that payments will not exceed \$20,000 in any fiscal year or more than the specified amount in the schedule of signature authority over the full term, including optional renewals, may be awarded under any method deemed in the City's best interest by the solicitation agent, including by direct appointment.

3.7. Professional service contracts of not more than \$75,000 or the specified amount in the schedule of signature authority, by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract, may be awarded without competition if the prior contract was awarded under a competitive process and the solicitation agent determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

3.8. In considering the evaluation and selection of a professional services contractor, the purchasing agent may consider the following criteria:

3.8.1. Specialized experience in the type of work to be performed.

3.8.2. Capa city and capability to perform the work, including any specialized services within the time limitations for the work.

3.8.3. 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.

3.8.4. 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.

3.8.5. Any other factors relevant to the particular contract.

3.9. The purchasing agent or council may waive the request for proposal process for a particular professional service, or a category of professional services. The request and granting of the waiver shall address the following criteria:

3.9.1. The nature of the contract;

3.9.2. The estimated cost;

3.9.3. A narrative description of the basis for the waiver and the reasons a RFP process would be inappropriate; and

3.9.4. A statement of the alternative selection process that will be used, if any.

3.10. Professional service contracts may be amended to increase the contract amount up to twenty five percent (25%) over the original professional service contract amount or that results in a total contract amount of less than specified amount in the schedule of signature authority, without a new request for proposal process, provided that the increase must be for substantially the same type of work described in the original request for proposal. If the original professional service contract allowed for increase in units of service at a set fee, an amendment to that professional service contracts is not subject to the percentage increase limitation. Any amendment that increases the contract amount by more than twenty five percent (25%) or results in a total contract amount that exceeds the specified amount in the schedule of signature authority, requires a formal competitive request for proposal process or waiver granted by the purchasing agent or contract review board.

3.11. Professional service contracts shall have a maximum contract period of five (5) years, unless otherwise specified in state or federal program regulations, or the five (5) year limitation is specifically waived by the purchasing agent.

3.12. The purchasing agent shall advertise each specific request for proposal at least once in a newspaper of general circulation in the City or appropriate trade journal. The last advertisement shall appear at least five (5) days before the due date for proposals.

#### 4. Concession Agreements.

4.1. No part of a concession agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of the City concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.

4.2. The following concession agreements may be awarded by any method deemed appropriate by the solicitation agent, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

4.2.1. Contracts under which the solicitation agent estimates that receipts by the City will not exceed \$5,000 in any fiscal year and \$50,000 in the aggregate.

4.2.2. Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the purchasing agent to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.

4.3. Concession agreements solicited by the City for the use of designated public premises for a term greater than a single event shall be awarded as follows:

4.3.1. For concession agreements for which the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less, the purchasing agent has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for professional services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000, the purchasing agent may, but shall not be required to, reissue the solicitation as a request for proposals.

4.3.2. Concession agreements for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000 annually shall be awarded using a request for proposal process.

## 5. Federal Purchasing Programs.

5.1. Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration as provided in this rule.

5.2. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the purchasing agent. The solicitation agent shall provide the purchasing agent with a copy of the letter, memorandum or other documentation from GSA establishing permission to the City to purchase under the federal program.

5.3. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.

5.4. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the City.

5.5. If a single purchase of goods or services exceeds the upper limit for formal bids, the solicitation agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the City. This paragraph does not apply to the purchase of goods or services made under 10 U.S.C. 381 the Electronic Government Act of 2002 (P.L. 107-347) or 40 U.S.C. 502 Local Preparedness Acquisition Act (P.L. 110-248) or any other Federal law that allows local governments to purchase from GSA Schedules. ***(Section 5.5 amended by administrative procedure, HMC 2.04.080, effective September 10, 2008)***

6. Qualified Rehabilitation Facilities.

6.1. As used in PCR 6,

6.1.1. "Price" means the cost to the City of the products and services under contracts procured under the program created by ORS 279.835 to 279.850 as determined by this rule.

6.1.2. "Procurement List" means a listing of those nonprofit agencies for individuals with disabilities that currently are qualified to participate in the program created by ORS 279.835 to 279.850 and includes a list of the products and services offered by QRFs and determined by the state procurement office to be suitable for purchase by the City.

6.1.3. "Qualified Rehabilitation Facility" or "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services that the State Procurement Office has determined to be qualified to participate in the program created by ORS 279.835 to 279.850.

6.1.4. "QRF Contract" means a contract entered into under the program created by ORS 279.835 to 279.850.

6.2. It is the policy of the City to encourage and assist disabled persons to achieve maximum professional independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. An essential element of this policy is to support sheltered employment to the fullest extent provided by law by contracting for needed goods and services available from QRF's. The City shall identify contracting opportunities within the organization and award appropriate contracts to QRF's in accordance with this rule.

6.3. Procurements from Qualified Rehabilitation Facilities:

- 6.3.1. When the City intends to procure a product or service that is listed on the Procurement List, it shall procure that product or service, at the price determined by the State Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of specifications appropriate to the City's procurement needs and is available within the time required by the City.
- 6.3.2. The City shall enter into and renew QRF Contracts only for the specific products or services that are on the Procurement List.
- 6.3.3. If a QRF is removed from the Procurement List, the City shall not award or renew a QRF contract, and the removal from the Procurement List shall constitute sufficient grounds for the City to terminate any outstanding QRF contract.
- 6.3.4. No placement of a product or service on the Procurement List shall act to displace a contractor under an existing contract with the City for the same product or service prior to the expiration or other termination of the contractor's contract with the City. However, where a product or service is on the Procurement List, no existing contract shall be renewed for such a product or service.
- 6.3.5. If a QRF submits a competitive bid, proposal, price quotation or other offer in a competitive procurement for a public contract, then regardless of whether the offer was accepted, that QRF may not, at any time during the initial term of the contract for which the QRF submitted a bid, proposal or offer, make any claim to the City that the product or service that was the subject of the offer is on the Procurement List. If, during the solicitation process, a QRF claims the product or service that is the subject of the procurement is on the Procurement List, then, if the product or service is determined to have been on the Procurement List at the time the solicitation document was issued, the solicitation process shall be terminated so long as a contract has not been fully executed at the time the claim is made.

#### 6.4. Procurement of QRF Contracts.

- 6.4.1 When a product or service on the Procurement List is offered by more than one QRF, the City may purchase the required product or service from any QRF without competition between QRFs.
- 6.4.2. The City may use the solicitation process to select a QRF to provide a service on the Procurement list, provided that:
  - 6.4.2.1. The solicitation shall not request any information concerning price and price shall not be a consideration in making the award.
  - 6.4.2.2. The solicitation shall not be advertised.

6.4.2.3. Notice of the solicitation may be given to those QRFs offering the service on the Procurement List.

6.4.2.4. After selection of a QRF the price will be determined in accordance with PCR 6.5.

6.5. Price.

6.5.1. For products or services on the Procurement List where the price is listed, the contract shall provide that the City will pay the price that is listed.

6.5.2. For services for which no price is listed on Procurement List, the City shall proceed as follows:

6.5.2.1. The City shall request that the QRF submit its proposed price to the City based on the volume or scope of the work and specifications provided by the City as prescribed in the proposed contract between the QRF and the City. For janitorial and security services where a fair wage is required to be paid, the specifications shall state the wage required to be paid.

6.5.2.2. In submitting its proposed price to the City, the City shall require the QRF to make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a price that will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a). The City shall require that an authorized officer of the QRF certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in ORS 279.845(1)(a).

6.5.2.3. If the QRF and the City agree on the terms and conditions of a proposed contract and the price for the services to be provided under the proposed contract, the purchasing agent shall present the proposed contract (including the agreed price) to the State Procurement Office for review and approval of the price. If the QRF and the City cannot agree on the price, the parties shall present the issue of price to the State Procurement Office for determination.

6.5.2.4. The City shall not execute or implement any contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the price approved determined by the State Procurement Office to the City and the QRF.

- 6.5.3. The price established by the State Procurement Office shall apply for the initial term or period of the contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a price at the request of a QRF or City, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new price, the QRF shall continue to provide, at the established price, the service or product in accordance with the scope of work that was the basis for establishing the existing price.
- 6.5.4. The City shall not pay or agree to pay a QRF any amount other than the price approved by the State Procurement Office. Any price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new price.
- 6.5.5. The City shall not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the specifications of a QRF contract under ORS 279.835 to 279.850 unless the changes are in writing and have been submitted to the State Procurement Office for a re-determination of price. If the City wishes to make a material change to the specifications from the most recent solicitation for the product or service, the City shall notify the QRF in writing of the specific changes in the scope of work or other conditions which will be required during the new contract period. No agreement making a material change in the specifications shall be executed until State Procurement Office re-determines the price.

## 7. Overview of Source Selection and Contractor Selection, Feasibility Determination and Cost Analysis.

7.1. The City shall award a public contract for goods and services covered by the City of Hillsboro Public Contracting Regulations using any method authorized by State or local law. These different methods are called methods of "source selection." Source selection methods include cooperative procurements, competitive sealed bidding, and competitive sealed proposals and small, intermediate, sole source, emergency and special procurements. The specific policies for each of these processes are largely set out in the Oregon Public Contracting Code and the Model Rules. In addition, the City uses an informal solicitation process set out in PCR 8. These rules state policies that supplement or change the Model Rules.

7.2. State law requires the City to use the services of Qualified Rehabilitation Facilities in certain instances. When required, the City shall use a QRF pursuant to PCR 6 before proceeding with a purchase through other methods of source selection.

7.3. Once the appropriate source selection method has been chosen, the City may consider the best process of selecting a contractor within the source selection method it has chosen.

7.4. The City may employ methods of contractor selection for the procurement of goods and services by using any process authorized by State law, including multi-tiered processes as set forth in the Model Rules, including, but not limited to:

- 7.4.1. An award or awards based solely on the ranking of proposals;
- 7.4.2. Discussions leading to best and final offers in which the City may not disclose private discussions leading to best and final offers;
- 7.4.3. Discussions leading to best and final offers, in which the City may not disclose information derived from proposals submitted by competing proposers;
- 7.4.4. Serial negotiations, beginning with the highest ranked Proposer;
- 7.4.5. Competitive simultaneous negotiations;
- 7.4.6. Multiple-tiered competition designed to identify, at each level, a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers;
- 7.4.7. A multi-step request for proposals requesting the submission of un-priced technical submittals, and then later issuing a request for proposals limited to the proposers whose technical submittals the City had determined to be qualified under the criteria set forth in the initial request for proposals; or
- 7.4.8. Any combination of methods described in PC 7.4 or as otherwise adopted by the purchasing agent.

7.5. The methods of contractor selection identified in PCR 7.4 shall conform to the procedures identified in these rules and the Model Rules.

7.6. The purchasing agent may, but is not required to, waive any nonconformity with the rules of contractor selection if the purchasing agent determines that the defect was minor and likely would not have had an effect on the outcome of the selection process.

7.7. Trade Service type contracts that exceed \$250,000 are required to have a Feasibility Determination and Cost Analysis done prior to the solicitation being issued. The Feasibility Determination will determine and document whether it is feasible for the City to use its own personnel or resources to perform the Trade Service that the City would otherwise procure. The Cost Analysis will determine and document whether it is less expensive to do the work with the City's own employees or through a contract. The solicitation agent will complete the Feasibility Determination and Cost Analysis using templates provided by the Purchasing Agent. A copy of the Determination will be kept with the procurement file and a copy will be sent to the Purchasing Division. Absent unique circumstances, the Feasibility Determination should occur before a Cost Analysis is conducted. If the Feasibility Determination results in a conclusion that it is not feasible for the City to use its own personnel or resources, a Cost Analysis does *not* need to be performed. Neither a Feasibility Determination or a Cost Analysis need to be conducted if the service being procured is a Professional Service.

## 8. Informal Solicitation Procedures.

The City may use the following procedure for informal solicitations in lieu of the procedures set forth in the Model Rules.

8.1. When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to persons selected by the solicitation agent, or in any other manner which the solicitation agent deems suitable for obtaining competitive quotes or proposals. The solicitation agent shall deliver or otherwise make available to potential offerors, a written scope of work, a description of how quotes or proposals are to be submitted and description of the criteria for award.

8.2. The solicitation agent shall attempt to obtain a minimum of three written quotes or proposals before making an award. If the award is made solely on the basis of price, the solicitation agent shall award the contract to the responsible offeror that submits the lowest responsive quote. If the award is based on criteria other than price, or in addition to price, the solicitation agent shall award the contract to the responsible offeror that will best serve the interest of the City, based on the criteria for award.

8.3. A written record of all persons solicited and offers received shall be maintained. If three offers cannot be obtained, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes.

## 9. Qualified Pools.

9.1. To create a qualified pool, the purchasing agent may invite prospective contractors to submit their qualifications to the City for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including professional services, and public improvements.

9.2. The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general circulation or through electronic advertisement. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at the City's main office and on its website.

9.3. Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the City.

9.4. The operation of each qualified pool may be governed by the provisions of a pool contract to which the City and all pool participants are parties. The contract shall contain all terms required by the City, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that the City may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any City contract.

9.5. Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the solicitation agent shall award all contracts for goods or services of the type for which a qualified pool is created from among the pool's participants, unless the solicitation agent determines that best interests of the City require solicitation by public advertisement. In that case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.

9.6. The purchasing agent may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.

9.7. The purchasing agent shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the City Council in the manner described in HMC 2.16.120.

## 10. Sole Source Procurements.

10.1. The City may award a public contract for goods or services without competition as a sole source procurement if the purchasing agent or contract review board, depending on the amount of the contract, makes a written finding that:

10.1.1. Efficient utilization of existing goods or services requires the acquisition of compatible goods or services;

10.1.2. The goods or services required for the exchange of software or data with other public or private agencies are available from only one source;

10.1.3. The goods or services are for use in a pilot or an experimental project; or,

10.1.4. Any other findings that support the conclusion that the goods or services are available from only one source.

10.2. Negotiation with a sole source contractor is desirable. The City is entitled to negotiate with any sole source contractor to obtain a favorable price, terms or conditions.

10.3. The City shall give notice of the determination that the goods or services or class of goods or services are available from only one source when the contract is estimated to be greater than the specified amount in the schedule of signature authority by publishing a notice on the City's website or comparable web site of another governmental jurisdiction at least seven (7) days before the contract is awarded.

11. Small Procurements.

11.1. For procurements of goods and services not exceeding \$5,000 the City may award a public contract as a small procurement pursuant to ORS 279B.065 and this rule. The City may choose any method of selecting such contractors, including, but not limited to, offering the contract to only one firm or conducting a competition for the contract.

11.2. State law prohibits a contract from being artificially divided or fragmented so as to constitute a small procurement under this rule.

11.3. Small procurements shall not be amended beyond \$5,000 without prior approval of the purchasing agent before the additional goods or services are provided.

12. Specifications and Brand Names.

12.1. Specification content is in the sole discretion of the City.

12.2. The City may consult with technical experts, suppliers, prospective contractors and representative of the industries with which the City will contract. The City shall take reasonable measure to ensure that no person who prepares or assists in the preparation of solicitation documents, specifications, plans or scopes of work, and that no business with which the person is associated, realizes a material competitive advantage in a procurement that arises from the City's use of those documents.

12.3. A "brand name or equal" specification may be used when it is advantageous to the City. The brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the City. The City's determination of what constitutes a product that is equal or superior to the product specified is final. Unless otherwise specified, the use of a brand name shall mean "brand name or equal."

12.4. As provided in HMC 2.16.090, a "brand name" specification may be used requiring a contractor to provide a specific brand only if the purchasing agent makes a written determination finding that the brand name will meet one or more of the following needs:

12.4.1. The use of a brand name specification is unlikely to encourage favoritism in the awarding of a public contract or substantially diminish competition for public contracts;

12.4.2. The use of a brand name specification would result in a substantial cost savings to the City;

12.4.3. There is only one manufacturer or seller of the product of the quality, performance or functionality required; or,

12.4.4. Efficient utilization of existing goods requires the acquisition of compatible goods or services.

12.5. The City's use of a brand name specification is subject to protest and review only as provided in PCR 15.2 and OAR 137-047-0710.

13. Rejection of Individual Bids or Proposals.

13.1. The City may reject any offer not in compliance with all prescribed solicitation procedures and requirements, and may reject for good cause any offer upon a written finding of the City that it is in the public interest to do so.

13.2. In addition, the City may reject an offer upon the City's finding that:

13.2.1. The contract is for a public work and the Commissioner of the Bureau of Labor and Industries has declared the bidder or proposer ineligible under ORS 279C.860; or

13.2.2. The vendor is not responsible. A vendor is not responsible if the City finds:

13.2.2.1. The bidder or proposer does not have available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the bidder or proposer to meet all contractual responsibilities;

13.2.2.2. The bidder or proposer does not have a satisfactory record of performance. The City shall document the record of performance of the bidder or proposer if the City finds the bidder not responsible under this rule;

13.2.2.3. The bidder or proposer does not have a satisfactory record of integrity. The City shall document the record of integrity of the bidder or proposer if the City finds the bidder or proposer not to be a responsible bidder or proposer under this rule. Lack of integrity also includes 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.

13.2.2.4. The bidder or proposer is not qualified legally to contract with the City, including the failure to have a business license from the City; or

13.2.2.5. The bidder or proposer has not supplied all necessary information in connection with the inquiry concerning responsibility. If the bidder or proposer fails to promptly supply information requested by the City concerning responsibility, the City shall base the determination of responsibility upon any available information, or may find the bidder or proposer not responsible.

13.2.3. The contract is for a public improvement and the Construction Contractor's Board lists the bidder or proposer as not qualified; or

13.2.4. Other circumstances relevant to the offer, bidder or proposer, indicate that acceptance of the offer may impair the integrity of the selection process.

13.3. For purposes of this rule, the City may investigate any bidder or proposer submitting an offer so that previously disqualified bidders or proposers, or their officers and directors, or principal owners may not, by subterfuge, change of ownership, or other adjustments in formal appearance, avoid application of this rule or of the disqualification provisions of state law and these rules.

#### 14. Surplus Property.

14.1. Surplus property may be disposed of by any of the following methods upon a determination by the purchasing agent that the method of disposal is in the best interest of the City. Factors that may be considered by the purchasing agent include costs of sale, administrative costs, and public benefits to the City. The purchasing agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.

14.1.1 Without competition, by transfer or sale to another City department or public agency.

14.1.2 By publicly advertised auction to the highest bidder.

14.1.3 By publicly advertised invitation to bid.

14.1.4 By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of professional services contracts.

14.1.5 The solicitation agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.

14.1.6 By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.

14.1.7 B y donation to any organization operating within or providing a service to residents of the City which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

14.2. Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost effective, including to disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.

14.3. An item (or indivisible set) of specialized and professional use, other than police officer's handguns, with a current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the purchasing agent.

14.4. City employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

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

14.6. The "Surplus Property Disposition Policy," originally adopted by the City Council on October 17, 2000, is incorporated into these rules as though fully set forth. That policy shall remain in effect until amended or repealed by rulemaking of the purchasing agent. The provisions of the "Surplus Property Disposition Policy" that assign responsibilities or duties to the City Council are amended to assign those responsibilities or duties to the purchasing agent.

15. General Rules on Protests.

15.1. The Model Rules govern protests except to the extent modified by these rules.

15.2. The purchasing agent is the "contract review authority" for purposes of protests of sole source procurements under OAR 137-047-0710.

15.3. The purchasing agent is the "contracting agency" for purposes of protests of multi-tiered and multistep solicitations under OAR 137-047-0720, protests of solicitations under OAR 137-047-0730 and protests of qualified products list determinations under OAR 137-047-0745.

16. Protests and Judicial Review of Special Procurements.

16.1. An affected person may protest the City's approval of a special procurement or a class special procurement.

16.2. A written protest of the City's approval shall be provided to the purchasing agent not later than seven (7) days after the approval of the special procurement or class special procurement unless a different time period is provided in the notice. The purchasing agent shall not consider a protest submitted after the timeline established for submitting such protest under this rule.

16.3. The written protest must include:

16.3.1. Sufficient information to identify the approval that is the subject of the protest;

16.3.2. A detailed statement of all the legal and factual grounds for the protest;

16.3.3. Evidence or supporting documentation that supports the grounds on which the protest is based;

16.3.4. A description of the resulting harm to the affected person; and

16.3.5. The relief requested.

16.4. The purchasing agent shall take the following actions, as appropriate:

16.4.1. The purchasing agent shall inform the affected person in writing if the protest was not timely filed;

16.4.2. The purchasing agent shall deny the protest and inform the affected person if it failed to meet the requirements of PCR 16.3 and the reasons for that failure;

16.4.3. If the protest was timely filed and provides the information required by this rule, the purchasing agent may deny the protest by issuing a decision in writing within seven (7) business days of the filing of the protest. The denial by the purchasing agent of the protest is final; or,

16.4.4. If the protest was timely filed and provides the information required by this rule, the purchasing agent may refer the protest and any response to the contract review board for decision.

16.5. If the protest is referred, the contract review board shall review the protest and any response, and seek additional information and argument if necessary. The board may conduct a public hearing. After review of the protest, the board may agree with the protest and take any necessary corrective action, deny the protest, issue a written response and provide that response to the affected person, or take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

16.6. An affected person may not seek judicial review of the City Council's approval of a special procurement or class special procurement unless it has complied fully with the protest requirements of this rule and exercised all administrative appeal rights.

17. Protest of Contract Award.

17.1. An adversely affected or aggrieved bidder or proposer must exhaust all avenues of administrative review and relief before seeking judicial review of the City's contractor selection or contract award decision.

17.2. Unless otherwise provided in the solicitation document and for a contract that is approved by the City Council, City staff's recommendation contained in the agenda item in the published City Council's agenda shall constitute the City's intent to award the contract. If the contract is not submitted to the City Council for approval prior to its execution, the notice of intent to award shall be posted on the City's website. The filing of a protest delays award of the contract until the protest is resolved.

17.3. An adversely affected bidder or proposer may protest the City's intent to award the contract if the person would be eligible to be awarded the contract in the event the protest was successful, i.e., the protesting bidder or proposer must claim that all lower bidders or higher-scoring proposers are ineligible for the award.

17.4. The reasons for a protest of intent to award are:

17.4.1. All lower bids, higher ranked proposals or other more advantageous offers are nonresponsive;

17.4.2. The City failed to conduct the evaluation of offers in accordance with the criteria or processes described in the solicitation document;

17.4.3. The City abused its discretion in rejecting the protester's offer as nonresponsive; or,

17.4.4. The City's evaluation of the offers was in violation of the City of Hillsboro Public Contracting Regulations, the Model Rules or the Oregon Public Contracting Code.

17.5. An adversely affected bidder or proposer must submit a protest to the purchasing agent within seven (7) days after the City's intent to award is published, unless a different protest period was provided in the solicitation document. The bidder's or proposer's protest must be in writing. The City will not consider a protest submitted after the time period established in this rule or such different period as may be provided in the City's solicitation document.

17.6. The protest must include the following information:

17.6.1. Sufficient information to identify the award that is the subject of the protest;

17.6.2. A detailed statement of all the legal and factual grounds for the protest as described in PCR 17.4;

17.6.3. Evidence or supporting documentation that supports the grounds on which the protest is based;

17.6.4. A description of the resulting harm to the protester; and,

17.6.5. The relief requested.

17.4. The purchasing agent shall take the following actions, as appropriate:

17.4.1. The purchasing agent shall inform the affected person in writing if the protest was not timely filed;

17.4.2. The purchasing agent shall deny the protest and inform the affected person if it failed to meet the requirements of PCR 17.4 and the reasons for that failure;

17.4.3. If the protest was timely filed and provides the information required by this rule, the purchasing agent may deny the protest by issuing a decision in writing within seven (7) business days of the filing of the protest. The denial by the purchasing agent of the protest is final; or,

17.4.4. If the protest was timely filed and provides the information required by this rule, the purchasing agent may refer the protest and any response to the contract review board for decision.

17.5. If the protest is referred, the contract review board shall review the protest and any response, and seek additional information and argument if necessary. The board may conduct a public hearing. After review of the protest, the board may agree with the protest and take any necessary corrective action, deny the protest, issue a written response and provide that response to the affected person, or take any other action that is in the best interest of the City while giving full consideration to the merits of the protest.

17.6. An affected person may not seek judicial review of the City's intent to award a contract or an award of a contract unless the person has complied fully with the protest requirements of this rule and exercised all administrative appeal rights.

## 18. Records Retention:

18.1 All records pertaining to the City's procurement of public contracts and adopted rules shall be retained and destroyed in accordance with the General Records Retention Schedule for Cities of Oregon (OAR Chapter 166, Division 200) and following the procedures established by the City Records Office.

19. Changes to the Work and Contract Amendments

19.1 Sections 19.2 through 19.6 of this rule apply to goods and services Contracts (not Professional Services, **except** that the “General Rules for Contract Amendments”, 19.2 **does** apply to Professional Services). For specific rules regarding Contract Amendments to Professional Services, see PCR 3.10. For specific rules regarding Contract Amendments for Public Improvement Contracts, please see 19.7.

19.1.1 Definitions As used in this rule:

19.1.1.1 "Amendment" means a written modification to the terms and conditions of a Contract, other than by Changes to the Work (Change Order), within the general scope of the original Procurement that requires mutual agreement between the City and the Contractor/Vendor.

19.1.1.2 "Changes to the Work" (Change Order) means a mutually agreed upon change related to a construction directive or other Written order issued by the City's authorized representatives to the Contractor. All Changes to the Work (Change Orders) falling within the general scope of a Public Improvement Contract can be issued under the contracts allowed and authorized change provisions as part of the regular administration of the Contract and, if applicable, adjusting the Contract Price or contract time for the changed Work.

19.2 General Rules for Contract Amendments (applicable to all goods and services contracts and Professional Services contracts)

19.2.1 The City may make Amendments to Contracts as set forth in this Rule under the following conditions:

19.2.1.1 Scope. The Amendment must be within the Scope of the original Solicitation Document, if any, and the Original Contract. When Amendments are agreed to or issued consistent with the Contract's Amendment provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance.

19.2.1.2 Original Contract. The Original Contract was awarded either:  
(a) According to the Hillsboro Municipal Code, HMC 2.16 Public Contracts, these Public Contracting Rules (PCR) or  
(b) State statute or administrative rule.

19.2.1.3 Legal Requirements. The Amendment is made consistent with applicable legal requirements;

19.2.1.4 Writing. All Amendments to Contracts must be in Writing;

19.2.1.5 Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Purchase Orders may be accepted by the action of the Provider in accordance with the terms and conditions of the Purchase Orders. All Amendments must receive all required approvals before the Amendments will be binding on the City.

19.3 Limited Amount. The total contract amount including one or more Amendments to a Contract must not exceed 20% of the Original Contract, and may not exceed the Departmental Signatory Authority which is currently \$100,000, or

19.4 Contract Amendments that do not exceed 20% of the original contract but cause the total contract amount to fall within the range of \$100,000 to \$150,000, must be authorized by the City Manager.

19.5 Cumulative contract amendments that have the total contract amount exceeding \$150,000 shall be approved by the City Council unless:

19.5.1 A contingency amount was established by the City Council when the original contract was approved that did not exceed 20% of the original contract amount. The contingency amount must be available from budgeted funds. City Departments may establish internal limitations and delegations for authorizing Contract Amendments including dollar limitations which are more restrictive than the forgoing amounts. The staff report must recommend and the minutes of the Council Meeting must reflect that the Contingency amount or percentage was approved.

19.6 Special Rules for Amendments Based on Dollar Threshold:

19.6.1 Small Procurements. See PCR 11

19.6.2 Informal Procurements. A Department may amend a Contract that was awarded as an Informal Procurement in accordance with PCR 8 (Informal Solicitation Procedures). Cumulative amendments may not allow the total contract amount to exceed the threshold for Formal Procurements as shown in the "Schedule of Signature Authority" unless exempted by the Purchasing Agent. If the total Contract amount including all Amendments would result in a Contract amount exceeding \$150,000, then the Department must request and obtain prior approval for a Special Procurement in accordance with HMC 2.16.070.

19.6.3 Formal Procurements. A Department may amend a Contract awarded through a formal advertised process in accordance with PCR 19.3 – 19.5.

19.6.4 Special Rule for Amendments of Sole-Source Procurements. A Department may amend a Contract awarded through a Sole Source Procurement in accordance with PCR 19.3 – 19.5.

19.6.5 Special Rule for Amendments of Contracts for Emergencies. Notwithstanding Sections 19.6.1 through 19.6.4, the City 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.

19.7 Special Rule for Amendments of Contracts and Change Orders for Public Improvements.

19.7.1 Change Provisions. Changes to the Work (Change Orders) are anticipated in construction and, accordingly, the City shall include change provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the City's 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 change provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance.

19.7.2 Change Order Limits. Generally cumulative change orders may not exceed 35% of the original contract amount and may not exceed the Departmental Signatory Authority which is currently \$100,000, or Change Orders that do not exceed 35% of the original contract but cause the total contract amount to fall within the range of \$100,000 to \$150,000, must be authorized by the City Manager.

19.7.3 Change Order Authority. Cumulative contract change orders which cause the original contract amount to exceed \$150,000 shall be approved by the City Council unless a contingency amount was established by the City Council when the original contract was approved and the contingency amount did not exceed 35% of the original contract amount. The contingency amount must be available from budgeted funds. City Departments may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations which are more restrictive than the forgoing amounts. Any Contingency amounts established must be recommended in the Staff report and appear in the minutes of the Council meeting as having been approved.

19.7.4 Contract Amendments. Contract Amendments to Public Improvement Contracts 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 specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

19.7.4.1 They are within the general scope of the original Procurement;

19.7.4.2 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;

19.7.4.3 In the case of a Contract obtained under an Alternative Contracting Method (e.g. design/build, CM/GC), any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

19.7.4.4 The Amendment is made consistent with this rule and other applicable legal requirements. ***(19. Changes to the Work and Contract Amendments added by administrative procedure, HMC 2.04.080, effective February 23, 2009)***