

**ORDINANCE NO. 20341**

**AN ORDINANCE CONCERNING PUBLIC CONTRACTING; ADDING SECTIONS 2.1400, 2.1405, 2.1410, 2.1415, 2.1420, 2.1425, 2.1430, 2.1435, 2.1440, 2.1445, AND 2.1450 TO THE EUGENE CODE, 1971; REPEALING SECTIONS 2.1200, 2.1205, 2.1210, 2.1215, 2.1220, 2.1225, 2.1230, 2.1240, 2.1245, 2.1250, AND 2.1255 OF THAT CODE; DECLARING AN EMERGENCY; AND PROVIDING AN EFFECTIVE DATE.**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Sections 2.1400, 2.1405, 2.1410, 2.1415, 2.1420, 2.1425, 2.1430, 2.1435, 2.1440, 2.1445, and 2.1450 are hereby added to the Eugene Code, 1971, to provide:

**2.1400 Public Contracts – City Policy.**

- (1) Short Title.** The provisions of sections 2.1400 to 2.1450 of this code, and all administrative rules adopted thereunder may be cited as the City of Eugene Public Contracting Regulations.
- (2) Purpose.** It is the policy of the city in adopting 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:
  - (a) Promoting impartial and open competition;
  - (b) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
  - (c) Taking full advantage of evolving procurement methods that suit the contracting needs of the city as they emerge within various industries.
- (3) Interpretation.** In furtherance of the purpose of the objectives set forth in subsection (2), it is the city's intent that sections 2.1400 to 2.1450 be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

**2.1405 Public Contracts – Exemption from Public Contracting Regulations.** The City of Eugene Public Contracting Regulations apply to all public contracts of the city except for the classes of contracts that are declared exempt from the Oregon Public Contracting Code, which shall be set forth in the rules adopted by the purchasing agent.

**2.1410 Public Contracts – Regulation by City Council.** Except as expressly delegated under sections 2.1400 to 2.1450, the city council reserves to itself

the exercise of all of the duties and authority of a contract review board under state law, including, but not limited to, the power and authority to:

- (1) **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
- (2) **Brand Name Specifications.** Exempt the use of brand name specifications for public improvement contracts;
- (3) **Waiver of Performance and Payment Bonds.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement other than in cases of emergencies;
- (4) **Electronic Advertisement of Public Contracts.** Authorize the use of electronic advertisements for public contracts in lieu of publication in a newspaper of general circulation; and
- (5) **Appeals of Debarment and Prequalification Decisions.** Hear properly filed appeals of the purchasing agent's determination of debarment, or concerning prequalification.

**2.1415 Public Contracts - Authority of Purchasing Agent.**

- (1) **General Authority.** The city manager shall be the purchasing agent for the city and is hereby authorized to award all city contracts for which there is an appropriation. Subject to the provisions of sections 2.1400 to 2.1450 of this code, the purchasing agent may adopt and amend all rules, regulations, procedures 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. Without limiting the generality of the foregoing, the purchasing agent shall adopt public contracting rules for the award of personal services contracts and concession agreements and shall hear all solicitation and award protests.
- (2) **Standards for Contracting Rules.** When adopting public contracting rules, the purchasing agent shall establish practices and procedures that:
  - (a) Do not encourage favoritism or substantially diminish competition;
  - (b) Allow the city to take advantage of the cost-saving benefits of alternative contracting methods and practices;
  - (c) 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;
  - (d) Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled 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 non-recycled products; and
  - (e) Establish purchasing practices that assure, to the maximum extent economically feasible, purchase of materials, goods and supplies that may be recycled or reused when discarded.

- (3) **Delegation of Authority.** Any of the responsibilities or authorities of the purchasing agent under Sections 2.1400 to 2.1450 of this code may be delegated and sub-delegated by administrative order.
- (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 agent shall review the city's public contracting regulations to determine whether any modifications to the regulations need to be adopted by the city to ensure compliance with statutory changes.

**2.1420 Public Contracts – Definitions.** The following terms used in sections 2.1400 to 2.1450 shall have the meanings set forth below.

**Bid.** A binding, sealed written offer to provide goods, services or public improvements for a specified price or prices.

**Concession agreement.** 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.** The total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

**Contract review board.** The city council.

**Cooperative procurement.** A procurement conducted by or on behalf of more than one contracting agency.

**Debarment.** A declaration by the purchasing agent under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the city's public contracts for a prescribed period of time.

**Disposal.** Any arrangement for the transfer of property by the city under which the city relinquishes ownership.

**Emergency.** Circumstances that 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.

**Energy savings performance contract.** A contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

**Findings.** 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; availability, performance and funding sources.

**Goods.** Includes 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.** A solicitation made in accordance with rules adopted by the purchasing agent to a limited number of potential contractors, in which the solicitation agent attempts to obtain at least three quotes or proposals.

**Invitation to bid.** A publicly advertised request for competitive sealed bids.

**Offeror.** A person who submits a bid, quote or proposal to enter into a public contract with the city.

**Oregon Public Contracting Code.** ORS chapters 279A, 279B and 279C.

**Person.** A natural person or any other private or governmental entity, having the legal capacity to enter into a binding contract.

**Proposal.** 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.

**Personal services contract.** A contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The purchasing agent shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

**Public contract.** 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.** A project for construction, reconstruction or major renovation on real property by or for the city. "Public improvement" does not include:

- (a) 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
- (b) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

**Purchasing agent.** The city manager or a designee appointed by the city manager to exercise the authority of the purchasing agent under the city's public contracting regulations.

**Quote.** A price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

**Request for proposals.** A publicly advertised request for sealed competitive proposals.

**Services.** Includes all types of services (including construction labor) other than personal services.

**Solicitation.** 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.** With respect to a particular solicitation or contract, the city manager or employee delegated responsibility for conducting the solicitation and awarding the contract.

**Solicitation documents.** Includes 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.** Personal property owned by the city which is no longer needed for use by the department to which such property has been assigned.

**Telecommunication services.** Two way switched access and transport of voice communications but does not include: (a) services provided by radio common carrier, (b) one-way transmission of television signals, (c) surveying, (d) private telecommunication networks, or (e) communications of the city which take place on the city's side of on-premises equipment.

**2.1425 Public Contracts - Process for Approval of Special Solicitation Methods and Exemptions.**

- (1) Authority of City Council.** In its capacity as contract review board for the city, the city council, upon its own initiative, or upon request of the purchasing agent, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this section 2.1425.
- (2) Basis for Approval.** The approval of a special solicitation method or exemption from competition must be based upon a record before the city council that contains findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations. In making a determination regarding a special selection method, the city council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.
- (3) Hearing.**
  - (a) The city shall approve the special solicitation or exemption after a public hearing before the city council following notice by publication in at least one newspaper of general circulation in the Eugene/ Springfield metropolitan area at least 7 days prior to the hearing.
  - (b) At the public hearing, the city shall offer an opportunity for any interested party to appear and present comment.
  - (c) The city council shall consider the findings, any comments or testimony presented at the hearing, and may approve the exemption as proposed or as modified by the council in response to the comments received.
- (4) Special Requirements for Public Improvement Contracts.**
  - (a) Notification of the public hearing shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.
  - (b) The notice shall state that the public hearing is for the purpose of taking comments on the city's draft findings for an exemption from

the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.

- (5) **Commencement of Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a special exemption under this section 2.1425, provided that the closing of the solicitation may not be earlier than 5 days after the date of the hearing at which the city council approves the exemption. If the city council fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or canceled.

**2.1430 Public Contracts - Solicitation Methods for Classes of Contracts.** The following solicitation methods and the classes of contracts that may be awarded under such methods are hereby established by the city council.

- (1) **Purchases from Nonprofit Agencies for Disabled Individuals.** When available, the city shall purchase goods, services and public improvements from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850 and rules adopted by the purchasing agent.
- (2) **Public Improvement Contracts.**
- (a) Any public improvement. Unless otherwise provided in these regulations or approved for a special exemption, public improvement contracts in any amount may be issued under an invitation to bid.
  - (b) Non-transportation public improvements up to \$100,000. Public improvement contracts other than contracts for a highway, bridge or other transportation project for which the estimated contract price does not exceed \$100,000 may be awarded using an informal solicitation for quotes in accordance with rules adopted by the purchasing agent.
  - (c) Transportation public improvements up to \$50,000. Contracts for which the estimated contract price does not exceed \$50,000, for highways, bridges or other transportation projects may be awarded using an informal solicitation for quotes in accordance with rules adopted by the purchasing agent.
  - (d) Public improvements up to \$5,000. Contracts for public improvements for up to \$5,000 are not subject to competitive solicitation requirements and may be awarded in any manner provided by the purchasing agent's rules and, subject to rules adopted by the purchasing agent, may be awarded at the discretion of the solicitation agent.
  - (e) City funded privately-constructed public improvements. The city may contribute funding to a privately constructed public improvement project (commonly known as a "PEPI") 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% 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 agent to protect the city against defective performance and claims for payment, unless the city's obligation to make a payment is conditioned upon final completion of the public improvement and proof of, or security for payment that is acceptable to the purchasing agent; 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.
- (3) **Personal Services Contracts.** The purchasing agent shall adopt such rules for the selection and award of contracts for personal services as the purchasing agent, in his or her sole discretion deems appropriate.
- (4) **Hybrid Contracts.** The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.
- (a) Design/build and CM/GC contracts. Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the city manager or the city manager's designee, upon application of the solicitation agent, in which the solicitation agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to the city.

- (b) Energy savings performance contracts. Unless the contract qualifies for award under another classification in this section 2.1430, contractors for energy savings performance contracts shall be selected under a request for proposals.

**(5) Contracts for Goods and Services.**

- (a) Any procurement. The procurement of goods or services, or goods and services in any amount may be made under either an invitation to bid or a request for proposals.
- (b) Procurements up to \$150,000. The procurement of goods or services, or goods and services, for which the estimated contract price does not exceed \$150,000 may also be made under an informal solicitation for either quotes or proposals.

**(6) Contracts Subject to Award at Solicitation Agent's Discretion.**

Subject to regulation under rules adopted by the purchasing agent, 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.

- (a) Advertising. Contracts for the placing of notice or advertisements in any medium.
- (b) Amendments. Contract amendments shall not be considered to be separate contracts if made in accordance with rules adopted by the purchasing agent.
- (c) Animals. Contracts for the purchase of animals.
- (d) Contracts up to \$5,000. Contracts of any type for which the contract price does not exceed \$5,000 may be awarded and amended as provided in rules adopted by the purchasing agent.
- (e) Copyrighted and library materials. Contracts for the acquisition of materials entitled to copyright, including, but not limited to, works of art and design, literature, music and library lending materials.
- (f) 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.
- (g) Goods for resale. Contracts for goods purchased for resale to consumers.
- (h) Government regulated items. Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- (i) Insurance. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (j) Non-owned property. Contracts or arrangements for the sale or other disposal of used abandoned property or other personal property not owned by the city.
- (k) 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.

- (l) Sole source contracts. Contracts for goods or services which are available from a single source may be awarded without competition. The purchasing agent shall adopt rules under which a determination of sole source availability may be made.
  - (m) Sponsorship agreements. Sponsorship agreements, under which the city receives a gift or donation in exchange for recognition of the donor.
  - (n) Structures. Contracts for the disposal of structures located on city-owned property, other than structures suitable for residential use.
  - (o) Temporary extensions or renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.
  - (p) 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 proposer;
    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.
  - (q) Used property. A solicitation agent, for procurements up to \$20,000, and the purchasing agent, 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. A record shall be made of the findings that support any purchase over \$10,000.
  - (r) Utilities. Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities, including in-kind telecommunications services pursuant to EC 3.415(6).
- (7) Contracts Required by Emergency Circumstances.**
- (a) In general. When the purchasing agent determines that immediate execution of a contract is necessary to prevent substantial damage or injury to persons or property, the city may execute the contract without competitive selection and award. The solicitation agent shall 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.

- (b) Emergency public improvement contracts. A public improvement contract may only be awarded under emergency circumstances if the purchasing agent has made a written declaration of emergency. The purchasing agent shall notify the city council of the declaration of emergency, if made, and the facts and circumstances surrounding the emergency execution of the contract, as soon as possible, in light of the emergency circumstances. Any public improvement contract awarded 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. When the delay required to obtain a payment or performance bond would result in injury or substantial property damage, the purchasing agent may waive, wholly or in part, the requirement for a payment or performance bond.
- (8) **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") in accordance with rules adopted by the purchasing agent.
- (9) **Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code and under rules adopted by the purchasing agent.
- (10) **Surplus Property.** The purchasing agent shall adopt rules for the disposal of all surplus property. The purchasing agent's rules shall include rules under which nonprofit corporations may lease or purchase structures suitable for use as residential buildings that are declared surplus property and must be removed from city-owned property. The rules shall give preferences to nonprofit corporations who will use the structure to provide housing for persons of low income, or who are otherwise disadvantaged.
- (11) **Concession Agreements.** The purchasing agent shall adopt rules for the award of concession agreements.

**2.1435 Public Contracts - Use of Brand Name Specifications for Public Improvements.**

- (1) **In General.** Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:
  - (a) It is unlikely that such exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; or

- (b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the city; or
  - (c) There is only one manufacturer or seller of the product of the quality required; or
  - (d) Efficient utilization of existing equipment, supplies requires the acquisition of compatible equipment or supplies.
- (2) **Authority of Purchasing Agent.** The purchasing agent shall have authority to determine whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of subsection (1).
- (3) **Brand Name or Equivalent.** Nothing in this section 2.1435 prohibits the city from using a “brand name or equivalent” specification, from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the city, or from establishing a qualified product list under rules adopted by the purchasing agent.

**2.1440 Public Contracts - Bid, Performance and Payment Bonds.**

- (1) **Solicitation Agent May Require Bonds.** The solicitation agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement under this section 2.1440.
- (2) **Bid/Proposal Security.** Except as otherwise exempted, the invitation to bid or request for proposals for all contracts that include the construction of a public improvement shall require bid or proposal security.
- (3) **Performance Bonds.**
- (a) General. Except as provided in sections 2.1400 to 2.1450 of this code, all public contracts are exempt from the requirement for the furnishing of a performance bond.
  - (b) Contracts involving public improvements. Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of the city and any public agency that is providing funding for the project for which the contract was awarded.
  - (c) Cash-in-lieu. The purchasing agent may permit the successful offeror to submit a cashier’s check or certified check in lieu of all or a portion of the required performance bond.
- (4) **Payment Bonds.**
- (a) General. Except as provided in sections 2.1400 to 2.1450 of this code, all public contracts are exempt from the requirement for the furnishing of a payment bond.

- (b) Contracts involving public improvements. Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.
- (5) **Design/Build Contracts.** If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.
- (6) **Construction Manager/General Contractor Contracts.** If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by subsection (1) of this section upon execution of an amendment establishing the guaranteed maximum price. The city shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.
- (7) **Surety; Obligation.** Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to the city or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the purchasing agent.
- (8) **Emergencies.** In cases of emergency, or when the interest or property of the city probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of section 2.1430(7)(c), unless the city council requires otherwise.

**2.1445 Public Contracts - Electronic Advertisement of Public Contracts.** In lieu of publication in a newspaper of general circulation in the Eugene/Springfield metropolitan area, the advertisement for an invitation to bid or request for

proposals for a contract may be published electronically by posting on the city's website, provided that the following conditions are met:

- (1) The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and
- (2) The solicitation agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in the Eugene/Springfield metropolitan area and will provide costs savings for the city, or that the use of electronic publication will be more effective.

**2.1450 Public Contracts - 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 city council as provided in this section 2.1450.
- (2) **Filing of Appeal.** A written notice of appeal must be filed with the city's purchasing agent within three business days after the person's receipt of the 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 agent 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:
  - (a) Promptly upon receipt of notice of appeal, the city shall notify the appellant of the time and place of the hearing;
  - (b) The city council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the purchasing agent; and
  - (c) 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 standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties. The standards of responsibility as defined in the Oregon Public Contracting Code shall be set forth in the rules adopted by the purchasing agent.
- (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 over-turned.

- (7) Judicial Review.** The decision of the city council may be reviewed only upon a petition in the circuit court of Lane County filed within 15 days after the date of the city council's decision.

**Section 2.** Sections 2.1200, 2.1205, 2.1210, 2.1215, 2.1220, 2.1225, 2.1230, 2.1240, 2.1245, 2.1250, AND 2.1255 of the Eugene Code, 1971 are repealed.

**Section 3.** The findings attached as Exhibit A hereto are adopted in support of this action.

**Section 4.** The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

**Section 5.** The revisions contained herein are based on, and consistent with the Oregon Public Contracting Code (ORS Chapters 279A, 279B and 279C), which will become effective on March 1, 2005. The Council finds that it is necessary for the preservation of the public health, welfare and safety that this Ordinance also become effective on that date and therefore, an emergency is declared to exist, and this Ordinance shall become effective on March 1, 2005.

**Passed by the City Council this**

**28<sup>th</sup> day of February, 2005**

**Approved by the Mayor this**

**\_\_\_\_ day of March, 2005**

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**City Recorder**

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**Mayor**