



This meeting will be held in person, but you may attend virtually; see the instructions on page 2.

## AGENDA (REVISED II)

11:30 a.m. LUNCH

11:45 a.m. STUDY SESSION – Contracting and Purchasing Regulations (Finance Manager, Beau Belikoff, Purchasing & Contract Administrator, Mark Depner)

12:15 p.m. BOARD MEETING

### 1. Roll Call

### 2. Pledge of Allegiance

### 3. Comments from the Audience

Comments will be limited to 4 minutes per individual, group, or organization; please state your name and organization (if applicable) when prompted.

### 4. Written Communications

4.1 Letters from St. Vincent de Paul and The Salvation Army

### 5. Consent Calendar

5.1 Approval or Correction of the Minutes of the Last Regular Meeting of June 5, 2024

5.2 Resolution No. 1939, A RESOLUTION Amending Medford Water's Contracting and Purchasing Regulations

5.3 Resolution No. 1940, A RESOLUTION Authorizing the General Manager of Medford Water to Execute on Behalf of the Board of Water Commissioners, a Payment to City County Insurance Services in the Amount of \$282,992.39 for Medford Water's General Liability, Automotive, and Property Damage Insurance Premium for Fiscal Year 2024-2025

5.4 Resolution No. 1941, A RESOLUTION Authorizing the Chair of the City of Medford, By and Through its Board of Water Commissioners to Execute a Quitclaim Deed Releasing All Right and Title to, and Interest in, the Easement Originally Recorded as Document No. 2006-024600 on May 10, 2006

### 6. Items Removed from Consent Calendar

7. Resolution No. 1942, A RESOLUTION Adopting, and Authorizing the General Manager to Execute the Comprehensive Financial Management Policy for the Board of Water Commissioners

**8. Leadership Team Reports**

Leadership Team staff will be present and may provide information: Engineering Manager Brian Runyen, Water Operations Manager Dan Perkins, Finance Manager Beau Belikoff, Information Technology Manager Kris Stitt, Human Resources Manager Tanya Haakinson, Water Resources & Customer Service Manager Julie Smitherman, and General Manager Brad Taylor.

**9. Propositions and Remarks from the Commissioners**

**10. Adjourn**

DATES TO REMEMBER*						
DATE	DAY	TYPE OF MEETING	STUDY SESSION TIME & TOPIC	REGULAR MEETING	LOCATION	
07/03/24	Wed	Board Meeting	Time TBD – TBD	12:15 p.m.	Prescott Room, Police Dept	
<i>Thursday, July 4, 2024 – Offices closed in observance of the Independence Day holiday</i>						
07/17/24	Wed	Board Meeting	Time TBD – Asset Management	12:15 p.m.	Prescott Room, Police Dept	

\*Meeting dates, times, and locations are subject to change.

**INSTRUCTIONS FOR ATTENDING THIS MEETING VIRTUALLY**



To join by computer, click the following link:

[https://us02web.zoom.us/webinar/register/WN\\_vq2KjEI0R4C8oGC9u7N9yw](https://us02web.zoom.us/webinar/register/WN_vq2KjEI0R4C8oGC9u7N9yw)

Meeting passcode: 711366



To join by phone, call:

(669) 900-6833

Meeting ID Number: 852 5287 9107 Meeting passcode: 711366



## Memorandum

**TO:** Commissioners Bob Strosser, David Wright, Jason Anderson, John Dailey, and Michael Smith  
**FROM:** Julie Smitherman, Water Resources and Customer Service Manager  
**DATE:** Wednesday, June 19, 2024  
**SUBJECT:** Item 4.1 – Funding Request Letters from Salvation Army and St. Vincent de Paul  
**OBJECTIVE:** Board Approval By Motion

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### Issue

Funding request letters have been received from all three agencies that receive annual grants from Medford Water for low-income, water bill payment assistance.

### Discussion

Emergency assistance grants have been included in Medford Water's budget since 2003, and are awarded based on the agencies' current balances, up to the \$5,000 maximum. The agencies handle the screening of applicants and disbursement of funds. Copies of the letters and disbursement reports are attached.

### Financial Impact

Based on their current funding status, staff would recommend the following grants for FY 2024-25 to The Salvation Army, and St. Vincent de Paul:

ACCESS:	\$5,000	Current Balance:	\$0
The Salvation Army:	\$2,660.27	Current Balance:	\$ 2339.73
St. Vincent de Paul:	\$4,314.60	Current Balance:	\$ 685.40

ACCESS is requesting \$10,000, the Salvation Army is requesting \$2,660.27 and St. Vincent de Paul is requesting \$4,314.60. The agencies requesting funding would like to continue to partner with us and provide assistance to our customers who have an emergency situation, or a leak they need help repairing.

Emergency Bill Payment Assistance has been budgeted for the 2024-25 fiscal year.

### Requested Board Action

Staff recommends approval of up to \$5,000 by motion for ACCESS, The Salvation Army and St. Vincent de Paul.



March 29, 2024

Brad Taylor  
General Manager  
Medford Water Commission 200  
South Ivy St., Room 177  
Medford, OR 97501

Dear Mr. Taylor,

ACCESS appreciates the financial support the Medford Water Commission has provided to us these past years to assist low-income families with their water bills.

In the past year (January 2023 to December 2023), ACCESS was able to utilize the LIHWA funds to provided \$79,051 in funding to 353 Medford Water Commission customers. This funding has now come to an end, leaving ACCESS without any funding to provide water assistance.

With this letter, ACCESS would like to request \$10,000 in funding from the Commission.

Thank you again, for providing this assistance to low-income community members.

Sincerely,

Rose Reeser  
Housing Programs Manager  
(541) 618-4018



**ROGUE VALLEY DISTRICT COUNCIL  
SOCIETY OF ST. VINCENT DE PAUL**

P.O. BOX 1663 • 2424 N. PACIFIC HWY. • MEDFORD, OREGON 97501  
PHONE: (541) 772-3828 • FAX: (541) 772-6886 • [www.stvincentdepaulmedford.info](http://www.stvincentdepaulmedford.info)

May 23, 2024

Medford Water Commission  
200 S. Ivy Street, Room 177  
Medford, OR 97501

Re: Grant Funding

Dear Commissioners:

On August 3, 2023, St. Vincent deposited your grant check in the amount of \$4,756.33 in our Social Services account to provide water assistance for our mutual clients. As of today, we have \$685.40 remaining of those funds.

Most of the checks written on your funds went to provide water to clients whose service had been terminated or who were in jeopardy of termination. Two checks, each for \$375, were written to American Leak Detection for clients who had been referred to us by your department. I have submitted our report on expenditures to Esmeralda Cortez.

Although we have not spent all the money previously granted, I believe that our request for additional funding is now due. Accordingly, I am making that request. We continue to be happy to work with you to help with leak detection and/or repair as well as to help to pay water bills. If I can provide any further information, please contact me at your convenience.

Sincerely,

Phyllis Douglas  
Volunteer for Grants  
[gpdouglas2775@gmail.com](mailto:gpdouglas2775@gmail.com)  
541-261-5208

10:28 AM  
 05/22/24  
 Accrual Basis

**CONFERENCE #1 - SACRED HEART**  
**Medford Water - Profit and Loss**  
**August 3, 2023 through May 21, 2024**

Type	Date	Num	Name	Memo	Amount	Balance
<b>Ordinary Income/Expense</b>						
Income						
GRANTS · FOUNDATION AND TRUST GRANTS						
453 · Government Grants						
Deposit	08/03/2023	15462	Rogue Valley District ...	Water	4,756.33	4,756.33
Total 453 · Government Grants					4,756.33	4,756.33
Total GRANTS · FOUNDATION AND TRUST GRANTS					4,756.33	4,756.33
Total Income					4,756.33	4,756.33
<b>Expense</b>						
CLIENT · CLIENT SUPPORT						
680 · Utilities Expense						
Check	08/11/2023	10501	Medford Water Com...		175.00	175.00
Check	08/16/2023	10520	Medford Water Com...		77.00	252.00
Check	08/21/2023	10544	Medford Water Com...		144.12	396.12
Check	08/31/2023	10594	Medford Water Com...		249.00	645.12
Check	10/04/2023	10678	American Leak Detec...		375.00	1,020.12
Check	10/05/2023	10695	Medford Water Com...		250.00	1,270.12
Check	10/19/2023	10765	Medford Water Com...		236.02	1,506.14
Check	10/24/2023	10781	American Leak Detec...		375.00	1,881.14
Check	10/26/2023	10802	Medford Water Com...		242.00	2,123.14
Check	11/14/2023	10917	Medford Water Com...		101.23	2,224.37
Check	01/19/2024	11305	Medford Water Com...		0.00	2,224.37
Check	01/19/2024	11307	Medford Water Com...		218.00	2,442.37
General Jo...	01/19/2024	380	Medford Water Com...		143.02	2,585.39
Check	01/24/2024	11325	Medford Water Com...		133.78	2,719.17
General Jo...	01/29/2024	380R	Medford Water Com...		-143.02	2,576.15
Check	01/29/2024	11345	Medford Water Com...		158.99	2,735.14
Check	01/30/2024	11355	Medford Water Com...		72.00	2,807.14
Check	03/18/2024	11689	Medford Water Com...		209.00	3,016.14
Check	04/10/2024	11814	Medford Water Com...		169.39	3,185.53
Check	04/17/2024	11849	Medford Water Com...		250.00	3,435.53
Check	04/19/2024	11867	Medford Water Com...		125.00	3,560.53
Check	04/25/2024	11890	Medford Water Com...		250.00	3,810.53
Check	05/08/2024	11976	Medford Water Com...		260.40	4,070.93
Total 680 · Utilities Expense					4,070.93	4,070.93
Total CLIENT · CLIENT SUPPORT					4,070.93	4,070.93
Total Expense					4,070.93	4,070.93
Net Ordinary Income					685.40	685.40
Net Income					685.40	685.40



**The Salvation Army**  
*Medford Citadel Corps & Community Center*  
*Serving all of Jackson County*  
*Medford, Oregon 97501*

March 25, 2024

Founded in 1865

William & Catherine  
Booth  
Founders

Brian Peddle  
General

Commissioner  
Douglas Riley  
Territorial Commander

Major Nancy Dihle  
Divisional Commander

Major Randy Mulch  
Major Jonnette Mulch  
Jackson County  
Coordinators/Corps Officers



Esmeralda Cortez  
541-774-2425  
[Esmeralda.cortez@medfordwater.org](mailto:Esmeralda.cortez@medfordwater.org)  
Medford Water Commission

Dear Esmeralda,


We at The Salvation Army are thankful to the Medford Water Commission for their commitment to our community to provide safe water resources to low income individuals in our community demonstrated by the \$5,000.00 grant given to The Salvation Army last year. Your support allowed us to help those who have been issued water shut off notices and those who had water leaks to repair systems.

Since December 2023 grant to The Salvation Army was received, we have been able to help 15 household occupants comprising 15 households in our community with payment of their water bills which help them stay in their homes. The current balance of our grant is \$2,071.37 and will fully spend the grant by the end of the cycle.

We have seen a recent influx of low-income households in Medford coming to us seeking help with water shut off notices. We believe that our current balance of water assistance funding will be depleted soon. Because of the increase in requests for services we are requesting an additional grant of \$5000 so we can help low-income households to continue to have access to safe water.

Thank you for helping us help others,

With Blessings,

  
Randy Mulch, Major  
The Salvation Army  
Jackson County Oregon

**Medford Citadel Corps**  
304 Beatty Street  
Ph (541) 773-6965  
Fax (541) 734-4293

**Hope House Transitional Living**  
1065 Crews Road  
Ph (541) 773-7005  
Fax (541) 842-2497

**Family Services**  
922 N. Central  
Ph (541) 772-8149  
Fax (541) 842-2489

**Thrift Store**  
922 N. Central  
Ph (541) 773-7335

**Serving Jackson County**

## Medford Water Assistance Program

<i>Date of Voucher</i>	<i>Name of Client</i>	<i>Amount of Voucher</i>	<i>Members of Household</i>
7/27/2023	Customer	\$ 195.00	6
8/4/2023	Customer	\$ 70.88	3
8/15/2023	Customer	\$ 87.32	1
8/15/2023	Customer	\$ 144.98	7
8/17/2023	Customer	\$ 200.00	2
8/21/2023	Customer	\$ 97.00	6
10/23/2023	Customer	\$ 73.36	2
10/31/2023	Customer	\$ 141.32	5
11/13/2023	Customer	\$ 195.00	2
12/1/2023	Customer	\$ 174.07	5
1/22/2024	Customer	\$ 175.00	6
1/26/2024	Customer	\$ 60.08	1
2/2/2024	Customer	\$ 175.00	3
2/7/2024	Customer	\$ 160.40	10
2/23/2024	Customer	\$ 121.96	3
4/16/2024	Customer	\$ 150.00	4
5/6/2024	Customer	\$ 118.36	4
		<b>\$ 2,339.73</b>	





## **Memorandum**

**TO:** Commissioners Bob Strosser, David Wright, Jason Anderson, John Dailey, and Michael Smith  
**FROM:** Mark Depner, Purchasing & Contract Administrator  
**DATE:** Wednesday, June 19, 2024  
**SUBJECT:** Item 5.2 – Resolution 1939, Amending Medford Water’s Contracting and Purchasing Regulations  
**OBJECTIVE:** Board Approval

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### **Issue**

Current Medford Water’s Contracting and Purchasing Regulations were last updated in their entirety in 2011. There have been several minor updates since then. However, the Regulations needed to be reviewed and updated to reflect current terminology as well as new public procurement thresholds established last year by the Oregon Legislature.

### **Discussion**

Medford Water’s Contracting and Purchasing Regulations need to be updated to reflect current terminology regarding Medford Water and its General Manager. In addition, the purchasing thresholds need to reflect the changes made by the Oregon Legislature in 2023 by Oregon Senate Bill 1047. Specifically, Small Procurements, which may be awarded directly without competitive solicitation, now cannot exceed \$25,000 (previously \$10,000). Intermediate Procurements, which must have at least three firms solicited, now cannot exceed \$250,000 (previously \$150,000). Large Procurements over \$250,000 must be publicly solicited. Also, minor clarifications to GM authority to accept grants, accumulated Change Orders’ approval thresholds, hazardous materials cleanup, and recording of offers should be incorporated into this update to Medford Water’s Contracting and Purchasing Regulations. Legal has reviewed and approved these revisions.

### **Financial Impact**

None.

### **Requested Board Action**

Staff recommends approval of Resolution 1939, authorizing the proposed amendments to Medford Water’s Purchasing and Contracting Regulations updating terminology, revising purchasing thresholds to reflect the changes to the Oregon Revised Statutes from 2023 Oregon Senate Bill 1047, and clarifying processes regarding GM authority to accept grants, accumulated Change Orders’ approval thresholds, hazardous materials cleanup, and recording of offers.

**RESOLUTION NO. 1939**

A RESOLUTION Amending Medford Water's Contracting and Purchasing Regulations, Effective June 19, 2024

WHEREAS, Medford Water's Purchasing and Contracting Regulations were last updated in their entirety in 2011; and

WHEREAS, several minor updates have occurred since 2011; and

WHEREAS, this update supersedes all previously Board approved updates to Medford Water's Purchasing and Contracting Regulations; and

WHEREAS, Medford Water's Purchasing and Contracting Regulations need updating to match current terminology regarding Medford Water as well as the General Manager; and

WHEREAS, Oregon Senate Bill 1047, passed in 2023, has revised the thresholds for small procurements and intermediate procurements; and

WHEREAS, Medford Water's Purchasing and Contracting Regulations need to reflect current terminology regarding Medford Water and the General Manager; and

WHEREAS, Medford Water's Purchasing and Contracting Regulations need to reflect the changes made to the Oregon Revised Statutes 279B; and

WHEREAS, minor clarifications to GM authority to accept grants, accumulated Change Orders' approval thresholds, hazardous materials cleanup, and recording of offers need to be incorporated into the updates to the Medford Water Purchasing and Contracting Regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER COMMISSIONERS OF THE CITY OF MEDFORD, OREGON, AS FOLLOWS, THAT:

That Medford Water's Contracting and Purchasing Regulations shall be updated to reflect current references to Medford Water and the General Manager; the Oregon Revised Statutes procurement thresholds revision made through Senate Bill 1047; and clarifications regarding GM authority to accept grants, accumulated Change Orders' approval thresholds, hazardous materials cleanup, and recording of offers, marked Exhibit A, and by this reference incorporated herein.

PASSED by the Board of Water Commissioners and signed by me in authentication of its passage this 19th day of June 2024.

ATTEST: \_\_\_\_\_  
Amber Furu, Asst Clerk of the Commission

\_\_\_\_\_   
Bob Strosser, Chair


# Contracting & Purchasing **REGULATIONS**



**MEDFORD  
WATER**

 [water@medfordwater.org](mailto:water@medfordwater.org)

 541.774.2430

 200 S. Ivy St. – Rm. 177  
Medford, Oregon 97501

# INTRODUCTION

Articles I to III shall be known as the “Contracting and Purchasing Regulations” (Regulations) and are set forth as follows:

- Article I – General Provisions, Authority, Organization, Definitions and Delegation
- Article II – Goods & Services: Purchasing, Competitive Solicitation and Contracting Requirements
- Article III – Public Improvements: Purchasing, Competitive Solicitation and Contracting

The purpose of the Regulations is to establish uniform, efficient and economical contracting and purchasing policies, procedures, rules, and regulations for the **Medford Water** Commission (**Medford Water**) in accordance with the Medford City Charter and Chapters 279A, B and C of the Oregon Revised Statutes. Pursuant to ORS 279A.065(5), and Medford Code 2.623, these regulations are adopted in place of the Attorney General’s Model Rules.

Personnel involved in the purchasing function should be knowledgeable of the Regulations. The Administrative Policies adopted by the **General** Manager pursuant to authority herein address authority and responsibility for all employees participating in **Medford Water’s** purchasing functions. Accountability and timeliness in the processing of transactions are integral elements of those policies.

The Regulations were adopted by the Board of Water Commissioners on September 8, 1993 (Res. No. 761); amended 4/17/02 (Res. No. 1063); amended 8/17/11 (Res. No. 1456); amended 12/21/11 (Res. No. 1466); amended 4/15/15 (Res. No. 1578); **amended 9/19/18 (Res 1688); amended 10/17/18 (Res 1692); amended 1/06/21 (Res 1759); and amended XX/XX/XX (Res. No. XXXX). The dates and resolution numbers of additions and amendments are noted below the applicable sections.**

# ARTICLE I

## General Provisions, Authority, Organization, Definitions, and Delegation

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## 1.01 Board of Water Commissioners as Local Contract Review Board for Medford Water.

Pursuant to Chapter V, Section 19 of the Medford Charter of 1998 and ORS 279A.060, the Board of Water Commissioners (Board) is designated as the Local Contract Review Board for **Medford Water**.

The Board shall exercise all the powers and duties conferred upon it by law, except to the extent that such powers and duties have been delegated by these regulations, or by a separate resolution, to others.

These regulations are intended to permit **Medford Water** to act to the full extent permitted by law. If there is a situation where State purchasing and contracting law allows greater authority than specified herein, then **Medford Water** has the option of acting under the greater authority of state law.

## 1.02 Authority of the **General Manager**.

For Contracts covered by these regulations, and for revenue-generating Contracts, the **General Manager** is authorized to:

- (A) Advertise for Bids or Proposals on all Contracts using any procurement method within these regulations, without specific authorization from Board of Water Commissioners, when the proposed purchase is included within the current budget.
- (B) Advertise, award, and execute Contracts without specific authorization by resolution of Board of Water Commissioners whenever the Contract Amount is \$150,000 or less.
- (C) Advertise, award, and execute Price Agreements for the purchase or lease of Goods and Services, including revenue producing services, if the yearly estimated cost to **Medford Water**, or the yearly estimated revenue or value is \$150,000 or less.
- (D) Recommend the Award of a Contract for Goods and Services, including revenue producing services, and Public Improvements, to Board of Water Commissioners for Contracts in excess of \$150,000. If the Board of Water Commissioners adopts the recommendation, it shall approve the Award by resolution.
- (E) Authorize and execute amendments to contracts that were originally executed in accordance with these regulations, so long as the amendment amount, plus the cumulative sum of any prior amendments to the same contract, does not exceed \$150,000 and does not exceed 25% of the original contract amount.
- (F) **Authorize and accept grant funds up to \$150,000 so long as the grant does not require Medford Water to match funds in excess of \$150,000. Apprise Board of Water Commissioners of such grants when new appropriation authority is needed (ORS 294.471).**
- (G) Adopt forms, procedures, and administrative regulations for all **Medford Water** purchases of Goods and Services regardless of amount. **Medford Water** shall use the forms, procedures, and administrative regulations unless in conflict with these regulations or law.

- (H) Establish a procedure providing appropriate financial control over the authorization provided by these regulations.
- (I) Adopt forms, procedures, and administrative regulations authorizing Division Heads and Employees to issue limited purchase orders obligating **Medford Water** for purchase of materials or services and impose conditions on the spending authority of Division Heads and Employees, in the event of violations of these regulations.
- (J) Delegate the **General** Manager's authority under this Article in accordance with **Medford Water** practices.
- (K) Resolve protests of Contract Award decisions and other matters as required by **Medford Water** rule or regulation.
- (L) To sell or dispose of all personal property, not to exceed \$150,000 in value, of **Medford Water**, which is surplus, obsolete, or unusable, using commercially reasonable means.
  - (1) Public auction for disposal of personal property: Personal property may be sold at auction if the **General** Manager determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive written bid.
  - (2) Sale of Personal Property: To sell or dispose of all personal property, not to exceed \$150,000 in value, of **Medford Water**, which is surplus, obsolete, or unusable, using commercially reasonable means. The **General** Manager shall document the file with the method used and justification, therefore. The **General** Manager may, where deemed it to be in the best interest of **Medford Water**, transfer any surplus property, to the State of Oregon Department of Administrative Services to be sold under an intergovernmental agreement providing for surplus property disposal in Jackson County.
  - (3) Donations of personal property:
    - (a) The **General** Manager may transfer surplus personal property, including recyclable or reclaimed materials, with or without remuneration without competitive bids to the following activities.
      - (i) Another public agency;
      - (ii) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property;
      - (iii) Any recognized non-profit activity which is certified to receive federal surplus property; or
      - (iv) Recognized private non-profit social or health service activities.
    - (b) Transfers under this section are subject to the following conditions:
      - (i) A determination has been made that the property is not needed for other public purposes; and
      - (ii) If the property has a current market value of \$150,000 or more, the donation or sale shall:



- Be approved by the Board; and
  - Be documented to be clearly in the public interest.
- (c) **Medford Water** shall maintain a record of all transfers, donations or sales authorized by this section.
- (M) Perform such other duties as directed by **Medford Water** or these Regulations.
- (N) The **General** Manager may execute agreements that contain hold-harmless and limitation-of-liability clauses, to the extent of his or her purchasing authority herein. **Any contract language that substantially deviates from Medford Water approved standard contract language shall be referred to Medford Water Legal Counsel for review and approval.**

The forms, procedures, and authority in (G), (H), and (I) above shall be in writing and on file in the office of the **General** Manager as a matter of public record, and available for public inspection during business hours.

### **1.03 Attorney General Model Regulations Not Binding.**

The regulations contained in these Articles apply to **Medford Water's** procurement of goods, services, and certain construction services, public improvements, and other construction services under state law. The Attorney General Model Public Contracting Regulations, while not binding, may be used to assist in contract decision-making.

### **1.04 Organization.**

**Medford Water's** Regulations are divided into three Articles: I) General Provisions, Authority, Organization, Definition, Delegation; II) Goods and Services – Purchasing, Competitive Solicitation, and Contracting Requirements; and III) Public Improvements – Purchasing, Competitive Solicitation, and Contracting Requirements.

### **1.05 Exemptions.**

These regulations apply to all Public Contracts of **Medford Water**, except:

- (A) Contract exceptions as set forth in the Oregon Public Contracting Code (ORS Chapters 279A, 279B and 279C) as enacted or as hereafter revised.
- (B) Contracts pursuant to 10 U.S.C. § 381 (relating to law enforcement equipment suitable for counter-drug activities through the Department of Defense), the Electronic Government Act of 2002 (relating to automated data processing equipment, including firmware, software, supplies, support equipment, and services from federal supply schedules), or other federal law that the Board of Water Commissioners determines are similar to those Acts in effectuating or promoting transfers of property to **Medford Water**;
- (C) Contracts, agreements, or other documents entered into, issued or established in connection with:
- (1) The incurring of debt by a public body, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated Contracts, agreements or other documents, regardless of whether the obligations that the Contracts, agreements or other documents establish are general, special or limited;
  - (2) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose

- of carrying out, promoting or sustaining activities or programs authorized by law;
- (3) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive Contractor selection procedures of these regulations;
  - (4) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
  - (5) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;
  - (6) Acquisitions or disposals of real property or interest in real property;
  - (7) Contracts for the sale of timber from lands owned or managed by the State Board of Forestry and the State Forestry Department; or
  - (8) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry.
- (D) Grants, when the terms do not require compliance with procurement requirements under state law, and defined either as:
- (1) An agreement under which:
    - (a) **Medford Water** receives moneys, property, or other assistance, including, but not limited to, federal assistance that is characterized by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets;
    - (b) The assistance received by **Medford Water** is from a grantor for the purpose of supporting or stimulating a program or activity of **Medford Water**; and
    - (c) No substantial involvement by the grantor is anticipated in the program or activity other than involvements associated with monitoring compliance with grant conditions; or
  - (2) An agreement under which:
    - (a) **Medford Water** provides moneys, property, or other assistance, including by not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets;
    - (b) The assistance is provided to a recipient for the purpose of supporting or stimulating a program or activity of the recipient; and
    - (c) No substantial involvement by **Medford Water** is anticipated in the program or activity of the recipient other than involvement associated with monitoring compliance with the grant conditions.
- (E) Contracts when rates are set by law or resolution for purposes of these regulations;

- (F) Revenue-Generating Contracts: Contracts, including but not limited to naming rights agreements, whose primary purpose is generating revenue and are typically Awarded to the Offeror proposing in the discretion of **Medford Water**, the most advantageous or highest monetary Offer or both to **Medford Water**. The **General Manager** may award such contracts to the limit of the **General Manager's** authority as stated in these regulations. The Board of Water Commissioners may designate a particular Contract as a revenue-generating Contract;
- (G) Contracts for Sale of Advertising in **Medford Water** Publications. The right to advertise in **Medford Water** publications may be sold without Competitive Bidding. **Medford Water** may utilize this exclusion when it publishes material and wants to recoup part of the cost by selling advertising to be placed in that publication. The revenue generated from the sale of advertising shall be applied first to the cost of the publication; and thereafter to the Medford Water Fund.

## 1.06 Definitions.

Except as otherwise provided by Oregon Revised Statutes Chapters 279A.010 et seq., 279B.005 et seq., or 279C.005 et seq., now existing or hereafter amended; and except as specifically modified by the solicitation documents, the following definitions apply.

- (A) *Addendum or Addenda*: An addition or deletion to, a material change in an Invitation to Bid, a Notice to Contractors, Bid Documents, or Request for Proposal.
- (B) *Board*: The Board of Water Commissioners of the City of Medford, Oregon acting as Local Contract Review Board pursuant to ORS 279A.065 and Medford Code Section 2.623.
- (C) *Closing*: The date and time announced in the Bid Documents as the deadline for submitting a bid, proposal or offer.
- (D) *Competitive Bidding*: Typically referred to as “sealed bid” and awarded to lowest responsive, responsible bidder, with selection based on price. Process involves an advertised public notice, issuance of an Invitation to Bid inviting Persons to submit written, signed, and sealed Bids that are received by **Medford Water** and publicly opened at a designated time and place.
- (E) *Competitive Negotiation*: A method of Contracting, typically through the Request for Proposal process, in which Proposal evaluation and Contract Award result from an open and competitive procedure, in which evaluation criteria in addition to price are considered in Contractor selection.
- (F) *Competitive Quotes*: An intermediate procurement method of contracting for Public Contracts that do not exceed \$50,000 on highways, bridges, or other transportation projects, or \$100,000 for other public improvement contracts. The competitive quotes may be in writing or oral as long as they are documented in the project file.
- (G) *Construction Manager/General Contractor (CM/GC)*: An alternative contracting method, or a Person selected pursuant to that method, to perform a Public Improvement project. The method typically requires a Contractor to undertake design phase involvement, constructability reviews, value engineering, scheduling, estimating, and acquiring subcontracting services, establishing a GMP to complete the Contract Work, acting as General Contractor, coordinating, and managing the building process, and providing General Contractor expertise.

- (H) *Contract Amount:* The total of the Awarded Bid or Proposal amount, including any approved alternates. The “original” Contract Amount is, depending on the context, the maximum amount that **Medford Water** will pay for work performed pursuant to the Contract or an estimated amount when the amount is based on unit prices. The “final” Contract Amount is the amount actually paid after execution of change orders, amendments, or variations in unit prices.
- (I) *Contract Execution:* Contract Execution occurs when the Contract is signed by an Authorized Representative of the Offeror and **Medford Water**.
- (J) *Cost Estimate:* **Medford Water’s** most recent pre-solicitation, good faith assessment of anticipated Contract amount, typically referred to as the “Engineer’s Estimate.”
- (K) *Day:* Calendar day, including weekends and holidays, beginning at midnight and ending twenty-four hours later, unless otherwise specified by rule or Solicitation Document.
- (L) *Electronic Notification:* Intended to satisfy public noticing requirements of state law for solicitation and award of contracts. Posted on the **Medford Water** or other website, available over the Internet or other similar system. Content may include, but is not limited to, Solicitation Document, Request for Qualifications, Request for Information, or competitive price quotations, and Notice of Intent to Award and Notice of Award.
- (M) *Emergency:* Grounds for exemption from procurement process. Circumstances that:
- (1) could not have been reasonably foreseen;
  - (2) create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare, or safety; and
  - (3) require prompt execution of a Contract to remedy the condition.
- (N) *Findings:* “Findings” means, in the context of an exemption from competitive bidding on a public improvement contract, the justification for the agency’s conclusion that includes, but is not limited to, information regarding: (1) Operational, budget and financial data; (2) Public benefits; (3) Value engineering; (4) specialized expertise required; (5) Public safety; (6) Market conditions; (7) Technical complexity; and (8) Funding sources.
- (O) *Foreign Contractor:* A Contractor neither domiciled, nor registered to do business, in the State of Oregon.
- (P) *Goods and services/Goods or Services:* Other than personal services designated under these regulations, means any personal property, including tangible and intellectual property and rights and licenses in relation thereto, supplies, equipment, materials and services, or combination thereof.
- (Q) *Invitation to Bid:* Written document that invites sealed bids from prospective contractors per either ORS 279B.055, 279C.335 or these regulations. Also called competitive bidding and competitive sealed bid.

- (R) *Life Cycle Costing*: Determination of a product's cost for its estimated useful life, including costs of acquisition, operation and maintenance, and disposal.
- (S) *Manager*: The **General Manager of Medford Water**, or his or her designee.
- (T) *Notice*: As required by law, or as described in these regulations, or as reasonable under the circumstances.
- (U) *Offer*: A response to a solicitation pursuant to the terms of the solicitation.
- (V) *Opening*: The date, time and place announced in the Solicitation Document for the public opening of written, sealed Offers.
- (W) *Personal Services*: Services performed under a Professional, Technical or Expert Services contract as described by these regulations or resolution of **Medford Water**. Includes, but is not limited to, architectural, engineering, or land surveying services.
- (X) *Price Agreement*: A Contract for the Procurement of Goods or Services at a set price with:
  - (1) No guarantee of a minimum or maximum purchase; or
  - (2) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services, in which **Medford Water** or other contracting agency does not guarantee a minimum or maximum additional purchase.
- (Y) *Procurement*: The act of purchasing, leasing, renting or otherwise acquiring Goods or Services or Improvements, and the process undertaken or required to be undertaken by **Medford Water** to enter into a Contract, administer a Contract and obtain the performance of a Contract under the State Law or these regulations.
- (Z) *Proposal*: A response to a Request for Proposals.
- (AA) *Proposer*: An Offeror who submits a Proposal.
- (BB) *Public Contract*: As defined in ORS 279A.010, a sale or other disposal, or a procurement, by **Medford Water** of personal property, services, including personal services, Public Improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. Does not include grants.
- (CC) *Public Improvement*: Means projects for construction, reconstruction, or major renovation on real property by or for a public agency. "Public improvement" does not include emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a public improvement.
- (DD) *Request for Information*: An inquiry by **Medford Water** regarding any aspect of a potential contract; typically prior to determining costs estimates for a contract; and the response to which is typically without compensation.
- (EE) *Request for Proposal (RFP)*: Also called Competitive Proposal. Documents used for soliciting Proposals, from prospective contractors per either ORS 279B.055, 279C.335 or these regulations.
- (FF) *Request for Qualifications (RFQ)*: Not a "Request for Quotes." A document, issued to prospective Contractors, seeking a description of their qualifications to perform certain identified work. May or may not lead to the issuance of an RFP.

- (GG) *Resident Bidder*: A Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this state and has stated in the Bid that Bidder is a "Resident Bidder." **Medford Water** may consider residency of proposers in its Request for Proposal process.
- (HH) *Responsible Offeror, Bidder or Proposer*: A Person who has submitted an Offer, Bid or Proposal and who meets the standards set forth in these regulations, and who has not been debarred or disqualified.
- (II) *Responsive Offer, Bid or Proposal*: An Offer, Bid or Proposal that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document.
- (JJ) *Signature*: Any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound to a Contract.
- (KK) *Signed*: As the context requires, either that a Written document contains a Signature or that the act of making a Signature has occurred.
- (LL) *Solicitation*: A request by **Medford Water** for prospective Contractors to submit Offers.
- (MM) *Solicitation Document*: An Invitation to Bid, Request for Proposals or other document requesting Offers from prospective Contractors pursuant to ORS Chapter 279A, 279B, 279C or these regulations. All documents referenced by the Solicitation Document are included in, and part of, the Solicitation Document.
- (NN) *Specification*: A description of the physical or functional characteristics, or of the nature of a supply, services or construction item, including any requirement for inspecting, testing or preparing a supply, services or construction item for delivery and quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed.
- (OO) *Work*: The furnishing of all materials, equipment, labor, tools, equipment, and all appliances, machinery, systems, transportation, appurtenances and incidentals necessary to successfully complete any individual item in a Contract or, in context such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete, functioning, and satisfactory system or structure; the entire Contract and the timely successful completion of all duties and obligations imposed thereby.
- (PP) *Writing/Written*: Letters, characters and symbols inscribed on paper by hand, print type or other method of impression, or when required or permitted by law, rule, or Solicitation Document, also means electronic letters, characters, and symbols.

Terms not defined herein shall be interpreted in a manner consistent with Chapters 279A-C of the Oregon Revised Statutes.

#### **1.07 Board Authority; Dollar Amount; Intergovernmental Agreements; and Liability Clauses.**

- (A) The Board shall authorize all Contracts when authority has not been delegated to the **General** Manager.

- (B) The Board shall authorize all ORS Chapter 190 intergovernmental agreements by resolution.
- (C) The Board shall authorize agreements containing hold-harmless or limitations of liability clauses when authority has not been delegated to the **General** Manager.

**1.08 Prohibition of Interest in **Medford Water** Contracts.**

Commissioners may not use their public office to obtain financial gain for themselves, any member of their household, or any business with which they or a member of their household is associated. The Commissioner shall give public notice of the potential conflict of interest and shall refrain from voting on any purchase or contract within these regulations in which a Commissioner is financially interested.

Any purchase or contract within the scope of these regulations in which any regular full-time employee of **Medford Water**, or any member of their households, is financially interested, directly or indirectly, is void.

**1.09 Electronic Advertisement and Notice Authorized; Electronic Offers Not Allowed.**

- (A) **Medford Water** finds that electronic advertisement over the Internet via **Medford Water's** website, the City of Medford website, or other system authorized by these regulations or Board resolution will result in cost savings and, due to the ubiquitous nature of the internet and access thereto, is unlikely to encourage favoritism or substantially diminish competition for public contracts; therefore, electronic advertising is authorized in lieu of advertising in newspaper publications.
- (B) The **General** Manager is authorized to advertise and notice any and all procurements on **Medford Water's** website, the City of Medford website, placing notice on the Oregon Department of Administrative Services' Electronic Procurement System known as "ORPIN" (Oregon Procurement Information Network) or a successor electronic system, or any Website the Board determines generates substantially equivalent interest from potential offerors. Electronic Postings may include, but are not limited to, Solicitation Documents, Requests for Qualifications, Requests for Information or Competitive Price Quotations, and Notice of Intent to Award and Notice of Award.
- (C) Notwithstanding the above, if the Public Improvement Contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.
- (D) However, no Offer, Proposal or Bid may be submitted to **Medford Water** by electronic means, except for Competitive Quotes, Intermediate Procurement, Direct Solicitation, and Small Procurement, or as otherwise provided in the solicitation documents.
- (E) In addition to using the authorized means of electronic procurement, the **General** Manager may use any other reasonable means to solicit responses to procurements.

**ARTICLE II**  
**Goods & Services**  
**Purchasing, Competitive Solicitation and Contracting Requirements**

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## **2.01 Overview of Source Selection and Contractor Selection.**

- (A) **Medford Water** shall Award a Contract for Goods and Services covered by these regulations using any method authorized by State law or these regulations.

Authorized methods of source selection include:

- (1) Competitive Sealed Bidding
  - (2) Competitive Sealed Proposals
  - (3) Small/Direct Procurements
  - (4) Intermediate Procurements
  - (5) Sole Source Procurements
  - (6) Special Procurements
  - (7) Emergency Procurements
- (B) The contract dollar value may control selection of a procurement method. If so, procurement may not be artificially divided or fragmented so as to avoid the required procurement method.
- (C) A multi-step process may be used when employing the competitive sealed bid or competitive sealed proposal method of source selection for contracting for goods and services.

## **2.02 Bids or Proposals are Firm Offers; Offer and Acceptance.**

- (A) A Bid, Proposal, or Price Quotation is an Offer to enter into a Contract. If written or contained in an electronic form capable of being reduced to writing, the Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for **Medford Water's** acceptance for the period specified in the solicitation document not to exceed 90 days. **Medford Water's** Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract. Communication of **Medford Water's** acceptance may be by posting on **Medford Water's** Website if specified in the solicitation document.

## **2.03 Competitive Sealed Bidding.**

- (A) **Medford Water** may procure goods and services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid (ITB) is used to initiate a competitive sealed bid solicitation and shall contain the information required by ORS 279B.055(2) and these regulations.
- (B) Public notice of the competitive sealed bidding solicitation is intended to reach prospective bidders and foster competition. Unless other notice is required, electronic notice under these rules or publication in a newspaper of general circulation in the area satisfies the statutory notice requirement but does not preclude other notification methods.
- (C) Invitation to Bid (ITB) Solicitation Documents; Requirements. The ITB shall include the following:
- (1) A time and date by which the bids must be received and a place at which the bids must be submitted;

- (2) The name and title of the person designated for the receipt of bids and, if different, the person designated by **Medford Water** as the contact person for the procurement;
- (3) A procurement description;
- (4) A time, date, and place that prequalification applications, if any, must be filed and the work for which bidders must be prequalified in accordance with ORS 279B.100 and these regulations.
- (5) A statement that **Medford Water** may cancel the procurement or reject any or all bids in accordance with ORS 279B.100 and these regulations;
- (6) A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
- (7) All contractual terms and conditions applicable to the procurement (sample contract);
- (8) Notice of any pre-offer conference as follows:
  - (a) The time, date, and location of any pre-offer conference; and
  - (b) Whether attendance at the conference will be mandatory or voluntary; and
  - (c) That statements made by **Medford Water's** representatives at the conference or elsewhere are not binding upon **Medford Water** unless confirmed by written addendum;
- (9) The form and submission of offers and any other special information;
- (10) The scheduled closing;
- (11) The office where the specifications for the goods or services may be reviewed;
- (12) A statement that each bidder to an ITB must identify whether the bidder is a "Resident Bidder";
- (13) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);
- (14) How **Medford Water** will notify Offerors of addenda and how **Medford Water** will make addenda available. It is presumed notification will occur electronically; and
- (15) That bidders are required to obtain a City of Medford business license if required.
- (16) A description of the character of goods or services **Medford Water** is purchasing including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements;
- (17) A description of the evaluation process, including but not limited to the anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any.
- (18) A description of the evaluation criteria. **Medford Water** may not evaluate a bid based on criteria not contained in the solicitation document. Evaluation

criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates based on information **Medford Water** has available concerning future use. Criteria may include but are not limited to:

- (a) whether inspection and testing will occur;
- (b) quality standards;
- (c) suitability for intended purpose;
- (d) consideration of price discounts;
- (e) transportation costs;
- (f) total costs of ownership or operation over a product's life;

**Medford Water** shall set forth the relative value applicable to each criterion that **Medford Water** will use to determine the responsible bidder with the lowest responsive bid.

- (19) If **Medford Water** intends to award contracts to more than one bidder, **Medford Water** must identify in the solicitation document the manner in which it will determine the number of contracts it will award. The criteria shall require **Medford Water** to purchase the lowest priced goods or services available from the multiple contracts;
- (20) Preference for goods manufactured from Recycled Materials under ORS 279A.125;
- (21) Unless otherwise provided in the contract, the contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the contract, either in whole or in part, without **Medford Water's** prior written consent. Unless otherwise agreed by **Medford Water** in writing, such consent shall not relieve the contractor of any obligations under the contract. Any assignee or transferee shall be considered the agent of the contractor and be bound to abide by all provisions of the contract. If **Medford Water** consents in writing to an assignment, sale, disposal or transfer of the contractor's rights or delegation of contractor's duties, the contractor and its surety, if any, shall remain liable to **Medford Water** for complete performance of the contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless **Medford Water** otherwise agrees in writing.
- (22) The process for selection and protest.

#### **2.04 Competitive Sealed Proposals/Request for Proposal (RFP).**

- (A) **Medford Water** may procure goods and services by competitive sealed proposals as set forth in ORS 279B.060 and this rule and any combination thereof. A Request for Proposal is used to initiate a competitive sealed proposal solicitation and shall contain the information required herein. **Medford Water** shall provide public notice of the competitive sealed proposal solicitation electronically or as otherwise provided in these regulations or by law.
- (B) Mandatory provisions in RFP Solicitation Documents.
  - (1) General Information.

- (a) A time, date, and location when the sealed proposals must be submitted and received;
  - (b) The name and title of the person designated for the receipt of proposals and the person designated by **Medford Water** as the contact person for the procurement, if different;
  - (c) A procurement description;
  - (d) A time, date, and place that prequalification applications, if any, must be filed and the classes of work, if any, for which bidders must be prequalified in accordance with ORS 279B.100 and these regulations;
  - (e) A statement that **Medford Water** may cancel the procurement or reject any or all proposals in accordance with ORS 279B.100 and these regulations;
  - (f) A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710;
  - (g) All contractual terms and conditions applicable to the procurement, including warranties and bonding requirements, if necessary. If **Medford Water** intends to allow discussions or negotiations regarding terms and conditions it must either specify the terms and conditions subject to negotiation or the subject matter reasonably related to the terms and conditions that it will negotiate;
  - (h) Notice of any pre-offer conference as follows:
    - (i) The time, date, and location of any pre-offer conference; and
    - (ii) Whether attendance at the conference will be mandatory or voluntary; and
    - (iii) That statements made by **Medford Water's** representatives at the conference or elsewhere are not binding upon **Medford Water** unless confirmed by written addendum;
  - (i) The form and submission of offers and any other special information;
  - (j) The scheduled closing;
  - (k) The location where the specifications for the goods or services may be reviewed;
  - (l) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and
  - (m) How **Medford Water** will notify offerors of addenda and how **Medford Water** will make addenda available. Electronic notification by posting or otherwise is presumed.
- (2) **Medford Water** Need.
- The character of the goods or services **Medford Water** is purchasing, including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements;
- (3) Proposal and Evaluation process.

- (a) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any;
  - (b) Evaluation criteria, including the relative value applicable to each criterion;
  - (c) **Medford Water** shall set forth selection criteria in the solicitation document. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to **Medford Water**;
  - (d) If **Medford Water's** solicitation process calls for **Medford Water** to establish a competitive range, **Medford Water** shall state the size of the competitive range in the solicitation document. However, **Medford Water** may increase or decrease the number of proposers in the competitive range as set forth in the solicitation documents;
  - (e) If **Medford Water** intends to award contracts to more than one Proposer, **Medford Water** must identify in the solicitation document the manner in which it will determine the number of contracts it will award. **Medford Water** shall also include the criteria it will use to determine how **Medford Water** will endeavor to achieve optimal value, utility, and substantial fairness when selecting a particular contractor to provide goods or services from those contractors awarded contracts;
  - (f) **Medford Water** shall award the contract to the Offeror that **Medford Water** determines to be the most advantageous to **Medford Water**.
- (4) Preference for goods manufactured from recycled materials under ORS 279A.125;
  - (5) Unless otherwise provided in the contract, the contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the contract, either in whole or in part, without **Medford Water's** prior written consent. Unless otherwise agreed by **Medford Water** in writing, such consent shall not relieve the contractor of any obligations under the contract. Any assignee or transferee shall be considered the agent of the contractor and be bound to abide by all provisions of the contract. If **Medford Water** consents in writing to an assignment, sale, disposal or transfer of the contractor's rights or delegation of contractor's duties, the contractor and its surety, if any, shall remain liable to **Medford Water** for complete performance of the contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless **Medford Water** otherwise agrees in writing.
- (C) Optional RFP provisions.
- (1) The RFP may contain the following provisions:
    - (a) That **Medford Water** is reserving for negotiation with proposers certain identified contractual terms or conditions;
    - (b) That proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals;

- (c) The form of contract that **Medford Water** will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with proposers;
- (d) That the method of contractor selection may include negotiations with the highest ranked proposers, competitive negotiations, multiple-tiered competition designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or any combination of these methods;
- (e) That **Medford Water** may conduct site tours, demonstrations, individual or group discussions and other informational activities with proposers before or after the opening of proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation's requirements or to consider and respond to requests for modifications of the proposal requirements.
- (f) If optional provisions set forth above for methods of contractor selection that call for the establishment of a competitive range or include discussions or negotiations, **Medford Water** shall use procedures designed to accord proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

## **2.05 Public Notice of Solicitation for Contracts for Goods and Services over \$250,000.**

- (A) **Medford Water** shall furnish public notice of every Solicitation Document in accordance with these regulations. **Medford Water** may give additional notice using any method it determines appropriate to foster and promote competition, including:
  - (1) Mailing notice of the availability of Solicitation Document to Persons that have expressed an interest in **Medford Water's** Solicitations; or
  - (2) Placing Notice on **Medford Water's** website or any state or national public entity procurement site or list.
- (B) The interval between the first date of notice of the Solicitation Document given in accordance with these regulations and Closing which shall not be less than fourteen (14) Days for an Invitation to Bid and 21 Days for a Request for Proposals, unless **Medford Water** determines that shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with these regulations and Closing be less than seven (7) Days as set forth in these regulations. **Medford Water** shall document the specific reasons for the shorter public notice period in the procurement file;
- (C) **Medford Water** shall provide potential Offerors notice of any Addendum to a Solicitation Document as specified in the solicitation document.

## **2.06 Addenda to Solicitation Document**

- (A) Issuance; Receipt. A Solicitation Document may be changed only by a Written Addendum. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless **Medford Water** otherwise specifies in the Addenda or Solicitation Document. If an Offeror submits an Offer and the Solicitation Document states that the Offeror is bound by all Addenda published in

accordance with these regulations, then the Offeror shall be bound to the terms contained in all Addenda so issued.

- (B) Notice and Distribution. **Medford Water** shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in these regulations. The Solicitation Document shall specify how **Medford Water** will provide notice of Addenda and how **Medford Water** will make the Addenda available. Electronic notification by posting or otherwise is presumed. For example, **Medford Water** may state: “**Medford Water** will not mail notice of Addenda but will publish notice of any Addenda on **Medford Water’s** website. Addenda may be downloaded off **Medford Water’s** website. Offerors should frequently check **Medford Water’s** website until Closing, i.e., at least once weekly until the week of Closing and at least once daily during the week of the Closing.”
- (C) Timelines; Extensions.
  - (1) **Medford Water** shall issue Addenda within a reasonable time to allow prospective Offerors to consider the information contained in the Addenda in preparing their Offers. **Medford Water** should extend the Closing if the **General** Manager determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent that the **General** Manager determines that the public interest requires it, **Medford Water** shall not issue an Addendum less than 72 hours before the Closing unless the Addendum also extends the Closing. For purposes of computing this time, the Addendum shall be deemed issued to occur when it is first posted on **Medford Water’s** website or upon mailing, whichever is applicable. If both occur, the notification is complete when the first of these two events occur.
- (D) Request for Change or Protest to Addenda. Unless a different deadline is set forth in the Addendum, an Offeror must submit a Written request for change or protest to the Addendum, as provided in these regulations, by the close of **Medford Water’s** next business Day after issuance of the Addendum. **Medford Water** shall consider only an Offeror’s request for change or protest to the Addendum; **Medford Water** shall not consider a request for change or protest to matters not added or modified by the Addendum.

## **2.07 Request for Clarification or Change to Solicitation Document.**

- (A) Time for submission of request for change. Unless otherwise provided in the Solicitation Document, and except for addenda protests as specified above, an Offeror shall deliver any request for change of the Solicitation Document, Specifications or Contract provisions to **Medford Water** in writing **at least within** seven (7) Days prior to Bid or Proposal Closing.
- (B) Any request for change shall include a detailed statement of the legal and factual reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any prejudice to the Offeror; and, a statement of the form of relief requested. No request for change of the content of the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request. **Medford Water** shall notify the Offeror if **Medford Water** entirely rejects the request.



If **Medford Water** agrees with the request, in whole or in part, **Medford Water** shall either issue an Addendum reflecting the change or cancel the Solicitation.

- (C) Extension of Closing date. If any request for change is timely received in accordance with these Regulations the Closing may be extended by the **General Manager** if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- (D) Identification of request for change. Envelopes containing requests for change or protests of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:
  - (1) Solicitation Specification or Contract Provision Request for Change; and
  - (2) Solicitation Document Number or Other Identification.
- (E) A Proposer may request a change to add alternate terms and conditions for negotiation if the Solicitation Document permits negotiation. In this circumstance, the request for change procedure shall be governed by the Solicitation Document and these regulations.
- (F) Clarification. Prior to the deadline for submitting a request for change, an Offeror may request in Writing that **Medford Water** clarify any provision of the Solicitation Document or Contract. **Medford Water's** clarification, whether oral or in Writing, does not change the Solicitation Document or Contract and is not binding on **Medford Water** unless **Medford Water** amends the Solicitation Document or Contract by Written Addendum.

## **2.08 Offeror Submission.**

- (A) Product Samples and Descriptive Literature. Product Samples or Descriptive Literature may be required if it is necessary or desirable to evaluate the quality, features, or characteristics of the offered items. **Medford Water** will dispose of Product Samples, return, or make available for return, Product Samples to the Offeror in accordance with the Solicitation Document.
- (B) Identification of Offers.
  - (1) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by **Medford Water**, whichever is applicable. If **Medford Water** permits electronic Offers in the Solicitation Document, the Offeror may submit and identify electronic Offers in accordance with the Solicitation Document.
  - (2) **Medford Water** is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
  - (3) Receipt of Offers. The Offeror is responsible for ensuring **Medford Water** receives its Offer at the location specified in the solicitation document prior to the stated Closing time for Offers, regardless of the method used to submit or transmit the Offer. Offers not so received are late as provided in and shall be returned unopened. If a late Offer is opened inadvertently, the procedure provided by these regulations shall apply except the submission shall be returned to the Offeror.

## 2.09 Pre-Closing Modification or Withdrawal of Offers.

- (A) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. Unless otherwise provided in the Solicitation Document, any modifications shall be prepared on the Offeror's letterhead, signed by an Authorized Representative of the Offeror, state that the new document supersedes or modifies the prior Offer and be submitted in a sealed envelope, appropriately marked. **Medford Water** may accept modifications electronically only if it has authorized electronic submittal of the Offer in the Solicitation document. The Offeror shall mark the submitted modification as follows:
- (1) Offer Modification; and
  - (2) Solicitation Number or other identification as specified in the Solicitation Document.
- (B) Withdrawals:
- (1) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, signed by an Authorized Representative of the Offeror, delivered to the location specified in the Solicitation Document or to the **General** Manager if no location is specified, and received by the specific location or to **General** Manager, as appropriate, prior to the time and date set for Closing.
  - (2) The Offeror or Authorized Representative of the Offeror may withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority. Because of the chance for error or misidentification, **Medford Water** reserves the right to reject a purported withdrawal if in the judgment of **Medford Water**, sufficient identification is not provided.
  - (3) **Medford Water** may release an unopened Offer withdrawn under these regulations to the Offeror or its Authorized Representative, after voiding any date and time stamp mark or otherwise by appropriately marking the envelope in which the Offer was received.
  - (4) The Offeror shall mark the Written request to withdraw an Offer as follows:
    - (a) Offer Withdrawal; and
    - (b) Solicitation Number or other identification as specified in the Solicitation Document.
    - (c) Documentation. **Medford Water** shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

## 2.10 Receipt, Opening, and Recording of Offers.

- (A) Receipt. **Medford Water** shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Offer or modification shall not be opened but shall be stored in a secure place until Opening. If an Offer or modification is inadvertently opened prior to the Opening, **Medford Water** shall reseal and store the opened Offer or modification for Opening. That action shall be documented and placed in the appropriate Solicitation file (e.g., "**Medford Water** inadvertently opened the Offer due to improper identification of the Offer.>").

- (B) Opening and recording. Offers shall be opened publicly, including any modifications made to the Offer pursuant to these regulations.
  - (1) In the case of Invitations to Bid, to the extent practicable, the name of each Bidder shall be read aloud as well as the Bid price(s), and such other information as **Medford Water** considers appropriate.
  - (2) In the case of Requests for Proposals, **Medford Water** will not read Proposals aloud, but will only disclose the name of each Proposer.
- (C) Availability. After Opening, Offers will be available for public inspection except for those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475.
  - (1) To the extent such designation is not in accordance with applicable law, **Medford Water** shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its Offer.
  - (2) Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary. The **General Manager** may determine the appropriate charge to be paid for copies made pursuant to public records requests and may request payment for such copies before they are released.
  - (3) Notwithstanding anything contrary above, **Medford Water** is not required to disclose the contents of Proposals until after **Medford Water** posts a Notice of Intend to Award pursuant to these regulations.

#### **2.11 Late Offers, Late Withdrawals and Late Modifications.**

- (A) Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. **Medford Water** shall not consider late Offers, withdrawals, or modifications
- (B) For manual submissions of Offers, the **General Manager's** recorded date and time shall determine the timeliness of submission. Late manual submissions shall be returned to the Offeror unopened with a copy of the envelope containing the **General Manager's** time recorded on the Offer retained for the Solicitation file.
- (C) For electronic submissions, when permitted, the time shown by **Medford Water** as to the date of arrival of the electronic submission shall determine the timeliness of the submission. Late electronic submissions shall be deleted from **Medford Water's** files, returned electronically to the Offeror and the time of the submission and the time of return shall be documented in the Solicitation file.
- (D) For Facsimile (FAX) submissions, when permitted, the time recorded at the top of the last page of the submission shall determine the timeliness of the submission. Late Facsimile transmissions shall be returned to the Offeror after keeping a copy of the last page of the transmission for the Solicitation file.

- (E) Failure to properly return or dispose of a late submission does not mean an Offer or submission arrived on time.

## 2.12 Mistakes.

- (A) General. To protect the integrity of the competitive Solicitation process and to assure fair treatment of Offerors, **Medford Water** should carefully consider whether to permit a waiver, correction, or withdrawal of an Offer for certain mistakes.
- (B) Treatment of Mistakes. Errors in judgment do not permit an Offeror to correct or withdraw an Offer. Mistakes that constitute a minor informality may be waived or corrected. Mistakes that constitute clerical errors may be corrected or withdrawn in **Medford Water's** discretion pursuant to this rule.
- (C) **Medford Water** notification. If **Medford Water** believes the Offer contains a mistake **Medford Water** shall, within a reasonable time period, notify the Offeror, note the apparent mistake and request that the Offeror verify the Offer. The Offeror shall verify the Offer in writing, or by electronic transmission within one business day after notification.
- (D) Failure of Offeror to Respond. If the Offeror fails to respond within one business day after notification of the apparent mistake, **Medford Water** shall consider the Offer as submitted unless the amount of the Offer is so far out of line with the amounts of other bids received, or with the amount estimated by **Medford Water**, or there are other indications of error so clear, as to reasonably justify the conclusion or that acceptance of the Offer would be unfair to the Offeror or to other bona fide Offerors, in which case **Medford Water** shall be entitled to reject the Offer. **Medford Water** may extend the time for response for good cause shown.
- (E) Verification. If the Offeror verifies its Offer, **Medford Water** must consider the Offer as originally submitted. However, in fairness to other Offerors, verification does not preclude **Medford Water** from rejecting the Offer if it is clear that a mistake has been made and **Medford Water** determines the intended Offer is not evident.
- (F) Minor Informality. If the Offeror verifies its Offer, and **Medford Water** sees no reason for rejection, **Medford Water** may waive or permit the Offeror to correct a mistake that constitutes a minor informality. A minor informality is a matter of form, rather than substance, that is evident on the face of the Offer and which can be corrected or waived without prejudice to the public or other Offerors. Examples of a minor informality include a failure to:
  - (1) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
  - (2) Sign the Offer in the designated block, provided, however, that a Signature appears elsewhere in the Offer that evidences the Offeror's intent to be bound; or
  - (3) Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms.

- (G) Clerical Mistakes. If the Offeror does not verify its Offer, but contends a clerical mistake caused a different Offer than intended to be submitted, or verifies the Offer but contends a clerical mistake should be corrected within a portion of the Offer, **Medford Water** may in its discretion permit correction if the conditions of this section are met.
- (1) Only clerical mistakes can be corrected. A clerical mistake is not a mistake of judgment. Examples of clerical mistakes include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, misplacement of a decimal point, and instances in which the intended correct price is evident by simple arithmetic calculations.
  - (2) If correction of the Offer would result in displacement of one or more lower Offers submitted by other Offerors, the correction is permitted if, and only if, both the existence of the mistake and the Offer actually intended are ascertainable from the Solicitation Document and the Offer itself.
  - (3) If correction of the Offer would not result in the displacement of one or more lower Offers submitted by other Offerors, correction may be permitted if the Offeror provides **Medford Water** with supporting evidence of the mistake and intended Offer within two business days after **Medford Water's** initial notification of the mistake. **Medford Water** may extend the time for response for good cause shown.
    - (a) Supporting evidence shall include all pertinent evidence, such as the Offeror's file copy of its Offer, the original worksheets and other data used in preparing the Offer, subcontractors' quotations, if any, and any other evidence that establishes the existence of a clerical mistake, the manner in which it occurred, and the Offer actually intended.
    - (b) The closer the corrected Offer is to the next lowest Offer the greater the need for **Medford Water** to be sure that it has evidence that permits a correction to ensure the integrity of the competitive process.

### **2.13 Time for **Medford Water** Acceptance.**

- (A) An Offeror's Offer is a Firm Offer, irrevocable, valid, and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document. After 30 Days the Offer shall lapse unless extended. The extension may occur after the expiration of the 30-Day period.
- (B) An Offer may be extended beyond 30 Days if the Offeror and **Medford Water** so agree. If agreement is reached the time period for extension shall be reduced to Writing and the Offer will remain valid, irrevocable, and binding on the Offeror for the agreed-upon extension period.

### **2.14 Responsibility of Offerors.**

- (A) Contracts shall be Awarded only to responsible, responsive Offerors. Pursuant to ORS 279B.110, **Medford Water** shall consider whether the Offeror has:
  - (1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all Contractual responsibilities;

- (2) A satisfactory record of performance. **Medford Water** shall document the record of performance of a prospective Offeror if **Medford Water** finds the prospective Offeror nonresponsible under this paragraph;
  - (3) A satisfactory record of integrity. **Medford Water** shall document the record of integrity of a prospective Offeror if **Medford Water** finds the prospective Offeror nonresponsible under this paragraph;
  - (4) Qualified legally to Contract with **Medford Water**. The **General** Manager may determine that such an Offeror is not legally qualified if the Offeror does not have a business license with the City.
  - (5) Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by **Medford Water** concerning responsibility, **Medford Water** shall base the determination of responsibility upon any available information or may find the prospective Offeror nonresponsible;
  - (6) Not been debarred by **Medford Water** under ORS 279B.130, or these regulations.
- (B) In the event **Medford Water** determines an Offeror is not Responsible it shall prepare a Written determination of non-responsibility as required by ORS 279B.110.

## **2.15 Prequalification of Prospective Offerors.**

- (A) **Medford Water** may Prequalify prospective Offerors as follows:
- (1) The **General** Manager shall determine the types of forms, the method of submitting applications and the information required to be a prequalified Offeror for Goods or Services.
  - (2) Prospective Offerors shall submit the application on the form required by the **General** Manager.
  - (3) Upon receipt of the application, **Medford Water** shall investigate the prospective Offeror as necessary to determine whether the Prequalification should be granted.
  - (4) If an early Prequalification decision is requested, **Medford Water** shall make that decision in less than 30 Days, if practicable.
  - (5) The **General** Manager shall notify prospective Offerors whether or not they have been prequalified. If a prospective Offeror is not prequalified, the **General** Manager shall specify which of the standards of responsibility listed in these regulations the prospective Offeror failed to meet.
- (B) If **Medford Water** determines that a prequalified Offeror is no longer qualified the **General** Manager may revoke or revise the Prequalification upon reasonable notice, except that a revocation or revision is invalid as to any Contract for which an advertisement for Bids or Proposals has already been issued.
- (C) Notwithstanding the prohibition against revocation of Prequalification generally in ORS 279B.120(3), **Medford Water** may determine that a prequalified Offeror is not Responsible for any given Contract prior to Contract Award.

## 2.16 Debarment of Prospective Offerors.

- (A) **Medford Water** may Debar prospective Offerors pursuant to ORS 279B.130 and this rule.
- (B) **Medford Water** may debar a prospective Offeror from consideration for **Medford Water** Contracts for a period up to three (3) years if:
  - (1) The Offeror has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or Subcontract or in the performance of such Contractor or Subcontract;
  - (2) The Offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the Offeror's responsibility as a Contractor;
  - (3) The Offeror has been convicted under state or federal antitrust statutes;
  - (4) The Offeror has committed a violation of a Contract provision and debarment for such a violation was listed in the Contract terms and conditions as a potential penalty. A violation may include, but is not limited to, a failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment; or
  - (5) The Offeror does not carry workers' compensation or unemployment insurance as required by Oregon Law.
- (C) **Medford Water** may debar a prospective Offeror as follows:
  - (1) Issue a Written decision that states the reasons for the action taken and informs the Offeror of the appeal rights under ORS 279B.425 and these regulations; and
  - (2) Mail or immediately furnish a copy of the decision to the debarred Offeror.
- (D) Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b) and this rule, **Medford Water** may determine that a previously Debarred Bidder or Proposer is not Responsible for a given Contract prior to Contract Award.
- (E) Imputed Knowledge. **Medford Water** may attribute improper conduct of a Person or its affiliate having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
- (F) Limited participation. **Medford Water** may allow a Debarred Person to participate in solicitations and Contracts on limited basis during the Debarment period upon Written determination that participation is advantageous to **Medford Water**. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

## 2.17 Offer Evaluation and Award.

- (A) General. If a Contract is Awarded, **Medford Water** shall Award the Contract to the Responsible Offeror submitting the lowest, Responsive Bid. **Medford Water** may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.
- (B) Multiple Items. An Invitation to Bid or Request for Proposal may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a “market basket” of items representative of the total requirement, or grand total of all items.
- (C) All or none Offers. All or none Bids or Proposals may be accepted if the evaluation shows an all or none Award to be the lowest cost of those submitted.
- (D) Clarification of Offers. After Opening, discussions may be conducted with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All Offers, in **Medford Water's** sole judgment, needing clarification shall be accorded such an opportunity. Clarification of any Offer must be documented in Writing by **Medford Water** and shall be included in the file.
- (E) Multiple Awards - Bids. If a Solicitation permits the Award of multiple Contracts, **Medford Water** shall specify the criteria it shall use to choose from the multiple Contracts when purchasing Goods and Services. The criteria shall require **Medford Water** to purchase the lowest priced goods or services available from the multiple Contracts. Multiple Awards shall not be made if a single Award will meet **Medford Water's** needs without sacrifice of economy or service. A multiple Award may be made if Award to two or more Offerors of similar products is necessary for adequate availability, delivery, service, or product compatibility. Awards may not be made for the purpose of dividing the Solicitation, or to allow for user preference unrelated to utility or economy. A notice to potential Offeror that multiple Contracts may be Awarded for any Solicitation shall not preclude the Award of a single Contract for such Solicitation.
- (F) Multiple Awards – Proposals. If a Solicitation permits the Award of multiple Contracts, **Medford Water** shall specify the criteria it shall use to choose from the multiple Contracts when purchasing Goods and Services. The criteria shall require **Medford Water** to procure the goods or services that are most advantageous to **Medford Water** available from the multiple Contracts. Multiple Awards shall not be made if a single Award will meet **Medford Water's** needs without sacrifice of economy or service. A multiple Award may be made if Award to two or more Offerors of similar Goods or Services is necessary for adequate availability, delivery, service, or product compatibility. Multiple Awards may not be made for the purpose of dividing the Solicitation, or to allow for user preference unrelated to obtaining the most advantageous Contract. A notice to potential Offeror that multiple Contracts may be Awarded for any Solicitation shall not preclude the Award of a single Contract for such Solicitation.
- (G) Partial Awards. If after evaluation of competitive Offers, **Medford Water** finds that a qualified Offer has been received for only parts of the requirements of the Solicitation:
  - (1) A Contract may be Awarded for the parts of the Solicitation for which qualified Offers have been received.



- (2) All Offers may be rejected and a new Invitation to Bid or Request for Proposals on the same or revised terms, conditions and Specifications may be issued.
- (H) **Medford Water** Evaluation. **Medford Water** shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. **Medford Water** shall not evaluate an Offer using any other requirement or criterion.
- (I) Evaluation of Bids. **Medford Water** shall evaluate Bids as set forth in ORS 279B.055.
  - (1) In evaluating Bids, **Medford Water** shall apply the Contract preferences set forth in these regulations.
  - (2) Low, Tied Offers. Low, tied Offers shall be resolved pursuant to these regulations.
- (J) Evaluation of Proposals. **Medford Water** shall evaluate Proposals as set forth in ORS 279B.060 and these regulations. Low, tied Proposals will be evaluated in accordance with these regulations.
- (K) Recycled Materials. In determining the most advantageous Responsive Proposal **Medford Water** shall give preference for recycled materials as set forth in ORS 279A.125.

## **2.18 Negotiation with Offerors.**

**Medford Water** shall not negotiate with any Offeror in regard to the acquisition of Goods and Services if the Procurement was pursuant to an Invitation to Bid. This rule does not prevent **Medford Water** from seeking a clarification of an Offer, provided the clarification does not change the Offer. This rule does not prohibit negotiation with a Proposer in response to a Request for Proposals pursuant to the procurement document.

## **2.19 Contract Preferences, Low Tie Awards.**

- (A) Award When Offers Identical. When **Medford Water** receives Offers identical in price, fitness, availability, and quality, and chooses to Award a Contract, **Medford Water** shall Award the Contract based on the following order of precedence:
  - (1) **Medford Water** shall Award the Contract to the Offeror among those submitting identical Offers who is offering Goods or Services, or both, that have been manufactured or produced in Oregon.
  - (2) If two or more Offerors submit identical Offers, and they all offer Goods or Services, or both, manufactured or produced in Oregon, **Medford Water** shall Award the Contract by drawing lots among the identical Offers offering Goods or Services that have been manufactured or produced in Oregon. **Medford Water** shall provide to the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots and an opportunity for those Offerors to be present when the lots are drawn.
  - (3) If **Medford Water** receives identical Offers, and none of the identical Offers offer Goods or Services, or both, that have been manufactured or produced in Oregon, then **Medford Water** shall Award the Contract by drawing lots among the identical Offerors. **Medford Water** shall provide to the Offerors that submitted the identical Offers notice of the date, time, and location of the drawing of lots and an opportunity to be present when the lots are drawn.

- (B) Determining if Offers are Identical. **Medford Water** shall consider Offers identical in price, fitness, availability, and quality as follows:
- (1) Bids received in response to an Invitation to Bid issued under these regulations or ORS 279C.335 are identical in price, fitness, availability, and quality if the Bids are Responsive, and offer the Goods or Services described in the Invitation to Bid at the same price.
  - (2) Proposals received in response to a Request for Proposals issued under these regulations, are identical in price, fitness, availability, and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
  - (3) Proposals received in response to a *Special Procurement* conducted pursuant to these regulations are identical in price, fitness, availability, and quality if, after completing the Contracting procedure approved by **Medford Water** if **Medford Water** determines, in writing, that two or more Proposals are equally advantageous to **Medford Water**.
  - (4) Offers received in response to an *Intermediate Procurement* conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of **Medford Water** in accordance with ORS 279B.070(4).
- (C) Determining if Goods or Services are Manufactured or Produced in Oregon. For the purposes of complying with these regulations, **Medford Water** shall determine whether a Contract is predominantly for Goods or Services and then use the predominant purpose to determine if the Goods or Services are manufactured or produced in Oregon. **Medford Water** may request in a Solicitation Document, following Closing, or at any other time determined appropriate by **Medford Water**, any information **Medford Water** may need to determine if the Goods or Services are manufactured or produced in Oregon. **Medford Water** may use any reasonable criteria to determine if Goods or Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the same criteria apply equally to each Offeror.

## **2.20 Reciprocal Preferences.**

- (A) When evaluating Bids pursuant to these regulations, **Medford Water** shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides.
- (B) **Medford Water** shall rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state Bidders, and (ii) the amount of such preference.

## **2.21 Contract Preferences: Recycled Materials.**

- (A) Notwithstanding provisions of law requiring **Medford Water** to Award a Contract to the lowest Responsible Bidder or best Proposer or provider of a quotation, and **Medford Water** shall give preference to the Procurement of goods manufactured from recycled materials.

- (B) In comparing goods from two or more Bidders or Proposers, and at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, **Medford Water** shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following four (4) conditions exists:
  - (1) The recycled product is available;
  - (2) The recycled product meets applicable standards;
  - (3) The recycled product can be substituted for a comparable non-recycled product; and
  - (4) The recycled product's costs do not exceed the costs of non-recycled products by more than five (5) percent, or a higher percentage if a written determination is made by **Medford Water** and set forth in the Solicitation Document. For purposes of making the foregoing determination, **Medford Water** shall consider the costs of the goods following any adjustments **Medford Water** makes to the price of the goods for purposes of evaluation pursuant to these regulations.
- (C) For the purposes of this section, **Medford Water** shall determine if goods are manufactured from recycled materials in accordance with standards established by **Medford Water**.

## **2.22 Rejection of All or Part of an Offer.**

- (A) Investigation. **Medford Water** may, but is not required to, seek clarification of an Offer to determine whether it is responsive and make such investigation as necessary to determine whether an Offeror is responsible. The investigation may include:
  - (1) An inquiry into the responsibility of the Offeror's proposed Subcontractor and suppliers;
  - (2) Requiring an Offeror to demonstrate its financial ability to perform the Contract. In exercising this right, **Medford Water** shall notify the apparent successful Offeror in writing to submit such documentation as **Medford Water** deems necessary to complete a thorough evaluation of the Offeror's financial ability;
  - (3) Obtaining any credit report information that **Medford Water** deems necessary to investigate and evaluate whether the Offeror is financially responsible. By submitting an Offer, the Offeror authorizes **Medford Water** to investigate its credit, to obtain credit reports and to cooperate in the event that credit information is requested by **Medford Water**.
  - (4) Any action necessary to ascertain whether the Offeror is responsible.
- (B) Grounds for Rejection.
  - (1) **Medford Water** may reject any Offer upon finding that to accept the Offer may impair the integrity of the Solicitation process or that rejecting the Offer is in the public interest.

- (2) **Medford Water** may reject any Offer, in whole or in part, when rejection is in the best interest of **Medford Water** as determined by **Medford Water**. If so, the reasons for rejection shall be made part of the Solicitation file.
- (3) **Medford Water** shall reject an Offer as nonresponsive upon **Medford Water's** finding that the Offer:
  - (a) is contingent upon **Medford Water's** acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
  - (b) takes exception to terms and conditions (including Specifications);
  - (c) offers Goods or Services that fail to meet the Specifications of the Solicitation Document;
  - (d) is late;
  - (e) is not in substantial compliance with the Solicitation Documents;
  - (f) is not in substantial compliance with all prescribed public Solicitation procedures;
  - (g) contains a deviation that, if the Offer was accepted, would give the Offeror a substantial advantage or benefit not shared by other Offerors; or
  - (h) has failed to comply with the programs adopted pursuant to these regulations.
- (4) **Medford Water** shall reject an Offer upon **Medford Water's** finding that the Offeror:
  - (a) Has not been prequalified under ORS 279B.120 and **Medford Water** required mandatory Prequalification;
  - (b) Has been debarred as set forth in ORS 279B.130;
  - (c) Has not met the requirements of ORS 279A.105 regarding subcontracting to emerging small businesses when required to do so by **Medford Water**;
  - (d) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
  - (e) Has failed to provide the certification of nondiscrimination required by these regulations; or
  - (f) Is otherwise nonresponsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, **Medford Water** must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, **Medford Water** must determine that the Offeror:
    - (i) Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all Contractual responsibilities;

- (ii) Has a satisfactory record of Contract performance. **Medford Water** should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, **Medford Water** should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. **Medford Water** may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of Contract performance. **Medford Water** shall make its basis for determining an Offeror nonresponsible under this section part of the Solicitation file;
  - (iii) Has a satisfactory record of integrity. An Offeror may lack integrity if **Medford Water** determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to **Medford Water**. **Medford Water** may find an Offeror nonresponsible based on the lack of integrity of any Entity having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor, or successor Entity). The standards for debarment under ORS 279B.130 may be used to determine an Offeror's integrity. **Medford Water** shall make its basis for determining that an Offeror is nonresponsible under this section part of the Solicitation file;
  - (iv) Is qualified legally to Contract with **Medford Water**. **Medford Water** may find the Offeror is not legally qualified to contract with **Medford Water** if the Offeror does not have a business license with the City of Medford, if applicable; or
  - (v) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by **Medford Water** concerning responsibility, **Medford Water** shall base the determination of responsibility upon any available information, or may find the Offeror nonresponsible.
- (C) Form of Business. For purposes of this rule, **Medford Water** may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring an ownership interest of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.
- (D) Certification of Non-Discrimination. The Offeror shall certify and deliver to **Medford Water** the Written certification required by these regulations.

## **2.23 Rejection of All Offers.**

- (A) Rejection. **Medford Water** may reject all Offers for good cause upon **Medford Water's** Written finding it is in the public interest to do so. **Medford Water** shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

- (B) Criteria. **Medford Water** may reject all Offers upon a Written finding that:
- (1) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
  - (2) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
  - (3) Misconduct, error, or ambiguous, conflicting or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
  - (4) Causes other than legitimate market forces threaten the integrity of the competitive Solicitation process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
  - (5) **Medford Water** cancels the Solicitation in accordance with these regulations; or;
  - (6) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

#### **2.24 Notice of Intent to Award.**

- (A) Applicability: This section applies to Awards of a Contract, except for direct (up to **\$25,000**), intermediate (up to **\$250,000**), sole source, emergency, or a special procurement pursuant to these regulations.
- (B) Notice: The **General** Manager shall provide Written notice of Intent to Award a Contract to all Offerors. If the Solicitation was posted by electronic means, however, the **General** Manager may post the Intent to Award electronically in the same manner as the Solicitation. The Notice shall be posted at least seven (7) Days before the Award of a Contract, unless the **General** Manager determines that circumstances require prompt execution of the Contract. The **General** Manager shall document the specific reasons for the shorter notice period in the Solicitation file.

#### **2.25 Cancellation, Delay or Suspension of Solicitation.**

- (A) Cancellation in the Public Interest. Prior to Opening, **Medford Water** may cancel a Solicitation or Procurement described in a Solicitation may be canceled in whole or in part prior to Contract execution when cancellation is in the best interest of **Medford Water** as determined by **Medford Water**.
- (B) Delay or Suspension. Any Solicitation or Procurement desired in a Solicitation may be delayed or suspended when the delay or suspension is in the best interest of **Medford Water** as determined by **Medford Water**.
- (C) Costs. **Medford Water** is not liable to any Offeror for costs, expenses or losses caused by the cancellation, delay, or suspension.
- (D) Notice. If **Medford Water** cancels, delays, or suspends a Solicitation prior to Opening, **Medford Water** shall provide notice of cancellation in the same manner that **Medford Water** initially provided notice of the Solicitation. Such notice of cancellation shall:

- (1) Identify the Solicitation;
  - (2) Briefly explain the reason for cancellation; and
  - (3) If appropriate, explain that an opportunity will be given to compete on any Re-Solicitation.
- (E) Notice of Cancellation After Opening. If **Medford Water** cancels a Procurement or Solicitation after Opening, **Medford Water** shall provide written notice of Cancellation to all Offerors who submitted Offers.

## **2.26 Disposition of Offers if Solicitation Canceled.**

- (A) Prior to Offer Opening. If **Medford Water** cancels a Solicitation prior to Offer Opening, **Medford Water** will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, **Medford Water** will open the Offer to determine the source and then return it to the Offeror.
- (B) After Offer Opening. If **Medford Water** rejects all Offers, **Medford Water** will retain all such Offers as part of **Medford Water's** Solicitation file. If a Request for Proposals is cancelled after Proposals are received, **Medford Water** may return a Proposal to the Proposer that made the Proposal provided the protest period for challenging the cancellation of the Solicitation has expired. **Medford Water** shall keep a list of returned Proposals in the Solicitation file.

## **2.27 Documentation of Award.**

- (A) Basis of Award. After Award, **Medford Water** shall make a record showing the basis for determining the successful Offeror part of **Medford Water's** Solicitation file.
- (B) Contents of Award Record. **Medford Water's** record shall include:
- (1) Bids.
    - (a) Completed Bid tabulation sheet; and
    - (b) Written justification for any rejection of lower Bids.
  - (2) Proposals.
    - (a) The completed evaluation of the Proposals;
    - (b) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
    - (c) If **Medford Water** permitted negotiations in accordance with these regulations, **Medford Water's** completed evaluation of the initial Proposals and **Medford Water's** completed evaluation of final Proposals.

## **2.28 Availability of Award Decisions.**

- (A) Contract Documents. To the extent required, **Medford Water** shall deliver to the successful Offeror, a Signed purchase order, Price Agreement, or other Contract document(s), as applicable.

- (B) Notification to Unsuccessful Offerors. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to **Medford Water** a written request accompanied by payment. Such request shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope.
- (C) Availability of Solicitation Files. Subject to these regulations and ORS 279B.060 **Medford Water** shall make completed Solicitation files available for public review at **Medford Water**.
- (D) **Medford Water** may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or ORS 192.502 including trade secrets, as defined in ORS 192.501 and information submitted to a public body in confidence, as described in ORS 192.502.
- (E) Copies from Solicitation Files. Subject to these regulations and ORS 279B.060 any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

### **2.29 Performance and Payment Security; Waiver.**

- (A) Public Contracts. The **General** Manager has discretion to require the submission of a performance bond, a payment bond, or both in regard to any contracts subject to this Chapter in any amount not to exceed the Contract Price. If so, the requirement shall be expressly set forth in the Solicitation Document.
- (B) Requirement for Surety Bond. If required, **Medford Water** shall accept only a performance bond and payment bond furnished by a surety company authorized to do business in Oregon or is otherwise approved by the **Medford Water** Attorney each in the amount of 100 percent of the Contract price unless otherwise specified in the Solicitation Document or such substitute security is approved by the **Medford Water** Attorney's office.
- (C) Time for Submission. The apparent successful Offeror must furnish the required performance and payment security within 10 Days after notification by **Medford Water**. If the Offeror fails to furnish the performance security as requested, **Medford Water** may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at **Medford Water's** discretion, the Offeror shall forfeit its Bid or Proposal Security.

### **2.30 Small Procurement; Direct Purchase Authorized.**

- (A) Procurements of Goods and Services not exceeding **\$25,000** may be awarded by offering the Contract to only one firm, without obtaining competitive quotes. Nothing herein prohibits **Medford Water** from conducting a competitive procurement. **Medford Water** may not artificially divide or fragment a procurement so as to constitute a small procurement under this Section.
- (B) Electronic Offers Authorized; Written Contract Required. Quotations for Small Procurements may be obtained by electronic means. Notwithstanding the authority to obtain quotations by telephonic and other electronic means, all contracts for small procurements shall be reduced to writing and contain all applicable statutory provisions for public contracts generally.



### 2.31 Intermediate Procurement.

- (A) **Medford Water** may award a contract for goods and services not to exceed **\$250,000** as an intermediate procurement pursuant to ORS 279B.070.
  - (1) Oral Price Quotations: For procurement of goods and services not exceeding \$50,000, **Medford Water** may award a contract after seeking three oral price quotations; staff shall document the file with a record of the quotations.
  - (2) Written Price Quotations: For procurements of goods or services anticipated to exceed \$50,000 but not exceeding **\$250,000**, **Medford Water** may award a contract after seeking three written price quotations.
- (B) Electronic Offers Authorized; Written Contract Required.  
Quotations for intermediate procurement may be obtained by electronic means. Notwithstanding the authority to obtain quotations by telephonic and other electronic means, all contracts for intermediate procurements shall be reduced to writing and contain all applicable statutory provisions for public contracts generally.
- (C) Written Record Required.  
For all intermediate procurements, **Medford Water** shall seek at least three informally solicited competitive price quotations or competitive proposals from prospective contractors, and shall keep written records of the sources of the quotations or proposals received. If three quotations or proposals are not reasonably available, **Medford Water** may proceed with the procurement but only after making a written record of the effort made to obtain the quotations or proposals.
- (D) Negotiations:  
**Medford Water** may negotiate with an Offeror to clarify its price quotation or proposal or to effect modifications that will make the price quotation or proposal acceptable or more advantageous to **Medford Water**, provided that all offerors contacted are offered the same opportunity in order to compete on the same basis. Written record of negotiations and participation in negotiations shall be maintained in the same manner as above.

### 2.32 Sole Source Procurement.

- (A) **Medford Water** may Award a Contract without competition as a Sole Source Procurement if the **General** Manager or Board, depending on the amount of the Contract, makes a Written finding that:
  - (1) Efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;
  - (2) 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) The Goods or Services are for use in a pilot or an experimental project; or
  - (4) Any other findings that support the conclusion that the Goods or Services are available from only one source.
- (B) Negotiation with a sole source Contractor is desirable.  
**Medford Water** is entitled to negotiate with any sole source Contractor to obtain a favorable price, terms, or conditions.

- (C) Public Notice of Sole Source Procurement. **Medford Water** shall give notice of the determination that the Goods or Services or class of Goods or Services are available from only one source by publishing a notice on the **Medford Water** website at least seven (7) Days before the Contract is Awarded.

### 2.33 Special Procurements: Contracts Exempt from Competitive Bidding.

- (A) Special Procurement” means, unless the context requires otherwise, a class special procurement, a contract-specific special procurement or both. **Medford Water** may Award a contract as a special procurement pursuant to the requirements of this section, which permits class special procurements. Such procurements allow **Medford Water** to enter into a series of contracts over time pursuant to the authorization provided in regard to the special procurement and without necessarily following the requirements of competitive sealed bidding, competitive sealed proposals or intermediate procurements. If a special procurement calls for competition among prospective contractors, **Medford Water** shall award the contract to the Offeror that **Medford Water** determines to be the most advantageous to **Medford Water**.
- (B) For purposes of these regulations the following definitions are applicable:
  - (1) “Class Special Procurement” (CSP) means a contracting procedure that differs from the procedures described in these regulations and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.
  - (2) “Contract-Specific Special Procurement” (CSSP) means a contracting procedure that differs from the procedures described in these regulations, and is for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project.
- (C) Classes of Special Procurement. **Medford Water** declares the following list as Classes of Special Procurements. The Classes as identified below are declared unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and are reasonable expected to result in substantial cost savings to the contracting agency or to the public; or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirement that are applicable under state procurement law or these regulations.
  - (1) **Manufacturer Direct Supplies.** **Medford Water** may purchase goods directly from a manufacturer if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type may be made on a contract-by-contract basis or price agreements.
  - (2) **Advertisements.** **Medford Water** may purchase advertising without competitive bidding or competitive quoting. Contracts for promoting the use of **Medford Water** for recreational, cultural, convention, and tourist related activities and services are exempt from competitive bidding and competitive quoting.

- (3) **Copyrighted Materials.** Medford Water may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, but is not limited to, new books, periodicals, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.
- (4) **Financial Products.** Medford Water may directly purchase financial products such as bond insurance, surety bonds for Medford Water bond reserves, and liquidity facilities such as letters or lines of credit.
- (5) **Employee Benefit Contracts.** Contracts relating to employee benefits may be awarded directly to a contractor pursuant to these regulations. Such contracts may include administrators of employee Flexible Spending Account Administration and Medical Claims Third Party Administration. Medford Water may hire a consultant to advise it on firms available to provide the work and the consultant may be authorized to solicit firms pursuant to a Request for Proposal process as well as assist Medford Water in placing advertisements in specific publications likely to reach the attention of such contractors. Medford Water may then negotiate or enter into the contract that appears most advantageous to Medford Water without further advertisement or issuance of its own Request for Proposals.
- (6) **Insurance Contracts.** Contracts for insurance, including Employee Benefit insurance, may be awarded directly to an insurer pursuant to these regulations.
  - (a) Property, casualty, and liability insurance shall be purchased by the General Manager through a licensed insurance agent designated by Medford Water as "Agent of Record." Among the services to be provided by such agent is the securing of competitive proposals from insurance carriers for the coverages for which the agent of record is given responsibility. Actual selection of insurance carriers and policies shall remain subject to the discretionary approval of the General Manager.
  - (b) Prior to the selection of an agent of record, the General Manager shall publish a notice in a newspaper of general circulation in the city generally describing the nature of the insurance Medford Water will require and requesting proposals from licensed insurance agents who wish to be appointed agent of record.
  - (c) In selecting an agent of record, Medford Water shall select the agent(s) most likely to perform the most cost-effective services. In determining which proposal is the most cost effective, Medford Water shall consider service, coverage, and cost. Proposals for agent of record designation shall be referred to a screening committee appointed by the General Manager and consisting of two (2) members of his or her staff and one outside expert in the field of public entity insurance who is not an officer or employee of Medford Water. The screening committee shall examine the proposals and make a recommendation to Medford Water as to the relative merit of the proposals submitted.
  - (d) Any appointment period shall not exceed three years. Agents may serve more than one appointment period. Upon expiration of an appointment period, the agent may be reappointed at the discretion of the General Manager without requesting proposals from other agents. Agents shall be selected for appointment prior to each period as if each appointment period were the first.

- (e) Employee benefit insurance and workers compensation coverage and other types of insurance not specified herein, may be purchased through an agent of record selected in the manner provided herein, or **Medford Water** may purchase specific insurance contracts from any agent or insurance carrier.
  - (f) The dollar amount limits of the **General** Manager’s purchasing authority in Article I shall not apply to the purchase of insurance under authority granted herein.
- (7) **Purchase of Used Personal Property or Equipment.** **Medford Water** may directly purchase used personal property and equipment. Used property and used equipment is property or equipment that has been placed in use by a previous owner or user for a period of time, and which is recognized in the relevant trade or industry, if there is one, as qualifying the personal property or equipment as “used.” Used personal property or equipment generally does not include property or equipment if **Medford Water** was the previous user, whether under a lease, as part of a demonstration, trial or pilot project or similar arrangement.
- (8) **Use of Price Agreements.** If **Medford Water** Awards a Price Agreement or executes a requirements contract that will allow **Medford Water** to purchase whatever quantity it needs from a Contractor, then **Medford Water** shall make its purchases from that Contract unless **Medford Water** grants an exemption to that requirements contract pursuant to these regulations.
- (9) **Amendments to Contracts and Price Agreements.** **Medford Water** may execute contract amendments, as follows:
- (a) Unit prices or “add alternates” were provided in the solicitation document that established the cost basis for the additional work or product or in a lump sum contract the contractor has provided an estimate of the additional cost which has been verified by the Department seeking the amendment; and the solicitation document provided for such amendments. **Accumulated Change Orders may not exceed 25% of the original contract price without General Manager approval. Accumulated Change Orders exceeding \$150,000 in total require Board approval.**
- (10) **Information Technology, Telecommunications, Software and Hardware Maintenance and Upgrades.** **Medford Water** may directly enter into a contract or renew existing contracts for information technology hardware or software maintenance and upgrades without competitive solicitation where the maintenance and upgrades are either available from only one source or, if available from more than one provider, are obtained from **Medford Water’s** current provider in order to utilize the pre-existing knowledge of the vendor regarding the specifics of **Medford Water’s** hardware or software system. **Medford Water** shall document in the Procurement File the facts that justify either that maintenance and upgrades were available from only one source or, if from more than one source, from the current vendor.

- (11) **Equipment Maintenance, Repair and Overhaul.** Medford Water may enter into a contract for equipment maintenance, repair and/or overhaul without competitive bidding and without obtaining competitive quotations if the extent of repair services, parts, maintenance or overhaul is unknown and cost cannot be determined without preliminary dismantling or testing.
- (12) **Hazardous Material Removal or Oil Cleanup.** Medford Water may enter into contracts without competitive bidding or competitive quotations when ordered to or in prevention of being ordered to clean up oil and/or hazardous waste pursuant to the authority granted to local, state or federal regulatory agencies having jurisdiction over such matters.
- (13) **Contracts for Price Regulated Items.** Medford Water may, regardless of dollar value, and without competitive bidding, contract 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.
- (14) **Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt.** Medford Water is exempt from formal competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants, and asphalt if Medford Water seeks competitive quotes from a majority of vendors in the area, makes its purchases from the least expensive source, and retains written justification for the purchase made.
- (15) **Periodicals.** Medford Water may purchase subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding.
- (16) **Investment Contracts.** Medford Water may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds by Medford Water when such investment or borrowing of funds is contracted pursuant to duly enacted statute, charter, or Medford Water resolution or policy.
- (17) **Personal Services Contracts.** A contract for "Personal Services" is a contract that calls for specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with price being secondary.
  - (a) The following are personal service contracts:
    - (i) Contracts for services performed as an independent contractor in a professional capacity, including, but not limited to, the services of an accountant; attorney; information technology consultant; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; or data processing consultant.

- (ii) Contracts for services as an artist in the performing or fine arts, including, but not limited to, persons identified as photographer, film maker, painter, weaver, print maker or sculptor.
  - (iii) Contracts for services of a specialized, creative and research-oriented, nature.
  - (iv) Contracts for services as a consultant.
  - (v) Contracts for educational and human custodial care services.
- (b) The following are not personal service contracts:
- (i) Contracts, even though in a professional capacity, if predominantly for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominantly for a tangible product.
  - (ii) A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry, and landscape maintenance service contracts.
  - (iii) Contracts for trade-related activities considered to be labor and material contracts.
  - (iv) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.
- (c) The procedures set forth in this section shall be followed in the selection and screening of all contractors for personal services as defined above.
- No formal selection process is required if:
- (i) The amount of the contract does not exceed **\$250,000**, or
  - (ii) The contract is for legal services performed by an attorney, or
  - (iii) The contractor is a person designated to represent **Medford Water** in administrative proceedings, arbitration, or labor negotiations.
- However, the official who awards the contract shall make a written public record of the reasons for selection of the contractor.
- (d) When the amount of the contract is less than \$150,000, the **General** Manager shall select the contractor, in the manner of intermediate procurement under Section 2.31.
  - (e) When the amount of the contract exceeds the **General** Manager's obligation authority, the contractor shall be selected by the Board after all proposals have been reviewed by a screening committee appointed by **Medford Water**. The committee shall always include two staff members appointed by the **General** Manager. **Medford Water** shall give due consideration to the recommendations of the screening committee.

- (f) Proposals to be reviewed by a screening committee shall be solicited using competitive request-for-proposal methods subject to the conditions contained in Section 2.04.
- (18) **Affirmative Action Contracts.** Affirmative action contracts aiding minority or disadvantaged groups and grant agreements with nonprofit corporations and other charitable organizations are exempt from competitive bidding.
- (19) **Requirements Contracts**
  - (a) **Medford Water** may enter into requirements contracts whereby it is agreed to purchase requirements for an anticipated need at a predetermined price providing the following conditions are complied with:
    - (i) The contract must be let by competitive procurement based on **Medford Water's** estimate of the quantities required.
    - (ii) The term of the contract, including renewals, does not exceed five years.
  - (b) **Medford Water** may use the requirements contract entered into by another public contracting agency when **there is** a formal interagency agreement.
- (20) **Specifications and Brand Names**
  - (a) Describing specifications is in the sole discretion of **Medford Water**.
  - (b) **Medford Water** may consult with technical experts, suppliers, prospective Contractors and representative of the industries with which **Medford Water** will Contract. **Medford Water** shall take reasonable measure to ensure that no person who prepares or assists in the preparation of Solicitation Documents, Specifications, plans or Scopes of Work, and that no business with which the person is associated, realizes a material competitive advantage in a Procurement that arises from **Medford Water's** use of such prepared or assisted documents.
  - (c) Unless otherwise specified, the use of a brand name shall mean "brand name or equal." A "brand name or equal" Specification may be used when it is advantageous to **Medford Water**. The brand name describes the standard of quality, performance, functionality, and other characteristics of the product needed by **Medford Water**. **Medford Water's** determination of what constitutes a product that is equal or superior to the product specified is final.
  - (d) A "brand name" Specification may require a specific brand only if **Medford Water** makes written findings that the specific brand meets one or more of the following needs:
    - (i) The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Contract or substantially diminish competition for Contracts;
    - (ii) The use of a brand name Specification would result in a substantial cost savings to **Medford Water**;

- (iii) There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
  - (iv) Efficient utilization of existing goods requires the acquisition of compatible Goods or Services.
  - (v) **Medford Water** shall make reasonable effort to notify all known suppliers of the specified product and invite the submittal of competitive bids or proposals. Reasonable efforts to notify under this section shall include advertising in a trade journal of state-wide distribution when possible, and/or by electronic means. In lieu of advertising, the **General Manager** may notify vendors and manufacturers appearing on the appropriate list maintained by **Medford Water**. Staff shall document the file with findings of current market research to support the determination that the product is available from only one seller.
- (e) Persons wishing to protest the use of a brand name specification shall make the protest at the time for challenging bids and proposals; failure to protest at this time precludes further challenges.
  - (f) When it is impractical to create a specific design or performance specification, **Medford Water** may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the above procedures. The Board shall adopt a list of approved products every two (2) years based on these criteria and following these procedures.

**(21) Single Manufacturer or Compatible Product**

- a) If there is only one manufacturer or seller of a product of the quality required, or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturers or seller, **Medford Water** may specify such particular product subject to the following conditions:
  - (i) The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product price, but also other items of expense such as costs related to quality or conversion.
  - (ii) Prior to awarding the contract, **Medford Water** has made reasonable effort to notify all known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals. If the purchase is **\$25,000** or more, but does not exceed **\$250,000**, such notice and invitation may follow intermediate procurement methods. If the amount of the purchase exceeds **\$250,000**, such notice shall include advertisement by electronic means or in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.
- (b) If the amount of the purchase exceeds **\$250,000** and is not also pursuant to the information technology contracts exemption, Section **2.33(10)**, **Medford Water** shall document its actions in the bid file. Such documentation shall include:



- (i) A brief description of the proposed contract or contracts.
    - (ii) A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by **Medford Water** to notify and invite proposals from competing vendors.
  - (c) If **Medford Water** intends to make several purchases of the products of a particular manufacturer or seller for a period not to exceed two years, it may so state in the documentation required by subsection (a) and (b) above, and section (2), and such documentation shall be sufficient notice as to subsequent purchases.
- (D) Contract-Specific Special Procurements (CSSP)
- (1) The Board may award a contract for CSSP with written findings that awarding the CSSP:
    - (a) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
    - (b) Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or
    - (c) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under state procurement law or these regulations.
  - (2) Public Notice: **Medford Water** shall give public notice of the Board's approval of a CSSP on its website as provided in these regulations. The public notice shall describe the goods or services to be acquired through the special procurement. **Medford Water** shall give such public notice of the approval of a special procurement at least seven (7) Days before award of the contract. If the special procurement leads to a solicitation document, then **Medford Water** will post a Notice of Intent to Award the Contract pursuant to these regulations.

### 2.34 Emergency Procurements.

- (A) Emergencies require prompt execution of a contract to remedy a hazard. **Medford Water** may award a public contract without competitive bidding if an emergency exists. An emergency arises under circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen.
- (B) The **General** Manager's authority under this exemption is limited to contracts not exceeding \$150,000. The **General** Manager shall report to the Board in writing at its next meeting all contracts awarded under this section and the specific justification for the use of the exemption.
- (C) When required by these regulations, the Board resolution authorizing emergency procurement shall state with specificity the emergency conditions necessitating the prompt execution of the contract.

- (D) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted pursuant to ORS 279B.080 and 279C.335(5).
- (E) All such Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting **Medford Water** to immediately terminate the Contract at its discretion and, unless the Contract was void, **Medford Water** shall pay the Contractor only for Work performed prior to the date of termination plus the Contractor's unavoidable costs incurred as a result of the termination. In no event will **Medford Water** pay for anticipated lost profits or consequential damages as a result of the termination.

### **2.35 Protests and Judicial Review of Contract Award.**

- (A) An Affected Person may protest the Award of a Contract, or the intent to Award a Contract, whichever occurs first, if:
  - (1) The Affected Person would be eligible to be Awarded the Contract in the event that the protest was successful; and
  - (2) The reason for the protest is that:
    - (a) All lower Bids, higher ranked Proposals or other more advantageous Offers are nonresponsive;
    - (b) **Medford Water** failed to conduct the evaluation of Offers in accordance with the criteria or processes described in the Solicitation Document;
    - (c) **Medford Water** abused its discretion in rejecting the Affected Person's Offer as nonresponsive; or
    - (d) **Medford Water's** evaluation of the Offers was in violation of these Regulations, ORS Chapter 279B or ORS Chapter 279A.
- (B) Method of Protest.
  - (1) Time: A Written protest of the **General** Manager's Award shall be provided to the **General** Manager within seven (7) Days after the Award of a Contract, or issuance of the Notice of Intent to Award the Contract, whichever occurs first. The **General** Manager shall not consider a protest submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the Solicitation Document or Notice of Intent to Award.
  - (2) Contents: The protest must include the following information:
    - (a) Sufficient information to identify the Award that is the subject of the protest;
    - (b) A detailed statement of all the legal and factual grounds for the protest as described in the applicable solicitation, statute or regulation;
    - (c) Evidence or supporting documentation that supports the grounds on which the protest is based;
    - (d) A description of the resulting harm to the Affected Person; and
    - (e) The relief requested.

- (C) **Medford Water** Response
  - (1) **Medford Water** shall consider and respond in writing to a protest in a timely manner. After the contracting agency issues the response, the bidder or proposer may seek judicial review in the manner provided in ORS 279B.415.
- (D) Judicial Review
  - (1) The protest response by **Medford Water** is reviewable by the Jackson County Circuit Court. To obtain review, a complainant must commence an action before the contract is executed by **Medford Water**. In the complaint, the complainant shall state the nature of the complainant's interest, the facts showing how the complainant is adversely affected or aggrieved by **Medford Water's** decision and the basis upon which the decision should be reversed or remanded.
  - (2) If injunctive relief is sought, the Court may require the person seeking a stay to post a bond in an amount sufficient to protect **Medford Water** and the public from costs associated with delay in execution of the contract.
  - (3) The timely filing for judicial review prevents **Medford Water** from proceeding with contract execution unless **Medford Water** determines that there is a compelling governmental interest in proceeding or that the goods or services are urgently needed. **Medford Water** shall set forth the reasons for its determination in writing and immediately provide them to the person who filed the challenge as provided in ORS 279B.415(4).
  - (4) The court shall review the matter without a jury and shall consider only those grounds the complainant raised on the protest. The court shall remand the matter to **Medford Water** for a further decision pursuant to ORS 279B.415(6) if evidence does not exist to support **Medford Water's** decision to proceed or the decision conflicts with **Medford Water's** rules or statutory law.

### **2.36 Judicial Review of Other Violations.**

- (A) If **Medford Water** allegedly violates a provision of ORS chapter 279A and a judicial remedy is not otherwise available under ORS chapter 279A, 279B, or 279C, the alleged violation is subject to judicial review only as provided in ORS 279B.420.

### **2.37 Review of Prequalification and Debarment Decisions.**

- (A) The denial, revocation, or revision of a Prequalification decision or a decision to debar a prospective Offeror must be appealed in writing to **Medford Water** within three (3) business days after receipt of **Medford Water's** notice.
- (B) The **Medford Water** Board delegates its authority to the **General** Manager for the purposes of receiving notice that a Person has appealed. Upon receipt of the notice the **General** Manager shall notify the Person appealing of a time and place of a hearing designed to consider the appeal within 30 days.
- (C) The **Medford Water** Board delegates its authority to conduct a hearing to the **General** Manager. The **General** Manager may sub-delegate the authority to conduct a hearing to any person the **General** Manager deems appropriate.

**ARTICLE III**  
**Public Improvements**  
**Purchasing, Competitive Solicitation and Contracting Requirements**

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### 3.01. Scope.

- (A) This article applies to the Award of Contracts for Public Improvements and construction services for public improvements.
- (B) Contracts for minor alteration, ordinary repair, or maintenance of public improvements, as well as other Contracts that are not defined as a public improvement under ORS 279A.010 may be awarded and executed pursuant to Articles I & II, and with limited exceptions contained in these regulations, this Article.
- (C) Pursuant to ORS 279C.320, Public Contracts for Construction Services that are not Public Improvement Contracts, may be procured and amended under the provisions of ORS Chapter 279B and Article II hereof.

### 3.02. Overview of Source Selection and Contractor Selection.

**Medford Water** shall Award a Public Improvement Contract under this Article using any method authorized by state law or **Medford Water** Regulations. Such different methods are called methods of source selection. Source selection methods for Public Improvement Contracts include:

- (A) Competitive Sealed Bidding
- (B) Competitive Sealed Proposals
- (C) Individual Exemptions and Class Exemptions under these regulations
- (D) Competitive Quotes/Intermediate Procurement
- (E) Direct Solicitation
- (F) Emergency Procurements

The required method of awarding Public Improvement Contracts shall be competitive bidding, unless an alternate method is authorized under this Article.

All contracts for public improvements using either competitive proposals, individual exemption or class exemption under these regulations will require, pursuant to ORS 279C.335, a written analysis to determine the cost savings realized by using the exemption.

### 3.03 Competitive Bidding Required; Exceptions

**Medford Water** shall solicit Public Improvement Contracts by Invitation to Bid except:

- (A) Contracts made with Qualified Nonprofit Agencies providing employment opportunities for disabled individuals, in which case the regulations for personal services contracts shall apply.
- (B) Contracts, or classes of Contracts, exempted by the Board of Water Commissioners pursuant to state law, including those stated in these regulations;
- (C) A public improvement contract with a value of less than **\$25,000**;
- (D) Contracts other than highway, bridge and other transportation projects not exceeding \$100,000, if made under procedures for competitive quotations pursuant to this article;

- (E) Contracts for a highway, bridge, or other transportation projects not exceeding \$50,000, if made under procedures for competitive quotations pursuant to this article;
- (F) Public improvement contracts Awarded as Emergency Contracts;
- (G) Energy Savings performance contracts entered into in accordance with this Article;
- (H) Contracts where federal law overrides this chapter;
- (I) Contracts governed by ORS 279A.100 and these regulations regarding affirmative action;
- (J) Any other Contract that is not governed by ORS 279A, 279B and 279C; and
- (K) Contracts exempted from using ITB by the Board of Water Commissioners, in which case the selection set forth in these regulations regarding the alternative Contract method selected, unless the exemption authorizes a different method.

*Contracts may not be artificially divided or fragmented to circumvent competitive bidding requirements.*

### **3.04 Competitive Bidding: Process Overview**

As set forth above, the **General** Manager is authorized to solicit any public contract through competitive sealed bidding. The following is an overview of the process for sealed bids on public improvement contracts, which consists of:

- (A) Estimating project costs and scope (may require separate consulting contract);
- (B) Preparing the Invitation to Bid;
- (C) Publishing the availability of bid documents;
- (D) Soliciting bids, if different from (c) above;
- (E) Processing bid protests and modifications, if any;
- (F) Receiving and opening bids;
- (G) Evaluating bids and bidders;
- (H) Issuing notice of Intent to Award;
- (I) Processing award protests, if any;
- (J) Awarding Contract and notifying the Construction Contractor's Board;
- (K) Processing change orders, if any; and
- (L) Other post-award activity involved with project completion and payment.

### **3.05 Unlicensed Bidders or Proposers Not Responsive; State Licenses Required.**

- (A) **Medford Water** shall not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.
- (B) **Medford Water** shall not consider a Person's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Person has a current, valid

landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the Offer is made.

- (C) An Offer received from a Person that fails to comply with this rule is non-responsive and shall be rejected as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

### **3.06 Solicitation Documents for Invitations to Bid (ITB)**

The Solicitation Document on an Invitation to Bid a public improvement Contract shall include the following:

- (A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;
- (B) Notice of any pre-Offer conference as follows:
  - (1) The time, date and location of any pre-Offer conference;
  - (2) Whether attendance at the conference will be mandatory or voluntary; and
  - (3) That statements made by **Medford Water**'s representatives at the conference are not binding upon **Medford Water** unless confirmed by Written Addendum;
- (C) The name and title of the authorized **Medford Water** representative designated for receipt of Offers and contact representative (if different);
- (D) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal Security requirements, and any other required or special information.
- (E) The time and date of Closing, which shall be not less than five (5) Days after the date of the last publication of the advertisement. If the Invitation to Bid (ITB) may result in a Public Improvement Contract with a value in excess of \$100,000, **Medford Water** shall designate a time of Closing consistent with the first-tier Subcontractor disclosure requirements of ORS 279C.370(1)(b) and these regulations;
- (F) The office where the Specifications for the Work may be reviewed;
- (G) The time, date and place of Opening;
- (H) A statement that each Bidder to an ITB must identify whether the Bidder is a "Resident Bidder," as defined;
- (I) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by **Medford Water** unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a";
- (J) A statement that **Medford Water** will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board.

- (K) Whether a Contractor or a Subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
- (L) Contractor's certification of nondiscrimination in obtaining required Subcontractors in accordance with ORS 279A.110(4);
- (M) How **Medford Water** will notify Offerors of Addenda and how **Medford Water** will make Addenda available; and
- (N) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in ORS 279C.370;
- (O) A statement that the Offeror must have a valid Medford business license if project is within city limits.
- (P) A statement that **Medford Water** may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon **Medford Water's** finding that it is in the public interest to do so;
- (Q) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;
- (R) Evaluation criteria, including the relative value applicable to each criterion, that **Medford Water** will use to determine the Responsible Bidder with the lowest Responsive Bid along with the process **Medford Water** will use to determine acceptability of the Work;
  - (1) **Medford Water** shall set forth any Special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information **Medford Water** has available concerning future use;
- (S) **Medford Water** shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that **Medford Water** considers appropriate for the Public Improvement project.
- (T) **Medford Water** must include all applicable Contract provisions required by Oregon law as follows:
  - (1) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1)); and all provisions regarding accelerated or twice-monthly payment if required by **Medford Water's** Standard Construction Specifications;
  - (2) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
  - (3) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;



- (4) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
  - (5) Payment of claims by public officers (ORS 279C.515(1));
  - (6) Contractor and first-tier Subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
  - (7) A Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract as provided in ORS 279C.515(3);
  - (8) Hours of labor in compliance with ORS 279C.520;
  - (9) Environmental and natural resources regulations (ORS 279C.525);
  - (10) Payment for medical care and attention to employees (ORS 279C.530(1));
  - (11) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements." (ORS 279C.530(2));
  - (12) Maximum hours, holidays and overtime (ORS 279C.540);
  - (13) Time limitation on claims for overtime (ORS 279C.545);
  - (14) Prevailing wage rates (ORS 279C.800 to 279C.870);
  - (15) Fee paid to BOLI (ORS 279C.830);
  - (16) BOLI Public Works Bond (ORS 279C.836(3));
  - (17) Retainage (ORS 279C.550 to 279C.570);
  - (18) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
  - (19) Contractor's relations with Subcontractors (ORS 279C.580);
  - (20) Notice of claim (ORS 279C.605);
  - (21) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
  - (22) Contractor's certification that all Subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the Subcontractors commence Work under the Contract.
- (U) Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without **Medford Water**'s prior Written consent, which must be approved as to form by the **Medford Water** Attorney's Office. Unless approved in Writing and approved as to form, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of

the Contract. If **Medford Water** consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to **Medford Water** for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless **Medford Water** otherwise agrees in Writing.

### **3.07 Negotiations with Bidders.**

If a public improvement contract is competitively bid and all responsive bids from responsible bidders exceed the contracting agency's cost estimate, contract terms may be negotiated with the lowest responsible bidder, to the extent allowed by the Solicitation Document, provided that the general Work Scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. Terms that may be negotiated consist of details of Contract performance, methods of construction, value engineering, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality.

### **3.08 Bid or Proposal Security**

- (A) Security Amount. **Medford Water** shall clearly state any Bid or Proposal Security requirements in its Solicitation Document. If **Medford Water** requires Bid or Proposal Security, it shall be not more than 10 percent of the Offeror's Bid or Proposal. The Offeror shall forfeit Bid or Proposal Security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(5) and ORS 279C.385.
- (B) Requirement for Bid Security (Optional for Proposals). Unless The Board of Water Commissioners has exempted a Solicitation, or class of Solicitations, from Bid security pursuant to ORS 279C.390, **Medford Water** shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by **Medford Water**, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(5). The **General** Manager nonetheless may require Bid or Proposal security from any Offeror, or for any project, even if the Board of Water Commissioners has exempted a class of Solicitations from Bid security if the **General** Manager believes it necessary to secure payment and performance.
- (C) Form of Bid or Proposal Security. **Medford Water** may accept only the following forms of Bid or Proposal Security:
  - (1) A surety bond, signed by the surety's authorized Attorney in Fact, from a company authorized to do business in the State of Oregon and that is duly listed in the United States Treasury list as published in the Federal Register, or which is otherwise approved by the **Medford Water** Attorney. The surety company's seal shall be affixed to the bond and a Power of Attorney for the Attorney in Fact shall be submitted. The **Medford Water** Attorney has the authority to waive the requirement of the corporate seal: or
  - (2) A signed irrevocable letter of credit issued by an insured institution as defined in ORS 706.008(12); or

- (3) A Cashier's check, or Offeror's certified check.
- (D) Return of Security. **Medford Water** shall return or release the Bid or Proposal Security of all unsuccessful Offerors after a Contract has been fully executed and all required Bonds have been provided, or after all Offers have been rejected. **Medford Water** may return the Bid or Proposal Security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the Security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

### **3.09 Addenda to Solicitation Documents.**

- (A) Form: Changes to bid documents shall be accomplished by written addenda. The written Addendum may be accomplished by posting on **Medford Water's** website.
- (B) Distribution: Addenda shall be sent to all prospective bidders known to have obtained the bid documents or attending any mandatory pre-bid conferences.
- (C) Timeliness: Addenda shall be issued within a reasonable time (preferably five [5] days prior to bid closing) to allow prospective bidders to consider them in preparing their bids, but in no case less than 48 hours before the bid opening.
- (D) Notice: The **General** Manager may notify prospective bidders by any reasonable method, including but not limited to posting on **Medford Water's** website.

### **3.10 Request for Clarification or Change.**

- (A) Modifications: Bids once submitted may be modified in writing prior to the time and date set for bid opening. Any modifications shall be signed by an authorized officer, and state that the new document supersedes or modifies the prior bid. Telegraphic, facsimile or similar modification shall not be accepted unless authorized in the bid documents. To ensure the integrity of the bidding process, the envelope containing any modifications to a bid shall be marked as follows:

*Bid Modification*  
*Bid Number or Other Identification (Address)*

- (B) Time for submission of request for change. Unless otherwise provided in the Solicitation Document, an Offeror shall deliver any request for change to the Solicitation Document, Specifications or Contract provisions to **Medford Water** in Writing within seven (7) Days prior to Bid or Proposal Closing. Requests for change in regard to Addenda shall be submitted in accordance within the time permitted by these regulations.
- (C) Any request for change shall include a detailed statement of the reasons for the request for change; any proposed changes to Specifications or Contract provisions; and a description of any benefit to the Offeror; and a statement of the form of relief requested.
- (D) No request for change of the content of the Solicitation Document, Specifications or Contract provisions shall be considered after the deadline established for submitting such request.
- (E) If **Medford Water** does not issue an Addendum, then the request for change shall be considered rejected.

- (F) Extension of Closing date. If any request for change is timely received in accordance with these regulations the Closing may be extended by the **General Manager** if it is determined that an extension is necessary to allow consideration of the request or issuance of any Addendum to the Solicitation Document.
- (G) Identification of request for change. Envelopes containing requests for change of the Solicitation Document, Specifications or Contract provisions shall be marked with the following information:
  - (1) Solicitation Specification or Contract Provision Request for Change or Clarification; and
  - (2) Solicitation Document Number or Other Identification.

### **3.11 Pre-Closing Modification or Withdrawal of Offers.**

- (A) Modifications. Once submitted, Bids or Proposals may only be modified in Writing prior to the time and date set for Bid or Proposal Closing. Unless otherwise provided in the Solicitation Document, any modifications shall be prepared on the Bidder's or Proposer's letterhead, signed by an Authorized Representative of the Bidder or Proposer, state that the new document supersedes or modifies the prior Bid or Proposal and be submitted in a sealed envelope, appropriately marked. **Medford Water** may accept modifications electronically only if it has authorized electronic submittal in the Solicitation Document. To ensure the integrity of the Bidding process, the envelope or electronic submission containing any modifications to a Bid or Proposal shall be marked with the following information:
  - (1) Bid or Proposal Modification.
  - (2) Solicitation Number or Other Identification.
- (B) Withdrawals:
  - (1) Bids or Proposals may be withdrawn by a Written notification of the Bidder or Proposer. The notice shall be signed by an Authorized Representative of the Bidder or Proposer, and must be received prior to the time and date set for Bid or Proposal Closing.
  - (2) Written notifications to withdraw Bid or Proposal shall be marked with the following information:
    - (a) Bid or Proposal Withdrawal.
    - (b) Solicitation Number or Other Identification.
- (C) Documentation. All documents relating to the modification or withdrawal of Bids or Proposals shall be made a part of the appropriate Bid or Proposal Solicitation file.
- (D) Late Requests for Modification or Withdrawal. Any request for modification or withdrawal of a Bid or Proposal made after the time for Bid or Proposal Closing is late. Any late submission shall be returned to the Bidder or Proposer unopened. If any late submission is opened inadvertently, the submission shall be returned to the sender

### **3.12 Receipt, Opening and Recording of Offers.**

- (A) Receipt. Each Offer, and modifications to Offers, shall, upon receipt, be electronically or mechanically time-stamped ~~by the Bureau of Purchases-time~~

~~clock~~, or marked by hand, but not opened, and shall be stored in a secure place until Bid or Proposal Opening. If Offers or modifications are opened inadvertently or opened prior to the time and date set for Bid or Proposal Opening because they were improperly identified by the Offeror, the opened Offers or modification documents shall be resealed and stored for Opening at the correct time. When this occurs, documentation of the resealing shall be placed in the file.

- (B) Opening and Recording. Offers and modifications to Offers shall be opened publicly, at the time, date, and place designated in the Solicitation Document. In the case of Invitations to Bid, to the extent practicable, the name of each Bidder, the Bid price(s), and such other information as considered appropriate shall be read aloud. In the case of Requests for Proposals or on voluminous Bids, **Medford Water** may advise Bidders and Proposers, as part of the Solicitation Documents, that the Bid or Proposal items and prices will not be read aloud.
- (C) Availability. After Opening, **Medford Water** shall make Bids available for public inspection, but pursuant to ORS 279C.410. Proposals are not subject to disclosure until after notice of intent to Award is issued. In any event, **Medford Water** may withhold from disclosure those portions of an Offer that the Offeror designates trade secrets or as confidential proprietary data in accordance with the Oregon Public Records Law, ORS 192.410 et seq. Application of the Oregon Public Records Law ORS 192.410 et seq. shall determine if the information designated as confidential and claimed to be exempt is in fact exempt from disclosure. To the extent **Medford Water** determines the designated information is not in accordance with applicable law, **Medford Water** shall make those portions available for public inspection. In order to facilitate public inspection of the non-confidential portion of the Bid or Proposal, material designated as confidential shall accompany the Offer, but the Offeror shall separate it, if requested, from the remainder of the Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of the Offeror's designation to the contrary. Copies of public records will be made available upon payment of **Medford Water's** charges.

### **3.13 Late Bids, Late Withdrawals and Late Modifications.**

- (A) Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. **Medford Water** shall not consider late Offers, withdrawals or modifications, except as permitted by regulations (Mistakes) or regulations (Offer Evaluation and Award).
- (B) For manual submissions of Offers, **Medford Water's** record of date and time on an Offer shall determine the timeliness of the submission. Late manual submissions shall be returned to the Offeror unopened with a copy of the envelope containing **Medford Water's** record of date and time stamp on the Offer retained for the Solicitation file.
- (C) For electronic submissions, when permitted, the time shown by **Medford Water** as to the date of arrival of the electronic submission shall determine the timeliness of the submission. Late electronic submissions shall be returned electronically to the Offeror and the time of the submission and the time of return shall be documented in the Solicitation file, after which time, late electronic submissions shall be deleted.
- (D) For Facsimile submissions, when permitted, the time recorded at the top of the last page of the submission shall determine the timeliness of the submission. Late

Facsimile transmissions shall be returned to the Offeror after keeping a copy of the last page of the transmission for the Solicitation file.

- (E) Failure to properly return or dispose of a late submission does not mean an Offer or submission arrived on time.

### **3.14 Mistakes.**

This section prescribes procedures to be applied in situations where mistakes in bids are discovered after the time and date set for bid opening, but before award.

- (A) **Minor Informalities:** Minor informalities are matters of form rather than substance that are evident from the bid documents, or insignificant mistakes that can be waived or corrected promptly without prejudice to other bidders or **Medford Water**; that is, the informality does not affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit price. Examples include, but are not limited to, the failure of a bidder to:
  - (1) Return the number of duplicates of signed bids or the number of duplicates of other documents required by the bid documents;
  - (2) Sign the bid form in the designated block so long as a signature appears in the bid document evidencing intent to be bound;
- (B) **Mistakes Where Intended Correct Bid is Evident:** If the mistake and the intended correct bid are clearly evident on the face of the bid form, or can be substantiated from accompanying documents, the **General Manager** may accept the bid. Examples of mistakes that may be clearly evident on the face of the bid form are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. Mistakes that are clearly evident on the face of the bid form also may include instances in which the intended correct bid is made clearly evident by simple arithmetic calculations. For example, missing unit price may be established by dividing the total bid item by the quantity of units for that item, and a missing or incorrect total bid for an item may be established by multiplying the unit price by the quantity when those figures are available on the bid. For discrepancies between unit prices and extended prices, unit prices shall prevail.
- (C) **Mistakes Where Intended Correct Bid is Not Evident:** **Medford Water** may not accept a bid in which a mistake is clearly evident on the face of the bid form, but the intended correct bid is not clearly evident or cannot be substantiated from accompanying documents.
- (D) **Withdrawals:** **Medford Water** may permit a bidder to withdraw a bid based on other errors only if the bidder shows by clear and convincing evidence
  - (1) The nature of the error, and
  - (2) That the error is not a judgment error, a minor informality or clerical error.

### **3.15 First-Tier Subcontractors; Disclosure and Substitution.**

- (A) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price estimated by **Medford Water** to exceed \$100,000, all Bidders shall submit to **Medford Water** a disclosure form as described by ORS 279C.370(2), identifying any first-tier Subcontractors that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

- (1) Five percent of the total Contract Price, but at least \$15,000; or
  - (2) \$350,000, regardless of the percentage of the total Contract Price.
- (B) Bid Closing, Disclosure Deadline and Bid Opening. For each ITB to which this rule applies, **Medford Water** shall:
- (1) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
  - (2) Open Bids publicly immediately after the Bid Closing; and
  - (3) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by **Medford Water**.
- (C) Bidder Instructions and Disclosure Form. For the purposes of this rule, **Medford Water** in its Solicitation shall:
- (1) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and
  - (2) Provide instructions in a notice substantially similar to the following:  
“Instructions for First-Tier Subcontractor Disclosure  
Bidders are required to disclose information about certain first-tier Subcontractors when the Contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the Contract Amount of a first-tier Subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:
    - (a) The Subcontractor's name,
    - (b) The category of Work that the Subcontractor would be performing, and
    - (c) The dollar value of the subcontract.If the Bidder will not be using any Subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.  
**MEDFORD WATER MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE.**
- (D) Submission. A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two (2) working hours after Bid Closing in the manner specified.
- (E) Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been

made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

- (F) **Medford Water** Role. **Medford Water** shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. **Medford Water** also shall provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. **Medford Water** is not required to determine the accuracy or completeness of the information provided on disclosure forms.
- (G) Substitution. Substitution of affected first-tier Subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, **Medford Water** is not under an obligation to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution. Substitution of Minority, Women and Emerging Small Businesses are also subject to **Medford Water's** Solicitation Document

### **3.16 Responsibility of Offerors.**

- (A) Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279C.375, **Medford Water** shall consider whether the Offeror has:
  - (1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to indicate the capability of the prospective Offeror to meet all contractual responsibilities;
  - (2) A satisfactory record of performance. Among the matters **Medford Water** may review in this regard is whether the Offeror has a record of material violations of state or federal prevailing wage laws. **Medford Water** shall document the record of performance of a prospective Offeror if **Medford Water** finds the prospective Offeror nonresponsible under this paragraph;
  - (3) A satisfactory record of integrity. **Medford Water** shall document the record of integrity of a prospective Offeror if **Medford Water** finds the prospective Offeror non-responsible under this paragraph;
  - (4) Qualified legally to Contract with **Medford Water**. **Medford Water** may determine that a Person is not legally qualified if:
    - (a) The Person does not have a business license with the **City** of Medford;  
or
  - (5) Supplied all necessary information in connection with the inquiry concerning responsibility. If a prospective Offeror fails to promptly supply information requested by **Medford Water** concerning responsibility, **Medford Water** shall base the determination of responsibility upon any available information or may find the prospective Offeror non-responsible;
- (B) In the event **Medford Water** determines an Offeror is not Responsible it shall prepare a Written determination of non-responsibility as required by ORS 279C.375(3)(c).

### **3.17 Solicitation Documents for Competitive Proposals/Request for Proposals (RFPs)**



As set forth above, the **General** Manager is authorized to Solicit a public improvement contract using the Request for Proposal Method, which allows for award of a public improvement based on factors as identified below.

(A) Evaluation Factors.

- (1) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capability of the **Contractor**, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, the status of its Equal Employment Opportunity (EEO) certification, its efforts to diversify its workforce in order to reach all of **Medford Water's** citizens and other related matters that affect cost or quality.
- (2) In CM/GC contracting, in addition to these regulations, those factors may also include the ability to respond to the technical complexity or unique character of the project, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.
- (3) In Design-Build contracting, in addition to these regulations, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

### **3.18 Additional Requirements for Solicitation Documents for Proposals**

- (A) In place of Lowest Responsible Bidder and Lowest Responsive Bid, the solicitation document shall refer to Lowest Responsible Proposer and Lowest Responsive Proposal.
- (B) Generally. The use of competitive Proposals must be specifically authorized for a Public Improvement Contract under the Competitive Bidding requirement of ORS 279C.335 (1), and these regulations.
- (C) Solicitation Documents. In addition to the Solicitation Document requirements for Sealed Bids under these regulations, this rule applies to the requirements for Requests for Proposals. RFP Solicitation Documents shall conform to the following standards:
  - (1) **Medford Water** shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include, to the extent not described in Section 3.08, price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references, and warranty provisions. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates based on information available to **Medford Water**;
  - (2) When **Medford Water** is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions,

**Medford Water** must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions **Medford Water** has identified as authorized for negotiation. **Medford Water** must describe the evaluation and discussion or negotiation process.

- (3) If **Medford Water** chooses to engage in Competitive Range discussions and negotiations it will set forth that process in the Solicitation Document.
  - (4) When **Medford Water** intends to Award Contracts to more than one Proposer, **Medford Water** must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. **Medford Water** shall also include the criteria it will use to determine how **Medford Water** will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.
  - (5) Competitive Proposals are not required to comply with first-tier subcontractor disclosure or reciprocal preferences.
- (D) Evaluation of Proposals.
- (1) Evaluation. **Medford Water** shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. **Medford Water** shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the Responsive Proposal or Proposals that are the most advantageous to **Medford Water**.
    - (a) Clarifications. In evaluating Proposals, **Medford Water** may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.
    - (b) Limited Negotiation. If **Medford Water** did not permit negotiation in its Request for Proposals, **Medford Water** may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:
      - (i) Statement of Work; and
      - (ii) Contract Price as it is affected by negotiating the statement of Work.
      - (iii) The process for discussions or negotiations that is outlined and explained in Section 3.07 does not apply to this limited negotiation.
  - (2) Cancellation. Nothing in this rule shall restrict or prohibit **Medford Water** from canceling the Solicitation at any time.

### **3.19 Classes of Contract Exempt from Competitive Low-Bid Award.**

(A) Design-Build

- (1) **Medford Water** reasonably anticipates the following types of benefits from the Design-Build form of contracting:

- (a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;
  - (b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
  - (c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
  - (d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); and
  - (e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.
- (2) Authority. Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these regulations.
  - (3) Selection. Design-Build selection criteria may include those factors set forth above in these regulations.
  - (4) Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, **Medford Water** shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(2)(g) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.
  - (5) Performance Security. ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.
  - (6) Contract Requirements. **Medford Water** shall conform its Design-Build contracting practices to the following requirements:
    - (a) Design Services. The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously

performed for the project. The Personal Services and Work to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

- (b) Professional Liability. The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and **Medford Water**, as well as requirements for professional liability insurance.
  - (c) Risk Allocation. The Contract shall clearly identify the extent to which **Medford Water** requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.
  - (d) Warranties. The Contract shall clearly identify any express warranties made to **Medford Water** regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
- (5) Incentives. The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.
- (B) Construction Manager/General Contractor (CM/GC)

General. The CM/GC form of contracting, as defined in these regulations, is a technically complex project delivery system. In order to utilize the CM/GC method, **Medford Water** must be able to reasonably anticipate the following types of benefits:

- (1) Time Savings. The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. **Medford Water** may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;
- (2) Cost Savings. Early Contractor input during the design process is expected to contribute to significant cost savings. **Medford Water** may consider value engineering, building systems analysis, Life Cycle Costing analysis and construction planning that lead to cost savings. **Medford Water** shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; and
- (3) Technical Complexity. The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between **Medford Water** and Contractor, in which the Contractor will assist in addressing specific project challenges through pre-construction services.

**Medford Water** may consider the need for Contractor input on issues such as design, operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

Selection. CM/GC solicitation document shall detail the selection criteria, which may include the following:

- (1) Basis for Payment.
- (2) Contract Requirements.
- (3) Setting the Price.
- (4) Adjustments to the Price.
- (5) Cost Savings.
- (6) Cost Reimbursement.
- (7) Audit.
- (8) Fee.
- (9) Incentives.
- (10) Controlled Insurance Programs.
- (11) Early Work.
  - (a) Early Procurement of materials and supplies;
  - (b) Early release of Bid packages for such things as site development; and
  - (c) Other advance Work related to critical components of the Contract.
- (12) Subcontractor Selection.
- (13) Subcontractor Approvals and Protests.
- (14) CM/GC Self-Performance.
- (15) Socio-Economic Programs.

(C) Class-Exempt Projects

- (1) The Board of Water Commissioners of **Medford Water** authorized exemption from competitive bid for the following classes of contracts:
  - (a) Filter Facilities at the Robert A. Duff Water Treatment Plant;
  - (b) Reservoirs;
  - (c) Pump Stations;
  - (d) Disinfection Facilities;
  - (e) Large Transmission Pipelines;
  - (f) Water Treatment Plant.

The above class exemptions are allowed if the solicitation follows the Design-Build or CM/CG process.

### 3.20 Specific Exemptions.

- (A) Specific exemptions. Those not contained in the described class exemption herein shall require adoption of findings supporting the exemption after a public hearing.
- (B) Notice of the public hearing on the exemption shall be published at least once in a trade newspaper of general statewide circulation a minimum of fourteen (14) days prior to the hearing.
- (C) The board or may exempt certain products or classes of products 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; and
  - (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 contracting agency.
- (D) When making the above determination, **Medford Water** can describe factors including but not limited to: operational; budget and financial data; public benefits; value engineering; specialized expertise required; public safety; market conditions; technical complexity; and funding sources.

### 3.21 Specifications; Limits on Use of Brand Names.

- (A) Specification content is in the sole discretion of **Medford Water**, subject to restrictions on the use of brand names.
- (B) Brand Names: The use of a brand name shall mean “brand name or equal.” A “brand name” Specification may be used when, in the judgment of **Medford Water**, the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by **Medford Water**. Determination of what constitutes a product that is equal or superior to the brand name specification shall be in the sole discretion of **Medford Water**, or the **General** Manager when the contract amount is within the **General** Manager’s authorized dollar amount spending limitation under these regulations.
- (C) A “brand name” Specification may be used requiring a Contractor to provide a specific brand when the **General** Manager, or designee, makes the following findings:
  - (1) The use of a brand name Specification is unlikely to encourage favoritism in the Awarding of a Public Contract or substantially diminish competition for Public Contracts: or
  - (2) The use of a brand name Specification would result in a substantial cost savings to **Medford Water**; or
  - (3) There is only one manufacturer or seller of the product of the quality, performance or functionality required; or
  - (4) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
- (D) Brand name is any product authorized for brand-specific procurement under Article II.

### **3.22 Competitive Quotations for Public Improvement Contracts.**

Pursuant to Regulation 3.03(C), public improvement contracts not exceeding \$100,000 may be procured by competitive quotation.

The **General Manager** or his or her designee shall keep a written record of the sources and amounts of the quotations received. If three quotations are not reasonably available, fewer will suffice, but in that event the **General Manager** or his or her designee shall make a written record of the effort made to obtain the quotations.

A contract procured by competitive quotation may be awarded to the contractor whose quotation will best serve the interests of **Medford Water**, taking into account price as well as any other applicable factors such as, but not limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility.

If an award is not made to the prospective contractor offering the lowest price quotation, the contracting agency shall make a written record of the basis for award.

A contract procured under this section may be amended to exceed \$100,000 so long as the total of the contract and all amendments do not exceed \$125,000.

### **3.23 Selection of Architectural, Engineering, Land Surveying, Photogrammetric Mapping, Transportation Planner Services and Related Services Contracts.**

#### **(A) Application.**

This section applies to the screening and selection of architects, engineers and land surveyors, photogrammetrists, transportation planners and providers of related services.

Related services means services that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representation services or land-use planning services.

Transportation planning services means transportation planning services for projects that require compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq.

This code does not apply to the screening and selection of the above services when using the design-build or construction manager/general contractor method of selection, when the architectural, engineering, survey, photogrammetry or transportation planning and related services do not constitute a majority of the total amount of those contracts.

This section does not apply to screening and selection of the above services when the estimated amount of those services does not exceed \$100,000. In those circumstances, and in emergencies, the services may be contracted by direct procurement with no formal solicitation required, and **Medford Water** may use any reasonable or lawful contracting method to procure the services.

This section does not apply to a contract for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services if the project 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 consultant that was previously awarded by **Medford Water** and the new contract is a continuation of the project.

(B) Qualifications Based Selection.

**Medford Water** shall select consultants to provide architectural, engineering, survey, photogrammetry or transportation planning and related services based on the consultant's qualifications for the type of professional service required.

**Medford Water's** screening and selection procedures under this section, regardless of the estimated cost of the consultant services, may include considering each Proposer's:

- (1) Specialized experience, capabilities and technical competence which the proposer may demonstrate with its proposed approach and methodology to meet the project requirements;
- (2) Resources committed to perform the work and the proportion of the time that the Proposer's staff would spend on the project, including time for specialized services, within the applicable time limits;
- (3) Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
- (4) Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
- (5) Availability to the project locale;
- (6) Familiarity with the project locale; and
- (7) Proposed project management techniques.

When using Qualifications Based Selection, **Medford Water** may use a request for proposal process with the restriction that any price or other cost-related component be sealed until after selection of the consultant. The fact that the consultant is required to submit sealed cost-related components neither requires nor **Medford Water** to accept, nor prohibits **Medford Water** from accepting, the costs-based information. **Medford Water** shall rank the proposers and shall negotiate with the highest ranked proposer.

(C) Pricing Information and Negotiating a Contract.

**Medford Water** may use pricing policies and proposals or other pricing information including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine the consultant compensation only after **Medford Water** has selected a proposer to negotiate with.

**Medford Water** and the selected proposer shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level must be reasonable and fair as determined solely by **Medford Water**.



If **Medford Water** and the initial selected proposer are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to **Medford Water**, **Medford Water** shall in writing terminate negotiations with the selected proposer. **Medford Water** may then negotiate with the other proposers by order of rank.

**Medford Water** may at any time terminate the consultant selection process, as determined to be in the best interests of **Medford Water**.

(D) Disclosure of Proposals.

**Medford Water** will not make available for public inspection the contents of the proposals until after the Notice of Intent to Award has been issued.

Whether or not a proposal is opened at a public meeting, **Medford Water** shall withhold from disclosure to the public trade secrets, as defined in ORS 192.501 and information submitted to **Medford Water** in confidence as described in ORS 192.502, that are contained in a proposal, so long as the trade secrets and confidential information has been identified by the proposer.

If the solicitation is cancelled, **Medford Water** shall return to all proposers their proposals. **Medford Water** shall keep a list of all such returned proposals and proposers.



## **Memorandum**

**TO:** Commissioners Bob Strosser, David Wright, Jason Anderson, John Dailey, and Michael Smith

**FROM:** Beau Belikoff, Finance Manager

**DATE:** Wednesday, June 19, 2024

**SUBJECT:** Item 5.3 – Resolution 1940, Authorizing the General Manager to Execute a Payment to CIS for General Liability, Automotive, and Property Damage Insurance for Fiscal Year 2024-2025

**OBJECTIVE:** Board Approval

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### **Issue**

The total cost of the annual premium for general liability, automotive, and property damage insurance premium exceeds the General Manager's purchasing authority without board approval.

### **Discussion**

To authorize and direct the General Manager to execute a payment on behalf of the Board of Water Commissioners in the amount of \$282,992.39 to City County Insurance Services (CIS). Last fiscal year's insurance premium with CIS was \$241,547.06. Industry-wide cost increases are responsible for our premium increase along with four new Medford Water vehicles and \$9.3 million in additional property insurance coverage with the on-going Duff Treatment Plant and Big Butte Springs Treatment Facility projects.

Traditionally, Medford Water has not carried collision insurance coverage on regular fleet trucks over 2 years old. An accident in January 2024 resulted in the total loss of one of our trucks to an uninsured driver. Considering our exposure level, we need to add collision coverage to our entire fleet. Moving forward, Medford Water will insure all vehicles with a \$5,000 deductible for collision and comprehensive coverage except for the Vac Con trucks, which will be insured with a \$10,000 deductible for collision and comprehensive coverage on each.

In addition, \$2M in cyber liability coverage is being purchased from Travelers through Marsh McLennan Insurance in the amount of \$14,072. Last fiscal year's cost for cyber liability was \$17,375.43 from Evolve. Cyber liability renewal rates have stabilized after sharp increases in recent years.

### **Financial Impact**

The Fiscal Year 2024-2025 premium for general liability, automotive, and property damage from CIS is \$282,992.39. Travelers' cyber liability coverage through Marsh McLennan is \$14,072. The total on both insurance premiums are under the proposed budgeted amount by \$5,926.88.

### **Requested Board Action**

Approval of Resolution 1940, authorizing the General Manager of Medford Water to execute a payment of \$282,992.39 to CIS for Medford Water's general liability, automotive, and property damage insurance premium for Fiscal Year 2024-25.

**RESOLUTION NO. 1940**

A RESOLUTION Authorizing the General Manager of Medford Water to Execute on Behalf of the Board of Water Commissioners, a Payment to City County Insurance Services in the Amount of \$282,992.39 for Medford Water's General Liability, Automotive, and Property Damage Insurance Premium for Fiscal Year 2024-2025

WHEREAS, the cost of the premium for general liability, automotive, and property damage insurance from City County Insurance Services (CIS) for Fiscal Year 2024-2025 is \$282,992.39; and

WHEREAS, this amount exceeds the General Manager's authority;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER COMMISSIONERS OF THE CITY OF MEDFORD, OREGON, THAT:

The General Manager is hereby authorized and directed to execute on behalf of the Board of Water Commissioners a payment in the amount of \$282,992.39 to CIS for Medford Water's general liability, automotive, and property damage insurance. This authorization exceeds the authority of the General Manager as defined in Section 1.02 of the Contracting & Purchasing Regulations.

PASSED by the Board of Water Commissioners and signed by me in authentication of its passage this 19th day of June 2024.

ATTEST: \_\_\_\_\_  
Amber Furu, Asst. Clerk of the Commission

\_\_\_\_\_  
Bob Strosser, Chair



## **Memorandum**

**TO:** Commissioners Bob Strosser, David Wright, Jason Anderson, John Dailey, and Michael Smith

**FROM:** Brian Runyen, PE, Engineering Manager

**DATE:** Wednesday, June 19, 2024

**SUBJECT:** Item 5.4 – Resolution 1941, Authorizing Execution of a Quitclaim Deed to the Owner of Mehta Apartments

**OBJECTIVE:** Board Approval

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### **Issue**

During development of Mehta Apartments, the developer needed to abandon in total the existing 4-inch water line within recorded easement Document No. 2006-024600 recorded May 10, 2006, to develop this site. A new 12-inch water main, meters, fire service and fire hydrant were installed and dedicated to Medford Water (MW) upon completion. The existing easement Document No. 2006-024600 recorded May 10, 2006, can be extinguished in its entirety. A new Medford Water easement (recorded on June 6, 2024, as Document No. 2024-011100) covers the new locations of Medford Water infrastructure.

### **Discussion**

MW has been requested by the developer to execute a Quitclaim Deed relinquishing any rights MW may have to the existing easement on his property. Prior to installation of the new water main to his property, the Owner provided an alternate easement which covers all necessary public water facilities including the new water main, services, fire hydrants and fire service and provides all of the same rights to MW as the original easement.

The entire existing easement to be quitclaimed on this property (1935 Table Rock Rd) is redundant and no longer needed. The attached Quitclaim Deed will vacate this easement.

### **Financial Impact**

There is no financial impact to MW.

### **Requested Board Action**

Staff recommends approval of this Resolution, executing a Quitclaim Deed to the Owner of Mehta Apartments for the easement lying within said property recorded May 10, 2006, and referenced as Document No. 2006-024600, Jackson County Deed Records.

**RESOLUTION NO. 1941**

A RESOLUTION Authorizing the Chair of the City of Medford, By and Through its Board of Water Commissioners to Execute a Quitclaim Deed Releasing All Right and Title to, and Interest in, the Easement Originally Recorded as Document No. 2006-024600 on May 10, 2006

WHEREAS, the developer of the property at Mehta Apartments has provided an alternate easement document that adequately covers the existing public water facilities as well as the newly-installed water service and meter box; and

WHEREAS, the alternate easement provides all of the same Rights as the original easement; and

WHEREAS, the alternate easement was duly recorded on June 6, 2024, as Document No. 2024-011100; and

WHEREAS, the developer of Mehta Apartments has requested that the existing Easement on his property be quitclaimed to remove an encumbrance on the property; and

WHEREAS, no part of the existing Easement on said property is required by Medford Water.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER COMMISSIONERS OF THE CITY OF MEDFORD, OREGON, THAT:

The Chair is hereby authorized to sign the Quitclaim Deed in favor of the owner of Mehta Apartments, on behalf of the City of Medford, by and through its Board of Water Commissioner as set forth in the Quitclaim Deed, a copy of which is attached as Exhibit A and by reference, made a part hereof.

PASSED at a regular meeting of the Board of Water Commissioners and signed by me in authentication thereof this 19th day of June 2024.

ATTEST: \_\_\_\_\_  
Amber Furu, Asst. Clerk of the Commission

\_\_\_\_\_   
Bob Strosser, Chair

**QUITCLAIM DEED**

The CITY OF MEDFORD, by and through its Board of Water Commissioners, GRANTOR, does hereby remise, release and forever quitclaim to V.S., Inc. GRANTEE, all of its rights, title and interest in and to the hereinafter described real property in the County of Jackson, City of Medford, State of Oregon.

The real property subject to the easement granted to The CITY OF MEDFORD, by and through its Board of Water Commissioners, pursuant to that certain Easement from the Grantee to the Grantor, recorded on May 10, 2006 as Document No. 2006-024600 of the Official Records of the County Clerk's Office of Jackson County, Oregon.

The CITY OF MEDFORD, by and through its Board of Water Commissioners hereby agrees that the Water Easement is hereby terminated, released, and discharged with respect to the Released Easement Area.

Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 197.352. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses, to determine any limits on lawsuits against farming or forest practices as defined in ORS 30.930 and to inquire about the rights of neighboring property owners, if any, under ORS 197.352.

The consideration for this conveyance: good and valuable (\$0.00).

IN WITNESS WHEREOF, said Grantor has executed this Quitclaim Deed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By (Printed Name): \_\_\_\_\_

Signature: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF OREGON ) ss.  
County of \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, and that said instrument is the free act and deed of such \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: \_\_\_\_\_



## **Memorandum**

**TO:** Commissioners Bob Strosser, David Wright, Jason Anderson, John Dailey, and Michael Smith  
**FROM:** Beau Belikoff, Finance Manager  
**DATE:** Wednesday, June 19, 2024  
**SUBJECT:** **Item 7.0** – Resolution 1942, Comprehensive Financial Management Policy  
**OBJECTIVE:** Board Approval

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### **Issue**

The Comprehensive Financial Management Policy (CFMP) requires annual review and approval by the Medford Water Commissioners.

### **Discussion**

Medford Water management has reviewed and updated the CFMP. Changes are as follows:

- I. FINANCIAL PLANNING POLICIES – creation of Bond Project Fund
- II. FINANCIAL PLANNING POLICIES – removed paragraph discussing monitoring and forecasting. Now included under GENERAL BUDGET POLICIES section h. monthly financial reporting.
- III. GENERAL BUDGET POLICIES – Public hearings updated to include SDC
- IV. GENERAL BUDGET POLICIES – now includes section h. monthly financial reporting.
- V. DEBT ISSUANCE AND DEBT MANAGEMENT POLICY – updated to include NEW debt Policy.
- VI. FINANCIAL RATIOS AND KEY INDICATORS – Updated to include target balances and debt limitations.

### **Financial Impact**

None.

### **Requested Board Action**

Staff recommends approval of Resolution 1942, approving the Comprehensive Financial Management Policy for Medford Water Commission.

## RESOLUTION NO. 1942

A RESOLUTION Adopting, and Authorizing the General Manager to Execute the Comprehensive Financial Management Policy for the Board of Water Commissioners

WHEREAS, the Comprehensive Financial Management Policy assembles all the financial policies of Medford Water into one document. They are the tools used to ensure the fiscal stability required to meet both immediate and long-term service objectives. The individual policies contained within this document serve as a guideline for both the internal financial management and financial planning for Medford Water; and

WHEREAS, the Comprehensive Financial Management Policy has the following objectives:

- A. To guide the Board of Water Commissioners (Board) and management policy decisions that have significant financial impact.
- B. To establish operating principles that minimize the cost of service and financial risk.
- C. To establish fair and balanced revenue policies that provide adequate funding for desired programs.
- D. To maintain appropriate financial capacity for present and future needs.
- E. To promote sound financial management by providing accurate and timely information on Medford Water's financial condition.
- F. To ensure the legal use of financial resources through an effective system of internal controls.
- G. To promote cooperation and coordination with the City of Medford, other local municipalities, and the citizens in financing and delivery of high-quality drinking water.
- H. To ensure commitment to excellence in water quality, professionalism, customer satisfaction, and system reliability.
- I. To provide transparency to the Board, Medford City Council, Medford Water's customers (retail and wholesale), and Medford Water staff; and

WHEREAS, the Comprehensive Financial Management Policy is attached hereto as Exhibit A and incorporated herein by reference; and being fully advised;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF WATER COMMISSIONERS OF THE CITY OF MEDFORD, OREGON, AS FOLLOWS, THAT:

SECTION 1. The Comprehensive Financial Management Policy, attached hereto as Exhibit A and by reference made a part hereof, is hereby adopted.

SECTION 2. The General Manager, acting by and on behalf of the Board of Water Commissioners, is authorized and directed to execute said Comprehensive Financial Management Policy, is hereby approved.

PASSED at a regular meeting of the Board of Water Commissioners and signed by me in authentication thereof this 19th day of June 2024.

ATTEST: \_\_\_\_\_  
Amber Furu, Asst. Clerk of the Commission

\_\_\_\_\_  
Bob Strosser, Chair





## COMPREHENSIVE FINANCIAL MANAGEMENT POLICY

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### PURPOSE

The Comprehensive Financial Management Policy (CFMP) assembles all the financial policies of Medford Water (MW) in one document and is approved by the Board of Water Commissioners (Board). They are the tools used to ensure the fiscal stability required to meet both immediate and long-term service objectives. The individual policies contained within this document serve as guidelines for both the internal financial management and financial planning for ~~the~~ MW.

MW is accountable to its customers for the use of water revenue, fees, and charges. MW resources must be used in a manner that ensures adequate funding for operations, renewal of aging infrastructure, new infrastructure, and long-term water supply needs. The water industry is capital intensive, and ~~the~~ MW is expected to provide uninterrupted service 24 hours a day, 7 days a week, 365 days a year. As one of the primary water providers within the Rogue Valley, the MW must understand and anticipate changes in local, statewide, and national economic trends to properly engage in strategic financial and management planning.

### OBJECTIVES

To achieve its purpose, the CFMP has the following objectives for ~~the~~ MW's fiscal performance:

- To guide the Board and management's policy decisions that have significant financial impact.
- To establish operating principles that minimize the cost of service and financial risk.
- To establish fair and balanced revenue policies that provide adequate funding for desired programs.
- To maintain appropriate financial capacity for present and future needs.
- To promote sound financial management by providing accurate and timely information on ~~the~~ MW's financial condition.
- To ensure the legal use of financial resources through an effective system of internal controls.
- To promote cooperation and coordination with the City of Medford, other local municipalities, and water users in financing system improvements and delivering high-quality drinking water to consumers.
- To be the Rogue Valley's trusted municipal water provider for present and future generations; through responsible stewardship, accountability, and the pursuit of excellence.
- To provide transparency to the Board, City of Medford, City of Medford Council, ~~the~~ MW's customers (retail and wholesale), and MW staff.

# POLICY OUTLINE

## I. FINANCIAL PLANNING POLICIES

- a. Ten-Year Financial Plan
- b. Fund Types and Policies
  - i. Water Fund
  - ii. Construction and Infrastructure Replacement Fund
  - iii. Rate Stabilization and Emergency Fund
  - iv. Bond Project Fund

## II. REVENUE POLICIES

- a. Rates
- b. Systems Development Charges
- c. Fees and Charges
- d. Agencies with Resources (Funding Programs)

## III. OPERATING POLICIES

- a. Operating Expenditures Should be Within Current Resource Projections
- b. Unrestricted Resources Should Remain Unrestricted
- c. Continual Improvement of Water Service
- d. Cash Management
- e. Fixed Asset Inventories
- f. Allocation of Overhead Costs

## IV. GENERAL BUDGET POLICIES

- a. Balanced Budget and Preparation
- b. Resources Greater than Budget Estimates
- c. Public Hearings
- d. Overhead Allocation
- e. Examination of Existing Budget
- f. Water Services
- g. Maintenance of Quality Water Service Programs
- h. Monthly Financial Reporting
- i. Maintenance of Existing Services vs. Additional or Enhanced Service Needs
- j. Budget Monitoring
- k. Performance Budgeting
- l. Distinguished Budget Presentation

## V. CAPITAL IMPROVEMENT BUDGET POLICIES

## VI. AGENDA MEMORANDUM REVIEW

## VII. ACCOUNTING, AUDITING, AND FINANCIAL REPORTING POLICIES

- a. Accounting Records and Reporting
- b. Auditing
- c. Excellence in Financial Reporting

## VIII. DEBT ISSUANCE AND DEBT MANAGEMENT POLICY

## IX. INVESTMENT POLICY

## X. FINANCIAL RATIOS AND KEY INDICATORS

# POLICY

## I. FINANCIAL PLANNING POLICIES

### a. Long Term Financial Plan (LTFP)

- i. Medford Water recognizes the many benefits of long-range financial forecasting including the early identification of potential fiscal constraints related to revenue and expenditure trends, the need to incorporate the impact of capital projects within the operating budget, and the need to maintain adequate resources during economic downturns to sustain system reliability and ensure the continued delivery of high-quality drinking water (a minimum of Ten years). Accordingly, ~~the~~ MW shall develop and maintain a LTFP that projects resources and requirements beyond the scope of the current budget period. The purpose of the plan is to provide long-term context for annual decisions that will be made in conjunction with the Cost-of-Service Study, the annual Budget and the LTFP. The LTFP will:
  1. Provide the Board with the projected long-term fiscal impact of current policies and budget decisions;
  2. Recognize the effects of economic cycles, growth, and inflation on the demand for services and MW resources;
  3. Provide revenue and expenditure projections, including the operating budget impacts of all planned capital expenditures;
  4. Differentiate between revenues and expenditures associated with one-time fiscal activities;
  5. Identify the impact to overall rate levels for both retail and wholesale customers;
  6. Provide insight into whether the current mix of resources and requirements are enough to cover current service levels into the future; and
  7. Allow staff and Commissioners to test “what if” scenarios and examine the financial impact of such scenarios on future years.
- ii. The LTFP will be updated annually at the time of the Cost-of-Service Study and will include projections of all Fund Types. Any unexpected changes in economic conditions or circumstances may prompt more frequent updates. Any significant changes shall be reported to the General Manager, and the Board.

### b. Fund Types and Policies

#### i. Water Fund

The Water Fund is the General Fund of ~~the~~ MW. In other words, it is the main operating fund of MW where most revenues and all expenditures flow through. It records all assets and liabilities that are not assigned to a special purpose fund.

~~MW Management will forecast and monitor respective resources and requirements and variance reporting will be performed at least bi-monthly.~~

~~The Finance Department will prepare monthly financial statements and narrative to be provided to the Board and MW, and annual audited financial statements will be made available on the MW's website.~~

~~MW will prepare a quarterly financial report to the Board and the Medford City Council as required by City of Medford Charter.~~

~~MW will strive to maintain approximately 20% of annual budgeted revenue carry over from year to year. When the Water Fund trends towards or falls below the designated policy minimum, MW staff shall inform the Board. Staff will then work with the Board to take appropriate action to address any shortfalls.~~

ii. Construction and Infrastructure Replacement Fund

- The Construction and Infrastructure Replacement Fund is a capital reserve fund used to fund capital projects that expand system capacity, comply with regulatory requirements, or the renewal and replacement of aging assets. There will be dedicated line items for Construction, Future Main Replacements, Future Water Supply and Treatment, Future Water Rights Development and Vernal Pool Mitigation.
- Construction Line Item  
Is for the renewal and replacement of stationary capital assets other than fleet, transmission, and distribution mains.
- Future Main Replacements Line Item  
Is for the renewal and replacement of transmission and distribution mains.
- Future Water Supply and Treatment Line Item  
Is for future capital items related to supply and treatment.
- Future Water Rights Development Line Item  
Is for the purchase of water rights at Lost Creek Lake for Outside City Customers and Water Districts.
- Vernal Pool Mitigation Line Item  
Is for the management of vernal pools next to the Robert A. Duff Water Treatment Plant in White City, Oregon.

~~MW will strive to maintain a balance for the Construction line item and Future Main Replacements two times the estimated annual amount of system depreciation. Construction line item depreciation is total system depreciation less mainline (transmission and distribution) depreciation. Future Main If the funds are used to pay for capital projects, then a repayment plan or a recalibration of line item balances will occur. When the balance of the two times the estimates annual amounts of depreciation trends towards or falls below the designated policy minimum, MW staff shall inform the Board. Staff will then work with the Board to take appropriate action to address any shortfalls within that fund.~~

iii. Rate Stabilization and Emergency Fund

This will be a newly created fund and will be used solely for the smoothing rates when a spike in rates is expected or as a one-time emergency expenditure. The targeted balance in this account shall be no less than

10% of budgeted water revenue in the operating budget. This amount will be calibrated on an annual basis during the Cost-of-Service Analysis (COSA). Funding to begin in fiscal year 2030/2031.

iv. Bond Project Fund

The purpose of the Bond Project Fund is to support capital projects with restricted bond funds. It is not a bond reserve account, and it does not transfer debt service payments. It may create subaccounts for future series of bonds

## II. REVENUE POLICIES

MW must be sensitive to the balance between the need for services and MW's ability to raise rates, fees, and charges to support those services. MW will aim at developing rates that utilize contemporary and industry recognized "generally accepted" rate setting methodologies. A Cost-of-Service Study will be prepared as needed and its assumptions will be recalibrated and updated on an annual basis. Other rates, fees and charges will all be reviewed and recalibrated on an annual basis.

### a. Rates

- i. MW shall strive to set rates in a manner that is consistent with the principles and methodologies established by the American Water Works Association (AWWA) M1 Manual, Principles of Water Rates, Fees and Charges.
- ii. Medford Water will develop a revenue requirement analysis to provide prudent and adequate funding levels for operations and maintenance (O&M) and capital projects, and in addition, will develop a ten-year financing planning model (revenue requirements) that provides prudent funding levels for O&M activities along with capital projects identified in Medford Water's capital improvement planning documents.
- iii. Medford Water will develop a cost allocation methodology that equitably allocates the cost of providing water service to Medford Water's various types of customers.
- iv. Medford Water will strive to set user rates at levels where Medford Water's operating and capital expenses are met with the revenues generated from customers.
- v. Medford Water will develop water rates that are cost-based and defensible using generally accepted methodologies (i.e., AWWA M1 Manual).

### b. Systems Development Charges (SDC's)

SDC's will be reviewed on an annual basis to update the cost-based charges for new customers connecting to, or requesting additional capacity to MW's water system. By establishing cost based SDC's, MW attempts to have "growth pay for growth" and existing utility customers will, for the most part, be sheltered from the financial impacts of growth. MW has three types of SDC's:

- i. Systemwide (Treatment Plant and Transmission Expansion)
- ii. East Side High Level
- iii. Southwest High Level

### c. Fees and Charges

- i. MW shall strive to set fees in a manner that recovers the full cost of the service provided.

- ii. MW will analyze current and future costs when determining fees.
- iii. MW will prepare a methodology that captures all costs including materials, labor, and equipment.

**d. Governmental Agency Resources (Funding Programs)**

In an effort to soften the adverse financial impacts of various programs and projects, MW will approach the following, nonexclusive list of state and federal governmental agencies which may periodically offer funding programs to support the planning, predevelopment, design and construction of drinking water infrastructure projects and emergencies.

- i. U.S. Environmental Protection Agency – Drinking Water State Revolving Fund
- ii. U.S. Environmental Protection Agency - Water Infrastructure Finance and Innovation Act (WIFIA) U.S. Department of Health and Human Services
- iii. Oregon Health Authority (OHA)
- iv. U.S. Department of Agriculture Development (USDA RD)
- v. U.S. Department of Commerce Economic Development Administration (EDA)
- vi. Oregon Business Development Department (OBDD)
- vii. Federal Emergency Management Agency (FEMA)
- viii. Oregon Department of Emergency Management (ODEM)

**III. OPERATING POLICIES**

MW should accommodate both one-time and ongoing expenditures within current resources, establish and adequately fund reserves, regularly monitor and report on budget variances, evaluate the fiscal impact of new proposals, operate as efficiently as possible, and constantly review services for appropriateness and effectiveness.

**a. Operating Expenditures Should be Within Current Resource Projections**

Operating expenditures should be equal to or less than operating revenues, excluding capital expenditures. One-time resources and non-recurring ending fund balances should be applied to reserves or to fund one-time expenditures; they should not be used to fund water services.

**b. Restricted Resources and Restricted Funds**

Restricted resources and restricted funds may only be used in compliance with the specific constraints that have been imposed in connection with receipt of those resources. Unrestricted resources or funds are all MW revenues and resources that are not restricted, and may, in the discretion of the Board as exercised through adoption of a budget, be utilized in connection with any MW projects, activities or expenditures.

**c. Continual Improvement of Water Service**

MW will seek the efficiency and effectiveness of its water services through business process improvements, actual vs budget variance analysis, and evaluation of its services with comparable utilities to reduce costs and improve service quality.

**d. Cash Management**

Finance will develop, maintain, and constantly seek to improve cash management systems which ensure the accuracy and timely accounting, investment, and security of all cash assets. All cash received by MW is expected to be deposited within 48 hours of receipt.

**e. Fixed Asset Inventories**

- i. Accurate inventories of all physical assets, their condition, life spans, and cost will be maintained to ensure proper stewardship of public property. Finance will establish policies and appropriate procedures to manage fixed assets, including establishing the threshold dollar amount of \$5,000 for which fixed asset records are maintained.
- ii. MW will maintain all its assets at a level adequate to protect its capital investment and to minimize future maintenance and replacement costs.
- iii. MW will project its equipment replacement and maintenance needs for the next several years and will update this projection every year. From the projection a maintenance and replacement schedule will be developed and followed.
- iv. MW will conduct a physical inventory of assets on an annual basis.
- v. MW will conduct a physical count of parts in inventory no less than once a year. A perpetual inventory system and cycle count process is encouraged.

**f. Allocation of Overhead Costs**

Overhead costs will be allocated to determine the full cost of providing water and other services. Overhead costs will be allocated according to consistent methodology as defined by the Finance Department.

**IV. GENERAL BUDGET POLICIES**

**a. Balanced Budget and Preparation**

- i. MW will annually adopt a balanced budget where planned resources equal planned requirements for the fiscal year for all ~~the~~ MW's funds.
- ii. The budget is a plan for matching resources to requirements with the objective to maintain a reliable and excellent drinking water supply with allocated resources. Service requirements must be delivered to the customers at a level that will meet real needs as efficiently and effectively as possible. The budget must be structured so that the Board and the customers can readily establish the relationship between revenues, expenditures, and the achievement of service objectives. It is driven by the COSA, the LTFP, the goals of the Board, and various Master Plans.
- iii. The budget shall be prepared with MW's organizational mission statement and Board goals in mind.
- iv. The budgetary review by MW staff and the Board will focus on the following basic concepts:
  1. Staff Economy
  2. System Maintenance
  3. Capital Construction
  4. Program Expansions
  5. New Programs
  6. Existing Service Costs

## 7. Administrative Costs

- v. MW budget submissions must be prepared with the basic assumption that there may not be a substantial increase and/or a decrease to water rates and/or service fees.
- vi. It is important that adequate cash on hand be available to fund operating expenses and purchase capital assets during the fiscal year. MW will avoid borrowing for ongoing operational expenses and shall maintain adequate fund balances in all funds.
- vii. Finance will prepare and present the budget in such a way that it is easy to read and understand. The budget will be available on MW's website at [www.medfordwater.org](http://www.medfordwater.org).

### **b. Resources Greater than Budget Estimates**

Resources (fund balance) greater than budget estimates in any fund shall be refunded to the contributing funds unless circumstances warrant retaining such monies for future expenditures in the current fund.

### **c. Public Hearings**

- i. MW shall hold a public hearing on the budget annually. It is not required by Oregon statute but is a practice promoting accountability and transparency.
- ii. **SDC hearing is required by statute and 90-day advertisement period.**
- iii. Any additional public hearings may be conducted if necessary.

### **d. Overhead Allocation**

The annual budget shall be prepared in a manner to reflect the full cost of providing water service.

### **e. Examination of Existing Budget**

Throughout the fiscal year, staff will look for cost savings and efficiencies that will benefit MW's customers.

### **f. Water Services**

To keep pace with needs of MW's customers, MW will strive to ensure that water services within the City of Medford keep pace with the dynamic needs of the community by incorporating a service needs review as part of the budget process. MW has adopted several ten-year master plans that address service needs..

### **g. Maintenance of Quality Water Service Programs**

Quality water service programs will be offered by MW. If expenditure reductions are necessary, service elimination is preferable to nonrequired, poor or marginal quality programs.

### **h. Maintenance of Existing Services vs. Additional or Enhanced Service Needs**

Significant annual resource allocations needed to maintain existing service quality will compete directly with other operational or capital expense priorities during the budget process. Resources will be allocated to the operational and capital expenditures that provide the greatest value to the customers.

### **i. Monthly Financial Reporting**

**MW Management will forecast and monitor respective resources and requirements and variance reporting. The Finance Department will prepare monthly financial statements and narrative to be provided to the Board and MW, and annual audited financial statements will be made available on the MW's website. MW will prepare a quarterly financial report for the Board and the Medford City Council as required**



by City of Medford Charter. MW will strive to maintain approximately 20% of annual budgeted revenue carry over from year to year.

**j. Budget Monitoring**

- i. MW's management will have primary responsibility for formulating budget proposals in line with the Board and Management's priority direction and goals. Once the budget has been formulated, it is Management's responsibility to monitor and implement once the budget has been approved.
- ii. Management is responsible for coordinating the overall preparation and administration of MW's Annual Budget and the overall preparation of the Capital Budget.
- iii. Management assists MW staff in identifying budget problems, formulating solutions and alternatives, and implementing any corrective actions.

**k. Performance Budgeting**

Metrics and performance measures will be utilized and reported within the budget. Finance will prepare trends, metrics, and performance measures on a monthly, quarterly, and annual basis.

**l. Distinguished Budget Presentation**

MW will work to obtain the Government Finance Officers Association Distinguished Budget Presentation Award for each annual budget. The budget will be presented in a way that clearly communicates the budget to the Board, MW staff and the public.

**V. CAPITAL IMPROVEMENT BUDGET POLICIES**

- a. MW will endeavor to make all capital improvements in accordance with an adopted Ten-Year Capital Improvement Plan (CIP), except as provided in the below subsection f. It will be updated annually and monitored monthly.
- b. MW will enact an annual CIP budget based upon the ten-year plan. Future capital expenditures necessitated by changes in the number of water services, changes in real estate development or changes in economic base will be calculated and included in CIP budget projections.
- c. MW will coordinate development of the CIP budget with the development of the operating budget. Future operating costs associated with new capital improvements will be projected and included in the operating budget forecasts.
- d. MW will identify the estimated costs and potential funding sources for each capital project proposal before including in the capital budget.
- e. MW will attempt to determine the most advantageous financing method for all new projects.
- f. MW recognizes that there may be capital improvement projects that have not been anticipated in the ten-year CIP plan. These projects are often imposed by other governmental entities or because of emergency replacement/repair. As a result, it is likely that budgeted or anticipated projects may be rescheduled, scaled back, or omitted completely.
- g. MW will identify all projects that are SDC eligible.

**VI. AGENDA MEMORANDUM REVIEW**

Management will review all agenda items submitted to the Board for action. The objective of these reviews will be to ensure compliance within the budget and disclosure of all fiscal

issues to the Board. This information will be presented in the fiscal impact section of each agenda memorandum.

## VII. ACCOUNTING, AUDITING, AND FINANCIAL REPORTING POLICIES

### a. Accounting Records and Reporting

- i. MW shall maintain clear, accurate, and understandable financial reporting that provides accountability and transparency for all components of MW's financial affairs and ensures compliance with applicable statutory and other regulatory requirements.
- ii. MW shall also maintain a system of financial monitoring, internal controls, and reporting for all operations, funds, and agencies to provide an effective means of ensuring that all MW goals and objectives are met, as well as to provide MWs customers with accurate and timely financial information that communicates ~~the~~ MW's economic condition and financial status.
- iii. MW shall establish and maintain accounting practices that conform to Generally Accepted Accounting Principles (GAAP) as promulgated by the Governmental Accounting Standards Board (GASB).

### b. Auditing

MW shall contract with a qualified firm of independent certified public accountants to perform an annual financial and compliance audit of ~~the~~ MW's financial statements. The firm's opinions must be presented in MW's Annual Comprehensive Financial Report (ACFR) and Independent Audit Report.

### c. Excellence in Financial Reporting

MW shall prepare an Annual Comprehensive Financial Report each year which must be prepared in accordance with GAAP, GASB, state and federal laws and regulations including Oregon Local Budget Law. The report must also meet the requirements of the Governmental Finance Officers' Association's Certificate of Achievement of Excellence in Financial Reporting (COA). MW shall strive to present financial reports following best practices.

### d. Popular Annual Financial Report

MW will strive to extract information from the ACFR in order to produce a high quality popular annual financial report that is specifically designed to be readily accessible by the general public and other interested parties. This report is an abbreviated version of the ACFR and is easily understandable by those who do not necessarily have a background in public finance. MW will strive to earn the General Finance Officer's Association's Popular Annual Financial Reporting Award (PAFR).

## VIII. DEBT ISSUANCE AND DEBT MANAGEMENT POLICY

- ~~a. MW, during normal operations, may need to issue long term debt to fund certain capital improvements. The establishment of policies related to debt issuance and debt management are intended to minimize the overall long term costs of MW and utilize long term debt to benefit customers.~~

- ~~b. MW will confine long term borrowing to capital improvements or projects that cannot be financed from current rates and revenues (including anticipated rate increases), except where approved justification is provided.~~
- ~~c. MW may find that short term debt or a line of credit is necessary; however, short term debt should not be used for typical, ongoing operational requirements.~~
- ~~d. When MW finances capital improvements or other projects by issuing bonds or entering capital leases, it will repay its debt within a period not to exceed the useful life of the asset or project.~~
- ~~e. MW will maintain regular and good communication with the bond rating agencies about its financial condition and will provide requested information in a timely manner. MW will follow a policy of full disclosure and transparency on every financial report and in Official Statements related to bond issues.~~

The Debt Issuance and Debt Management Policy has been adopted by Board Resolution. The Policy defines the debt management and policies to issue debt, and it shall be reviewed annually and updated by Board Resolution if needed.

**a. Allowable Debt Instruments**

The debt instruments that Medford Water is allowed to use are described by state law. All derivative instruments carry considerable risk and MW avoids the use of such financial instruments.

**b. Debt Limitations**

Medford Water will charge rates and fees in connection with the operation of the Water System to generate adequate gross revenues and net revenues defined to meet bond covenants.

**c. Maturity Guidelines**

Foremost, the term of any debt issued should not exceed the useful life the asset is funding.

**d. The Process To Issue Debt**

Approval of debt issuance will include an evaluation of applicable federal, state, and additional legal provisions and restrictions and are subject to bond counsel review. Medford Water will consult the expertise of a registered municipal advisor to determine the best course of action for their specific project and the method of sale.

**e. Management of Debt**

Management of bond proceeds takes in consideration all inherent risk and should consider the objectives and uses of proceeds. Investments purchased with bond proceeds are kept separate from unrestricted funds and recorded in the Bond Project Fund. Medford Water will consult with investment advisors to project cash flow requirements and investment horizons. Arbitrage calculations will be performed by a consultant and assist with IRS filings. Record retention will be for the life of the bond plus 3 years.

The Finance Manager is responsible for the management of debt and remedial action.

## **IX. INVESTMENT POLICY**

The Investment Policy has been adopted by Board Resolution. The Policy defines the cash management and investment strategies of MW, and it shall be reviewed annually and updated by Board Resolution if needed.

## **X. FINANCIAL RATIOS AND KEY INDICATORS**

MW shall establish and utilize financial ratios to analyze and determine financial health of the organization. The performance standard for each ratio shall be developed. The ratios shall be published as part of the monthly and/or quarterly financial packet provided to the Board and MW staff. These metrics enable MW to assess financial health and performance of the water utility in an expedient manner.

### **Metric Definitions:**

- a. Current Ratio – Indicates the extent to which the claims of short-term creditors are covered by assets that are expected to be converted to cash in a period roughly corresponding to the maturity of the liabilities. Target is >1.0.
- b. Age of System – Ratio of accumulated depreciation against the historical value of assets. This ratio measures how old the system is as compared to how much has been depreciated. Infrastructure over 65% depreciated should be watched for aging, while infrastructure less than 50% depreciated is representative of newer systems. Target is <50%.
- c. Water Fund Cash on Hand – How long, in days, MW could meet Capital Expenditures and Operating Expenses without receiving new income. MW strives to maintain 90 -180 days cash on hand.
- d. Days Sales Outstanding - Average collection period or days' sales in receivables, measures the number of days that MW is to collect cash from its water sales. This calculation shows the liquidity and efficiency of MW's Customer Collection and Meter Reading Departments. The target is < 30 days.
- e. Debt Limitations – MW will strive to maintain a debt service coverage ratio of 2.0 for planning purposes during the annual update to the long-term financial plan.
- f. Target Balances
  - i. 20% Budgeted Revenues: MW will strive to maintain approximately 20% of annual budgeted revenue carried over from year to year. When the Water Fund trends towards or falls below the designated policy minimum, MW staff shall inform the Board. Staff will then work with the Board to take appropriate action to address any shortfalls.
  - ii. 2x estimated annual amount of system depreciation: MW will strive to maintain a balance for the Construction line item and Future Main Replacements two times the estimated annual amount of system depreciation. Construction line-item depreciation is total system depreciation less mainline (transmission and distribution) depreciation. Future Main If the funds are used to pay for capital projects, then a repayment plan or a recalibration of line-item balances will occur. When the balance of the two times the estimates annual amounts of depreciation trends towards or falls below the designated policy minimum, MW staff shall inform the Board. Staff will then work with the Board to take appropriate action to address any shortfalls within that fund.