

**ORDINANCE NO. 05-610-O****AN ORDINANCE ADOPTING PROCEDURES FOR PUBLIC CONTRACTING**

**WHEREAS**, the Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794)(“The Public Contracting Code”), which was signed by the Governor, and has an operative date of March 1, 2005; and

**WHEREAS**, the Public Contracting Code requires the City of Columbia City to designate a Local Contract Review Board, and to adopt contracting rules in areas not covered by the Public Contracting Code or “Model Rules” adopted by the Attorney General; and

**WHEREAS**, the Public Contracting Code divides powers and duties for contracting into two categories: those that must be performed by the local “Contract Review Board;” and those that must be performed by the “Contracting Agency” for City of Columbia City.

**CITY OF COLUMBIA CITY DOES ORDER AS FOLLOWS:**

**Section 1: Definitions:** As used in this Chapter, the following words or phrases shall have the following meanings. All words and phrases not defined in this Section shall have the meanings ascribed to them in the Public Contracting Code or the Model Rules adopted by the Oregon Attorney General thereunder (“Model Rules”)

**A) Contracting Agency:** The City Council or other governing body of City of Columbia City.

**B) District:** The City of Columbia City.

**C) Formal Quote:** Procedure pursuant to which written offers are solicited by advertising or other writing stating the quantity and quality of goods or services to be acquired, and which offers are received by the Contracting Agency on or before a stated date. In soliciting formal quotes, the Contracting Agency shall seek quotes from a sufficiently large number of potential offerors to insure sufficient competition to meet the best interests of the District. An award based on less than three formal quotes may be made provided the Contracting Agency makes a written record of the effort to obtain quotes.

**D) Informal Quote:** Procedure pursuant to which written or verbal offers are gathered by correspondence, telephone or personal contact stating the quantity and quality of good or services to be acquired. In soliciting informal quotes, the Contracting Agency shall seek quotes from a sufficiently large number of potential offerors to insure sufficient competition to meet the best needs of the District. An award based on less than three quotes may be made, provided the Contracting Agency makes a written record of the effort to obtain quotes.

**E) Local Contract Review Board (LCRB):** The City Council or other governing body of City of Columbia City.

**F) Personal Services Contract:** A contract to retain the services of an independent contractor, including architects, engineers, land surveyor and related services. The contract shall be predominantly for services requiring special training or certification, independent judgment, skill and experience.

**G) Purchasing Agent:** The City Recorder or other Chief Executive Officer of City of Columbia City.

**H) Sole Source Procurement:** A contract for goods or services, or a class of goods or services, available from only one source.

**I) Value Engineering:** The identification of alternative methods, materials or systems which provide for comparable function at reduced initial or lifetime cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

**J) Works of Art:** All forms of original creations of visual art, including but not limited to:

- 1) **Painting:** All media, including both portable and permanently affixed or integrated works such as murals
- 2) **Sculpture.** In the round, bas-relief, high relief, mobile, fountain, kinetic, electronic, etc., in any material or combination of materials;
- 3) **Miscellaneous Art:** Prints, clay, drawings, stained glass, mosaics, photography, fiber and textiles, wood, metal plastics and other materials or combination of materials, calligraphy, and mixed media, any combination of forms of media, including collage.

**Section 2: Contract Review Board.** The City of Columbia City is designed to continue as the Local Contract Review Board of the District and shall have all of the rights, powers and authority necessary to carry out the provisions of ORS Chapters 279A, 279B, and 279C (the “Public Contracting Code”). Except as otherwise provided in this Ordinance, the City Recorder, or his designated purchasing agent, is designated as the District’s Contracting Agency for purposes of contracting powers and duties assigned to the District as a contracting agency under the Public Contracting Code.

**Section 3: Public Contracts:** This Section applies to all public contracts that are not contracts for personal services. A public contract shall not be artificially divided or fragmented to qualify for a different award procedure than that provided by this Section.

**A) Classes and Procedures:** The following classes of public contracts for goods and services and for public improvements and the respective award procedures are created:

1) **Public Contracts Valued at Less than \$5,000.** A public contract for an amount which is valued at less than FIVE THOUSAND DOLLARS may be awarded by the Contracting Agency based on informal quotes. Amendments to public contracts under this Section shall not cause the contract price to exceed SIX THOUSAND DOLLARS.

2) **Public Contracts Valued at \$5,000 or More But Less than \$100,000.** A public contract for an amount which is valued at FIVE THOUSAND DOLLARS or more, but less than ONE HUNDRED THOUSAND DOLLARS, shall be awarded by the Contracting Agency based on formal quotes. Amendments to public contracts under this Section may not cause the contract price to exceed an amount that is greater than twenty-five percent (25%) of the original contract price.

3) **Public Contracts From \$100,000.** A public contract for an amount which is valued at ONE HUNDRED THOUSAND DOLLARS or more shall be awarded by the Contracting Agency based on competitive sealed bidding or competitive sealed proposals pursuant to the Public Contracting Code.

**B) Exemptions:** The requirements of subsection (A) do not apply to the following classes of public contracts:

1) **Brand Names of Products, “or Equal,” Single Seller and Sole Source.**

a) The District may purchase brand names or products from a single seller or sole source without competitive bidding subject to the limitations of this rule, pursuant to ORS 279B.075.

b) The District has determined that value engineering, specialized expertise required, public safety and/or technical complexity, generally do not apply to this exemption.

c) Solicitation specifications for public contracts of the District shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections d. and e. of this rule.

d) The District may specify a particular brand name, make or product suffixed by “or equal,” “or approved equal,” “or equivalent,” “or approved

equivalent” or similar language if there is no other practical method of specification after documenting the procurement file with the following:

- i) A brief description of the solicitation(s) to be covered, including contemplated future purchases;
  - ii) The brand name, mark or product to be specified; and
  - iii) The reasons the District is seeking this procurement method, which shall include any of the following findings in the procurement file:
    - a) It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of the public contracts or substantially diminish competition; or
    - b) Specification of the brand name, mark or product would result in cost savings to the agency; or
    - c) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
  - iv) The District shall make reasonable effort to notify all known suppliers of the specified product and invite such vendors to submit competitive bids or proposals.
- e) The District may purchase a particular product or service available from only one source, after documenting the procurement file with the District’s findings of current market research to support the determination that the product is available from only one seller or source. The District’s findings shall include:
- i) A brief description of the contract or contracts to be covered, including contemplated future purchases;
  - ii) Description of the product or service to be purchased; and
  - iii) The reasons the District is seeking this procurement method, which shall include any of the following:
    - a) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies or services; or
    - b) The required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments; or
    - c) The particular product is for use in a pilot or an experimental project.
- f) The District may specify a product or service available from only one manufacturer but available through multiple sellers, after documenting the procurement file with the information required in d(i-iv) of this rule above, and subject to the following:

- i) If the total purchase is \$5,000 or more but does not exceed \$100,000 and a comparable product or service is not available under an existing state cooperative purchasing contract, competitive quotes shall be obtained by the District and retained in the procurement file;
- ii) If the purchase does not exceed \$100,000, and the comparable product or service is available under an existing cooperative purchasing contract, authorization from LCRB to proceed with the acquisition shall be first requested and obtained. The acquisition process would then be subject to the requirements and documentation in this rule; or
- iii) If the amount of the purchase exceeds \$100,000, the product or service shall be obtained through competitive bidding unless a specific exemption is granted by the LCRB.

g) If the District intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed five years, the District will so state in the solicitation file and in the solicitation document, if any. Such documentation shall be sufficient notice as to subsequent purchases. If the total purchase amount is estimated to exceed \$100,000, this shall be stated in the advertisement for bids or proposals.

2) **Emergency Contracts:**

a) Pursuant to the requirements of ORS 279C.335(5), ORS 279B.080 and this rule, the District may, at its discretion, enter into a public contract without competitive bidding if an emergency exists. “Emergency” means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that require prompt performance of a contract to remedy the condition.

b) The LCRB may, by order, resolution or other official action declare the existence of the emergency stating with specificity either in the order, resolution, other documentation of official action or in the minutes or record of its official proceedings, the findings describing the emergency conditions that require prompt execution of the contract.

The findings shall include a statement of the anticipated harm from failure to establish the contract on an expedited basis and record the measures taken to encourage competition to the extent reasonable under the circumstances, the amounts of the bids, quotes or proposals obtained and the reason for selecting the contract. There is no dollar limit upon such action by the LCRB.

c) Under delegation of authority by the LCRB, the Contracting Agency may declare the existence of the emergency, which shall authorize the

District to enter into an emergency contract. The Contracting Agency must make written findings describing the emergency conditions that require prompt execution of the contract.

d) Any contract awarded under this exemption shall be awarded within a reasonable period of time or 60 days, whichever is less, following declaration of the emergency unless an extension is granted by the LCRB pursuant to ORS 279C.335(5) and ORS 279B.080.

3) **Federal Contracts, Purchases Under:**

a) When the price of goods and services has been established by a contract of the federal government pursuant to a federal contract award, the District may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding.

b) The District has determined that value engineering, generally, does not apply to this exemption.

c) In exercising its authority under this exemption, the District shall:

i) Obtain and document permission from the appropriate federal agency granting permission to the District to purchase under the federal contract; and

ii) Document the cost savings to be gained for the District from the anticipated purchase(s) from the federal contract.

d) The District shall not contract pursuant to this rule in the absence of a cost savings to the District by using this method.

4) **Contracts Under Certain Dollar Amounts:**

a) The District may, at its discretion, let public contracts not to exceed \$100,000 for the purchase of goods, materials, supplies and services including trade-related projects such as construction, maintenance, repair or similar labor and materials contracts without formal competitive bidding, if the District has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are met:

i) Where the contract is for a single project and is not a component of or related to any other project;

ii) Where the contract is more than \$5,000, but less than or equal to \$100,000, the District shall, at minimum, obtain three informally solicited, competitive quotes; or

iii) Where the contract is less than \$5,000, however, the District shall obtain competitive quotes, if practical;

iv) Where the required goods, materials, supplies or services are unavailable from a Qualified Rehabilitation Facility as provided in ORS 279.850 (Products of Disabled Individuals), the District shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

b) When the contract is for a “public improvement” as defined in ORS 279A.010(1)(aa) or for “public works” as defined in ORS 279C.800(5), the District will follow the procedures in subsection A. of this rule and applicable provisions of ORS 279C.335(4) for holding a public hearing before final adoption of required findings. Further, if the contract price exceeds \$25,000 but is less than or equal to \$100,000, the District and the contract shall comply with:

i) The prevailing wage provisions of ORS 279C.800 through 279C.870, when applicable;

ii) The performance bond requirements of ORS 279C.375;

iii) The contractor registration requirements of ORS Chapter 701; and

iv) Any other law applicable to such a contract.

c) If more than one supplier may be available and the total purchase is estimated to exceed \$100,000, the District shall select a contractor through competitive bidding.

5) **Art.** Contracts for the purchase or commissioning of works of art.

6) **Advertising Contracts, Purchase of:**

a) The District may purchase advertising in any media, regardless of dollar amount, without competitive bidding.

b) The District has determined that value engineering, public safety and/or technical complexity, generally, do not apply to this rule.

7) **Advertising Contracts, Sale of:**

a) The District may sell advertising for District publications and activities, regardless of dollar amount, without competitive bidding, including newspapers, news letters, yearbooks, District sponsored programs and the like.

b) The District has determined that value engineering, public safety and/or technical complexity, generally, do not apply to this exemption.

8) **Equipment Repair and Overhaul:**

a) The District may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

i) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

ii) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

iii) The purchase is made within the limits and pursuant to the methods in subsection b) of this rule.

b) The following limitations apply to this rule:

i) If the contract is less than or equal to \$100,000 the Purchasing Agent shall submit in writing to the Contracting Agency the reasons why competitive bids or quotes are deemed to be impractical. The Contracting Agency will accordingly document in its procurement file and may enter directly into the contract;

ii) If the Purchasing Agent thinks the contract may exceed \$100,000, he/she shall submit in writing to the Contracting Agency the reasons why competitive bidding is deemed to be impractical and a description of the cost savings to be obtained by an exempted purchase. The Contracting Agency may prepare a specific request for the anticipated contract to be exempted from the competitive bidding requirement of ORS 279C.025 to submit to the LCRB for approval under the conditions of ORS 279C.335(2).

9) **Price Regulated Items, Contractors for:**

a) The District may, regardless of dollar amount and without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority, including, but not limited to, postage, local garbage and sewer and water service.

b) The District has determined that value engineering, public safety and/or technical complexity, generally, do not apply to this exemption.

10) **Copyrighted Materials:**

a) The District may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials where there is only one known supplier available for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, newly adopted textbooks/instructional materials, workbooks, curriculum kits, reference materials, audio and visual media and non-mass-marketed software from a particular publisher or their designated distributor.

b) The District has determined that value engineering, public safety and/or technical complexity, generally, do not apply to this exemption.

11) **Investment/Borrowing Contracts:**

a) The District may, without competitive bidding and regardless of dollar amount, invest public funds or borrow funds pursuant to District authority under state law and in accordance with the applicable state laws and rules, District policy and administrative regulation.

b) The District has determined that value engineering and/or technical complexity, generally, do not apply to this exemption.

12) **Product Prequalification:**

a) When specific design or performance specifications must be met or such specifications are impractical to create or reproduce for a type of product to be purchased, the District may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or vendors in accordance with the following product prequalification procedure:

i) The District will make reasonable efforts to notify all known manufacturers and vendors of competing products of the District's intent to compile a list of prequalified products. The notice will explain the opportunity that manufacturers and vendors of competing products will have to apply to have their product(s) included on the District's list of prequalified products. At its discretion, the District may provide notice by advertisement in a trade paper of general statewide circulation or other appropriate trade publication; or instead of advertising, the District may provide written notice to those manufacturers and vendors appearing on the appropriate list maintained by the District; and

ii) The District will accept manufacturer and vendor applications to include products in the District's list of prequalified products up to 15 calendar days prior to the initial advertisement for bids or

proposals for the type of product to be purchased, unless otherwise specified in the advertisement or in the District's written notice.

b) The District has determined that generally required special expertise does not apply to this rule.

c) If the District denies an application for including a product on a list of prequalified products, the District shall promptly provide the applicant with a written notice of the denial and include the reason for denial. The applicant may submit a written appeal within ten (10) days to the LCRB to request review and reconsideration of the denial.

13) **Request for Proposal (RFP):**

a) The District may, at its discretion, use RFP competitive procurement methods subject to the following conditions:

i) The procurement is advertised and a written solicitation document is issued that invites the submission of sealed, written offers to be opened publicly at a designated time and place; and

ii) Contractual requirements are stated clearly in the solicitation document; and

iii) Evaluation criteria and weighting factors to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the District's needs may include, but are not limited to, cost, quality, service and support, compatibility, product or system reliability, financial stability, operating efficiency, proposer qualifications and experience; and

iv) The solicitation document clearly states all complaint processes and remedies available; and

v) The solicitation document states the provisions for proposers to comment on any specifications that they feel limit competition.

14) **Request for Proposal - Construction Manager/General Contractor:**

a) The District may use RFP procedures, in accordance with its rule governing Request for Proposal, Section 3B(13), for the selection of construction manager/general contractor firms (CM/GC) who will be required to establish guaranteed maximum prices for constructing public improvements, subject to the following conditions:

i) Contractual requirements are stated clearly in the solicitation document. The contract shall describe the methods by which the CM/GC shall competitively select other contractors and

subcontractors to perform the work of the improvement. Further, the contract shall describe completely the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a preannounced time and place;

ii) Evaluation criteria to be applied in selecting the CM/GC firm are stated clearly in the solicitation document. Criteria used to identify the CM/GC firm which best meets the public contracting needs may include, but are not limited to, cost, quality, experience relevant to the improvement to be constructed and time required to commence and complete the improvement.

b) The Contracting Agency shall prepare specific written findings to support the use of the CM/GC contracting method for each public improvement contract proposed and submit them to the LCRB for adoption. The findings must show compliance with ORS 279A.010(1)(g) for energy savings performance contracts. The District shall retain the findings and make them available upon request. These findings shall address the following items, as applicable:

i) The District has competitively bid a public improvement project and failed to receive responsive; responsible bid within the cost estimate established by the District or its consultant. There are de facto cost savings from not redesigning and rebidding the project;

ii) There are expected substantial savings on direct construction costs;

iii) The District requires use of the project within the stated project schedule and there will be program and cost consequences if the required use is delayed;

iv) The technical complexity or unique character of the project requires the coordination of multiple disciplines;

v) The use of value engineering through cooperation among the architect/engineer, contractor and District is important to the project's delivery on time and within budget;

vi) There are other factors which demonstrably affect cost.

c) The District shall publish notice and hold a public hearing in accordance with ORS 279C.335(4) prior to final adoption of findings.

15) **Requirements Contracts (Blanket Purchase Orders, Price Agreements):**

a) The Purchasing Agent, on behalf of the District, may establish requirements contracts for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory,

combining District requirements for volume discounts, standardization among departments and reducing lead time for ordering.

b) The District has determined that value engineering, specialized expertise required and/or technical complexity, generally, do not apply to this rule.

c) The District may enter into a requirements contract (also known as a blanket purchase order or price agreement) whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price or price discount from a price list, provided the contract is let by a competitive procurement process pursuant to the requirements of ORS Chapters 279, 279A, 279B and 279C and these rules.

d) Once a requirements contract is established, departments may purchase the goods and services from the awarded contractor without first undertaking additional competitive solicitation.

e) Departments shall use requirements contracts established by the District, unless otherwise specified in the contract, allowed by law or these rules or specifically authorized by the Contracting Agency.

f) Under the authority of ORS 279A.025 and 279C.335, the District may use the requirements contract entered into by another Oregon public agency when:

i) The original contract met the requirements of public procurement statutes contained in ORS Chapters 279, 279A, 279B and 279C; and

ii) The original contract allows other public agency usage of the contract; and

iii) The original public contracting agency concurs and this is documented by a written interagency agreement between the District and the agency.

g) The term of any District requirements contract, including renewals, shall not exceed five years unless otherwise exempted pursuant to ORS 279C.335.

**16) Used Personal Property or Equipment, Purchase of:**

a) Subject to the provisions of this rule, the District may purchase used property or equipment without obtaining competitive bids or quotes, if the District has determined that the purchase will result in cost savings to the District and will not diminish competition or encourage favoritism. "Used

personal property or equipment” is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as “used” at the time of District purchase. Used personal property or equipment generally does not include property or equipment if the District was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.

b) The District has determined that special expertise required and/or technical complexity, generally, do not apply to this exemption.

c) For purchases of used personal property or equipment costing less than or equal to \$150,000, the District shall, where feasible, obtain three competitive quotes unless the District has determined and documented that a purchase without obtaining competitive quotes will result in cost savings to the District and will not diminish competition or encourage favoritism.

d) For purchases of used personal property or equipment totaling \$150,000 or more, the District shall attempt to obtain three competitive quotes. The District will keep a written record of the source and amount of quotes received. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

17) **Information Technology Contracts:**

a) The District may enter into a contract to acquire information technology hardware and software without competitive bidding subject to the following conditions:

i) If the contract amount does not exceed \$100,000, the District shall, as a minimum, follow its rule governing Contracts Under Certain Dollar Amounts, Section 3B(4). Prior to selecting a contractor, reasonable efforts shall be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the District;

ii) If the contract amount exceeds \$100,000, the District shall determine and use the best procurement method, pursuant to ORS public contracting statutes and these rules, and shall solicit written proposals in accordance with the requirements of the Attorney General’s Model Public Contract Rules. The District shall document the evaluation and award process, which will be part of the public record justifying the award;

iii) If the amount of the contract is estimated to exceed \$100,000, the District shall provide proposers an opportunity to review the evaluation of their proposals before final selection is made.

b) The District has determined that public safety, generally, does not apply to this exemption.

18) **Telecommunications Systems - Hardware and Software Contracts:**

a) The District may enter into a contract to acquire telecommunications system hardware and software, without competitive bidding, subject to the following conditions:

i) If the contract amount does not exceed \$100,000, the District shall at a minimum obtain competitive quotes. See the District's rule governing Contracts Under Certain Dollar Amounts, Section 3B(4). Prior to selection of a contractor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the District;

ii) If the contract amount exceeds \$100,000 the District shall determine and use the best procurement method, pursuant to public contracting statutes and these rules, and it shall solicit written proposals in accordance with the requirements of Chapter 137, Divisions 47 and 49 of the Attorney General's Model Public Contract Rules.

b) The District has determined the public safety, generally, does not apply to this exemption.

c) The telecommunications solicitation authorized in subsection a) of this subsection shall:

i) State the contractual requirements in the solicitation document;

ii) State the evaluation criteria to be applied in awarding the contract and the role of any evaluation committee. Criteria that would be used to identify the proposal that best meets the District's needs may include, but are not limited to, cost, quality, service and support, compatibility, product or system, reliability, vendor viability and financial stability, operating efficiency and expansion potential;

iii) State the provisions made for bidders or proposers to comment on any specifications which they feel limit competition; and

iv) Be advertised in accordance with ORS 279C.360 and OAR 137-049-0210.

19) **Telecommunications Services:**

a) The District shall secure the most competitive, cost-effective telecommunications services of the quality needed to meet all service

performance requirements while minimizing administrative and service delivery costs. The District will use routine purchasing procedures whenever possible, but, if necessary, the District can consider alternative procurement methods in accordance with this rule.

The District will generally follow the normal competitive procurement processes in obtaining telecommunications services. This exempted process will only be used if necessary where there is a lack of sufficient competition to furnish needed services.

b) In determining the appropriate procurement method for telecommunications services, the District shall comply with the requirements of ORS 291.038 and determine whether competition exists.

In determining whether competition exists, the District may consider the following factors:

i) The extent to which alternative providers exist in the relevant geographic and service market which is the greater area of Columbia County;

ii) The extent to which alternative services offered are comparable or substitutable in technology, service provided and performance. For example, if the District requires digital services, analog services are not comparable or substitutable. If the District requires fiber optic technology, then, copper, microwave or satellite transmission technology may not be comparable or substitutable;

iii) The extent to which alternative providers can respond to the District's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management and limiting District liability. For example, to be considered as the District's long-distance service provider, any long-distance service vendor must be able to meet, support and interface with the District's centralized automated billing requirements. The District must document for the record its findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the District may solicit the information either through informal telephone or written contacts or through a formal solicitation such as an RFP.

c) If the District determines that competition does not exist in the area for the relevant service, the District may proceed to secure the service on a sole source basis, as described in the District's rule governing Brand Names or Products, "Or Equal," Single Seller and Sole Source, Section 3B(1).

20) **Insurance, Employee Benefit:**

a) The District may purchase employee benefit insurance without competitive bidding, regardless of dollar amount, subject to the terms of any collective bargaining agreement.

b) The District has determined that value engineering, public safety and/or technical complexity, generally, do not apply to this exemption.

21) **Waiver of Bid Security Requirements (Other Than Public Improvements):** The LCRB may, at its discretion, waive the bid security requirements of ORS 279C.365 for contracts other than those for public improvements.

22) **Waiver of Bid Security Requirements (Public Improvement Contracts \$100,000 or Less):** The LCRB may, at its discretion, waive the bid security requirements of ORS 279C.365 if the amount of the contract for the public improvement is less than or equal to \$100,000. Although the bid security requirement is waived for public improvement contracts of \$100,000 or less, the LCRB may impose a bid or quote security requirement for projects \$100,000 or less when deemed to be in the best interest of the District.

23) **Amendments/Change Orders:** Amendments to contracts exceeding the limits in Section 3(A) above if the Contracting Agency determines that it is not reasonably feasible to require additional competitive procurement to complete the purpose of the contract; otherwise, the Contracting Agency shall direct additional competitive procurement and the competitive procurement procedure required for the amendment.

24) **Exempt Other Public Contracts or Classes of Public Contracts:** By resolution, the Contracting Agency may exempt other public contracts or classes of public contracts from the requirements of Section 3(A) pursuant to ORS 279B.085.

**Section 4: Public Improvement Contracts:** By resolution, the LCRB may exempt from competitive bidding a public improvements contract or class of public improvement contracts not otherwise exempt under this Ordinance pursuant to ORS 279C.335.

**A)** Amendments to public improvement contracts shall comply with the Public Contracting Code.

**B)** The performance and payment bond requirements and exceptions of the Public Contracting Code shall apply to all public improvement contracts.

**C)** The District may undertake to construct a public improvement using its own equipment and personnel if doing so will result in the least cost to the District or public. If the District decides to construct a public improvement estimated to cost more than \$125,000 using its own personnel and equipment, the District shall prepare adequate plans and

specifications and the estimated unit cost of each classification of work, and maintain an accurate accounting in accordance with ORS 279C.305.

**D)** If all responsive offers on a public improvement contract exceed the budget for the project, the Contracting Agency may, prior to contract award, negotiate for a price within the budget under the following procedures:

- 1) Negotiations shall start with the lowest responsive, responsible offeror. If negotiations are not successful, then the Contracting Agency may negotiate with the second lowest responsive, responsible offeror, and so on.
- 2) Negotiations may include value engineering and other options to attempt to bring the project cost within the budgeted amount.
- 3) A contract may not be awarded under this subsection D if the scope of the project is significantly changed from the description in the original solicitation documents.
- 4) The records of an offeror used in contract negotiations under this section are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

**Section 5. Offeror Disqualification:**

**A)** The Contracting Agency, who is awarding a public contract, may disqualify any person as an offeror on a contract if:

- 1) The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;
- 2) The person does not have available equipment to perform the contract;
- 3) The person does not have key personnel of sufficient experience to perform the contract; or
- 4) The person has breached previous contractual obligations.

**B)** The provisions of the Public Contracting Code regarding disqualification of persons shall apply in addition to this section with respect to public improvement contracts.

**C)** A person who has been disqualified as an offeror may appeal the disqualification in accordance with the procedures in Chapter 279C of the Public Contracting Code.

**Section 6: Personal Services Contracts:**

A) Personal services contracts as subject to the rules established by this section, and the following procedures apply: [as amended by Ordinance No. 06-616-O 2/2/06]

1) Personal service contracts will be used to retain the services of independent contractors, other than architects or engineers. Nothing in this section shall apply to the employment of regular District employees.

2) Unless otherwise approved by the Contracting Agency, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the District, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.

3) Unless otherwise approved by the Contracting Agency, District personal service contracts in excess of \$50,000 shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the District's tort liability limits, naming the District as an additional named insured, during the life of the contract.

4) All District personal service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise.

5) The following procedure shall be observed in the selection of personal service contractors:

a) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, the Contracting Agency or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.

b) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, the Contracting Agency or its designated officer shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.

c) The Contracting Agency or its designated officer may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate District employee or by an interview committee.

d) Following a review of the qualifications and interview, where

conducted, of the interested prospective contractors, the Contracting Agency or its designated officer shall select the prospective contractor, and shall prepare a personal service contract.

- 6) The selection procedures described in this section may be waived by the Contracting Agency, at its discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.
- 7) Nothing contained in this section shall preclude the District from complying with provisions of Federal or State law that require the District to utilize a different selection or contracting procedure.
- 8) The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.
- 9) Except as otherwise provided in the Public Contracting Code, for all other personal services contracts, including amendments to and annual renewals of existing contracts and emergencies, the Contracting Agency may enter into the contract without a solicitation of offers. A personal services contract shall not be artificially divided or fragmented to qualify for the award procedures provided by this subsection.

**B)** The following criteria shall be considered in the evaluation and selection of a personal services contractor. This section does not preclude the use of other additional criteria:

- 1) Total cost to the District for delivery of services.
- 2) Expertise of the contractor, and educational record.
- 3) References from successfully completed projects managed by the contractor.
- 4) Utilization of locally procured goods, services, or personnel. Other services provided by the contractor not specifically listed in the Request for Proposal.
- 5) Other services provided by the contractor not specifically listed in the Request for Proposal.
- 6) Timeliness of delivery of services.

- 7) Other criteria specially listed in the solicitation document on a case-by-case basis.

**Section 7. Disposition of Personal Property:**

**A)** The Purchasing Agent shall have the authority to determine when personal property owned by the District is surplus.

**B)** The Purchasing Agent shall select the method of disposal which maximizes the value the District will realize from disposal of the surplus property. Surplus personal property shall be disposed of as follows:

- 1) Sold to the highest qualified buyer meeting the sale terms when the value of each item so offered is less than \$2,000 and the sale has been advertised at least once in a newspaper of general circulation in the District not less than one week prior to the sale;
- 2) Traded in on the purchase of replacement equipment or supplies;
- 3) Sold at public auction advertised at least once in a newspaper of general circulation in the District not less than one week prior to the auction. The published notice shall specify the time, place and terms upon which the personal property shall be offered and a general description of the personal property to be sold;
- 4) Sold at a fixed price retail sale if doing so will result in substantially greater net revenue to the District; or
- 5) Contracted for use, operation or maintenance by one or more private or public entities. Prior to approval of such a contract, the Purchasing Agent shall determine that the contract will promote the economic development of the District.

**C)** All personal property sold pursuant to this section shall be sold “**AS-IS**” without any warranty, either express or implied, of any kind.

**D)** Sales of surplus personal property may be conducted electronically.

**Section 8. Adoption of Code and Rules:**

**A)** Except as specifically provided in this Ordinance, public contracts shall be awarded, administered and governed according to the Public Contracting Code and the Model Rules as they now exist and may be amended in the future.

**B)** In the event of a conflict between any provisions of this Ordinance and the Public

1-7.8

1-7.8

Contracting Code or Model Rules, the provisions of this Ordinance shall prevail, unless specifically superseded by state law.

Passed by the Council on August 4, 2005 and approved by the Mayor on August 5, 2005.