

RESOLUTION NO. 2017-28

A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES AND SCHEDULE OF SIGNATURE AUTHORITY AND REPEALING RESOLUTION 2005-03

Findings:

- A. The Oregon Public Contracting Code (“Code”), codified in ORS chapters 279A, 279B and 279C, governs most public contracting and procurement.
- B. The Code requires local governments to adopt rules governing personal service contracts.
- C. The Oregon Attorney General’s Office promulgates rules implementing the Code (the “Model Rules”). The Model Rules are found in Oregon Administrative Rules Chapter 137, divisions 46, 47, 48 and 49. The Model Rules are applicable to the City’s contracting and procurement unless the City adopts alternative rules that are consistent with the Code.
- D. Sandy’s current public contracting rules are contained in Resolution 2005-03.
- E. The City wants to update its contracting rules. Therefore, the Sandy City Council repeals Resolution 2005-03 and adopts this resolution as the City’s contracting rules.

THE CITY OF SANDY RESOLVES AS FOLLOWS:

Section 1. Public Contracting Rules for the City of Sandy.

1.10.010 General provisions

(1) Except as provided within these rules, City public contracting is governed by the Code and the Model Rules. These rules will prevail in the case of a conflict between them and the Model Rules.

(2) The Sandy City Council is the City’s Contract Review Board (“Board”). Except as otherwise provided in these rules, the powers and duties of the Board under the Code and Model Rules will be exercised by the Board and the powers and duties given or assigned to contracting agencies

by the Code or Model Rules will be exercised by the City Manager acting as the City's contracting agent.

(3) For the purposes of these rules, "City Manager" means the City Manager for the City of Sandy, or the City Manager's designee.

(4) For the purposes of these rules, "emergency" means circumstances that:

(A) Could not have been reasonably foreseen;

(B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(C) Require prompt execution of a contract to remedy the condition.

1.10.020 Personal service contracts

(1) "Personal service contract" means a contract for personal or professional services performed by an independent contractor, 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 attorneys, accounting and auditing services, information technology services, planning and development services, artists, designers, performers, property managers and consultants. The City Manager has discretion to determine whether a particular contract or service falls within this definition. For the purposes of this section, personal services contracts do not include contracts for architectural, engineering, photogrammetric, land surveying and, in very narrow instances, transportation-planning services when only such professionals may legally provide the service. The procedures for those contracts are found below at section 1.10.025.

(2) The following formal selection procedure will be used when the estimated payment to the contractor exceeds \$75,000.

(a) Announcement. The City will announce its intent to procure personal services through a newspaper of general circulation, and any other means the City deems appropriate, including contacting prospective contractors directly. Announcements will include:

- (A) A description of the proposed project;
- (B) The scope of the services required;Pu
- (C) The project completion dates;
- (D) A description of special requirements;
- (E) When and where the proposal materials may be obtained and to whom they must be returned;
- (F) The closing date; and
- (G) Other necessary information.

(b) Proposals. Proposals will include a statement that describes the prospective contractor's credentials, performance data, examples of previous work product or other information sufficient to establish contractor's qualification for the project, references, and other information identified by the City as necessary to make its selection.

(c) Initial screening. The City Manager will evaluate the qualifications of all proposers and select a prospective contractor or prospective contractors whose proposals demonstrates that the contractor is best qualified to meet the City's needs.

(d) Final selection.

(A) The City Manager may interview the finalists selected from the initial screening. The City Manager may decide that interviews are not warranted or necessary and may select a contractor after conducting the initial screening. At the City Manager's discretion, the interviews may be conducted before the Board.

(B) If interviews occur, after the interview process concludes the City Manager will make the final selection. If interviews are conducted before the Board, the Board will make the final selection.

(C) The final selection will be based upon applicant capability, experience, project approach, compensation requirements, references and any other criteria identified by the City as necessary for the City to select a contractor.

(3) The following informal selection procedure may be used when the estimated payment to the contractor does not exceed \$75,000 or when the City Manager determines that the informal procedures will not interfere with competition among prospective contractors, reduce the quality of services or increase costs. The City Manager will contact a minimum of three prospective contractors qualified to offer the services sought. The City Manager will request an estimated fee, and make the selection consistent with the City's best interests. If three quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.

(4) The City Manager may enter into personal service contracts not exceeding an estimated \$15,000 without following the procedures under subsection (2) or (3). However, the City Manager must make reasonable efforts to choose the most qualified contractor to meet the City's needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.

(5) The City Manager may negotiate with a single source for personal services if the services are available from only one contractor, or the prospective contractor has special skills uniquely required for the performance of the services. The City must make written findings to demonstrate why the proposed contractor is the only contractor who can perform the services desired.

(6) The City Manager may select a contractor without following any procedures when an emergency exists. In such instances, the City Manager must make written declarations of the circumstances that justify the emergency appointments.

1.10.025 Contracts for certain construction-related services

(1) Purpose. This section implements ORS 279C.100 to .125. The City will rely on this subsection, not the Model Rules, when it seeks to contract with an architect, engineer, photogrammetrist, land surveyor or (in very narrow instances) a transportation planner.

(2) Applicability. This section applies only to services meeting the following criteria:

(a) A contract with an Estimated Fee that exceeds \$100,000; and

(b) The contract is for a personal service that is *legally required* to be provided or performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor. For example: hiring an architect to design a building or structure, or hiring an engineer to design a wastewater system. Because the law requires licensed professionals to design buildings and infrastructure, the City would rely on this subsection to hire someone to perform those services. However, if the City were hiring an architect or engineer to perform project management services (for example), it may solicit and award such services under section 1.10.020 of these rules. See definition of “Related Services” below.

(c) If either (a) or (b) above is not satisfied, then the City may rely on section 1.10.020 of these rules to solicit and award the contract.

(d) Mixed contracts. Some contracts will contain a mixture of services covered by this section (i.e. services that only the particular consultant may legally perform) and Related Services. Whether the City uses section 1.10.020 or this section to solicit and award a mixed contract will depend upon the contract’s predominate purpose. The City will determine the predominant purpose based upon either the amount of money it estimates it will spend for covered services versus Related Services or the amount of time it estimates it the consultant will spend working on covered services versus Related Services. If covered services predominate, the City will solicit the contract under this section. If Related Services predominate, the City will solicit the contract under section 1.10.020.

(3) Definitions. The following definitions apply to this section:

(a) "Construction-Related Consultant" means an architect, engineer, photogrammetrist, land surveyor, a transportation planner in narrow instances defined below or a provider of Related Services.

(b) "Estimated Fee" means the City’s reasonably projected fee to be paid for a Construction-Related 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.

(c) “Price Agreement” 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 and possibly at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase, combined with a continuing obligation to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or Related Services where the City does not guarantee a minimum or maximum additional purchase.

(d) "Project" means all components of a City-planned undertaking that gives rise to the need for a Construction-Related Consultant's architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, or Related Services, under a contract.

(e) "Transportation Planning Services" only includes Project-specific transportation planning required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq. and no other types of transportation planning services. By way of example only, Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project required to comply with the National Environmental Policy Act, 42 USC 4321 et. seq.

(f) "Related Services" means personal services, other than architectural, engineering, photogrammetric, mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services. In other words, personal services that are *not required by law* to be performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor.

(4) Selection procedures.

(a) When selecting a Construction-Related Consultant to perform architectural, engineering, photogrammetric mapping, transportation planning or land surveying services under this section, the City must award a contract to the most qualified consultant.

(b) In accordance with Oregon law, when determining which consultant is most qualified, the City may only solicit or use pricing policies and pricing proposals, or other price information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Construction-Related Consultant's compensation *after* the City has selected the most qualified consultant.

(c) When soliciting a Construction-Related Consultant under this section, the City will use a Request for Proposals (“RFP”) or a Request for Qualifications (“RFQ”) followed by a RFP, as described below. The City may advertise RFQs and RFPs in any manner it deems appropriate. If the City directly solicits qualifications or proposals from Construction-Related Consultants, it will attempt to contact at least three consultants.

(d) RFQ. The City may in its sole discretion issue a RFQ to evaluate potential Construction-Related Consultants and establish a short list of qualified Construction-Related Consultants to whom it may issue a RFP for some or all of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or Related Services described in the RFQ. RFQs may include:

(A) A brief Project description;

(B) A description of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or Related Services required for the Project;

(C) Any conditions or limitations that may constrain or prohibit the selected Construction-Related Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) A response deadline and a description of how or where to submit a response;

(E) A statement that interested consultants respond solely at their own expense;

(F) RFQ evaluation criteria; and

(G) Any other elements the City Manager deems appropriate.

(e) RFP. The City will issue a RFP to select the most qualified Construction-Related Consultant, regardless of whether an RFQ precedes a RFP. RFPs will include:

(A) 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 that the City will use to select the most qualified Construction-Related Consultant, including the weight, points or other classifications applicable to each criterion. Without limitation, the criteria may include:

(i) Proposers' availability and capability to perform the services described in the RFP;

(ii) Experience of proposers' key staff persons in providing similar services on similar projects within the last three years;

(iii) The amount and type of resources, and number of experienced staff persons Proposers will commit to the Project;

(iv) Proposers' demonstrated ability to successfully complete similar Projects on time and within budget, including the hourly rates for key personnel and related cost data for similar Projects in the previous 12 months;

(v) References and recommendations from past clients;
and

(vi) Any other criteria the City Manager deems appropriate.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Construction-Related Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews will or may occur and, if so, how the interview will factor into the City's selection;

(E) A proposal deadline and a description of how or where to submit a proposal;

(F) A statement whether the City will accept proposals in electronic format;

(G) A statement that interested consultants respond solely at their own expense;

(H) A statement reserving the City's right to reject any or all proposals and its right to cancel the RFP at anytime if doing either would be in the public interest;

(I) A statement directing proposers to the protest procedures set forth in the RFP;

(J) A statement whether or not the City will hold a pre-proposal meeting for all interested

Construction-Related Consultants to discuss the Project and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(K) Any other elements the City Manager deems appropriate.

(f) After selecting the most qualified Construction-Related Consultant in accordance with a RFP, the City will notify each proposer accordingly and state that it will begin negotiating a contract with the most qualified consultant. A resulting contract will at least include:

(A) The consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the consultant for the services required under the contract;

(C) Legally required terms; and

(D) Any other provisions the City believes to be in its best interest to negotiate.

(g) The City will formally terminate negotiations in writing with the most qualified consultant if it is unable for any reason to negotiate a contract within a reasonable amount of time, as the City may determine in its sole discretion. The city may thereafter negotiate with the second ranked consultant, and if necessary, with the third ranked consultant, and so on, until negotiations result in a contract. If negotiations with any consultant do not result in a contract within a reasonable amount of time, the City may end the particular solicitation. Nothing in this section precludes the City from re-entering negotiations, in its own discretion, with a consultant if negotiations were previously terminated for the same contract.

(5) Price agreements. 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 Construction-Related Consultant to decide whether to submit a proposal;

(b) Specify whether the City intends to award a Price Agreement to one consultant or to multiple consultants. If the City will award a Price Agreement to more than one consultant, the solicitation document and Price Agreement will describe the criteria and procedures the City will use to select a consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve architectural, engineering, photogrammetric mapping, transportation planning or land surveying services are at the City's sole discretion.

(c) Specify the maximum term for assigning services under the Price Agreement.

1.10.030 Authority to electronically advertise solicitations for goods and services

(1) The City Manager is authorized to develop an “electronic procurement system” in accordance with OAR 137-047-0300(2)(b). As described in OAR 137-046-0110(16), this is an information system accessible through the internet that allows the City to post electronic advertisements and receive electronic offers for goods and services. When an electronic procurement system is in place, the Model Rules allow procurement solicitations to be advertised exclusively on the internet. This saves the City time and money over newspaper advertisements.

(2) Prior to any development of an electronic procurement system, the City may advertise solicitations for goods and services on the internet in addition to newspaper advertisements.

1.10.040 Authority to electronically advertise solicitations for public improvements

(1) For all public improvement contracts with an estimated cost not exceeding \$125,000, the City Manager may electronically advertise solicitations in a manner deemed appropriate. This method of advertising will save the City time and money, may be used exclusively, and is allowed under ORS 279C.360(1).

(2) An advertisement for a public improvement contract with an estimated cost over \$125,000 must be published at least once in a trade newspaper of general statewide circulation, such as the Daily Journal of Commerce.

1.10.050 Small procurements

(1) As provided by ORS 279B.065, any procurement of goods or services not exceeding \$10,000 may be awarded in any manner the City Manager finds practical or convenient, including direct selection or award.

(2) A small procurement contract may be amended in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total contract price to greater than \$12,500.

(3) A procurement may not be artificially divided or fragmented to qualify for this section.

1.10.060 Sole-source procurements

(1) Pursuant to ORS 279B.075(1), the City Manager is authorized to declare in writing certain goods and services to be available from only one source.

(2) The determination of a sole-source must be based on findings required by ORS 279B.075(2), and otherwise be processed in accordance with OAR 137-047-0275.

1.10.070 Notice of intent to award certain contracts

(1) At least seven days before the award of a public contract solicited under a traditional invitation to bid or request for proposals, the City will post or provide to each bidder or proposer notice of the City's intent to award a contract.

(2) If stated in the solicitation document, the City may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of the City's intent.

(3) As an alternative, the City may provide written notice to each bidder or proposer of the City's intent to award a contract. This written notice may be provided electronically or through non-electronic means.

(4) The City may give less than seven days notice of its intent to award a contract if the City determines in writing that seven days is impracticable as allowed by ORS 279B.135.

(5) This section does not apply to goods and services contracts awarded under small procurements under these rules, or other goods and services contracts awarded in accordance with ORS 279B.070, 279B.075, 279B.080 or 279B.085.

(6) This section does not apply to any public improvement contract or class of public improvement contracts exempt from competitive bidding requirements.

(7) A protest of the City's intent to award a contract may only be filed in accordance with OAR 137-047-0740 or OAR 137-049-0450, as applicable.

1.10.080 Procedure for surplus property

(1) Surplus property is property owned by the City such as office furniture, computers, equipment, vehicles, excluding real property, that the City Manager determines is surplus and no longer useful to the City. Real property is subject to a different procedure under state law.

(2) The City Manager may authorize the sale, donation or destruction of surplus property. Surplus property may be sold through the informal solicitation of bids or through an auction, including an online auction. The City Manager has the discretion to advertise the sale of surplus property in a newspaper of city-wide circulation.

(3) Employees of the City may purchase surplus property, so long as at least three individuals or entities have bid on the property and the employee's bid is the highest bid.

1.10.090 Signature authority

(1) The purpose of this section is to clarify when the City Manager may bind the City to a purchase of, or a contract for, goods, services (including personal services) and public improvements (collectively "Purchases") without additional Board authorization. In order to bind the City to a Purchase, the City Manager must sign a document related to the Purchase. For the purposes of this section, "signing" a document includes a digital signature or authorization.

(2) If the City's adopted budget for a given fiscal year includes or anticipates the Purchase and the cost of the purchase does not exceed \$100,000, the City Manager may bind the City without additional Board authorization. For the purposes of this section, the City Manager may exercise reasonable discretion in determining whether the adopted budget anticipates a Purchase.

(3) For Purchases with a value exceeding \$100,000 or if the City's adopted budget for a given fiscal year does not include or anticipate the Purchase regardless of the dollar amount, the Board must authorize the Purchase in order to bind the City to it.

Section 2. Resolution No. 2005-03 is repealed.

Section 3. This resolution is effective on the date of its adoption.

THIS RESOLUTION IS ADOPTED BY THE CITY OF SANDY THIS ____ DAY OF _____, 2017.

Attest:

Bill King, Mayor

Karey Milne, City Recorder