

CHAPTER 50

APPLICATION AND EXEMPTIONS

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50-0010 Purpose

The provisions herein describe the application of the Purchasing Code, outline statutory and class exemptions to the Purchasing Code, and describe the process by which the City may authorize a single contract exemption or additional class exemptions. An agreement that does not fall into the exceptions to application of the Purchasing Code or one of the below mentioned exemptions, must follow one of the procurement processes described in Chapters 47-49.

50-0020 Application of Purchasing Code; Exceptions

A. The procurement methods stated in the City’s Purchasing Code are applicable to Public Contracts, but are not applicable to the following agreements:

1. Contracts or agreements to which the Public Contracting Statutes, ORS Chapters 279A, 279B and 279C, does not apply;
2. Agreements between the City and:
 - a. Another “contracting agency” as defined by ORS 279A.010;
 - b. The Oregon Health and Science University;
 - c. The Oregon State Bar;
 - d. A governmental body of another state;
 - e. The federal government;
 - f. An American Indian tribe or an agency of an American Indian tribe;
 - g. A nation, or a governmental body in a nation, other than the United States; or
 - h. An intergovernmental entity formed between or among governmental bodies of this or another state, the federal government, an American Indian tribe or an agency of an American Indian tribe, a nation other than the United States or a governmental body in a nation other than the United States.
3. Contracts pursuant to 10 U.S.C. § 381 (relating to law enforcement equipment suitable for counter-drug activities through the Department of Defense), the Electronic Government Act of 2002 (relating to automated data processing equipment, including firmware, software, supplies, support equipment, and services from federal supply schedules), or other federal law that the City Council determines are similar to those Acts in effectuating or promoting transfers of property to the City;
4. Agreements authorized by ORS Chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
5. Insurance and service contracts as provided for under ORS 414.115, ORS 414.125, ORS, ORS 414.135 and ORS 414.145;
6. Contracts, agreements or other documents entered into, issued or established in connection with:
 - a. The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated Contracts, agreements or other documents, regardless of whether the obligations that the Contracts, agreements or other documents establish are general, special or limited;

- b. The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
 - c. The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive Contractor selection procedures of BPC Chapters 46 through 51;
- 7. Grants;
 - 8. Acquisitions or dispositions of real property or interests in real property;
 - 9. Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
 - 10. Contracts for employee benefit plans as provided in ORS 243.105, ORS 243.125, ORS 243.221, ORS 243.275, ORS 243.291, ORS 243.303, ORS 243.565, or ORS 243.860; or
 - 11. Any other public contracting of a public body specifically exempted from the public contracting statutes by another provision of law.

STATUTORY EXEMPTIONS FOR GOODS AND SERVICES

50-0100 Special Procurements for Goods and Services: Single Contract or Single Class

A. Generally.

The City may Award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

B. Public Notice.

The City shall give public notice of the Contract Review Board's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under BPC 47-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract.

C. Protest.

An Affected Person may protest the request for approval of a Special Procurement in accordance with BPC 47-0700. [OAR 137-047-0285]

50-0110 Sole-Source Procurements for Goods and Services

A. Generally.

The City may Award a Contract without competition as a sole-source Procurement of Goods or Services if the Goods or Services are available from only one seller or source.

B. Authorization.

In all instances, approval of the purchase of a Goods or Services from the single seller or source shall be contingent upon a documented written decision that in the particular instance under consideration, the Goods or Services, or class of Goods or Services, are available from only one source.

The Contract Review Board must approve a sole-source Procurement if the Finance Director determines that the Contract that is expected to result from the Procurement under consideration will likely be valued greater than \$100,000. The Finance Director may approve a sole-source Procurement if the Finance Director determines that the Contract that is expected to result from the Procurement will likely be valued at less than or equal to \$100,000.

C. Findings

The determination of a sole source must be based on written findings that may include:

1. That the efficient utilization of existing goods requires the acquisition of compatible Goods or Services;
2. That the Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source;
3. That the Goods or Services are for use in a pilot or an experimental project; or
4. Other findings that support the conclusion that the Goods or Services are available from only one source.

D. Public Notice.

If, but for the City's determination that it may enter into a Contract as a sole-source, the City would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, the City shall give public notice of the Contract Review Board's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055 (4) and BPC 47-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The City shall give such public notice at least seven (7) Days before Award of the Contract.

E. Negotiate.

To the extent reasonably practical, the City shall negotiate with the sole source to obtain Contract terms Advantageous to the City.

F. Protest

An Affected Person may protest the Contract Review Board's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with BPC 47-0710.

50-0120 Emergency Procurements for Goods and Services

A. Authorization.

Pursuant to the requirements of these Rules, the City may enter into a Contract for Goods or Services not related to construction services or Public Improvements without formal competitive Procurement if an emergency exists. (See BPC 49-0140A for Emergency Contracts for construction services and Public Improvements.)

B. Declaration of Emergency Required.

The City Council, Mayor or another officer authorized by the City shall declare the existence of the emergency, as required by subsection C of this section, which shall authorize the City to enter into an emergency Contract.

C. Mandatory Actions.

Regardless of the dollar value of the Contract, when the City enters into an emergency Contract, the City shall:

1. Make a Written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis;
2. Encourage competition to the extent reasonable under the circumstances; and
3. Record the measures taken under subsection (2) of this section to encourage competition, the amounts of the quotes obtained, and the reason for selecting the Contractor.

D. Time Limitation.

Any Contract Awarded under this exemption and delegation shall be Awarded within 60 days following declaration of the emergency, unless the Contract Review Board grants a reasonable extension of time for reasons related to the emergency.

E. Notification.

For Contracts greater than \$100,000 in value, the City shall notify the Contract Review Board of the existence of such Contract by submitting a copy of the Written documentation required in subsections A and B of this section to the Contract Review Board within 60 days following the declaration of an emergency, unless the Contract Review Board grants a

reasonable extension of time for reasons related to the emergency. If the Contract Review Board grants such an extension, the City shall submit such documentation on or before expiration of the extension.

[OAR 137-047-0280]

50-0130 Purchases of Goods or Services under Federal Contracts

A. Authorization.

When the price of Goods or Services has been established by a Contract with an agency of the federal government pursuant to a federal Contract Award, the City may purchase Goods or Services in accordance with the federal Contract without further formal competitive Procurement.

B. Limitations.

In exercising this authority under this exemption, the City shall:

1. Obtain and document permission from the appropriate federal agency granting permission to the City to purchase under the federal Contract;
2. Document the cost savings to be gained for the City from the anticipated purchase from the federal Contract;
3. Forego Contracting pursuant to this exemption absent a demonstrable cost savings; and
4. Obtain Contract Review Board approval before proceeding with the purchase under this provision if the cost of purchase is expected to be greater than \$100,000.

50-0140 State or Local Cooperative Procurements

The City may utilize, participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in BPC 46-0400 through BPC 46-0480.

50-0150 Brand Name or Equal Specification

A. Authorization.

Solicitation Specifications for Contracts for Goods or Services shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections B and C of this section.

B. "Or Equal" Suffix.

A brand name or equal specification may be used when the use of a brand name or equal specification is Advantageous to the City, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the City.

The City is entitled to determine upon any reasonable bases what constitutes a product that is equal or superior to the product specified, and any such determination is final.

Nothing in this subsection may be construed as prohibiting the City from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the City.

C. Brand Names.

A brand name specification may be prepared and used only if the City determines for a solicitation or a class of solicitations that only the identified brand name specification will meet the needs of the City based on one or more of the following written determinations:

1. That use of a brand name specification is unlikely to encourage favoritism in the Awarding of Contracts or substantially diminish competition for Contracts;
2. That use of a brand name specification would result in substantial cost savings to the City;
3. That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or
4. That efficient utilization of existing goods requires the acquisition of compatible Goods or Services.

The Contract Review Board must approve a Specification of a brand name, make or product without an “or equal” or equivalent suffix if the Finance Director determines that the Contract that is expected to result from a Solicitation will likely be valued greater than \$100,000.

The Finance Director must approve a Specification of a brand name, make or product without an “or equal” or equivalent suffix if the Finance Director determines that the Contract that is expected to result from a Solicitation will likely be valued less than or equal to \$100,000.

D. Protest and Judicial Review.

The City’s use of a brand name specification may be subject to review only as provided in BPC 50-0150 (C).

CLASS EXEMPTIONS FOR GOODS AND SERVICES

50-0200 Real Estate Contracts Involving Sensitive Information

A. General.

Personal Service Contracts that relate to real property or the possible acquisition or disposal of or an interest in real property may be Awarded in accordance with the Intermediate Procurement procedure for competitive quotes established under BPC 49-0160 without regard to the estimated value of the Contract if use of competitive sealed bids or competitive sealed proposals would likely cause a competitive disadvantage for the City by adversely affecting the terms or conditions of a real estate transaction related to the property.

B. Approval of Use of Exemption.

The Finance Director must approve use of the Intermediate Procurement Procedure for competitive quotes authorized under this section. The City shall keep a written record of the approval.

50-0210 Equipment Repair and Overhaul

A. Authorization.

The City may enter into a Contract for equipment repair or overhaul without formal competitive Procurement if the annual cost of equipment repair or overhaul is expected not to exceed \$100,000, subject to the following conditions:

1. Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
2. 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
3. In either instance, the City documents in its Procurement file the reasons why Competitive Bids or Proposals were deemed to be impractical under this section.

When the cost of equipment repair or overhaul is expected to exceed \$100,000, the City shall obtain Contract Review Board authorization before proceeding with the purchase of the needed repair or overhaul.

B. Notification.

If repairs or overhauls are commenced under a belief that the cost will not exceed \$100,000, but in fact the actual cost is greater than \$100,000, the City shall submit a copy of the Written documentation required in subsection A of this section to the Contract Review Board within 60 days following the repair or overhaul, unless the Contract Review Board grants a reasonable extension of time for reasons related to the repair or overhaul.

50-0220 Contracts for Price Regulated Items

The City may, regardless of dollar value and without formal competitive Procurement, Contract for the direct purchase of Goods or Services where the rate or price for Goods or Services being purchased is established by federal, state, or local regulatory authority.

50-0230 Advertising Contracts

The City may procure advertising regardless of dollar value, without formal competitive Procurement. The City shall obtain Contract Review Board approval before proceeding with the purchase under this provision if the cost of purchase is expected to be greater than \$100,000.

50-0240 Intellectual Property

The City may, without formal competitive Procurement and regardless of dollar amount, purchase Intellectual property when the product(s) are protected under copyright law and/or there is only one known supplier (e.g., manufacturer, copyright holder) available for such products. . Examples of Intellectual property that may be covered by this exemption may include, but are not limited to, art, textbooks, instructional materials, library materials, workbooks, curriculum kits, reference materials, audio and visual media, and most software.

50-0250 Investment Contracts

The City may, without formal competitive Procurement, and regardless of dollar amount, Contract for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing is Contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

50-0260 Purchase of Used Personal Property

A. Authorization.

The City may purchase used property or equipment without formal competitive Procurement less than or equal to \$20,000 if the Purchasing Agent or Finance Director makes a Written determines that the purchase:

1. Will result in cost savings to the City; and
2. Will not diminish competition or encourage favoritism.

B. Solicitation Methods.

For procurements of used personal property or equipment in excess of \$20,000, the Purchasing Agent may negotiate 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 and over the period for which the property will be used by the City. A record shall be made of the findings that support any purchase over \$20,000.

Prior to purchase of used personal property or equipment valued greater than \$100,000, the Finance Director shall obtain the Contract Review Board's approval of the expenditure

C. Definition.

As used in this section, the term "used personal property or equipment" means property or equipment that 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 the City's purchase. Used personal property or equipment generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

50-0270 Employee Benefits and Insurance

The City may purchase employee benefits and insurance without formal competitive Procurement. Employee benefits and insurance includes medical insurance, dental insurance, vision insurance, life insurance, accidental death and dismemberment insurance, long-term care insurance, employee long-term disability insurance, unemployment insurance, and deferred compensation plans.

50-0280 Insurance Contracts

Contracts for insurance where either the annual or aggregate premium is greater than \$100,000 must be let by formal competitive Procurement or by one of the following two procedures:

1. The City may appoint a licensed insurance agent as its "Agent of Record." The Agent of Record shall serve as the City's representative in the insurance market.

- a. The services the Agent of Record shall provide the City include, but are not limited to, insurance Contract review, loss control, loss forecasting, business needs assessments and securing competitive Proposals from insurance carriers for all the City's coverage's for which the Agent of Record is given responsibility.
 - b. Prior to the selection of an Agent of Record, the City shall make a reasonable effort to inform known insurance agents in Oregon. These efforts shall include advertisement in a publication of general circulation. The advertisement shall include a general description of the nature of the insurance that the City will require.
 - c. In selecting its Agent of Record, the City shall select an agent it determines most likely to perform the most cost-effective services; price alone need not be the only criterion considered in selecting the Agent of Record. The agent may be compensated through commissions paid by insurance companies on the City's account.
 - d. An appointment as the City's Agent of Record shall not exceed a period of five years, but the same agent may be selected in subsequent periods.
2. The City may solicit Bids or Proposals from licensed insurance agents for the purpose of acquiring specific insurance Contracts.
- a. The City shall make reasonable efforts to inform known insurance agents in the competitive market area that the City is considering such selection. These efforts shall include advertisement in a publication of general circulation.
 - b. In selecting an insurance Contract, the City shall select the insurance Contract most likely to provide the City the most cost-effective coverage; premium cost alone need to be the only criterion considered in selecting a specific insurance Contract. Other factors that may be considered in selecting an insurance Contract include, but are not limited to coverage, financial stability of the insurer, and loss control services to be provided.

50-0290 Legal Services-Related Contracts

Contracts for legal counsel, expert witnesses, court-appointed attorneys, stenographers and other legal service providers are exempt from formal competitive Procurement and may be hired based upon the judgment of the City Attorney. Except for legal counsel hired by the City to provide legal services to indigent criminal defendants prosecuted by the City and paralegal and legal intern services, the City Attorney shall select and retain all outside legal counsel hired by the City subject to the approval of the City Council.

50-0300 Printing Services

Notwithstanding that the City's cumulative Procurement of printing services may exceed \$100,000 per annum:

A. Intermediate Procurements.

The City may procure any individual contract for printing services valued at less than or equal to \$100,000 by obtaining a minimum of three informally solicited competitive Written quotes. The City shall keep a record of the source and amount of the quotes received. If three informally solicited competitive Written quotes are not available, fewer quotes will suffice, provided a record is made of the effort to obtain the quotes.

B. Small Procurements.

The City may procure any individual contract for printing services not exceeding \$10,000 in any manner deemed practical by the Purchasing Agent or Finance Director. The City shall keep a record of the source and amount of the printing services received. A Procurement may not be artificially divided or fragmented so as to constitute a small Procurement under this section.

50-0310 Software and Hardware Maintenance; Licenses; Subscriptions and Upgrades

A. General.

The City may renew existing Contracts for information technology hardware or software, or any of its licenses, subscriptions, maintenance costs, and upgrades (hereinafter, “Software”) without competitive solicitation only if all of the following criteria are met:

1. The Software is available from the City’s current vendor and the Software utilizes the pre-existing knowledge of the vendor regarding the specifics of the City’s information technology system(s);
2. The City currently uses the Software;
3. The City’s continued use of the Software is in the best interest of the City as determined solely by the Finance Director and Information Services Division (ISD) Manager; and
4. Future appropriations are provided in the budget for continued use of the Software.

The City shall document in the procurement file the facts that justify why Software from the current vendor is in the best interest of the City.

B. New Contracts.

1. All departments should consult ISD prior to obtaining new Software.
2. The City may use an intermediate Procurement method for new Software if the total cost for obtaining the Software is equal to or less than \$100,000 over three years. No direct appointments or Cooperative Procurements are permitted for this category.
3. If Software is obtained under subsection (B)(2) of this section and the total cost of the Software is over \$100,000 at or before 5 years, the City shall request and obtain approval from the Contract Review Board at the year the cost exceeds \$100,000. The request must describe the Software, include the ongoing maintenance or subscription costs for the Software, and contain written findings and justifications for why the Contract Review Board should approve continued use of the Software.
4. If the total cost to obtain new Software is expected to be greater than \$100,000 over three years, then the City shall either competitively bid the project through a formal procurement process that includes advertisement and sealed bid or proposal as provided in BPC 47-0300 et seq. or obtain the new Software through Cooperative Procurement as described in BPC 46-0400 et seq.

C. Exemption Relating to Cooperative Procurement

The City may obtain new Software from a specific vendor without complying with the requirements in subsection (B)(4) of this section only if all the following criteria are met:

1. There is an existing Cooperative Procurement, as described in BPC 46-0400 et seq., available for the City to use to obtain new Software;
2. The cost to obtain new Software from the existing Cooperative Procurement is greater than \$100,000 but is less than \$250,000 over three years;
3. The cost to obtain the same new Software with substantially similar functionality and features from a specific vendor is (i) less than the cost identified in the Cooperative Procurement and (ii) the Contract for the same new Software has substantially similar terms and conditions in the Cooperative Procurement; and
4. The City requests and obtains approval from the Contract Review Board to use the new Software from a specific vendor. The request must describe the new Software; the total cost of the Software through the Cooperative Procurement and the total cost of the Software from a specific vendor; and written findings and justifications for why the Contract Review Board should approve the use of the Software with a specific vendor through this exemption.

STATUTORY EXEMPTIONS FOR ARCHITECTURAL CONTRACTS

50-0400 Emergency

The City may enter into a contract directly with a consultant according to the procedures in 48-0200 when it finds an emergency exists.

STATUTORY EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS

50-0500 Emergency Contracts; Bidding and Bonding Exemptions

A. Emergency Declaration.

The City may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made by the City Council, Mayor or a department head by a Written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall be kept on file as a public record.

B. Competition for Emergency Contracts.

Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080. For emergency procurement of construction services that are not a Public Improvement, the City shall ensure competition that is reasonable and appropriate under the Emergency circumstances. This may include making a Written or oral request for Offers in whatever Solicitation time period the City considers reasonable in responding to the Emergency and, in cases of extreme necessity, awarding a contract by direct appointment without competition. (See BPC 50-0120 for Emergency Contracts for Goods or Services not related to construction services or public improvements.)

C. Emergency Contract Scope.

Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

D. Emergency Contract Modification.

Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

E. Excusing Bonds.

Pursuant to ORS 279C.380 (4) and this Rule, the Emergency declaration may also state that the City waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See OAR 137-049-0815 and BOLI rules at OAR 839-025-0015.

F. Notification.

For contracts greater than \$50,000 in value, the City shall notify the Contract Review Board of the existence of such contract by submitting a copy of the Written documentation required in subsections A and B of this section to the Contract Review Board within 60 days following the declaration of an emergency, unless the Contract Review Board grants a reasonable extension of time for reasons related to the emergency. If the Contract Review Board grants such an extension, the City shall submit such documentation on or before expiration of the extension.

G. Class Exemptions

In addition to the above required findings, when making findings supporting a class exemption, the City shall clearly identify the class with respect to its defining characteristics. Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values or method of procurement or other factors that distinguish the limited and related class of Projects from the City's overall construction program. Classes shall not be defined solely by funding sources, such as a particular bond fund, or by method of procurement, but must be defined by characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2).

CLASS EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS

50-0600 Ancillary Public Improvements

A Contract entered into between the City and a developer for Public Improvements that is additional to the Public Improvements the City requires the developer to install as a condition of a development permit is exempt from formal competitive Procurement if the additional Work is reasonably related to the Public Improvements required as a condition of the development permit and the cost of the additional work does not exceed \$100,000.

50-0610 Water Infrastructure Contracts Involving Sensitive Information

A. General.

Public Improvement Contracts that relate to the City's water system may be Awarded in accordance with the Intermediate Procurement procedures for competitive quotes established under BPC 49-0160 without regard to the estimated value of the Contract if use of a competitive bid process would likely reveal sensitive information regarding a critical element of the City's water infrastructure.

B. Approval of Use of Exemption.

Prior to conducting a solicitation pursuant to this section, the City's Utility Engineer shall prepare written findings describing how use of a competitive bidding solicitation process would likely reveal sensitive information about the City's water system in the context of a specific project. The findings shall be submitted to the Mayor and the Finance Director for approval or disapproval. The City shall be authorized to conduct a solicitation pursuant to this section only if both the Mayor and Finance Director approve the findings prepared and submitted by the Utility Engineer.

50-0620 Public Art

A contract for permanent installation or other artistic fixture, including but not limited to 1% for art contracts, are exempted from competitive bid requirements of the Purchasing Code and shall follow those requirements as otherwise may be provided in City Code Chapter 3.16.