**Chapter 3.25
PURCHASING AND CONTRACTING**

**Sections:**
3.25.010 City policy.
3.25.020 [Reserved].
3.25.030 Regulation by city council.
3.25.040 Model Rules.
3.25.050 Authority of purchasing manager.
3.25.060 Definitions.
3.25.070 [Reserved].

3.25.071 Personal Services Contracts.
3.25.080 Solicitation methods for certain classes of contracts.
3.25.090 Informal solicitation procedures.
3.25.100 [Reserved].
3.25.110 [Reserved].
3.25.120 [Reserved].
3.25.130 Appeal of debarment or prequalification decision.

1. 3.25.010 City policy.
	1. Title. The provisions of this chapter and all rules adopted under this chapter may be cited as the City of Newberg’s public contracting regulations.
	2. Purpose of Public Contracting Regulations. It is the policy of the City of Newberg, hereinafter referred to as “the city,” in adopting the public contracting regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
		1. Promoting impartial and open competition;
		2. Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
		3. Taking full advantage of evolving procurement methods that suit the contracting needs of the city as they emerge within various industries.
	3. Interpretation of Public Contracting Rules. In furtherance of the purpose of the objectives set forth in subsection (B) of this section, it is the city’s intent that the city’s public contracting regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C. [Ord. 2618, 3-7-05. Code 2001 § 34.01.]
2. 3.25.020 [Reserved.]
3. 3.25.030 Regulation by city council.
4. Except as expressly delegated in accordance with policy or these regulations, the city council reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law. [Ord. 2618, 3-7-05. Code 2001 § 34.03.]
5. 3.25.040 Model Rules.

The model rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are adopted as the public contracting rules for the city, to the extent that the Model Rules do not conflict with the provisions of this chapter. [Ord. 2618, 3-7-05. Code 2001 § 34.04.]

1. 3.25.050 Authority of purchasing manager.
	1. General Authority. The city manager shall be the purchasing manager for the city and is authorized to issue all solicitations and to award all city contracts for which the contract price does not exceed $100,000 and the proposed expenditure is included in the current fiscal year budget. Subject to the provisions of this chapter, the purchasing manager may adopt and amend all solicitation materials, contracts, and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the city’s contracting needs. The purchasing manager shall hear all solicitation and award protests.
	2. Solicitation Preferences. When possible, the purchasing manager shall use solicitation documents and evaluation criteria that:
		1. Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability, and quality are otherwise equal;
		2. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for nonrecycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from nonrecycled products; and
		3. Give any other preferences as set forth in the City of Newberg Purchasing Policy, applicable law, or both.
	3. Delegation of Purchasing Manager’s Authority. Any of the responsibilities or authorities of the purchasing manager under this chapter may be delegated and subdelegated by written directive, including the City of Newberg Purchasing Policy.
	4. Mandatory Review of Rules. Whenever the Oregon State Legislative Assembly enacts laws that cause the Attorney General to modify its Model Rules, the purchasing manager shall review the public contracting regulations, other than the Model Rules, and recommend to the city council any modifications required to ensure compliance with statutory changes.
	5. Emergencies.
		1. *In General*. When the city manager or the city manager’s duly appointed designee determines that immediate execution of a contract is necessary to prevent substantial damage or injury to persons or property, the city manager or designee may execute the contract without competitive selection and award or city council approval, but, where time permits, the city manager shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.
		2. *Reporting*. Any official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances:
			1. Document the nature of the emergency, the method used for selection of the particular contractor, and the reason why the selection method was deemed in the best interest of the city and the public; and
			2. Notify the city council of the facts and circumstances surrounding the emergency execution of the contract.
		3. *Emergency Public Improvement Contracts*. A public improvement contract may only be awarded under emergency circumstances if the city council has made a written declaration of emergency. Any public improvement contract award under emergency conditions must be awarded within 60 days following the declaration of an emergency unless the city council grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the city council may waive the requirement for all or a portion of required performance and payment bonds.
2. 3.25.060 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Award” means either identifying or the city’s identification of the person with whom the city intends to enter into a contract following the resolution of any protest of the city’s selection of that person and the completion of all contract negotiations.

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

“Concession agreement” means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by the city, and under which the concessionaire makes payments to the city based, at least in part, on the concessionaire’s revenues or sales. The term “concession agreement” does not include a mere rental agreement, license, or lease for the use of premises.

“Contract price” means the maximum monetary obligation that the city either will or may incur under a contract, including bonuses, incentives, and contingency amounts, if the contractor fully performs under the contract.

“Contract review board” or “local contract review board” means the city council. The city council of the City of Newberg is designated as the local contract review board under the Oregon Public Contracting Code. The local contract review board may delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, and the Newberg Municipal Code.

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

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

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

“Emergency” means circumstances that could not have been reasonably foreseen, create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare, or safety, and require prompt execution of a contract to remedy the condition.

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

“Goods” means any item or combination of supplies, equipment, materials, or other personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto.

“Informal solicitation” means a solicitation made in accordance with the city’s public contracting regulations to a limited number of potential contractors, in which the solicitation agent attempts to obtain at least three written quotes or proposals.

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

“Model Rules” means the public contracting rules adopted by the Attorney General under ORS 279A.065.

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

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

“Person” means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract, or a public body.

“Personal services contract” or “PSC” means a contract primarily for the provision of services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of services depends on attributes that are unique to the service provider.

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

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

“Public improvement” means a project for construction, reconstruction, or major renovation on real property by or for the city. “Public improvement” does not include:

1. Projects for which no funds of the city are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

2. Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

“Purchasing manager” means the city manager or designee appointed by the city manager to exercise the authority of the purchasing manager under these public contracting regulations.

“Qualified pool” means a pool of contractors who are prequalified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

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

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

“Request for qualifications” or “RFQ” means a written document issued by the city to which contractors respond in writing by describing their experience with and qualifications for the services, personal services or architectural, engineering or land surveying services, or related services, described in the document.

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

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

“Solicitation agent” means, with respect to a particular solicitation, the city manager or designee appointed by the city manager to conduct the solicitation and make an award.

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

“Surplus property” means personal property owned by the city which is no longer needed for use by the department to which such property has been assigned. [Ord. 2618, 3-7-05. Code 2001 § 34.06.]

1. 3.25.070 [Reserved].

**3.25.071 Personal services contracts.**

* 1. Personal Services Contracts Definition.
		1. PSCs within the definition set forth in NMC 3.25.060 include, but are not limited to, the following:
			1. Contracts for services performed in a professional capacity, including services of an accountant, attorney, medical professional (e.g., doctor, dentist, nurse, counselor), information technology consultant or broadcaster, except for Architectural, Engineering, Photogrammetric Mapping or Land Surveying Services and other construction-related professional services subject to Chapter 137, Division 48 of the Oregon Administrative Rules (OAR);
			2. Contracts for services as an artist in the performing or fine arts, including any person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;
			3. Contracts for services that are specialized, creative, or research-oriented;
			4. Contracts for educational services;
			5. Contracts for human custodial care, child care, mental health care, health services, social and emergency services, and other human services; and
			6. Contracts for other professional or technical consulting services not listed above.
		2. The purchasing manager is given the discretion to decide whether a particular type of contract or service falls within the definition of “Personal Services Contract” as set forth in these regulations.
		3. The city will not use PSCs to obtain and pay for the services of an employee. A PSC may be used only to obtain and pay for the services of an independent contractor.
	2. PSC Formal Selection Procedure. The City will use a formal selection procedure if the estimated contract amount of the personal services contract is greater than $150,000. All formal RFP and RFQ solicitations must comply with the requirements for competitive sealed proposals contained in ORS 279B.060 and may be solicited, processed, and reviewed through any of the sealed proposal procurement methods set forth in OAR 137-047-0260 through 137-047-0263.
	3. PSC Informal Selection Procedures. The city may use an informal selection process to obtain personal services when a formal selection process is not required.
		1. The informal selection process must solicit responses/proposals from at least three qualified contractors or vendors offering the required services. If three proposals are not reasonably available, fewer will suffice, but the city shall make a written record of the effort made to obtain at least three proposals.
		2. The informal selection process is intended to be competitive. The selection and ranking may be based on criteria including, but not limited to, each offeror’s:
			1. Particular capability to perform the services required;
			2. Experienced staff available to perform the services required, including each offeror’s recent, current, and projected workloads;
			3. Performance history;
			4. Approach and philosophy used in providing services;
			5. Fees or costs;
			6. Geographic proximity to the project or the area where the services are to be performed; and
			7. Work volume previously awarded by the city, with the object of effecting an equitable distribution of contracts among qualified contractors. But distribution must not violate the policy of selecting the most highly qualified contractor to perform the services at a fair and reasonable price.

Written confirmation of solicitation attempts and responses with contractor names and addresses shall be maintained in the city’s procurement file.

* 1. Other Approved Solicitation Methods.
		1. *Request for Qualifications*. An RFQ may be used to determine that competition does not exist for a particular service, or to establish a list of qualified contractors for RFPs or for informal solicitations under these regulations.
			1. The RFQ must at least describe the particular specialty desired, the qualifications the contractor must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to, the contractor’s particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the contractor has completed with references concerning past performance; and any other information necessary to evaluate contractor qualifications.
			2. A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested contractors to discuss the proposed services. The RFQ must include the date, time, and place of the meeting.
			3. Unless the RFQ establishes that competition does not exist, each contractor qualified under an RFQ will receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit a proposal or quote in response to the city’s subsequent RFP.
		2. *Price Agreements*. The City may enter into Price Agreements for personal services. Such Price Agreements shall be solicited as otherwise required by these regulations based on the maximum contract price.
		3. *Cooperative Procurement*. The city may contract for personal services pursuant to a cooperative procurement in compliance with OAR 137-046-0400 to 137-046-0480.
	2. PSC Selection by Negotiation.

The purchasing manager may procure personal services with contractors through direct negotiation in any of the following circumstances:

* + 1. The contract price is not more than $75,000, provided that the chosen contractor is prequalified.
		2. The nature of the work is not project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such work include insurance brokerage/agent of record services, medical services, and audit services.
		3. The Contractor possesses unique knowledge and/or expertise in a specialized service area, making competition impractical. Such services can include, but are not limited to, education services, staff coaching, and community relations.
		4. A contract for which a non-city funding source, e.g., a grant or a federal, state, or city contract, identifies the contractor in the funding award or makes a funding award conditioned upon the service being performed by a specific contractor. The following must be documented to the procurement file:
			1. The name of the external funding source;
			2. The background on how the funding source selected the contractor(s); and
			3. A copy of the funder’s document naming the contractor.
		5. The contract is entered into pursuant to an emergency declared by the city manager.
		6. The contract is for interim staff or temporary staffing services.
		7. The contract is for legal services. For the purposes of this section, “legal services” means attorney and paralegal services for transactional work, litigation, investigations, advice, reports, and other services requiring legal advice or work by an attorney, and includes all related costs or fees.
	1. PSC Contract Requirements. City PSCs must contain the mandatory contract provisions set forth in ORS 279B.020(5), 279B.220, 279B.230, 279B.235(3), and, if the contract involves lawn or landscape maintenance, ORS 279B.225.
	2. PSC Contract Amendments.
		1. The city may amend any Personal Services Contract if the city, in its sole discretion, determines that the amendment is within the scope of the solicitation and that the amendment would not materially impact the field of competition for the personal services described in the final form of the original solicitation documents. In making this determination, the city shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the solicitation document if the city reasonably believes that the number of offerors would not significantly increase if the solicitation document were re‑issued to include the additional services.
		2. The city may amend any contract if the additional services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the original contract.
		3. All amendments to contracts must be in writing, must be signed by an authorized representative of the consultant and the city, and must receive all required approvals before the amendments will be binding on city.
		4. A single contract amendment or cumulative amendments may not increase the total contract price to greater than 110 percent of the original contract price, except in any of the following circumstances:
			1. The purchasing manager determines that the need for the amendment is caused by unforeseen conditions or circumstances and conducting a new procurement would result in unreasonable additional cost or delay. For the purposes of this section:
				1. An “unforeseen condition or circumstance” is one that is discovered after the original contract was solicited and awarded that could not have been reasonably anticipated as part of the original solicitation or contract.
				2. “Unreasonable additional cost or delay” means that the cost of conducting a new procurement and/or awarding a new contract is likely to exceed the cost of a contract amendment and/or that the delay caused by conducting a new procurement would cause a break in service, require repetition of earlier work, or cause a delay in completion of the contract that would be detrimental to the city program or service benefiting from the contract.
			2. The purchasing manager determines that the amendment, additional scope, or alternative work was contemplated in the original procurement and provided for in the original contract. (Examples include a solicitation and contract that provides for renewal or extension for subsequent terms or that specifically allows for alternates or additional work.)
			3. The amendment is presented to the city council as part of the council’s agenda and the council approves the amendment based upon the circumstances of the particular contract. The purchasing manager shall set forth the justification for the amendment in a supplementary staff report enclosed with the council’s consent agenda.
		5. *Amendments Requiring Additional Authority*. An amendment to a contract that increases the original contract price by more than 10 percent requires city manager approval. An amendment to a contract approved by the city manager that would cause the total contract price to exceed the city manager’s delegated authority to approve contracts under these regulations or the City of Newberg Purchasing Policy must be approved by the city council except as provided in these regulations or the City of Newberg Purchasing Policy.
1. 3.25.080 Solicitation methods for certain classes of contracts.

The following classes of public contracts and the method(s) that are approved for the award of each of the classes are established by the city council:

* 1. Purchases from Nonprofit Agencies for Disabled Individuals. The city shall give a preference to goods, services, and public improvements available from qualified nonprofit agencies for individuals with disabilities in accordance with the provisions of ORS 279.835 through 279.850.
	2. Public Improvement Contracts.
		1. *City-Funded Privately Constructed Public Improvements*. The city may contribute funding to a privately constructed public improvement project without subjecting the project to competitive solicitation requirements if all of the following conditions are met with respect to the entire public improvement project:
			1. The city’s contribution to the project may not exceed 25 percent of the total cost of the project;
			2. The city must comply with all applicable laws concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;
			3. The general contractor for the project must agree in writing to comply with all applicable laws concerning reporting and payment of prevailing wages for the project;
			4. The funds contributed to the project may not provide a pecuniary benefit to the owner of the development for which the project is being constructed, other than benefits that are shared by all members of the community;
			5. The performance of the general contractor and the payment of labor for the project must be secured by performance and payment bonds or other cash-equivalent security that is acceptable to the purchasing manager to protect the city against defective performance and claims for payment; and
			6. The contract for construction of the project must be amended, as necessary, to require the general contractor to maintain adequate workers’ compensation and liability insurance and to protect and provide indemnification to the city for all claims for payment, injury, or property damage arising from or related to the construction of the project.
		2. *Public Improvement Contracts for Construction, Maintenance, and Repair of Public Rights-of-Way Where the Work Is Adjacent to a Private Developer’s Construction Work*. The city is authorized to sole source city public improvement contracts for construction, maintenance, and repair of public rights-of-way (or utilities located in city rights-of-way) where the work to be done under the public improvement contract is adjacent, connecting or in close proximity (i.e., six blocks) to where a private developer is having construction work done on infrastructure in their development.
	3. Contracts Subject to Award at Solicitation Agent’s Discretion. The following classes of contracts may be awarded in any manner which the solicitation agent deems appropriate to the city’s needs, including by direct appointment or purchase. Except where otherwise provided, the solicitation agent shall make a record of the method of award.
		1. *Advertising*. Contracts for the placing of notice or advertisements in any medium.
		2. *Amendments*. Contract amendments shall not be considered to be separate contracts if made in accordance with the public contracting regulations.
		3. *Animals*. Contracts for the purchase of animals.
		4. *Copyrighted Materials—Library Materials*. Contracts for the acquisition of materials entitled to copyright, including, but not limited to, works of art and design, literature and music, or materials, even if not entitled to copyright, purchased for use as library lending materials.
		5. *Equipment Repair*. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
		6. *Government-Regulated Items*. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
		7. *Insurance*. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
		8. *Non-Owned Property*. Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the city.
		9. *Specialty Goods for Resale*. Contracts for the purchase of specialty goods by the city for resale to consumers.
		10. *Sponsor Agreements*. Sponsorship agreements under which the city receives a gift or donation in exchange for recognition of the donor.
		11. *Structures*. Contracts for the disposal of structures located on city-owned property.
		12. *Renewals*. Contracts that are being renewed in accordance with their terms are not considered to be newly issued contracts and are not subject to competitive procurement procedures.
		13. *Temporary Extensions or Renewals*. With the exception of Price Agreements, contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and nonrenewable, or recently expired, contract, other than a contract for public improvements.
		14. *Temporary Use of City-Owned Property*. The city may negotiate and enter into a license, permit, or other contract for the temporary use of city-owned property without using a competitive selection process if:
			1. The contract results from an unsolicited proposal to the city based on the unique attributes of the property or the unique needs of the offeror;
			2. The proposed use of the property is consistent with the city’s use of the property and the public interest; and
			3. The city reserves the right to terminate the contract without penalty, in the event that the city determines that the contract is no longer consistent with the city’s present or planned use of the property or the public interest.
		15. *Used Property*. A solicitation agent, for procurements up to $20,000, and the purchasing manager, for procurements in excess of $20,000, may contract for the purchase of used property by negotiation if such property is suitable for the city’s needs and can be purchased for a lower cost than substantially similar new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the city. The purchasing manager shall record the findings that support the purchase.
		16. *Utilities*. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.
	4. Contracts Required by Emergency Circumstances.
		1. *In General*. When an official with authority to enter into a contract on behalf of the city determines that immediate execution of a contract within the official’s authority is necessary to prevent substantial damage or injury to persons or property, the official may execute the contract without competitive selection and award or city council approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.
		2. *Reporting*. An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances:
			1. Document the nature of the emergency, the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of the city and the public; and
			2. Notify the city council of the facts and circumstances surrounding the emergency execution of the contract.
		3. *Emergency Public Improvement Contracts*. A public improvement contract may only be awarded under emergency circumstances if the city council has made a written declaration of emergency. Any public improvement contract award under emergency conditions must be awarded within 60 days following the declaration of an emergency unless the city council grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the city council may waive the requirement for all or a portion of required performance and payment bonds.
	5. Federal Purchasing Programs. Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration (GSA) as provided in this chapter.
		1. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the purchasing manager. The solicitation agent shall provide the purchasing manager with a copy of the letter, memorandum, or other documentation from GSA establishing permission to the city to purchase under the federal program.
		2. The price of the goods or services must be established under Price Agreements between the federally approved vendor and GSA.
		3. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the city.
		4. If a single purchase of goods or services exceeds $150,000, the solicitation agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the city. This subsection does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.
	6. Cooperative Procurement Contracts. Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.
	7. Surplus Property.
		1. *General Methods*. Surplus property may be disposed of by any of the following methods upon a determination by the solicitation agent that the method of disposal is in the best interest of the city. Factors that may be considered by the solicitation agent include costs of sale, administrative costs, and public benefits to the city. The solicitation agent shall maintain a record of the reason for the disposal method selected and the manner of disposal, including the name of the person to whom the surplus property was transferred.
			1. *Governments*. Without competition, by transfer or sale to another city department or public agency.
			2. *Auction*. By publicly advertised auction to the highest bidder.
			3. *Bids*. By publicly advertised invitation to bid.
			4. *Liquidation Sale*. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
			5. *Fixed Price Sale*. The solicitation agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
			6. *Trade-In*. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
			7. *Donation*. By donation to any organization operating within or providing a service to residents of the city which is recognized by the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
		2. *Disposal of Property with Minimal Value*. Surplus property which has a value of less than $500.00, or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.
		3. *Personal-Use Items*. An item (or indivisible set) of specialized and personal use, other than police officer’s handguns, with a current value of less than $100.00 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the purchasing manager.
		4. *Police Officers’ Handguns*. Upon honorable retirement from service with the city, a police officer may purchase the handgun that the police officer was using at the time of retirement. The purchase price shall be the fair market value of the handgun as determined by an independent appraisal performed by a qualified weapons appraiser. An officer electing to exercise this option shall notify the city at least 30 days prior to the officer’s expected retirement date and request an appraisal of the handgun. Upon receipt of the appraisal fee from the officer, the city shall arrange for the appraisal. A copy of the completed appraisal shall be provided to the officer, who shall have up to 30 days from the date of retirement to purchase the handgun for the appraised fair market value. However, the purchasing manager is delegated the authority to present the handgun that the police officer used at the time of retirement to the police officer as a gift from the city.
		5. *Restriction on Sale to City Employees*. City employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.
		6. *Conveyance to Purchaser*. Upon the consummation of a sale of surplus personal property, the city shall make, execute, and deliver a bill of sale signed on behalf of the city, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.
	8. Concession Agreements.
		1. *General*. No part of a concession agreement shall contain or constitute a waiver of any generally applicable rules, code provisions, or requirements of the city concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental, or business activity.
		2. *Classes of Contracts Eligible for Award without Competition*. The following concession agreements may be awarded by any method deemed appropriate by the solicitation agent, including, without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
			1. *Contracts under $10,000*. Contracts under which the solicitation agent estimates that receipts by the city will not exceed $10,000 in any fiscal year and $100,000 in the aggregate.
			2. *Single Event Concessions*. Concessions to sell or promote food, beverages, merchandise, or services at a single public event shall be awarded based on any method determined by the purchasing manager to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.
		3. *Competitive Award*. Concession agreements solicited by the city for the use of designated public premises for a term greater than a single event shall be awarded as follows:
			1. *Small Concessions*. For concession agreements for which the concessionaire’s projected annual gross revenues are estimated to be $500,000 or less, the purchasing manager has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire’s annual gross revenues will exceed $500,000, the solicitation agent may, but shall not be required to, reissue the solicitation as a request for proposals.
			2. *Major Concessions*. Concession agreements for which the concessionaire’s projected annual gross revenues under the contract are estimated to exceed $500,000 annually shall be awarded using a request for proposals. [Ord. 2856 § 2, 2-18-20; Ord. 2705 § 4, 10-6-08; Ord. 2618, 3-7-05. Code 2001 § 34.08.]
1. 3.25.090 Informal solicitation procedures.

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

* 1. Informally Solicited Quotes and Proposals.
		1. *Solicitation of Offers*. When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of contractors, by direct inquiry to persons selected by the solicitation agent, or in any other manner which the solicitation agent deems suitable for obtaining competitive quotes or proposals. The solicitation agent shall deliver or otherwise make available to potential offerors a written scope of work, a description of how quotes or proposals are to be submitted, and a description of the criteria for award.
		2. *Award*. The solicitation agent shall attempt to obtain a minimum of three written quotes or proposals before making an award. If the award is made solely on the basis of price, the solicitation agent shall award the contract to the responsible bidder that submits the lowest responsive quote. If the award is based on criteria other than, or in addition to, price, the solicitation agent shall award the contract to the responsible offeror that will best serve the interest of the city, based on the criteria for award.
		3. *Records*. A written record of all persons solicited and offers received shall be maintained for at least six years after award. If three offers cannot be obtained, a lesser number will suffice; provided, that a written record is made of the effort to obtain the quotes or proposals.
	2. Qualified Pools.
		1. *General*. To create a qualified pool, the purchasing manager may invite prospective contractors to submit their qualifications to the city for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including personal services, and public improvements.
		2. *Advertisement*. The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be republished at least once per year and shall be posted at the city’s main office and on its website.
		3. *Contents of Solicitation*. Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to, qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the city.
		4. *Contract*. The operation of each qualified pool may be governed by the provisions of a pool contract to which the city and all pool participants are parties. The contract shall contain all terms required by the city, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that the city may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any city contract.
		5. *Use of Qualified Pools*. Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the solicitation agent shall award all contracts for goods or services of the type for which a qualified pool is created from among the pool’s participants, unless the solicitation agent determines that best interests of the city require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.
		6. *Amendment and Termination*. The purchasing manager may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
		7. *Protest of Failure to Qualify*. The purchasing manager shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the city council in the manner described in NMC 3.25.130. [Ord. 2618, 3-7-05. Code 2001 § 34.09.]
1. 3.25.100 [Reserved].
2. 3.25.110 [Reserved].
3. 3.25.120 [Reserved].
4. 3.25.130 Appeal of debarment or prequalification decision.
	1. Right to Hearing. Any person who has been debarred from competing for city contracts or for whom prequalification has been denied, revoked, or revised may appeal the city’s decision to the governing body as provided in this section.
	2. Filing of Appeal. The person must file a written notice of appeal with the city’s purchasing manager within three business days after the prospective contractor’s receipt of notice of the determination of debarment or denial of prequalification.
	3. Notification of City Council. Immediately upon receipt of such notice of appeal, the purchasing manager shall notify the city council of the appeal.
	4. Hearing. The procedure for appeal from a debarment or denial, revocation, or revision of prequalification shall be as follows:
		1. Promptly upon receipt of notice of appeal, the city shall notify the appellant of the time and place of the hearing;
		2. The city council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the purchasing manager; and
		3. At the hearing, the city council shall consider de novo the notice of debarment, or the notice of denial, revocation, or revision of prequalification, the criteria upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.
	5. Decision. The city council shall set forth in writing the reasons for the decision.
	6. Costs. The city council may allocate the city council’s costs for the hearing between the appellant and the city. The allocation shall be based upon facts found by the city council and stated in the city council’s decision that, in the city council’s opinion, warrant such allocation of costs. If the city council does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the city, if the decision is overturned.
	7. Judicial Review. The decision of the city council may be reviewed only upon a petition in the circuit court of Yamhill County filed within 15 days after the date of the city council’s decision. [Ord. 2618, 3-7-05. Code 2001 § 34.13.]