

CITY OF NEWPORT

RESOLUTION NO. 4010

**JOINT RESOLUTION OF THE NEWPORT CITY COUNCIL AND
LOCAL CONTRACT REVIEW BOARD AMENDING
PUBLIC CONTRACTING RULES FOR THE CITY OF NEWPORT**

WHEREAS, in 2012, the City of Newport (“City”) opted out of the Public Contracting Model Rules adopted by the Attorney General under ORS Chapters 279A, 279B, and 279C, as set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48, and 49 (“Model Rules”) and adopted its own Public Contracting Rules (“Rules”), which were most recently updated by Resolution No. 3968 in April 2023; and

WHEREAS, the 2023 legislature adopted several amendments to Oregon’s Public Contracting Code (“Code”), allowing further updates to the City’s Rules, Divisions 46, 47, 49, and Personal Services rules; but requiring no changes to the City’s class exemptions under its Rules; and

WHEREAS, the City Council and the City’s Local Contract Review Board agree that legislative amendments to the Code should be reflected in the City’s Rules.

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

1. **Findings.** The findings set forth in the above recitals are hereby adopted as support for the amendments to the City’s Public Contracting Rules (“Rules”).

2. **Amendments.** The following identified provisions of the City’s Rules, Divisions 46, 47, 49, and Exemptions E-17 and E-18, adopted by Resolution No. 3968, section 3, are hereby amended as follows:

- a. Subsection 5 of Rule 137-046-0300, Preference for Oregon Goods and Services; Nonresident Bidders, is amended to read as follows:

(5) Discretionary Preference and Award.

- (a) Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than: (i) ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon or (ii) five percent for Goods or Services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754, that submits

with a bid or proposal a certificate of existence issued under ORS 60.027 and has the majority of the benefit company's regular, full-time workforce located in Oregon at the time the benefit company submits the bid or proposal.

- (b) When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon.
- (c) A Contracting Agency may establish a preference percentage higher than the percentages authorized in (5)(a) of this rule by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage.
- (d) The Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

- b. Rule 137-047-0265, Small Procurements, is amended to read as follows:

137-047-0265

Small Procurements

(1) **Generally.** For Procurements of Goods or Services less than or equal to \$25,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process.

(2) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the small procurement threshold stated in subsection (1) of this Rule.

- c. Rule 137-047-0270, Intermediate Procurements, is amended to read as follows:

137-047-0270

Intermediate Procurements

(1) **Generally.** For Procurements of Goods or Services greater than \$25,000 and less than or equal to \$250,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Written Solicitations.** For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.

(3) **Negotiations.** A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.

(4) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds one hundred twenty-five percent (125%) of the intermediate procurement threshold stated in subsection (1) of this Rule.

- d. Subsection 1 of Rule 137-049-0160, Intermediate Procurements; Competitive Quotes and Amendments, is amended to read as follows:

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to cost \$25,000 or more, but not to exceed \$100,000 may be Awarded in accordance with this rule.

- e. The term "service-disabled veteran" as used in Rules 137-046-0210, 137-049-0370, and 137-049-0440, is amended to read as "veteran, as defined by ORS 200.005, * * *."

- f. Subsection (6)(c) of Rule 137-049-0390 is amended to read as follows:

Negotiation Prohibited. Except as allowed by Rules 137-049-0420(1) and 137-049-0430, the Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

- g. The last sentence of Subsection (1) of Rule 137-049-0395 is amended to read as follows:

This requirement does not apply to Award of a small, intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).

- h. Subsections (6)(a) and (b) of Exemption E-17, Personal Services, are amended to increase the threshold of "\$10,000" to "\$25,000."
- i. The first paragraph of Exemption E-18, Liability Insurance Contracts, is amended to read as follows:


Contracts for insurance where either the annual or aggregate premium exceeds \$25,000 must be let using one of the following procedures: * * *.

3. **Legal Review.** In accordance with ORS 279A.065(6)(b), the City shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules to implement Oregon Public Contracting Code amendments adopted after the 2023 legislative session in order to determine whether amendments are required to ensure statutory compliance.

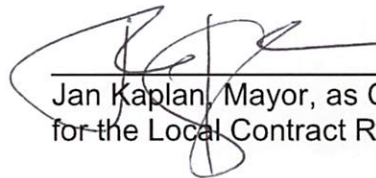
4. **Continued Effect.** All unamended provisions of Resolution No. 3968, and all rules adopted thereby, shall continue and remain unchanged and in full force and effect.

This resolution shall become effective immediately upon adoption.


Adopted by the Newport City Council on February 20, 2024.




Jan Kaplan, Mayor



Jan Kaplan, Mayor, as Chair
for the Local Contract Review Board

ATTEST:


Erik Glover, City Recorder

ATTEST:


Erik Glover, City Recorder, as Secretary
for the Local Contract Review Board