

**CITY OF DUNES CITY, OREGON
ORDINANCE NO. 174**

AN ORDINANCE CONCERNING PUBLIC CONTRACTING; REPEALING AND REPLACING ORDINANCE NO. 160 AND CHAPTER 33 OF THE CODE OF DUNES CITY; AND DECLARING AN EMERGENCY.

The City of Dunes City Finds:

WHEREAS, it is the policy of the City of Dunes City that a sound and responsive public contracting system should allow impartial, meaningful, and open competition, preserving formal competitive selection as the standard for public contracts unless otherwise specifically exempted herein, by state law, or by subsequent ordinance or resolution; and

WHEREAS, the Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) the ("Public Contracting Code"), which was signed by the Governor, and has an operative date of March 1, 2005. Oregon Revised Statutes ("ORS") chapter 279 is repealed (with minor exceptions) and replaced with three new subchapters: ORS 279A, 279B, and 279C. These three subchapters, together, constitute the new Public Contracting Code. All rules and exemptions adopted under ORS chapter 279, including the Dunes City Code Chapter 33, expired on March 1, 2005; and

WHEREAS, absent any action by the Local Contract Review Board (or its delegee), Dunes City will be subject to the Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C (the "Model Rules"), which include Divisions 46, 47, 48, and 49 in the Attorney General's Public Contracts Manual; and

WHEREAS, in order to adopt new public contracting rules that differ from the Model Rules, the City Council must specifically state that the Model Rules adopted by the Attorney General do not apply, and must adopt its own rules. The Local Contract Review Board may also adopt rules for public contracting not covered by the Model Rules as long as they do not conflict with the Public Contracting Code; and

WHEREAS, the Public Contracting Code divides powers and duties for contracting into two categories: those that must be performed by the "Local Contract Review Board"; and those that must be performed by the "Contracting Agency;" and

WHEREAS, the Local Contract Review Board may designate certain personal service contracts or classes of service contracts as personal service contracts, which are not subject to the rules of the Public Contracting Code or the Model Rules.

THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1. Title 3, Administration, of the Dunes City Code of Ordinances, is amended by repealing and replacing Chapter 33 with the following:

Chapter 33: PUBLIC CONTRACTS

Sections:

- 33.005 Policy
- 33.010 Definitions
- 33.015 Approval Process for Special Solicitation Methods and Exemptions
- 33.020 Solicitation Methods For Classes of Contracts
- 33.030 Public Contracts - Informal Solicitation Procedures
- 33.040 Public Contracts - Use of Brand Name Specifications for Public Improvements
- 33.050 Public Contracts - Bid, Performance and Payment Bonds
- 33.060 Public Contracts - Electronic Advertisement of Public Improvement Contracts.
- 33.070 Appeal of Debarment or Prequalification Decision

33.005 Policy

A. **Application of Public Contracting Regulations.** In accordance with ORS 279A.025, Dunes City's public contracting regulations and the Oregon Public Contracting Code do not apply to the following classes of contracts:

1. **Between Governments.** Contracts between Dunes City and a public body or agency of the State of Oregon or its political subdivisions, or between the Dunes City and an agency of the federal government.
2. **Grants.** A grant contract is an agreement under which Dunes City is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.
3. **Legal Witnesses or Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which Dunes City is or may become interested.
4. **Real Property.** Acquisitions or disposals of real property or interests in real property.
5. **Textbooks.** Contracts for the procurement or distribution of textbooks.
6. **Oregon Corrections Enterprises.** Procurements from an Oregon corrections enterprises program.

7. **Finance.** Contracts, agreements or other documents entered into, issued or established in connection with:

a. The incurring of debt by Dunes City, including any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;

b. The making of program loans and similar extensions or advances of funds, aid or assistance by Dunes City to a public or private Person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law other than for the construction of public works or public improvements;

c. The investment of funds by Dunes City as authorized by law, or

d. Banking, money management or other predominantly financial transactions of Dunes City that, by their character, cannot practically be established under the competitive contractor selection procedures, based upon the findings of the Purchasing Manager.

8. **Employee Benefits.** Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125 (4), 243.221, 243.275, 243.291, 243.303 and 243.565.

9. **Exempt Under State Law.** Any other public contracting specifically exempted from the Oregon Public Contracting Code by another provision of law.

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

B. **Regulation of Public Contracts by the City Council.** Except as expressly delegated under these regulations, the City Council reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law, including, but not limited to, the power and authority to:

1. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;

2. **Brand Name Specifications.** Exempt the use of brand name specifications for public improvement contracts;

3. **Waiver of Performance and Payment Bonds.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement;

4. **Electronic Advertisement of Public Contracts.** Authorize the use of electronic advertisements for public improvement contracts in lieu of publication in a newspaper of general circulation;

5. **Appeals.** Hear properly filed appeals of the City Council's determination of debarment, or concerning prequalification or contract award;

6. **Rulemaking.** Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements; and

7. **Award.** Award all contracts;

8. **Delegation.** Delegate to any employee or agent of Dunes City any of the duties or authority of a contracting agency; and

9. **Mandatory Review of Rules.** Whenever the Oregon state legislative Assembly enacts laws that cause the Attorney General to modify its Model Rules, the City Council shall review these regulations to determine whether any modifications to the regulations need to be adopted by Dunes City to ensure compliance with statutory changes.

C. **Model Rules.** The Model Rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are hereby adopted as the public contracting rules for the Dunes City to the extent that the Model Rules do not conflict with the provisions of this Ordinance including any amendments to this Ordinance, and further provided that, despite the provisions of the Model Rules concerning the selection of architects, engineers, land surveyors and related consultants, Dunes City's evaluation of architects, engineers, land surveyors and related consultants may include price as a dominant criterion for selection.

D. **Authority of Purchasing Manager.**

1. The City Recorder shall be the Purchasing Manager for Dunes City and is hereby authorized to issue all solicitations and to award all Dunes City contracts for which the contract price does not exceed \$500, provided that, the Purchasing Manager shall not in any month enter into contracts pursuant to this exemption that in the aggregate exceeds \$500.00 without approval of the Mayor or President of the City Council. Subject to the provisions of this Chapter, the Purchasing Manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the

Oregon Public Contracting Code or otherwise convenient for Dunes City's contracting needs. The City Council shall hear all solicitation and award protests.

2. When possible, the Purchasing Manager shall use solicitation documents and evaluation criteria that:

a. Give preference to goods and services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal; and

b. Give preference to goods that are certified to be made from recycled products when such goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of goods made from recycled products is not significantly more than the cost of goods made from non-recycled products.

3. Any of the responsibilities or authorities of the Purchasing Manager under this Chapter may be delegated and sub-delegated by written directive.

4. Whenever the Oregon State Legislative Assembly enacts laws that cause the Attorney General to modify its Model Rules, the Purchasing Manager shall review the Public Contracting Regulations, other than the Model Rules, and recommend to the City Council any modifications required to ensure compliance with statutory changes.

33.010 Definitions.

The following terms used in these regulations shall have the meanings set forth below.

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

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

Concession agreement means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by Dunes City, and under which the concessionaire makes payments to Dunes City based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license or lease for the use of premises.

Contract price means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.

Contract review board or local contract review board means the City Council of Dunes City.

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

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

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

Emergency means circumstances that create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

Energy savings performance contract means a contract with a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures that guarantee energy savings or performance.

Findings are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

Goods mean any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

Informal solicitation means a solicitation made in accordance with Dunes City's Public Contracting Regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

Invitation to bid means a publicly advertised request for competitive sealed bids.

Model Rules means the public contracting rules adopted by the Attorney General under ORS 279A.065.

Offeror means a person who submits a bid, quote or proposal to enter into a public contract with Dunes City

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

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

Proposal means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A Proposal may be made in response to a request for proposals or under an informal solicitation.

Personal services contract means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The City Council shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

Public contract means a sale or other disposal, or a purchase, lease, rental or other acquisition, by Dunes City of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

Public improvement means a project for construction, reconstruction or major renovation on real property by or for Dunes City. "Public improvement" does not include:

- (1) Projects for which no funds of Dunes City are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- (2) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

Purchasing Manager means the City Recorder or designee appointed by the City Recorder to exercise the authority of the Purchasing Manager under these public contracting regulations.

Qualified pool means a pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.

Quote means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

Request for proposals means a publicly advertised request for sealed competitive proposals.

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

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

Solicitation Agent means with respect to a particular solicitation, the City Recorder or person designated by the City Recorder to conduct the solicitation and make an award.

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

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

- (1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
- (2) A satisfactory record of performance. The Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (3) A satisfactory record of integrity. The Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;
- (4) Qualified legally to contract with Dunes City;
- (5) Supplied all necessary information in connection with the inquiry concerning responsibility. If an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and

(6) Not been debarred by Dunes City and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

Surplus property means personal property owned by Dunes City that is no longer needed for use by the department to which such property has been assigned.

33.015 Approval Process for Special Solicitation Methods and Exemptions

A. **Authority of City Council.** In its capacity as contract review board for Dunes City the City Council, upon its own initiative, or upon request of the Purchasing Manager, may create special selection, evaluation and award procedures for, or may exempt from competition, the award of a specific contract or class of contracts as provided in this Section.

B. **Basis for Approval.** The approval of a special solicitation method or exemption from competition must be based upon a record before the City Council that contains the following:

1. The nature of the contract or class of contracts for which the special solicitation or exemption is requested;
2. The estimated contract price or cost of the project, if relevant;
3. Findings to support the substantial cost savings, enhancement in quality or performance or other public benefit anticipated by the proposed selection method or exemption from competitive solicitation;
4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or class of public contracts, or would otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the solicitation requirements that would otherwise be applicable under these regulations;
5. A description of the proposed alternative contracting methods to be employed; and
6. The estimated date by which it would be necessary to let the contract(s).

In making a determination regarding a special selection method, the City Council may consider the type, cost, amount of the contract or class of contracts, number of persons available to make offers, and such other factors as it may deem appropriate.

C. **Hearing.**

(1) Dunes City may approve the special solicitation or exemption after a public hearing before the City Council following notice by publication in at least one newspaper of general circulation in the Dunes City area.

(2) At the public hearing, Dunes City shall offer an opportunity for any interested party to appear and present comment.

(3) The City Council will consider the findings and may approve the exemption as proposed or as modified by the City Council after providing an opportunity for public comment.

D. Special Requirements for Public Improvement Contracts.

1. Notification of the public hearing for exemption of a public improvement contract, or class of public improvement contracts, shall be published in a trade newspaper of general statewide circulation at least 14 days prior to the hearing.

2. The notice shall state that the public hearing is for the purpose of taking comments on Dunes City's draft findings for an exemption from the standard solicitation method. At the time of the notice, copies of the draft findings shall be made available to the public.

E. Commencement of Solicitation Prior to Approval. A solicitation may be issued prior to the approval of a special exemption under this section, provided that the closing of the solicitation may not be earlier than five days after the date of the hearing at which the City Council approves the exemption. If the City Council fails to approve a requested exemption, or requires the use of a solicitation procedure other than the procedures described in the issued solicitation documents, the issued solicitation may either be modified by addendum, or cancelled.

33.020 Solicitation Methods For Classes of Contracts

The following classes of public contracts and the method(s) that are approved for the award of each of the classes are hereby established by the City Council:

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

B. Public Improvement Contracts. Unless otherwise provided in these regulations or approved for a special exemption, public improvement contracts in excess of \$2,000 shall be issued only under an invitation to bid.

C. **Personal Services Contracts.** . Except as otherwise provided in these regulations, personal services contracts may be awarded in the same manner as contracts for services under ORS 279B.050, and 279B.060 to 279B.085.

1. **Any Personal Services Contract.** Personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals.

2. **Personal Service Contracts Not Exceeding \$20,000.** Contracts for personal services for which the estimated contract price does not exceed \$20,000 may be awarded using an informal solicitation for proposals.

3. **\$5,000 Award from Qualified Pool.** Contracts for personal services for which the estimated contract price does not exceed \$5,000 may be awarded by direct appointment without competition from a Qualified Pool.

4. **Personal Service Contracts Not Exceeding \$10,000 Per Year.** Contracts for which the Solicitation Agent estimates that payments will not exceed \$10,000 in any fiscal year or \$50,000 over the full term, including optional renewals, may be awarded under any method deemed in Dunes City's best interest by the City Council, including by direct appointment.

5. **Personal Service Contracts for Continuation of Work.** Contracts of not more than \$15,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the City Council determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

D. **Hybrid Contracts.** The following classes of contracts include elements of construction of public improvements as well as personal services and may be awarded under a request for proposals, unless exempt from competitive solicitation.

1. **Design/Build and CM/GC Contracts.** Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the City Council or designee, upon application of the Solicitation Agent, in which the Solicitation Agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to Dunes City.

2. **Energy Savings Performance Contracts.** Unless the contract qualifies for award under another classification in this Section, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with Dunes City's Public Contracting Regulations.

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

1. **Any Procurement.** The procurement of goods or services, or goods and services in any amount may be made under either an invitation to bid or a request for proposals.

2. **Procurements Between \$500 and \$2,500.** All procurements for an amount that is more than five hundred dollars but not more than two thousand five hundred dollars shall be awarded by the Purchasing Manager, with approval of the Mayor or the President of the Council, based on informal quotations. Except for public improvement procurements, the award may be based on a combination of price and other criteria, including the submission of samples. In soliciting informal quotations, the Purchasing Manager shall seek quotations from a sufficiently large number of potential bidders to ensure sufficient competition in price, quality and such other criteria as are considered important to meet the best interests of the City. An award based on receiving fewer than three informal quotations may be made only on a determination by the Purchasing Manager that potential bidders were given a reasonable opportunity to submit quotes or proposals. Notwithstanding the foregoing, no contractor may be awarded, in the aggregate, within the fiscal year, procurements in excess of \$10,000 under this subsection without formal quotations. In computing the aggregate under this subsection, awards under \$500 need not be included.

3. **Procurements Between \$2,500 and \$15,000.** All procurements for an amount more than two thousand five hundred dollars but not more than fifteen thousand dollars shall be awarded by the City Council based on informal quotations. Except for public improvement procurements, the award may be based on a combination of price and other criteria, including the submission of samples. In soliciting informal quotations, the City Council shall seek quotations from a sufficiently large number of potential bidders to ensure sufficient competition in price, quality and such other criteria as are considered important to meet the best interests of the City. An award based on receiving fewer than three informal quotations may be made only on a determination by the City Council that potential bidders were given a reasonable opportunity to submit quotes.

4. **Procurements Between \$15,000 and \$50,000.** All procurements for an amount more than fifteen thousand dollars but not more than fifty thousand dollars shall be awarded by the City Council based on formal quotations. In soliciting formal quotations, the Purchasing Manager shall seek quotations from a sufficiently large number of potential bidders to ensure sufficient competition in price, quality and such other criteria as are considered important to meet the best interests of the City. An award based on receiving fewer than three formal quotations may be made only on a determination by the City Council that potential bidders were given a reasonable opportunity to submit quotes.

5. **Procurements Over \$50,000.** All procurements for over fifty thousand dollars value shall be awarded by the City Council based on formal bids or proposals.

The advertisement for bids or proposals shall be published at least once in a newspaper of general circulation in the Dunes City area and if the proposed procurement is for a public improvement over fifty thousand dollars value, the solicitation shall also be published in a trade newspaper of general state-wide circulation.

F. **Contracts Subject to Award at Solicitation Agent's Discretion.** Subject to Subsection 33.005.D.1, the following classes of contracts may be awarded in any manner that the Solicitation Agent deems appropriate to Dunes City's needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.

1. **Advertising.** Contracts for the placing of notice or advertisements in any medium.

2. **Amendments.** Contract amendments shall not be considered to be separate contracts if made in accordance with the Public Contracting Regulations.

3. **Animals.** Contracts for the purchase of animals.

4. **Contracts Up to \$500.** Contracts of any type for which the contract price does not exceed \$500 without a record of the method of award.

5. **Copyrighted Materials; Library Materials.** Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.

6. **Equipment Repair.** Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

7. **Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.

8. **Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

9. **Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by the Dunes City.

10. **Sole Source Contracts.** Contracts for goods or services that are available from a single source may be awarded without competition.

11. **Specialty Goods for Resale.** Contracts for the purchase of specialty goods by Dunes City for resale to consumers.

12. **Sponsor Agreements.** Sponsorship agreements, under which Dunes City receives a gift or donation in exchange for recognition of the donor.

13. **Structures.** Contracts for the disposal of structures located on Dunes City-owned property.

14. **Renewals.** Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.

15. **Temporary Extensions or Renewals.** Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than a contract for public improvements.

16. **Temporary Use of Dunes City-Owned Property.** Dunes City may negotiate and enter into a license, permit or other contract for the temporary use of Dunes City-owned property without using a competitive selection process if:

a. The contract results from an unsolicited proposal to Dunes City based on the unique attributes of the property or the unique needs of the proposer;

b. The proposed use of the property is consistent with Dunes City's use of the property and the public interest; and

c. Dunes City reserves the right to terminate the contract without penalty, in the event that Dunes City determines that the contract is no longer consistent with Dunes City's present or planned use of the property or the public interest.

17. **Used Property.** With approval by the City Council, the Solicitation Agent, for procurements up to \$20,000, and the Purchasing Manager, for procurements in excess of \$20,000, may contract for the purchase of used property by negotiation if such property is suitable for Dunes City's needs and can be purchased for a lower cost than substantially similarly new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by Dunes City. The Purchasing Manager shall record the findings that support the purchase.

18. **Utilities.** Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities.

G. Contracts Required by Emergency Circumstances.

1. **In General.** When the Mayor determines that immediate execution of a contract is necessary to prevent substantial damage or injury to persons or property, the official may execute the contract without competitive selection and award or City

Council approval, but, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

2. **Reporting.** The Mayor shall, as soon as possible, in light of the emergency circumstances, (1) document the nature of the emergency; the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of Dunes City and the public, and (2) notify the City Council of the facts and circumstances surrounding the emergency execution of the contract.

3. **Emergency Public Improvement Contracts.** A public improvement contract may only be awarded under emergency circumstances if the City Council has made a written declaration of emergency. Any public improvement contract award under emergency conditions must be awarded within 60 days following the declaration of an emergency unless the City Council grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the City Council may waive the requirement for all or a portion of required performance and payment bonds.

H. **Federal Purchasing Programs.** Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration (“GSA”) as provided in this subsection.

1. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the City Council. The Solicitation Agent shall provide the Purchasing Manager with a copy of the letter, memorandum or other documentation from GSA establishing permission to Dunes City to purchase under the federal program.

2. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.

3. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to Dunes City.

4. If a single purchase of goods or services exceeds \$50,000, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for Dunes City. This paragraph does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

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

J. **Surplus Property.**

1. **General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of Dunes City. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to Dunes City. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.

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

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

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

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

e. **Fixed Price Sale.** The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.

f. **Trade-In.** By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.

g. **Donation.** By donation to any organization operating within or providing a service to residents of Dunes City which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

2. **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.

3. **Personal-Use Items.** An item (or indivisible set) of specialized and personal use, other than police officer's handguns, with a current value of less than \$100 may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the City Council.

4. **Restriction on Sale to Dunes City Employees.** Dunes City employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

5. **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, Dunes City shall make, execute and deliver, a bill of sale signed on behalf of the Dunes City conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

K. **Concession Agreements.**

1. **General.** No part of a Concession Agreement shall contain or constitute a waiver of any generally applicable rules, code provisions or requirements of Dunes City concerning regulation, registration, licensing, inspection, or permit requirements for any construction, rental or business activity.

2. **Classes of Contracts Eligible for Award Without Competition.** The following concession agreements may be awarded by any method deemed appropriate by the Solicitation Agent, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

a. **Contracts Under \$5,000.** Contracts under which the Solicitation Agent estimates that receipts by Dunes City will not exceed \$5,000 in any fiscal year and \$50,000 in the aggregate.

b. **Single Event Concessions.** Concessions to sell or promote food, beverages, merchandise or services at a single public event shall be awarded based on any method determined by the Purchasing Manager to provide a fair opportunity to all persons desiring to operate a concession, but in which the promotion of the public interest and success of the event shall be of predominant importance.

3. **Competitive Award.** Concession agreements solicited by Dunes City for the use of designated public premises for a term greater than a single event shall be awarded as follows:

a. **Small Concessions.** For Concession Agreements for which the concessionaire's projected annual gross revenues are estimated to be \$500,000 or less, the Purchasing Manager has discretion to use either an informal solicitation or formal request for proposals process applicable to contracts for personal services. If the proposals received indicate a probability that the concessionaire's annual gross revenues will exceed \$500,000, the Solicitation Agent may, but shall not be required to, reissue the solicitation as a request for proposals.

b. **Major Concessions.** Concession agreements for which the concessionaire's projected annual gross revenues under the contract are estimated to exceed \$500,000 annually shall be awarded using a request for proposals.

33.030 Public Contracts - Informal Solicitation Procedures. Dunes City may use the following procedure for informal solicitations in lieu of the procedures set forth in the Model Rules.

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

1. **Solicitation of Offers.** When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to persons selected by the Solicitation Agent, or in any other manner which the Solicitation Agent deems suitable for obtaining competitive quotes or proposals. The Solicitation Agent shall deliver or otherwise make available to potential offerors, a written scope of work, a description of how quotes or proposals are to be submitted and description of the criteria for award.

2. **Award.** The Solicitation Agent shall attempt to obtain a minimum of three written quotes or proposals before making an award. If the award is made solely on the basis of price, the Solicitation Agent shall award the contract to the responsible offeror that submits the lowest responsive quote. If the award is based on criteria other than, or in addition to, price, the Solicitation Agent shall award the contract to the responsible offeror that will best serve the interest of Dunes City, based on the criteria for award.

3. **Records.** A written record of all persons solicited and offers received shall be maintained. If three offers cannot be obtained, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes.

B. **Qualified Pools.**

1. **General.** To create a qualified pool, the City Council may invite prospective contractors to submit their qualifications to Dunes City for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including personal services, and public improvements.

2. **Advertisement.** The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at Dunes City's main office and on its website.

3. **Contents of Solicitation.** Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be

maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of Dunes City

4. **Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which Dunes City and all pool participants are parties. The Contract shall contain all terms required by Dunes City, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that Dunes City may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any Dunes City contract.

5. **Use of Qualified Pools.** Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the City Council shall award all contracts for goods or services of the type for which a qualified pool is created from among the pool's participants, unless it determines that best interests of Dunes City require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.

6. **Amendment and Termination.** The City Council may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.

7. **Protest of Failure to Qualify.** The Purchasing Manager shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to City Council in the manner described in Section 33.070.

33.040 Public Contracts - Use of Brand Name Specifications for Public Improvements.

A. **In General.** Specifications for contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:

1. It is unlikely that such exemption will encourage favoritism in the awarding of Public improvement Contracts or substantially diminish competition for Public improvement Contracts; or

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 Dunes City or

3. There is only one manufacturer or seller of the product of the quality required; or

4. Efficient utilization of existing equipment, systems or supplies requires the acquisition of compatible equipment or supplies.

B. Authority of Purchasing Manager. The Purchasing Manager shall have authority to determine whether an exemption for the use of a specific brand name specification should be granted by recording findings that support the exemption based on the provisions of Subsection 33.040.A.

C. Brand Name or Equivalent. Nothing in this Section prohibits Dunes City from using a "brand name or equivalent" specification, from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by Dunes City or from establishing a qualified product list.

33.050 Public Contracts - Bid, Performance and Payment Bonds.

A. Solicitation Agent May Require Bonds. The Solicitation Agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.

B. Bid Security. Except as otherwise exempted by the City Council, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed \$25,000 shall require bid security. Bid security for a request for proposal may be based on Dunes City's estimated contract price.

C. Performance Bonds.

1. **General.** Except when required by the City Council or as provided by this Chapter, all public contracts under \$25,000 are exempt from the requirement for the furnishing of a performance bond.

2. **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$25,000, the contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of Dunes City and any public agency that is providing funding for the project for which the contract was awarded.

3. **Emergency Exemptions.** For contracts necessitated by emergency, or where the interest or property of the city would suffer material injury or delay or for other

good cause, the Council, or as the case may be, the Mayor or President of the Council who awards the contract, may waive the requirements for bid security and good and sufficient bond to assure performance of the contract and payment of the obligations incurred in the performance, if a declaration of emergency is or other sufficient findings are made prior to awarding the contract.

4. **Cash-in-Lieu.** The Purchasing Manager may permit the successful offeror to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

D. Payment Bonds.

1. **General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.

2. **Contracts Involving Public Improvements.** Prior to executing a contract for more than \$50,000 that includes the construction of a public improvement, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

E. **Design/Build Contracts.** If the public improvement contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract, for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.

F. **Construction Manager/General Contractor Contracts.** If the public improvement contract is with a single person to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by subsection A of this Section upon execution of an amendment establishing the guaranteed maximum price. Dunes City shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

G. **Surety; Obligation.** Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to Dunes City or to the public agency or agencies for whose benefit the bond is issued, as

specified in the solicitation documents, and shall be in a form approved by the Purchasing Manager.

H. **Emergencies.** In cases of emergency, or when the interest or property of Dunes City probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions of Section 33.050.C.4, unless the City Council requires otherwise.

33.060 Public Contracts - Electronic Advertisement of Public Improvement

Contracts. In lieu of publication in a newspaper of general circulation in Dunes City's metropolitan area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement may be published electronically by posting on Dunes City's website, provided that the following conditions are met:

A. The placement of the advertisement is on a location within the website that is maintained on a regular basis for the posting of information concerning solicitations for projects of the type for which the invitation to bid or request for proposals is issued; and

B. The Solicitation Agent determines that the use of electronic publication will be at least as effective in encouraging meaningful competition as publication in a newspaper of general circulation in the Dunes City metropolitan area and will provide costs savings for Dunes City or that the use of electronic publication will be more effective than publication in a newspaper of general circulation in Dunes City's metropolitan area in encouraging meaningful competition.

33.070 Appeal of Debarment or Prequalification Decision.

A. **Right to Hearing.** Any person who has been debarred from competing for Dunes City contracts or for whom prequalification has been denied, revoked or revised may appeal the City's decision to the City Council as provided in this Section.

B. **Filing of Appeal.** The person must file a written notice of appeal with the Purchasing Manager within three business days after the prospective contractor's receipt of notice of the determination of debarment, or denial of prequalification.

C. **Notification of City Council** Immediately upon receipt of such notice of appeal, the Purchasing Manager shall notify City Council of the appeal.

D. **Hearing.** The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:

1. Promptly upon receipt of notice of appeal, Dunes City shall notify the appellant of the time and place of the hearing;

2. The City Council shall conduct the hearing and decide the appeal within 30 days after receiving notice of the appeal from the Purchasing Manager; and

3. At the hearing, the City Council shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment, and any evidence provided by the parties.

E. **Decision.** The City Council shall set forth in writing the reasons for the decision.

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

G. **Judicial Review.** The decision of the City Council may be reviewed only upon a petition in the circuit court of Lane County filed within 15 days after the date of the City Council's decision.

Section 2. Severability. If any phrase, clause, or part of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

Section 3. Emergency Clause. This Ordinance, being essential to the preservation of the health, safety, welfare and financial integrity of the City because amendments to Oregon Revised Statutes Chapter 279, from House Bill 279, become effective on March 1, 2005, and it is essential for Dunes City to have a local public contracting process in place as soon as possible following the effective date of House Bill 279, an emergency is hereby declared to exist and this Ordinance is effective on March 10, 2005.

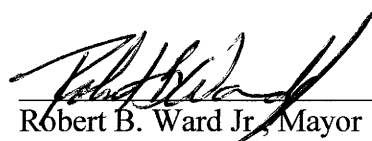
ADOPTED BY THE DUNES CITY COUNCIL THIS 10th DAY OF MARCH, 2005.

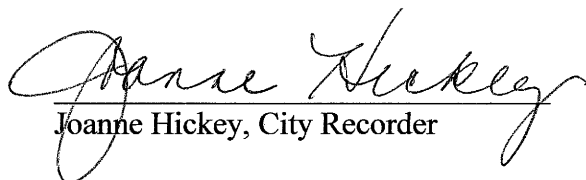
Ayes: 6

Nays: 0

Abstain: _____

Absent: _____


Robert B. Ward Jr., Mayor


Joanne Hickey, City Recorder