

**ARTICLE VII. PROCUREMENT AND CONTRACTING PROCEDURES;
SALE OR DISPOSAL OF REAL OR PERSONAL PROPERTY**

DIVISION 1. GENERAL

Sec. 2-301. Authority of Finance Director.

In addition to the duties described in § 2-17 of this chapter, the Director of Finance shall have direction and control over the purchasing of supplies, materials and/or services for the city and the several officers and boards thereof; and over the sale or disposal of real or personal property of the city. Said Director may delegate such of his or her responsibility and duties hereunder as he or she may deem fit and necessary. The provisions of division 2 shall apply to the City schools as provided in section 2-312 below. City and school compliance with this article will be subject to review through the annual audit process.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

DIVISION 2. COMPETITIVE PROCESS FOR CONTRACTS

Sec. 2-302. Contracts; purchases.

(a) *City Council authorization.* All contracts for the management of city-owned facilities that require the management entity to invest in equipment or improvements to the facility, except contracts at the Portland International Jetport, shall be approved by the City Council. All other contracts or purchases of supplies, materials or services, including contracts at the Portland International Jetport, shall be authorized by the City Council, unless they meet the conditions outlined herein for approval by the City Manager.

Members of the City Council or School Committee shall not participate in the process for competitive bidding or request for proposals set out in paragraphs (c) and (d) below.

(b) *Supplies, materials and/or services procurement.* The City Manager shall have the authority to award any bid and to execute any contract or approve any purchase for and in behalf of the City for supplies and/or materials to be furnished and/or services to be performed for the city, including without limitation professional consulting services, provided that:

- (1) The Finance Director certifies that funds are available for such procurement; and
- (2) The bid is awarded and the contract or purchase executed as the result of a competitive process, which shall mean either by competitive bidding or request for proposals.

(c) *Competitive bidding.* Competitive bidding, as used herein, shall include, at a minimum, prior public notice of the procurement, including publication in a newspaper of general circulation in the City, unless the Finance Director determines in a particular case that publication elsewhere would be reasonably expected to provide effective competition; solicitation of sealed bids based on identical specifications; and intent to award the bid to the lowest qualified and responsible bidder who meets the specifications.

d) *Competitive request for proposal.* The request for proposal competitive process shall consist of the following:

- (1) *Request for proposals.* A request for proposals shall be issued identifying all significant evaluation factors, including price or cost, and their relative importance or weighting.
- (2) *Solicitation.* Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall be published at a minimum in a newspaper of general circulation in the city, unless the Finance Director determines in a particular case that publication elsewhere would be reasonably expected to provide effective competition.
- (3) *Evaluation.* The Finance Director shall provide mechanisms for technical evaluation of the proposals received, determinations of qualified and responsible proposers for the purposes of further written or oral negotiations, and the selection for contract award. Said evaluation of proposals shall include a determination of compliance with the request for proposals and its evaluation factors. The evaluation process may include interviews with some or all of the proposers.
- (4) *Negotiations.* Negotiations may be undertaken with the qualified and responsible proposer(s) whose proposal(s) is determined to be most advantageous to the city, considering the price and the evaluation factors set forth in the request for proposals.
- (5) *Award.* The contract shall be awarded by the City Manager to the qualified and responsible proposer whose proposal and the result of the subsequent negotiations are determined by the City Manager to be in the best interest of the city.

(e) *Exceptions to required competitive process.* The requirement of a competitive process set forth in subsection (b) above may be waived by the City Manager, in his or her discretion, if one (1) or more of the following conditions are met, and the Finance Director has certified that funds are available for such procurement:

(1) Such procurement does not equal or exceed the aggregate sum of twenty-five thousand dollars (\$25,000.00) and the procurement is done in accordance with the Finance Director's rules for said procurement; or

(2) The City Manager determines in writing that the procurement of such services, supplies and/or materials is of such an emergency nature that the requirements of a competitive process cannot be followed, in which event the Manager shall specify such efforts in aid of a competitive process which he or she determines to be feasible under the circumstances; or

(3) In connection with any project funded or reimbursable by state or federal sources, such source requires a different procurement process to be followed and procurement is effected through or in accordance with such process; or

(4) The procurement is through an award by any governmental entity or group of governmental entities, which award is the result of a competitive process by said entity or group; or through any public or private group purchasing program; or

(5) There has been a competitive process but no bids or proposals were received or the City Manager determines that the bids or proposals received are unreasonable or in excess of the funds available for such procurement or not independently reached in open competition. In such cases, he or she may negotiate a contract if he or she determines:

- a. That it is not feasible to re-solicit bids or proposals again; and
- b. Each qualified and responsible bidder or proposer, if any, has been notified of the intention to negotiate with the bidders or proposers, starting with the lowest qualified bidder or proposer first and proceeding consecutively until a contract acceptable to the city is reached; or

(6) The procurement is of computer equipment, investment services, appraisal services, repair parts, travel, transportation, island transportation, maintenance contracts and similar purchases

to the extent specified by rule of the Director of Finance; or

(7) The procurement is of legal services, including but not limited to lawyers, paralegals, court reporters and other persons necessary to provide legal services to the city, said procurement to be after consultation with the corporation counsel; or

(8) The procurement is of medical services, including but not limited to physicians, physician assistants, nurses and related medical or dental personnel; or other specialized professional services, needed for the administration of city programs.

(9) The procurement is of used vehicles and equipment. (Ord. No. 376-90, §3, 6-6-90; Ord. No. 244-93, § 3, 4-16-93; Ord. No. 142-96, 1-17-96; Ord. No. 131-00, 12-18-00; Ord. No.87-10/11, 12-6-10)

Sec. 2-303. Sole source.

Unless otherwise prohibited by applicable state or federal law, the City Manager may authorize a contract or purchase of supplies, materials and/or services in any amount without any competitive process if:

- (a) The Finance Director certifies that funds are available for said procurement; and
- (b) The City Manager makes a written finding that said supplier, contractor or consultant is the sole available source for said goods or services, and the basis for said finding.

(Ord. No. 376-90, §3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-304. Brand names.

- (a) The Finance Director certifies that funds are available for said procurement;

Unless otherwise prohibited by applicable state or federal law, nothing herein shall prevent or prohibit the City from soliciting bids for supplies or materials on the basis of brand names so long as;

- (b) The solicitation is approved in advance by the City Manager; and
- (c) The solicitation is in furtherance of a policy of standardization of such supplies or materials; and
- (d) The City Manager determines that there is a sufficient number of dealers in said brand-name supplies or materials in the area of the solicitation to provide a reasonable

expectation of competition for the bid.
(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-305. Rights of the City.

The City Manager may waive any informality or irregularity in any bid or proposal received and shall have the right to reject any or all bids or proposals received for whatever reason he or she deems in the best interest of the City.

(Ord. No. 376-90, §3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-306. Rules and regulations.

(a) The Finance Director is authorized to issue rules and regulations which are not inconsistent with this article, which rules and regulations may include, but are not limited to, requirements forbid security, performance and payment bonds, insurance and payment practices.

(b) The Finance Director is further authorized to issue rules and regulations to govern purchases of supplies, materials and/or services of less than twenty-five thousand dollars (\$25,000.00), which rules may include, but not necessarily be limited to, a procedure for the solicitation of informal quotations for purchases of less than twenty-five thousand dollars (\$25,000.00) and for the City use of purchase orders.

(c) All rules and regulations promulgated hereunder shall be effective upon approval by the City Manager. A copy of all such rules and regulations shall be kept on file, at a minimum, in the office of the Finance Director.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00; Ord. No. 87-10/11, 12-6-10)

Sec. 2-307. Termination for convenience.

Any contract executed or purchases awarded by the City Manager without council approval shall be subject to termination at the convenience of the City, with the City responsible only for the contractor's unpaid, unrecovered, or unrecoverable out-of-pocket costs for supplies, materials and/or services provided or amounts expended or incurred in reliance thereon prior to the effective date of such notice.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00. 12-18-00; Ord. No. 87-10/11, 12-6-10)

Sec. 2-308. Contractor or consultant qualifications.

(a) The City Manager or the Finance Director may inspect or inquire into the qualifications of any bidder or proposer to determine whether they are qualified and

responsible bidders or proposers. The failure of any bidder or proposer to promptly supply information or submit to such inspection shall be grounds for a determination that the bidder or offer or is not a qualified and responsible bidder or proposer. The right to inspect shall include the plant or business of a contractor, consultant or any subcontractor or sub consultant under any procurement contract awarded or to be awarded by the city and the right to audit the books and records of any person seeking to become a contractor, consultant or subcontractor or sub consultant under any procurement contract with the city. The City Manager or Finance Director may establish rules and regulations for the qualification or prequalification of bidders or proposers. Such rules and regulations may apply to any procurement methods as set forth in this section, or may be specifically promulgated for any particular procurement situation.

(b) In determining whether a bidder or proposer is a qualified and responsible bidder or proposer, in addition to price and compliance with all applicable bid specifications, the City Manager or Finance Director may consider:

- (1) The documented quality of performance of other contracts or services for the city or for others;
- (2) Whether the bidder or proposer can perform the contract or service within the time specified, without delay or interference;
- (3) The past and current compliance with City laws and ordinances;
- (4) Whether the bidder or proposer is current on its obligations to the City, including taxes, sewer assessments and any other City accounts receivable; and
- (5) The sufficiency of the manpower and financial resources of the bidder or proposer to perform the contract or provide the service.

(c) In addition to the foregoing determination, the Finance Director may disqualify a bidder or proposer from contracting with the city for a period of time, up to and including two years, for good cause shown. Such cause shall include, but not be limited to, the foregoing factors used for determining the qualifications of a bidder or proposer.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-309. Disqualification appeal procedure.

In the event of disqualification of any bidder or proposer under section 2-308(c) above, the affected party may appeal the disqualification as follows:

(a) First, by filing a complaint, in writing or orally, with the Finance Director for an informal discussion of the basis of the disqualification by the city. Such complaint shall be filed within five (5) business days after the affected party had notice of the action taken by the city. Following such discussions, the Finance Director, or his or her designee, shall provide the complaining party with a written decision on the complaint.

(b) In the event the complaint is not resolved in step 1 above to the satisfaction of the complaining party, then such party may appeal the decision to the City Manager within five (5) business days of the Finance Director's decision. Within ten(10) business days thereafter, the City Manager shall each have the opportunity to be heard. The City Manager shall issue a written decision, which decision shall be final.

(Ord. No. 131-00, 12-18-00)

Sec. 2-310. No prohibition.

Nothing herein is intended, nor shall it be deemed, to prevent or prohibit the City Manager from requiring Council approval of any proposed City contract, purchase or lease should he or she choose to do so. Nothing in this article shall bind the City Council in its choice of a contractor or consultant including, but not limited to, the choice of an auditor pursuant to article VII, section 1 of the Charter.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-311. Applicability to schools.

(a) The procedures provided in this division shall apply to the procurement of supplies, materials and/or professional, consulting or other services for the City's schools, provided, however, that the Portland Superintending School Committee shall designate the person or persons within the school department to assume the authority of the Finance Director as provided herein.

(b) All reference to "City Manager" herein, when applied to school procurement, shall mean the superintendent of schools, unless another person within the school department is designated by order of the said school committee. All references to the "City Council"

herein, when applied to school procurement, shall mean the said School Committee. All proposed rules and regulations to be issued by the responsible school department official under § 2-308 shall be submitted to the City's Finance Director for review and comment prior to their final adoption by the said School Department.
(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

Sec. 2-312. Employment contracts.

Nothing herein shall be construed or required to apply to teaching or other employment contracts in which the relationship is that of employer-employee rather than that of independent contractor to the city or the school department.
(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)

DIVISION 3. SALE OR DISPOSAL OF REAL OR PERSONAL PROPERTY

Sec. 2-313. Sale or disposal of real or personal property.

(a) *Redemption of tax-acquired real property.*

(1) Property acquired by the City by reason of delinquent property taxes or sewer user charges may be reconveyed to the person or persons from whom the property was acquired after the expiration of the statutory period for redemption, upon the following conditions: The payment of the full amount of all taxes, sewer user charges, and other charges and assessments of any kind owed on all property located within the city, owned by the person seeking to redeem the property.

(2) The City Manager may attach such further conditions as he or she may determine to be reasonable and appropriate for any reconveyance.

(3) Nothing herein shall be construed to create any entitlement to reconveyance.

(b) *Real property.*

(1) Subject to the provisions of section 2-313(a) above for redemption by the prior owner, the Finance Director shall promulgate rules and regulations for the review and disposition of all real property. Such properties may be offered for sale pursuant to said rules and regulations. All sales shall be subject to the approval of the City Council, except as follows: Vacant lots that do not meet minimum lot size for construction and are less than five thousand dollars (\$5,000.00) in value as determined by the assessor do not require City Council approval and may be finally sold by the Finance Director, subject to the approval of the City Manager, except to the extent provided otherwise by rule.

(2) All rules and regulations promulgated hereunder shall be effective upon approval by the City Manager, and a copy of all such rules and regulations shall be kept on file in the office of the Finance Director.

(3) Nothing herein shall limit or modify the discretion of the City Manager or the City Council to reject any sale or offer to purchase by any person should they deem it in the best interest of the City to do so.

(c) *Acceptance of sewer and drainage easements.* The Finance Director, upon approval by the City Manager, shall have the authority to accept sewer and drainage easements and shall cause such easements to be recorded in the Cumberland County Registry of Deeds.

(d) *Personal property.* The Finance Director shall conduct all disposal of personal property determined by the City Manager to be surplus, such disposal to be either:

- (1) By competitive bid;
- (2) By competitive negotiation including, but not limited to, trading property, the value of any single piece of which does not exceed five thousand dollars (\$5,000.00);
- (3) By public auction; or
- (4) By discarding it as he or she determines to be in the best interest of the city, if he or she determines it to be of no economic value.

(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 244-93, § 3, 4-16-93; Ord. No. 142-96, 1-1796; Ord. No. 131-00, 12-18-00)

Sec. 2-314. Leases of real and personal property.

All leases of real or personal property by or to the City shall be authorized by the City Council, except that the City Manager is authorized to execute such leases without City Council authorization if the following conditions are met:

(a) The City Council has appropriated funds to pay the entire term of the lease; or

(b) The lease is on a month-to-month basis or has a clause permitting the city to terminate for convenience upon no more than ninety (90) days notice with no further City obligation there under.
(Ord. No. 376-90, § 3, 6-6-90; Ord. No. 131-00, 12-18-00)