

**RESOLUTION NO. 24-01**

**A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES AND PROCEDURES AND REPEALING  
RESOLUTION NO. 23-14**

WHEREAS, the City of Scappoose ("City") is an Oregon municipal corporation which is subject to Oregon's public contracting laws; and

WHEREAS, the City Council of the City serves as the City's Local Contract Review Board ("LCRB"); and

WHEREAS, and the City Council wishes to amend its existing rules to align with state law and to increase efficiency and clarity of the contracting and procurement process;

WHEREAS, the City is required to adopt public contracting rules consistent with the revised Public Contracting Code.

**NOW, THEREFORE, BE IT RESOLVED:**

1. That, except as otherwise provided herein, the City hereby adopts the Oregon Attorney General's Model Public Contracting Rules ("Model Rules") as the contracting rules for the City, as such Model Rules now exist or are later modified.
2. That the City adopts the public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to the Model Rules.
3. That the City shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Exhibit A Rules are consistent with current law.
4. This resolution shall take effect on date of adoption.

**APPROVED AND ADOPTED** on February 5, 2024.



\_\_\_\_\_  
Mayor Joseph A. Backus

**ATTEST:**



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City Recorder Susan M. Reeves, MMC

## EXHIBITA

### PUBLIC CONTRACTING RULES AND PROCEDURES

#### A. Personal Services (other than Construction-Related Personal Services).

(1) Definition. "Personal Services" shall be defined to include those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects; engineers; land surveyors; photogrammetrists; transportation planners; attorneys; accountants; auditors; computer programmers; artists; designers; performers; and consultants. The City Manager or designee shall have the authority to determine whether a particular service is a "personal service" under this definition.

(2) Large Procurements. When the estimated payment to the contractor for personal services is above \$250,000, the City shall seek competitive sealed proposals in accordance with OAR 137-047-0260. When practical, the City shall attempt to advertise such proposals to COBID-certified businesses.

(3) Intermediate Procurements. The following informal selection procedure may be used when the estimated payment to the contractor is equal to or less than \$250,000 and above \$75,000. The City Manager or designee will contact a minimum of three (3) prospective contractors qualified to offer the services sought, including, when practical, COBID-certified businesses. The City Manager will request an estimated fee, and make the selection consistent with the City's best interests. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.

(4) Small Procurements. The City Manager may enter personal service contracts when the estimated payment is less than \$75,000 in any manner the City Manager finds practical or convenient, including direct selection or award. 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) Sole Source. 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, in general compliance with ORS 279B.075, and shall present such findings to City Council for review and approval.

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

#### B. Contracts for Construction-Related Personal Services.

(1) Purpose. This section implements ORS 279C.100 to 279C.125. The City will rely on these rules, not the Model Rules, for a contract with an architect, engineer, photogrammetrist, land surveyor, as each is defined in ORS 279C.100, and (in very narrow instances) a transportation planner (collectively referred to herein as "Construction-Related Personal Services").

(2) Applicability. This section applies only to a Construction-Related Personal Service contract that meets the following criteria:

- (a) The estimated payment to the contractor 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 hiring an engineer to design a wastewater system. Because the law requires licensed professionals to design buildings and infrastructure, the City may rely on this subsection to hire someone to perform those services. However, if the City is hiring an architect or engineer to perform project management services (for example), it may solicit and award such services under Section A of these Rules. See definition of “Related Services” below.

- (c) If either (a) or (b) above is not satisfied (i.e. the contract is for a personal service that is legally required to be provided by a licensed architect, etc. *but* is estimated to not exceed \$100,000; *or* the contract will require an engineer, etc. to perform a Related Service) then the City may rely on Section A of these rules to solicit and award the contract.

(3) 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 this Section or Section A to solicit and award a mixed contract will depend upon the predominate purpose of the contract. The City will determine the predominate 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 that 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 A.

(4) Small Procurements. For clarity’s sake, the City Manager may enter Construction-Related Personal Service contracts when the estimated payment is less than \$100,000 in any manner the City Manager finds practical or convenient, including direct selection or award. 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) Exception for Emergencies. Pursuant to ORS 279C.110(9), the City may directly appoint a Construction-Related Personal Service contract in an emergency.

(6) Definitions. The following definitions apply to this Section:

- (a) “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.

- (b) “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.

(7) Intermediate Procurements. The following informal selection procedure may be used when the estimated payment to the consultant for Construction-Related Personal Services is equal to or less than

\$250,000 and above \$1 00,000. The City Manager or designee will contact a minimum of three (3) prospective consultants qualified to offer the services sought, including, when practical, COVID-certified businesses. The City Manager will request an estimated fee, and make the selection consistent with the City's best interests, to the most qualified consultant. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.

(8) Large Procurements.

- (a) When the estimated cost of the contract for Construction-Related Personal Services is greater \$250,000, a contract shall be awarded following a qualifications based selection procedure focusing on the consultant's qualifications for the type of professional service required, taking into account the candidate's specialized experience, capabilities and technical competence; resources; record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration; ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses; availability to the project locale; familiarity with the project locale; and proposed project management techniques. When practical, the City shall attempt to advertise such bid or proposal to COVID-certified businesses.
- (b) Unless the City follows the process set forth in subsection (c) of this Section, the City may not solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation until after the City has selected a qualified professional for award.
- (c) Notwithstanding subsection (b) of this Section, the City may request pricing policies or pricing proposals from prospective consultants, including an estimate of the number of hours that will be needed to perform the work described in the solicitation, and a schedule of hourly rates, if the City:
  - (i) States in the following in its solicitation document:
    - a. That the City will screen and select prospective consultants as provided in ORS 279C.110(5);
    - b. How the City will rank proposals from prospective consultants, with a specific focus on:
      - 1. Which factors the City will consider in evaluating proposals, including pricing policies, proposals or other pricing information, if the City will use pricing policies, proposals or other pricing information in the evaluation; and
      - 2. The relative weight the City will give each factor, disclosing at a minimum the number of available points for each factor, the percentage each factor comprises in the total evaluation score and any other weighting criteria the City intends to use;
    - c. An estimate of the cost of professional services the City requires for the procurement; and
    - d. A scope of work that is sufficiently detailed to enable a prospective consultant to prepare a responsive proposal.
  - (ii) Evaluates each prospective consultant on the basis of the prospective consultant's qualifications to perform the professional services the City requires for the procurement.

- (iii) Announces the evaluation scores and rank for each prospective consultant after completing the evaluation described in paragraph (ii) of this subsection. The City may determine that as many as three of the top-ranked prospective consultants are qualified to perform the professional services the City requires for the procurement and may request a pricing proposal for the scope of work stated in paragraph (i)(d) of this subsection from each of the top-ranked consultants. The pricing proposal must consist of:
    - a. A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the City requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
    - b. A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement.
  - (iv) Permits a prospective consultant identified as qualified under paragraph (iii) of this subsection to withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.
  - (v) Completes the evaluation and selects a consultant from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (iv) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant's price proposal
- (d) If the City and the professional are unable to negotiate a reasonable and fair amount of compensation, as determined solely by the City, the City shall, either orally or in writing, formally terminate negotiations with the selected candidate and may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the contracting agency terminates the consultant contracting process.

**C. Delegation.**

(1) Except as otherwise provided in these rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the City Council.

(2) Unless expressly limited by the Local Contract Review Board or these Rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the City Manager or the City Manager's designee, including the authority to enter into emergency contracts pursuant to ORS 279B.080.

(3) All contracts estimated to cost more than \$75,000 in a calendar year must be approved by City Council. All public contracts estimated to cost \$75,000 or less in a calendar year may be entered into by the City Manager or designee without Council approval.

(4) The authority delegated to the City Manager under Subsection (3) of this Section shall not include intergovernmental agreements authorized by ORS Chapter 190 or agreements for loans or grants from state or federal agencies, financial institutions or otherwise; provided however, that nothing herein shall preclude the City Manager or their delegate from applying for such grants or loans.

(5) Except as provided within these Rules, City public contracting is governed by the Oregon Public Contracting Code (ORS Chapters 279, 279 A, 279B and 279C) (the “Public Contracting Code”) and the Oregon Attorney General’s Model Public Contract Rules (OAR Chapter 137, divisions 46, 47 and 49) (the “Model Rules”).

**D. Special Procurements, Sole Source, and Exemptions.**

(1) The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.

(2) The Local Contract Review Board may award a contract for goods or services from a single source if the goods or services are available from only one company, or the prospective company has special skills uniquely required for the provision of the goods or the performance of the services. The City must make written findings to demonstrate why the proposed company is the only company who can provide the goods or perform the services desired, in general compliance with ORS 279B.075.

(3) The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements or Construction-Related Personal Services from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

**E. Small Procurements (Under \$25,000) for Goods and Services, and Public Improvements.**

(1) Public contracts under \$25,000 are not subject to competitive bidding requirements. The City Manager or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the City.

(2) The City may amend a public contract awarded as a small procurement beyond the \$25,000 limit in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that is greater than \$31,250.

(3) A procurement may not be artificially divided or fragmented to avoid this Section.

**F. Intermediate Procurements for Goods and Services, and Public Improvements.**

(1) If a contract for procurement of goods and services estimated to cost between \$25,000 and \$250,000, or a contract for a public improvement that is estimated to cost between \$25,000 and \$100,000, the City Manager or designee will contact a minimum of three (3) prospective contractors qualified to offer the goods or services or public improvement sought, including, when practical, COBID-certified businesses. The City Manager will request an estimated fee, and make the selection consistent with the City’s best interests. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.

(2) The City may amend a public contract awarded as an intermediate procurement beyond the stated limitations in accordance with OAR 137-047-0800 or OAR 137-049-0910, as applicable, provided the cumulative amendments shall not increase the total contract price to a sum that is greater than \$312,500.

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

**G. Large Procurements for Goods and Services, and Public Improvements.**

(1) When the estimated payment to the contractor for goods or services is above \$250,000, the City shall either seek competitive sealed bidding in accordance with OAR 137-047-0255 or competitive sealed proposals in accordance with OAR 137-047-0260.

(2) When estimated payment to the contractor for a public improvement is above \$100,000, the City shall follow the solicitation procedures set forth in OAR 137-049-0200.

(3) When practical, the City shall attempt to advertise such bids or proposals to COBID-certified businesses.

(4) A procurement may not be artificially divided or fragmented to avoid this Section.

#### **H. Emergency Contracts.**

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

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

(3) Emergency contracts may be awarded as follows:

(a) Goods and Services. Emergency contracts for procurement of goods and services may be awarded pursuant to ORS 279B.080 and section C, "Delegation," of these Rules.

(b) Public Improvements. The City hereby adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.

#### **I. Local Preference Allowed in Evaluation of Bids or Proposals.**

When possible, the City shall use solicitation documents and evaluation criteria that give preference to goods that are fabricated or processed, or services that are performed entirely within the State of Oregon if the cost of the goods or services does not exceed 110% of the cost of the goods or services not fabricated or processed or performed entirely within the State of Oregon. If more than one bidder or proposer qualifies for this preference, the City may give an additional 5% preference to a qualifying bidder or proposer that resides in or is headquartered in the State of Oregon.

#### **J. Disposal of Surplus Property.**

(1) "Surplus Property" is defined as any personal property under the ownership or control of the City that has been determined by the appropriate authority as being of no further, or minimal use or value to the City.

(a) When the current estimated market value of a single item of personal property is equal to or greater than \$1,000.00, or a group of items greater than a single discrete item is equal to or greater than \$5,000.00, a shall be submitted request to the City Council for an approval to declare such property as Surplus Property. The City Council shall, by resolution, declare such property Surplus Property and authorize the means by which the City may dispose of the property, including granting the City Manager discretion to dispose of the property in any appropriate manner, including in accordance with Section (3) below. The City Council may require the City Manager to obtain an appraisal of the property prior to disposition.

(b) When the current estimated market value for a single item of personal property is less than \$1,000, or a group of items greater than a single discrete item is less than \$5,000, the City Manager or their designee are authorized to declare such property as Surplus Property and dispose of the item(s) by any means described in Section (3) below.

(c) Vehicles and large equipment always require Council authorization to declare as Surplus Property, regardless of the estimated market value.

(2) Surplus Property may be disposed of in the manner that is most advantageous to the City or the community at large, with a preference towards auctioning or donating surplus items whenever possible, including, but not limited to, the following:

(a) Public Auction. Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the Surplus Property. Employees of the City may purchase Surplus Property from the City only at an advertised auction, and only if the employee submits the highest bid for such property.

(b) Donation. Surplus Property may be donated or sold to any non-profit organization, any other local government, or any state or federal program created to dispose of surplus property.

(c) Disposal. Surplus Property determined to be of insufficient value to merit auction or donation may be disposed of in any appropriate manner.

(d) Electronics and Computers Containing Digital Information. Any computers or electronics determined to be Surplus Property will have hard drives or other internal storage electronically wiped prior to disposal so as to prevent retrieval of data, or will have hard drives or other internal storage removed and destroyed prior to disposal, in accordance with any applicable City IT policies. For cell phones, tablets, and other mobile devices, this includes a factory reset, or resetting in a manner by which any data native to the device placed there by the City of Scappoose shall be permanently removed.

#### **K. Appeals of Prequalification Decisions and Debarment Decisions.**

(1) Review of the City's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply to hearings on such decisions by the LCRB:

(a) Notices shall be submitted in writing to the City Manager. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.

(b) Upon opening of the hearing, City staff shall explain the City's decision being appealed and the justification thereof. The appellant shall then be heard. Time for the appellant's testimony shall be established by the Mayor. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Mayor.

(c) Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the City's decision shall be provided time to be heard, with time limits established by the Mayor. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Mayor shall close the hearing.



(d) When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

**L. Notice of Intent to Award Certain Contracts.**

(1) At least seven days before the award of a public contract solicited under any 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.

(5) This Section does not apply to any goods or service contract, public improvement contract or class of public improvement or goods or services contracts exempted from competitive bidding requirements.

(6) A protest of the City's intent to award a contract may only be filed in accordance with OAR 137-047-0740, OAR 137-048-0240, or OAR 137-049-0450, as applicable. Protests to the City's intent to award a personal service contract under Section A may only be filed in accordance with OAR 137-047-0740.

**M. Concession Agreements.**

(1) A "concession agreement" is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned by the City, and under which the concessionaire makes payments to the City based, in whole or in part, on the concessionaire's sales revenues. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

(2) Concession agreements are not required to be competitively bid. However, when it is in the City's best interests to do so, the City may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

**N. Purchases from Federal Catalogs.**

(1) By Resolution No. 05-01, the LCRB has adopted the following rules for procurement of goods from federal catalogues:

Subject to applicable Council approval requirements stated in the City's Contracting Rules, the City may purchase goods from federal catalogues without competitive bidding when the procurement is pursuant to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107347). Purchases under other federal laws will be permitted upon a finding by the Local Contract Review Board that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

**O. Electronic Advertising**

(1) Pursuant to ORS 279C.360 and ORS 279B.055, electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost-effective to do so. The City

Manager or designee shall have the authority to determine when electronic publication is appropriate, and consistent with the City's public contracting policies.

(2) Notwithstanding the foregoing, any 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.