

## Chapter 3.01 Public Contracts and Purchasing

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**3.01.010. Title, Purpose and Relationship to the Model Rules.** This ordinance shall be referred to as “Public Contracts and Purchasing.” The purpose of this ordinance is to implement the applicable public contracts and purchasing requirements in ORS chapter 279A, 279B and 279C and the City of Mosier. Except where provided otherwise, the procedures and requirements set forth in this ordinance shall govern public contracting public procurement and public improvements and related contracts in the City of Mosier instead of OAR chapter 137, divisions 46, 47, 48 and 49 (the “Model Rules”). Where this ordinance does not address a particular issue or process, the City may rely upon the Model Rules for guidance on the matter.

**3.01.020. Definitions.** The following definitions shall control the interpretation, application and administration of this ordinance. Where a term is used but not specifically defined, use or definition of the term in the Model Rules shall apply:

A. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of property or financial loss, human injury, damage, interruption of services or a threat to public health or safety that requires prompt execution of a contract to remedy the specific emergency condition.

B. Formal Quote means a procedure pursuant to which written offers are solicited by advertising or other writing stating the quantity and quality of goods or services to be acquired, and which offers are received by the Contracting Agency on or before a stated date. In soliciting formal quotes, the Contracting Agency shall seek quotes from a sufficiently large number of potential offerors to insure sufficient competition to meet the best interests of the City. An award based on less than three formal quotes may be made provided the Contracting Agency makes a written record of the effort to obtain quotes.

C. Informal Quote means a procedure pursuant to which written or verbal offers are gathered by correspondence, telephone or personal contact stating the quantity and quality of good or services to be acquired. In soliciting informal quotes, the Contracting Agency shall seek quotes from a sufficiently large number of potential offerors to insure sufficient competition to meet the best needs of the City. An award based on less than three quotes may be made, provided the Contracting Agency makes a written record of the effort to obtain quotes.

D. Personal Property means everything subject to ownership that is not real property and has exchangeable value.

E. Personal Services means predominantly professional or personal independent services requiring special training or certification, independent judgment, skill and experience including but not be limited to, architectural, engineering, land surveying, auditing, financial, legal, planning, and technical inspection/testing services.

F. Requirements Contract means an agreement in which the vendor agrees to supply all of the purchaser's requirements that arise for an item or items within a specified time period.

G. Responsible bidder is one that has:

1. Adequate financial resources to perform the contract or the ability to obtain those resources. If a bond is required to insure performance of a contract, evidence that the bidder can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability. Evidence of ability to obtain required resources may also include a commitment or specific arrangement that will be in existence by the time of contract award, to rent, purchase or otherwise acquire the needed facilities, equipment, personnel or other resources;
2. The ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and public business commitments;
3. A satisfactory performance record. Evidence that a bidder has repeatedly breached contractual obligations to public or private contracting agencies creates a rebuttable presumption that the bidder is not responsible. The city shall consider the number of contracts involved and the extent of the deficiencies of each in making this evaluation. This evaluation may include past performance on projects for the City;
4. Key personnel available with appropriate experience and expertise, as determined by the city to perform the contract;
5. The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain those skills and abilities as required to satisfactorily perform the contract. These may include, as appropriate, elements as production control procedures, property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractors;
6. The necessary production, construction and technical equipment and facilities or the ability to obtain them; and
7. Be otherwise qualified and eligible to receive and fully perform the contract under applicable laws and regulations.

8. Additional project specific qualifications may be used as a basis for responsiveness.

H. Responsive bid or proposal is one that complies in all material aspects with an invitation to bid or a request for proposals and with all other applicable public bidding procedures and requirements.

I. Sole Source Procurement means a contract for goods or services, or a class of goods or services, available from only one source.

J. Works of Art means all forms of original creations of visual art, including but not limited to:

1. Painting: all media, including both portable and permanently affixed or integrated works such as murals;
2. Sculpture: in the round, bas-relief, high relief, mobile, fountain, kinetic, electronic, etc., in any material or combination of materials;
3. Miscellaneous art: prints, clay, drawings, stained glass, mosaics, photography, fiber and textiles, wood, metal, plastics and other materials or combination of materials, calligraphy, and mixed media, any combination of forms of media, including collage.

**3.01.030. Local Contract Review Board.** The Mosier City Council is designated as the Local Contract Review Board. Actions taken by the City Council with regard to public contracts and purchasing shall be deemed the actions of the Local Contract Review Board. The procedures governing City Council adoption of ordinances and resolutions shall be the procedures governing the City Council as a Local Contract Review Board.

**3.01.040. Authority of Contract Administrator.** The Mayor, or the Mayor's designee, shall be the Contract Administrator and purchasing officer for the City and is authorized to execute and administer all city contracts. All such awards must be in compliance with applicable state law (ORS chapters 279a, 279b and 279c) and this ordinance, and funds must be available for the purchase. The City Recorder shall keep a record of all awarded city contracts, including bids solicited and received, determinations made, contracts awarded and contracts concluded. The Contract Administrator may delegate the authority granted in this section to one or more city employees on a case-by-case basis as deemed appropriate for the efficient accomplishment of city business.

**3.01.050. Small Procurement.** Any procurement of goods or services, or combination thereof, not exceeding \$5,000 per item may be awarded in any manner deemed practical or convenient by the purchasing officer, including by direct selection or contract award.

A. A contract awarded under this section may be amended to exceed \$5,000 only upon approval of the purchasing officer.

B. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this section.

**3.01.060. Intermediate Procurement.** Any procurement of goods or services exceeding \$5,000 but not exceeding \$100,000 may be awarded after seeking three informally solicited competitive price quotes or competitive proposals from prospective, qualified contractors. If three quotes or proposals are not reasonably available, fewer will suffice, but the purchasing officer shall make a written record of the effort to obtain the quotes or proposals. A contract shall be awarded under this section to the responsive bidder whose bid is the most advantageous to the city concerning price, conformity to the specification, bidder qualifications and experience, compatibility with existing equipment and similar relevant factors.

A. A contract awarded under this section may be amended to exceed \$100,000 only upon approval of the purchasing officer.

B. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section.

**3.01.070. Formal Procurement.** Any procurement of goods or services exceeding \$100,000 shall be awarded only after a formal competitive solicitation process unless otherwise provided for in this ordinance.

A. Advertising: Contracts under the formal procurement procedure shall be advertised at least once in a newspaper of general circulation, on the city's website and any other forum likely to result in competitive bids from qualified respondents. The advertisement shall include at least the following information:

1. A brief description of the work to be performed or the goods or services to be purchased and where and how the complete contract terms, conditions and specifications can be obtained or reviewed.
2. The date by which respondents must file applications for prequalification if prequalification is a requirement, and the classes of work for which the respondent must be prequalified.
3. The scheduled closing date for the acceptance of bids, which shall be not less than 5 days after the date of the last published advertisement.
4. The name, title and address of the person to whom bids should be sent or delivered.
5. The scheduled bid opening date, time and place.
6. If applicable, whether the contract is subject to prevailing wage rates under ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 USC 276(a)), and if so that all bidders shall provide a signed statement agreeing to comply with these requirements.
7. That each bid must include a signed statement as to whether the bidder is a resident bidder as provided in ORS 279A.120.
8. That the city may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause all bids upon a finding that it is in the public interest to do so.

B. Requirements for bids. All bids submitted and received under the formal procurement procedures shall adhere to the following requirements:

1. All bids shall be in writing, filed with the person designated to receive bids for the city and shall be opened publicly by the city at the time and location stated in the bid advertisement.
2. After opening, all bids shall be filed and available for public inspection.
3. All bids shall include a bid security in the form of a surety bond, cashier's check, certified check or irrevocable letter of credit from the bidder, unless the contract is exempt from this requirement. The security shall not exceed 10% of the total bid amount. The bid security shall be due and payable to the city in the event the contract is awarded to the bidder and the bidder fails to execute a contract. At the discretion of the Contract Administrator, the City may exempt a bid from this requirement for a public improvement where the contract is less than \$25,000.
4. All bids shall include all of the signed statements required in the preceding subsection or otherwise specified in the bid advertisement, including a statement that the bidder will comply with and provide all specified work and/or materials described in the specifications.
5. The First-Tier Subcontractor Disclosure Form, when required by ORS 279C.370 for a public improvement contract, must be submitted to the City with the bid or proposal for that public improvement contract.

C. Contract Award: The following shall control the city's award of a contract under the formal procurement procedures:

1. The city shall open all bids at the time and place specified, and shall subsequently award the contract to the lowest responsive and responsible bidder based on the evaluation and/or selection criteria stated in the specifications. For purposes of determining the lowest responsible bidder, the city shall add a percent increase to the bid total of a nonresident bidder equal to the percent, if any, given to that bidder in the state in which the bidder resides.
2. The successful bidder shall promptly execute a formal contract with the city. If the contract is for a public improvement, the successful bidder shall execute and deliver to the city a performance sufficient bond, in a form acceptable to the City Attorney, equal to the contract price for the faithful, satisfactory and complete performance of the contract. The successful bidder shall also execute and deliver to the City a material and labor payment bond in a form and amount acceptable to the City Attorney. In lieu of a surety bond, the city may permit the successful bidder to submit a cashier's check, certified check, letter of credit or similar instrument in an amount equal to the contract price. In case of emergency or where the city's interest or property could suffer material injury by delay or other causes, the requirement that the successful bidder provide a surety bond for the contract price may be waived, in whole or in part, if the Contract Review Board makes a declaration of emergency.
3. At least 7 days before the award of a public contract, the city shall provide to each bidder or proposer notice of the city's intent to award a contract. Notice shall be in writing and mailed to the address provided by the bidder or proposer. This notice requirement does not apply to emergency or special procurements.

D. Rejection of Bids and Proposals: The city may reject any bid or proposal not in compliance with all prescribed public bidding procedures and requirements or requirements for the particular bid or proposal. The city may also reject all bids or proposals upon a finding that it is in the public interest to do so or otherwise cancel the bid request or proposal solicitation. In any case where competitive bids or proposals are required and all bids or proposals are rejected, the city may revise the project or specifications and call for new bids or proposals.

**3.01.080. Exemptions from Formal Procurement Requirements:**

A. General Exemptions: The following classes of contracts are exempt from the procurement requirements otherwise provided in Sections 5 through 8:

1. Interagency contracts: Contracts made with other public agencies or the federal government.
2. Nonprofit contracts: Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.
3. Repairs: Contracts for equipment repair or overhaul if:
  - a. The service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing, or
  - b. The service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source, or
  - c. The service or parts required are known and available from a sole, specific source to match existing equipment.
4. Regulated price goods: Contracts for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.
5. Periodicals: Contracts for subscriptions for periodicals, including journals, magazines, and similar publications.
6. Used personal property: Contracts for the purchase of used personal property if the Contract Administrator determines that the award of the contract without competitive bidding will result in cost savings.
7. Investments: Contracts for the investing of public funds or the borrowing of funds by the city when the investment or borrowing is contracted under the duly enacted statute, ordinance, charter, or constitutional provision.
8. Contract amendments: Contract amendment for additional work, including change orders, extra work, field orders, or other changes in the original specifications which increases the original contract price if:
  - a. The original contract was let by competitive bidding, unit prices or bid alternatives were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or
  - b. The amount of the aggregate cost increase resulting from all amendments does not exceed 20% of the initial contract. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding 33% of the initial contract.

Amendments made pursuant to subsection a. above are not included in computing these aggregate amounts.

9. Copyrighted materials: Contracts for the purchase of copy-righted materials where there is only one known supplier available for such material.

10. Requirements contracts: Contracts for the purchase of requirements for an anticipated need at a predetermined price if:

- a. The contract is let by a competitive procurement process; and
- b. The term of the contract including renewals does not exceed three years. When the price of goods and services has been established by a requirements contract under these provisions, the Contract Administrator may purchase the goods and services from the supplier without subsequent competitive bidding.

11. Insurance: Contracts for the purchase of employee benefit insurance.

12. Computer and telecommunications hardware and software: Contracts for the acquisition of data and word processing or telecommunications systems hardware and systems software.

13. Telecommunication services: Contracts for telecommunications services, subject to the provisions of OAR 125-320-025.

14. Copier and fax equipment: Contracts for the purchase or lease of office copiers and telefax equipment. The City may enter into multiple price agreements or requirements contracts for either the purchase or lease of office copying and telefax equipment. The agreements shall conform with the limitations on requirements contracts set out above. In exercising this exception, the Contract Administrator shall fully consider the operating capabilities, limitations, and cost of each brand or model and select that brand which will produce the best combination of performance and cost per copy or transmission.

15. Works of art: Contracts for the purchasing or commissioning of works of art.

16. Goods for resale: Contracts for goods purchased for resale to consumers.

17. Existing public agency contracts: Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is a party to the contract for which the original contract met the requirements of ORS Chapter 279, the contract allows other public agency usage of the contract, and the original contracting public agency concurs.

18. Temporary employment: Contracts with temporary service or employment agencies.

B. Sole Source Procurement. The City Council may award a contract for goods or services without competition when it determines in writing, based on written findings described in this subsection, that the goods or services, or class of goods or services, are available from only one source. To the extent reasonably practical, the City shall negotiate with the sole source to obtain contract terms advantageous to the City. The solicitation and selection of a sole source provider shall be documented in writing and based on one or more of the following findings:

1. That the efficient utilization of existing goods requires the acquisition of compatible goods or services.

2. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source.
3. That the goods or services are for use in a pilot or an experimental project.
4. Other findings that support the conclusion that the goods or services are available from only one source.

C. Emergency Procurement. The Mayor, or Council President in the absence of the Mayor, may make or authorize others to make emergency procurement of goods or services in an emergency in an amount not to exceed \$50,000 without using competitive procurement procedures. The solicitation and selection of a contractor in an emergency situation shall be documented in writing and based one or more of the following findings:

1. The solicitation and selection of a contractor in an emergency situation shall be documented in writing, including a written explanation of the nature of the emergency and the method used for the selection of the particular contractor.
2. A majority of the City Council must concur that an emergency exists.

D. Public Improvement Contracts. The City Council may exempt a public improvement contract or a class of public improvement contracts from competitive bidding upon approval of written findings described below. Exemption under this section shall occur only after a public hearing before the City Council noticed by posting and publication at least 14 days before the hearing:

1. Required Findings:
  - a. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
  - b. The awarding of public improvement contracts under the exemption will result in substantial cost savings to the City.
2. In granting an exemption under this section, the City shall, when appropriate, use alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.
3. A public improvement contract may be exempted from competitive bidding if emergency conditions require prompt execution of the contract. If the City declares an emergency, any contract awarded under this subsection must be awarded within 60 days following declaration of the emergency.
4. An exemption under this section may authorize or require the award of a public improvement contract by competitive proposals. A contract awarded under this subsection may be amended only upon approval of the Mayor.

**3.01.090. Personal Service Contracts.** A contract for personal services may be entered into using the procedures in this section.

A. The City may enter into a personal services contract directly with a contractor if the work described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the contractor that was awarded in accordance with this chapter and the new contract is a continuation of that work.

B. Except as provided in subsection 9(A), personal service contracts for \$25,000 or less may be made by direct appointment without first obtaining competitive quotes or proposals. If practical, considering time spent, reasonable attempts should be made to solicit quotes or proposals and make known to contractors the required request for services.

C. Except as provided in subsection 9(A), when a contract for personal services is more than \$25,000, a request for proposal, specifying the nature of the service needed, a detailed description of the work to be performed, the minimum qualifications of contractors, and any other relevant information on which a selection can be made, must be prepared. Proposals shall be solicited from known contractors, and, if possible, at least three competitive proposals obtained. The City shall place appropriate notices and advertisements in at least one trade magazine or a newspaper of general circulation. All proposals submitted must be in writing. The contract need not be awarded to the contractor submitting the least costly proposal. The reasons for selecting the recommended contractor must be stated in writing.

D. Protests of personal services solicitations shall be administered in accordance with Section 13. Protests of personal services contract awards shall be administered in accordance with Section 14.

E. The procedures in this section also shall be used by the City for the final selection of a consultant for architectural, engineering, and land surveying services for public improvements that are procured through a state agency in accordance with ORS 279C.125.

**3.01.100. Disposition of Surplus Personal Property.** The City may negotiate with one or more private or public entities to establish contracts, agreements and other cooperative arrangements for the use, operation, maintenance or ultimate lawful disposition of personal property owned by or under the control of the city, including property acquired under ORS 279A.260. Before approving such a contract, agreement or arrangement, the city council shall first make the following findings:

A. That the personal property is surplus to the needs of the city;

B. That a negotiated sale will result in increased net revenue to the city; and

C. That such a contract, agreement or arrangement will promote the economic development of the city, of the geographical area in which the city is situated or of other public bodies that perform similar functions.

**3.01.110. Modification and Withdrawal of Offers and Bids.**

A. An offeror may modify its offer in writing prior to the closing of the solicitation. Any modification must include the offeror's statement that the modification amends and supercedes

the prior offer. The modification must be submitted to the same name and address and contain the same markings as required for the offer. The modification must be received by the City prior to the closing of the solicitation.

B. An offeror may withdraw its offer by written notice prior to the closing of the solicitation. The withdrawal must be submitted to the same name and address as required for the offer. The withdrawal must be received by the City prior to the closing of the solicitation.

C. An offeror may not modify or withdraw its offer after the closing of the solicitation.

D. An award or a contract shall not be cancelled based on a bid mistake.

**3.01.120. Protests of Approvals of Special Procurements.** Any person may file a protest of the approval of a special procurement if he believes such approval was in violation of state law or this chapter.

A. A protest under this section:

1. Must be filed in writing with the City Recorder no more than 5 days after the approval is made.

2. Must state the special procurement approval that is the subject of the protest, the reason why the approval was contrary to state law or this chapter, and the relief sought.

3. Must be considered and approved or disapproved by the City Council within 30 days after receipt.

B. The Contract Administrator shall notify the protester of the City Council's decision in writing within 5 days after the decision is rendered.

**3.01.130. Protests of Solicitations.** A prospective bidder, proposer, or offeror for a competitive sealed bid, competitive sealed proposal, or special procurement may file a protest if he believes that the procurement process is contrary to law, or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. If a prospective bidder, proposer, or offeror fails to file such a protest at least 10 days before the closing of the solicitation, the prospective bidder, proposer, or offeror may not challenge the contract on grounds under this section in any future legal or administrative proceeding.

A. A protest under this section shall be filed in writing with the City Recorder and contain the following:

1. Sufficient information to identify the solicitation that is the subject of the protest.

2. The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name.

3. Evidence or supporting documentation that supports the grounds on which the protest is based.

4. The relief sought.

B. If the protest meets the requirements of subsection A of this section and is timely filed, the City Recorder shall consider the protest and issue a decision in writing within seven days. Otherwise, the Contract Administrator shall promptly notify the prospective bidder, proposer, or offeror that the protest is untimely or that the protest failed to meet the requirements and give the reason for the failure.

C. Before seeking judicial review, a prospective bidder, proposer, or offeror is required to file a protest with the City and exhaust all available administrative remedies.

**3.01.140. Protests of Contract Award.**

A. A bidder or proposer may protest the award of a public contract or a notice of intent to award a public contract, whichever occurs first, if

1. The bidder or proposer is adversely affected because the bidder or proposer would be eligible to be awarded the public contract in the event the protest were successful; and
2. The reason for the protest is that:
  - a. All lower bids or higher ranked proposals are nonresponsive;
  - b. The City has failed to conduct the evaluation of proposals in accordance with the criteria or process described in the solicitation materials;
  - c. The City has abused its discretion in rejecting the protestor's bid or proposal as nonresponsive; or
  - d. The City's evaluation of bids or proposals or the City's subsequent determination of award is otherwise in violation of ORS Chapters 279A or 279B.

B. The bidder shall submit the protest to the City Recorder in writing no more than 7 days following the award of a public contract or a notice of intent to award a public contract, whichever occurs first. The protest shall specify the grounds for the protest to be considered by the City.

C. Late protests shall not be considered.

D. The Contract Administrator shall respond in writing to a protest within 10 days after receiving a protest. After the Contract Administrator issues the response, the bidder or proposer may seek judicial review in the manner provided in ORS 279B.415. When judicial review is sought, the City may not proceed with contract execution unless the City determines that there is a compelling government interest in proceeding or that the goods and services are urgently needed. If the City makes such a determination, it shall set forth the reasons for the determination in writing and immediately provide them to the complainant.

**3.01.150. Negotiations with Lowest Bidder for a Public Improvement Contract.**

A. If a public improvement contract is competitively bid and all responsive bids from responsible bidders exceed the City's cost estimate, the City may negotiate with the lowest responsive, responsible bidder prior to awarding the contract in order to solicit value engineering and other options to attempt to bring the contract within the City's cost estimate.

B. Negotiation with the lowest responsive, responsible bidder under this section may not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal.

C. The records of a bidder used in contract negotiations under this section are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated or otherwise concluded.

**3.01.160. Brand Name Specifications for a Public Improvement Contract.**

A. Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller, unless the product is exempt under subsection B of this section.

B. The City Council may exempt certain products or classes of products from subsection A of this section upon any of the following findings:

1. It is unlikely that the 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;
3. There is only one manufacturer or seller of the product of the quality desired; or
4. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.