

ORDINANCE NO. 877

COPY

**AN ORDINANCE REPEALING AND RESTATING STAYTON MUNICIPAL CODE ("SMC"), CHAPTER 3.04, RELATING TO THE PROCEDURES FOR PUBLIC CONTRACTING; AND, DECLARING AN EMERGENCY.**

WHEREAS, the Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) (the "Oregon Public Contracting Code," codified in Oregon Revised Statutes ("ORS") Chapters 279A, 279B, and 279C), which, effective March 1, 2005, necessitates the replacement of all state and local public contracting rules;

WHEREAS, the Oregon Public Contracting Code recommends that local governments adopt local contracting regulations for areas not covered by the Oregon Public Contracting Code or the companion "Model Rules" established by the Oregon Attorney General;

WHEREAS, pursuant to the new Oregon Public Contracting Code, substantial portions of the former ORS Chapter 279, and the rules and exemptions adopted thereunder (including SMC Chapter 3.04), were repealed on March 1, 2005, and it is appropriate that the new "Stayton Public Contracting Code" contained in this Ordinance substitute for the former SMC Chapter 3.04;

WHEREAS, findings supporting the provisions of the new "Stayton Public Contracting Code" have been approved by the Stayton City Council through Resolution; and,

WHEREAS, it is appropriate that an emergency be declared as to the enactment of this Ordinance so that it is in full force and effect immediately from and after its adoption by the Stayton City Council and signing by the Mayor.

NOW, THEREFORE, the Stayton City Council does ordain as follows:

SECTION 1. Stayton Municipal Code, Chapter 3.04 ("Public Contracts"), is hereby repealed in its entirety and restated as follows:

**REVENUE AND FINANCE**

**Chapter 3.04**

**STAYTON PUBLIC CONTRACTING CODE**

**SECTIONS:**

- 3.04.010 Policy.**
- 3.04.020 Application of Public Contracting Code.**
- 3.04.030 Authority and Regulation by Stayton City Council.**
- 3.04.040 Model Rules.**
- 3.04.050 Authority of City Administrator.**

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- 3.04.060 **Definitions.**
  - 3.04.070 **Process for Approval of Special Solicitation Methods and Exemptions.**
  - 3.04.080 **Solicitation Methods for Classes of Contracts.**
  - 3.04.090 **Informal Solicitation Procedures.**
  - 3.04.100 **Use of Brand Name Specifications for Public Improvements.**
  - 3.04.110 **Bid, Performance and Payment Bonds.**
  - 3.04.120 **Cancellation, Rejection, Delay of Invitations for Bids or Requests for Proposals**
  - 3.04.130 **Electronic Advertisement of Public Improvement Contracts.**
  - 3.04.140 **Appeal of Debarment or Prequalification Decision.**

**3.04.010 Policy.**

- A. **Short Title.** This Chapter may be cited as the Stayton Public Contracting Code.
- B. **Purpose of Public Contracting Code.** It is the policy of the City of Stayton in adopting the Stayton Public Contracting Code 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 of Stayton as they emerge within various industries.
- C. **Interpretation of the Stayton Public Contracting Code.** In furtherance of the purpose of the objectives set forth in subsection B, it is the City of Stayton's intent that the Stayton Public Contracting Code be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C.

**3.04.020 Application of Public Contracting Code.** In accordance with ORS 279A.025, the Stayton Public Contracting Code and the Oregon Public Contracting Code do not apply to the following classes of contracts:

- A. **Between Governments.** Contracts between the City of Stayton and a public body or agency of the State of Oregon or its political subdivisions, or between the City of Stayton and an agency of the federal government.
- B. **Grants.** A grant contract is an agreement under which the City of Stayton is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other

than involvement associated with monitoring compliance with the grant conditions. The making or receiving of a grant is not a public contract subject to the Oregon Public Contracting Code; however, any grant made by City of Stayton for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant to design or construct the public improvement or public works project are made in accordance with the Oregon Public Contracting Code and the Stayton Public Contracting Code.

- C. **Legal Witnesses and Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City of Stayton is or may become interested.
- D. **Real Property.** Acquisitions or disposals of real property or interests in real property.
- E. **Textbooks.** Contracts for the procurement or distribution of textbooks.
- F. **Oregon Corrections Enterprises.** Procurements from an Oregon corrections enterprises program.
- G. **Finance.** Contracts, agreements or other documents entered into, issued or established in connection with:
  - (1) The incurring of debt by the City of Stayton, including 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;
  - (2) The making of program loans and similar extensions or advances of funds, aid or assistance by the City of Stayton to a public or private person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;
  - (3) The investment of funds by the City of Stayton as authorized by law; or,
  - (4) Banking, money management or other predominantly financial transactions of the City of Stayton that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the City Administrator.
- H. **Employee Benefits.** Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565, or in the Stayton Municipal Code.
- I. **Exempt Under State Laws.** Any other public contracting specifically exempted from the Oregon Public Contracting Code by any other provision of law.

- J. **Federal Law.** Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or the Stayton Public Contracting Code, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or the Stayton Public Contracting Code.

**3.04.030 Authority and Regulation by Stayton City Council.** Except as expressly delegated under this Chapter, the Stayton 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, including, but not limited to, the power and authority to:

- A. **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;
- B. **Brand Name Specifications.** Exempt the use of brand name specifications for public improvement contracts;
- C. **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;
- D. **Electronic Advertisement of Public Improvement Contracts.** Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation;
- E. **Appeals of Debarment and Prequalification Decisions.** Hear properly filed appeals of the City Administrator's determination of debarment, or concerning prequalification;
- F. **Rulemaking.** Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements; and
- G. **Award.** Award all contracts that exceed the authority of the City Administrator.

**3.04.040 Model Rules.** The Model Rules adopted by the Oregon Attorney General under ORS 279A.065 are adopted as supplemental to this Chapter only to the extent that they do not conflict with the public contracting code adopted by Stayton City Council.

**3.04.050 Authority of City Administrator.**

- A. **General Authority.** The Stayton City Administrator is hereby authorized to issue all solicitations and to award all City of Stayton contracts for which the contract price does not exceed \$150,000. Subject to the provisions of this Chapter, the City

Administrator 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 of Stayton's contracting needs. The City Administrator shall hear all solicitation and award protests.

**B. Solicitation Preferences.** When possible, the City Administrator 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; and,

(2) 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.

**C. Delegation of City Administrator's Authority.** Any of the responsibilities or authorities of the City Administrator under this Chapter may be delegated by administrative directive.

**D. Mandatory Review of ORS and Model Rules.** Whenever the Oregon State Legislative Assembly enacts laws that amend the provisions of the Oregon Public Contracting Code and/or cause the Oregon Attorney General to modify its Model Rules, the City Administrator shall review the Stayton Public Contracting Code and recommend to the Stayton City Council any modifications required to ensure compliance with statutory or rule changes.

**3.04.060 Definitions.** The following terms used in this Chapter shall have the meanings set forth below.

**Award:** means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the City of Stayton until the contract is executed and delivered by City of Stayton.

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

**City Administrator:** means the Stayton City Council's duly appointed City Administrator who may designate respective duties under this Chapter to a Purchasing Manager or a Solicitation Agent, defined herein, as deemed appropriate.

**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 of Stayton, and under which the concessionaire makes payments to the City of Stayton 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 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 or Local Contract Review Board:** means the Stayton City Council.

**Cooperative Procurement:** means a procurement conducted by or on behalf of one or more contracting agencies.

**Debarment:** means a declaration by the City Administrator under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the City of Stayton's public contracts for a prescribed period of time.

**Disposal:** means any arrangement for the transfer of property by the City of Stayton under which the City of Stayton relinquishes ownership.

**Emergency:** means 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.

**Findings:** are 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:** 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 Stayton Public Contracting Code 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 Oregon Attorney General pursuant to ORS 279A.065.

**Offeror:** means a person who submits a bid, quote or proposal to enter into a public contract with the City of Stayton.

**Oregon Public Contracting Code:** means ORS Chapters 279A, 279B and 279C.

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

**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.

**Personal Services Contract:** means 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 City Administrator 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:** means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the City of Stayton 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 of Stayton. "Public improvement" does not include:

- (1) Projects for which no funds of the City of Stayton 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 with respect to a particular procurement, the City Administrator, or designee, performing procurement duties pursuant to the Stayton Public Contracting Code.

**Qualified Pool:** means a pool of vendors who are pre-qualified 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 (RFP):** means a publicly advertised request for sealed competitive proposals.

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

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

**Solicitation Agent:** means with respect to a particular solicitation, the City Administrator, or designee, conducting the solicitation and making an award.

**Solicitation Documents:** means all informational materials issued by the City of Stayton for a solicitation, including, but not limited to RFP, advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

**Standards of Responsibility:** means the qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

- (1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- (2) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (3) A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (4) Qualified legally to contract with the City of Stayton;
- (5) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and,
- (6) Not been debarred by the City of Stayton, and, in the case of public improvement contracts, has not been listed by the Oregon Construction Contractors Board as a contractor not qualified to hold a public improvement contract.



**Surplus Property:** means personal property owned by the City of Stayton which is no longer needed for use by the department to which such property has been assigned.

**3.04.070 Process for Approval of Special Solicitation Methods and Exemptions.**

- A. **Authority of Stayton City Council.** In its capacity as Contract Review Board for the City of Stayton, the Stayton City Council, upon its own initiative, or upon request of the City Administrator, 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 3.04.070.
- B. **Basis for Approval.** The approval of a special solicitation method or exemption from competition must be based upon a record before the Stayton City Council that contains the following:
- (1) The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
  - (2) The estimated contract price or cost of the project, if relevant;
  - (3) Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
  - (4) 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 this Chapter;
  - (5) A description of the proposed alternative contracting methods to be employed;
  - (6) The estimated date by which it would be necessary to let the contract(s); and,
  - (7) In making a determination regarding a special selection method, the Stayton 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.
- C. **Hearing.**
- (1) The City of Stayton shall approve the special solicitation or exemption after a public hearing before the Stayton City Council following notice by publication in at least one newspaper of general circulation in the City of Stayton area.

- (2) At the public hearing, the City of Stayton shall offer an opportunity for the public and any interested party to appear and present comment.
- (3) The Stayton City Council will consider the findings and may approve the exemption as proposed or as modified by the Stayton City Council after providing an opportunity for public comment.

**D. Special Requirements for Public Improvement Contracts.**

- (1) Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.
- (2) The notice shall state that the public hearing is for the purpose of taking comments on the City of Stayton'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.

**E. Commencement of Solicitation Prior to Approval.** A solicitation may be issued prior to the approval of a special exemption under this section 3.04.070, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the Stayton City Council approves the exemption. If the Stayton 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 cancelled.

**3.04.080 Solicitation Methods for Classes of Contracts.** The following classes of public contracts and the methods that are approved for the award of each of the classes are hereby established by the Stayton City Council.

**A. Purchases from Nonprofit Agencies for Disabled Individuals.** The City of Stayton shall give a preference to goods, services and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.

**B. Public Improvement Contracts.**

- (1) **Any Public Improvement.** Unless otherwise provided in this Chapter or approved for a special exemption, public improvement contracts in any amount may be issued only under an invitation to bid.
- (2) **Non-Transportation Public Improvements Up to \$100,000.** Public improvement contracts other than contracts for a highway, bridge or other transportation projects for which the estimated contract price does not exceed \$100,000, may be awarded using an informal solicitation for quotes.

- (3) **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.
- (4) **City of Stayton-Funded, Privately-Constructed Public Improvements.** The City of Stayton 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:
  - (a) The City of Stayton's contribution to the project may not exceed 25% of the total cost of the project;
  - (b) The City of Stayton must comply with all applicable laws concerning the reporting of the project to the Bureau of Labor and Industries as a public works project;
  - (c) 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;
  - (d) 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;
  - (e) 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 City Administrator to protect the City of Stayton against defective performance and claims for payment; and,
  - (f) 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 of Stayton for all claims for payment, injury or property damage arising from or related to the construction of the project.

**C. Personal Services Contracts.**

- (1) **Any Personal Services Contract.** Except as provided herein, personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals.
- (2) **Personal Service Contracts Not Exceeding \$150,000.** Contracts for personal services for which the estimated contract price does not exceed \$150,000 may be awarded using an informal solicitation for proposals as provided in Section 3.04.090 hereof.

- (3) **\$75,000 Award from Qualified Pool.** Contracts for personal services for which the estimated contract price does not exceed \$75,000 may be awarded by direct appointment without competition from a Qualified Pool.
- (4) **Personal Service Contracts Not Exceeding \$20,000 Per Year.** Contracts for which the Solicitation Agent estimates that payments will not exceed \$20,000 in any fiscal year or \$150,000 over the full term, including optional renewals, may be awarded under any method deemed in the City of Stayton's best interest by the Solicitation Agent, including by direct appointment.
- (5) **Personal Service Contracts for Continuation of Work.** Contracts of not more than \$150,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Solicitation Agent determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

D. **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.

- (1) **Design/Build and Construction Manager/General Contractor ("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 Stayton City Council or 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 of Stayton.
- (2) **Energy Savings Performance Contracts.** Unless the contract qualifies for award under another classification in this section 3.04.080, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with the Stayton Public Contracting Code.

E. **Contracts for Goods and Services.**

- (1) **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.

- (2) **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 be made under an informal solicitation for either quotes or proposals.

F. **Contracts Subject to Award at City Administrator's Discretion.** The following classes of contracts may be awarded in any manner which the City Administrator deems appropriate to the City of Stayton's needs, including by direct appointment or purchase. Except where otherwise provided, the City Administrator 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 Stayton Public Contracting Code.
- (3) **Animals.** Contracts for the purchase of animals.
- (4) **Contracts Up to \$5,000.** Contracts of any type for which the contract price does not exceed \$5,000 without a record of the method of award.
- (5) **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.
- (6) **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.
- (7) **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- (8) **Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145, and the Stayton Municipal Code.
- (9) **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the City of Stayton.
- (10) **Sole Source Contracts.** Contracts for goods or services which are available from a single source may be awarded without competition.
- (11) **Specialty Goods for Resale.** Contracts for the purchase of specialty goods by City of Stayton for resale to consumers.

- (12) **Sponsorship Agreements.** Sponsorship agreements, under which the City of Stayton receives a gift or donation in exchange for recognition of the donor.
- (13) **Structures.** Contracts for the disposal of structures located on City of Stayton-owned property.
- (14) **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.
- (15) **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.
- (16) **Temporary Use of City of Stayton-Owned Property.** The City of Stayton may negotiate and enter into a license, permit or other contract for the temporary use of City of Stayton-owned property without using a competitive selection process if:
  - (a) The contract results from an unsolicited proposal to the City of Stayton based on the unique attributes of the property or the unique needs of the proposer;
  - (b) The proposed use of the property is consistent with the City of Stayton's use of the property and the public interest; and,
  - (c) The City of Stayton reserves the right to terminate the contract without penalty, in the event that the City of Stayton determines that the contract is no longer consistent with the City of Stayton's present or planned use of the property or the public interest.
- (17) **Used Property.** The City Administrator may contract for the purchase of used property by negotiation if such property is suitable for the City of Stayton'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 of Stayton. The City Administrator shall record the findings that support the purchase.
- (18) **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

**G. Contracts Required by Emergency Circumstances.**

- (1) **In General.** When an official with authority to enter into a contract on behalf of the City of Stayton 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 Stayton 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 of Stayton and the public, and (2) notify the Stayton 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 Stayton City Council or City Administrator 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 Stayton 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 Administrator may waive the requirement for all or a portion of required performance and payment bonds.

H. **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 subsection.

- (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 City Administrator. The Solicitation Agent shall provide the City Administrator with a copy of the letter, memorandum or other documentation from GSA establishing permission to the City of Stayton 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 of Stayton.
- (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 of Stayton. This paragraph

does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

I. **Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.

J. **Surplus Property.**

(1) **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the City Administrator that the method of disposal is in the best interest of the City of Stayton. Factors that may be considered by the City Administrator include costs of sale, administrative costs, and public benefits to the City of Stayton. The City Administrator 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.

(a) **Governments.** Without competition, by transfer or sale to another city department or other public agency.

(b) **Auction.** By publicly advertised auction to the highest bidder.

(c) **Bids.** By public advertised invitation to bid.

(d) **Liquidation Sale.** By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.

(e) **Fixed Price Sale.** The City Administrator 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 sale terms.

(f) **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.

(g) **Donation.** By donation to any organization operating within or providing a service to residents of the City of Stayton 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, 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 with a current value of less than \$100 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 City Administrator, or may be gifted to the employee as the City Administrator determines is appropriate under the circumstances.
- (4) **Restriction on Sale to City of Stayton Employees.** City of Stayton 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.
- (5) **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, the City of Stayton shall make, execute and deliver, a bill of sale (certificate of title, etc.) signed on behalf of the City of Stayton, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

**K. Concession Agreements.**

- (1) **In 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 of Stayton 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.
  - (a) **Contracts Under \$5,000.** Contracts under which the Solicitation Agent estimates that receipts by the City of Stayton will not exceed \$5,000 in any fiscal year and \$50,000 in the aggregate.
  - (b) **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 City Administrator 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 of Stayton for the use of designated public premises for a term greater than a single event shall be awarded as follows:

(a) **Small Concessions.** For Concession Agreements for which the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less, the City Administrator 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.

(b) **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.

**3.04.090 Informal Solicitation Procedures.** The City of Stayton may use the following procedure for informal solicitations, in lieu of the procedures set forth in the Oregon Attorney General's Model Rules.

**A. Informally Solicited Quotes and Proposals.**

(1) **Solicitation of Offers.** When authorized by this Chapter, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, 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 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 offeror 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 of Stayton, based on the criteria for award.

(3) **Records.** A written record of all persons solicited and offers received shall be maintained. 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.

## B. Qualified Pools.

- (1) **In General.** To create a qualified pool, the City Administrator may invite prospective contractors to submit their qualifications to the City of Stayton 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 re-published at least once per year and shall be posted at the City of Stayton'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 of Stayton.
- (4) **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which the City of Stayton and all pool participants are parties. The Contract shall contain all terms required by the City of Stayton, 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 of Stayton 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 of Stayton contract.
- (5) **Use of Qualified Pools.** Subject to the provisions of this Chapter 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 of Stayton 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 City Administrator 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 City Administrator shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the Stayton City Council in the manner described in section 3.04.140.

### **3.04.100 Use of Brand Name Specifications for Public Improvements.**

- A. **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:
  - (1) It is unlikely that such exemption will encourage favoritism in the awarding of Public improvement Contracts or substantially diminish competition for Public Improvement Contracts;
  - (2) 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 of Stayton;
  - (3) There is only one manufacturer or seller of the product of the quality required; or,
  - (4) Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.
- B. **Authority of City Administrator.** The City Administrator 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 section 3.04.100A.
- C. **Brand Name or Equivalent.** Nothing in this section 3.04.100 prohibits the City of Stayton 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 of Stayton, or from establishing a qualified product list.

### **3.04.110 Bid, Performance and Payment Bonds.**

- A. **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.

B. **Bid Security.** Except as otherwise exempted, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed \$75,000 shall require bid security. Bid security for a request for proposal may be based on the City of Stayton's estimated contract price.

C. **Performance Bonds.**

(1) **In General.** Except as provided in this Chapter, all public contracts are exempt from the requirement for the furnishing of a performance bond.

(2) **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 of Stayton and any public agency that is providing funding for the project for which the contract was awarded.

(3) **Cash-in-Lieu.** The City Administrator or Stayton City Council 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.

D. **Payment Bonds.**

(1) **In General.** Except as provided in this Chapter, all public contracts are exempt from the requirement for the furnishing of a payment bond.

(2) **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.

E. **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.

F. **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 section 3.04.110A of this section upon execution of an amendment establishing the guaranteed maximum price. The City of Stayton 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.

- G. **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 of Stayton 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 City Administrator.
- H. **Emergencies.** In cases of emergency, or when the interest or property of the City of Stayton 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 3.04.080 G., unless the Stayton City Council requires otherwise.

**3.04.120 Cancellation, Rejection, Delay of Invitations for Bids or Requests for Proposals.** The following provisions apply to all contracts administered under this Chapter:

- A. Any solicitation or procurement described in a solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the City as determined by the Stayton City Council, City Administrator, Purchasing Manager, or Solicitation Agent. The reasons for the cancellation or rejection must be made part of the solicitation file. The City of Stayton, City Administrator, Purchasing Manager, or Solicitation Agent are not liable to any bidder or proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, bid, proposal or award.
- B. Any solicitation or procurement described in a solicitation may be delayed or suspended when the delay or suspension is in the best interest of the City as determined by the Stayton City Council, City Administrator, Purchasing Manager, or Solicitation Agent. The reasons for the delay or suspension must be made part of the solicitation file. The City of Stayton, City Administrator, Purchasing Manager, or Solicitation Agent are not liable to any bidder or proposer for any loss or expense caused by or resulting from the delay or suspension of a solicitation, bid, proposal or award.

**3.04.130 Electronic Advertisement of Public Improvement Contracts.** In lieu of publication in a newspaper of general circulation in the Stayton area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement may be

published electronically by posting on the City of Stayton's website, provided that the following conditions are met:

- A. 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,
- B. 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 Stayton area and will provide costs savings for the City of Stayton, or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in the City of Stayton metropolitan area in encouraging meaningful competition.

**3.04.140 Appeal of Debarment or Prequalification Decision.**

- A. **Right to Hearing.** Any person who has been debarred from competing for City of Stayton contracts or for whom prequalification has been denied, revoked or revised, may appeal the City of Stayton's decision to the Stayton City Council as provided in this section 3.04.140.
- B. **Filing of Appeal.** The person must file a written notice of appeal with the City of Stayton's City Administrator within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial of prequalification.
- C. **Notification of Stayton City Council.** Immediately upon receipt of such notice of appeal, the City Administrator shall notify the Stayton City Council of the appeal.
- D. **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 of Stayton shall notify the appellant of the time and place of the hearing;
  - (2) The Stayton City Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the City Administrator; and,
  - (3) At the hearing, the Stayton 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.
- E. **Decision.** The Stayton City Council shall set forth in writing the reasons for the decision.

F. **Costs.** The Stayton City Council may allocate the Stayton City Council's costs for the hearing between the appellant and the City of Stayton. The allocation shall be based upon facts found by the Stayton City Council and stated in the Stayton City Council's decision that, in the Stayton City Council's opinion, warrant such allocation of costs. If the Stayton City Council does not allocate costs, the costs shall be paid as by the appellant, if the administrative action/decision is upheld, or by the City of Stayton, if the same decision is overturned.

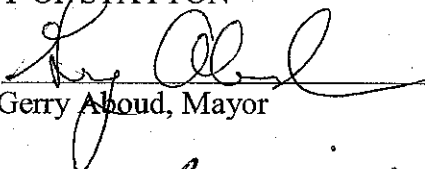
G. **Judicial Review.** The decision of the Stayton City Council may be reviewed only upon a petition in the Marion County Circuit Court filed within 15 days after the date of the Stayton City Council's written decision, as stated in the minutes of the meeting in which the decision was rendered.

SECTION 2. Emergency declared to exist. Because the revised Oregon Public Contracting Code, and the rules promulgated thereunder, became effective on March 1, 2005, the Stayton City Council finds that it is necessary for the general welfare of the City that upon adoption by the Stayton City Council and the Mayor's signing, this Ordinance shall become immediately effective.

ADOPTED BY THE STAYTON CITY COUNCIL this 21<sup>st</sup> day of March, 2005.

Signed: MARCH 22, 2005

CITY OF STAYTON

By:   
Gerry Aboud, Mayor

Signed: March 22, 2005

ATTEST:   
Chris Childs, City Administrator

APPROVED AS TO FORM:

  
David A. Rhoten, City Attorney