



ARA 2.01 PROCUREMENT RULES FOR THE AUDITOR'S OFFICE

A. Purpose and General Provisions

1. Introduction.

- a. Pursuant to Portland City Charter Article 5, Section 2-506(d), the Auditor has all of the authority state law grants to a contracting agency for the Procurement of Goods & Services and Professional, Technical, and Expert services.
- b. The Auditor's Procurement practices and procedures will generally follow the Code of the Portland City Code (PCC) Chapters 5.33 (Goods & Services) and 5.68 (Professional, Technical, and Expert Services – PTE). Chapter 5.68 adopts by reference the City's PTE Manual, which governs the processes of selection, Award, Protest and related matters for PTE Services.
- c. However, the Auditor has determined that some of the rules contained in those chapters impair the Auditor's independence or the Auditor's ability to carry out the Auditor's duties with respect to Procurement. Therefore, the Auditor adopts these administrative rules to govern the Auditor's Procurement of PTE and Goods & Services and PTE Services.

~~2. Relationship to PCC Chapters 5.33 and 5.68. Procurement in the Auditor's Office will follow the provisions of Chapters 5.33 and 5.68 of the PCC, including the PTE Manual, except as otherwise provided in these rules. If there is any conflict between these rules and Chapters 5.33 or 5.68 of the PCC, or the PTE Manual, these rules will prevail.~~

~~3.2.~~ Delegation. Unless limited or prohibited by state law, the Auditor may delegate any authority granted to the Auditor in these rules.

4.3. Definitions. Capitalized terms in these rules have specific definitions. In addition to the definitions contained in various sections of the PCC and the PTE Manual, the following words are defined for the purposes of these rules.

a. **Auditor**: The City Auditor or designee.

b. **Bureau Director**: Notwithstanding anything to the contrary in PCC 5.33, PCC 5.68, or the Manuals, the Auditor is in charge of and responsible for all procurement initiated by the Auditor's Office. Any authority these sources vest in Bureaus, Offices, or Bureau Directors is vested in the Auditor for purposes of procurements conducted pursuant to the Auditor's procurement authority.

~~b.c.~~ **Chief Procurement Officer**: Notwithstanding ~~PCC 5.33.010(A)(10), anything to the contrary in PCC 5.33, PCC 5.68, or the Manuals,~~ the Auditor is in charge of and responsible for all procurement initiated by the Auditor's Office and is the Chief Procurement Officer for the Auditor's Office.

~~e.d.~~ **Informal Solicitation**: A Solicitation that is not based on an Invitation to Bid or a Request for Proposals, but rather is based upon an oral or succinct written request for an Offer.

~~d.~~ **PTE Manual**: The "Professional, Technical and Expert Services Contracting Manual" created, amended from time to time and published by the Procurement Services Division of the Bureau of Revenue and Financial Services.

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City Procurement Manual. The "City Procurement Manual" created, amended from time to time and published by the Procurement Services Division of the Bureau of Revenue and Financial Services.

B. Authority

f. _____

g. **Manuals**. The PTE and City Procurement Manuals when referred to jointly.

B. Variances to City Procurement Policies

1. Relationship to PCC Chapters 5.33 and 5.68. Procurement in the Auditor's Office will generally follow the provisions of Chapters 5.33 and 5.68 of the Portland City Code, as well as the Manuals, except as otherwise provided in these rules. If there is any conflict between these rules and Chapters 5.33 or 5.68 of the City Code, or the Manuals, these rules will prevail.

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~~3.2.~~ Authority. The Auditor will serve as the Chief Procurement Officer for the Procurement of PTE Services and Goods & Services Contracts initiated by the Auditor's Office. Portland City Code Sections 5.33.040 and 5.68.035, which govern the authority of Chief Procurement Officer, are not applicable to the Auditor. The Chief Procurement Officer for the Auditor's Office may:

- a. Advertise or otherwise solicit Bids or Proposals for Goods & Services and PTE Services when the anticipated amount is included in the budget for the Auditor's Office.
- b. Award and execute Contracts and Price Agreements for the purchase or lease of Goods & Services and PTE Services. When the [City Code](#) or [PTE Manual](#) ~~requires~~[Manuals require](#) the "Chief Procurement Officer" to review or approve a solicitation, those functions will be performed by the Auditor as the Chief Procurement Officer for the Auditor's Office.
- c. Authorize and execute amendments for Contracts and Price Agreements in accordance with state law.
- d. Authorize final payment for Contracts and Price Agreements after confirming that all Work is complete and after the Auditor's Office accepts the Work.
- e. Establish forms and related documents for Procurement, including agreements and Solicitation Documents. All Contracts, Price Agreements and

purchase orders shall be in writing. The Auditor may use forms the City has drafted, may edit those forms, or may draft new forms for the Auditor's use. The Auditor may approve the use of a third-party's form on a case-by-case basis. The Auditor has the discretion to seek further review by legal counsel of the Auditor's choice, including by the City Attorney or the Auditor's General Counsel.

f. Resolve Protests related to the Procurement activities of the Auditor's office.

g. Exemptions. Take any other actions that PCC 5.33, PCC 5.68 and/or the Manuals assign to the Chief Procurement Officer or designee of the Chief Procurement Officer.

3. Approval as to form. Legal counsel of the Auditor's choosing will approve the form of all Contracts and shall ensure that all required documentation is present before the Contract is executed. The Auditor has the discretion to determine whether the approval will be done by the City Attorney, the Auditor's General Counsel, or other counsel retained by the Auditor.

4. Outside Legal Services. The Auditor's Office does not follow the process set forth in PCC 5.68.060 ("Outside Legal Services") as the Auditor has Charter authority to retain or employ independent legal counsel, and if the Auditor does so, the Auditor is the client and is the entity entitled to the benefits and privileges of being the client.

5. Price Agreements. The Auditor may, in the Auditor's discretion, make purchases pursuant to a Price Agreement that the City has awarded to a Contractor, but the Auditor is not required to do so if the Auditor believes it not to be in the best interest of the Auditor's Office and/or believes it could compromise the independence of the Auditor's Office.

6. Emergency Procurement Contracts. The Auditor may award a contract as an Emergency Procurement without the use of competitive sealed Bidding or competitive sealed Proposals as authorized by ORS 279B.050(2) when the requirements of ORS 279B.080 are met. The Auditor will follow the procedures set forth in PCC 5.33.130 for Emergency Procurements but the Auditor will be the

[person that authorizes the emergency procurement and may award Emergency Procurement Contracts without approval by City Council. The Auditor will publish any Emergency Procurement Contracts awarded on the Auditor's Office's website.](#)

4.7. [Special Procurements](#). In accordance with [theCity](#) Code and state law, the City may Award certain Contracts directly to a vendor or consultant without a competitive process preceding the Award. These are known as "Special Procurements" ~~for Goods & Services Contracts and "exemptions" for PTE Services Contracts.~~ In addition to the Special Procurements and exemptions listed in Code Sections 5.33.220(D) and 5.68.020(B), the Auditor exempts from any competitive requirement the Services of an on-call hearings officer to conduct hearings.

C. Process

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3.1. ~~Methods.~~ [Code Chapter PCC 5.33, PCC 5.68,](#) and the [PTE Manual](#) ~~Manuals~~ permit a variety of methods to procure Goods & Services and PTE Services. For instance, pursuant to Section 5.33.190, an informal quotation process may be used to obtain the Goods or Services if the value does not exceed \$150,000. With respect to PTE Services, the PTE Manual generally requires the use of a Request for Proposals, depending on the estimated costs of the Procurement.

- a. PTE Services [Solicitations](#). For PTE Services, the Auditor's Office will follow the Procurement methods identified in Section 8 of the PTE Manual, with the following exceptions to the dollar thresholds identified in Section ~~86~~(c):
 - i. The Auditor may utilize the "Small" Contract procedure identified in Section 8(c) for any Procurement of PTE Services with an estimated value not exceeding \$25,000.
 - ii. The Auditor may utilize the "Intermediate" Contract procedure identified in Section 8(c) for any Procurement of PTE Services with an estimated value greater than \$25,000 but not exceeding \$150,000.

- iii. The Auditor shall utilize the "Formal" Contract procedure identified in Section 8(c) for any Procurement of PTE Services with an estimated value greater than \$150,000.
- b. Elevating Procurement. The Auditor may elevate any procurement to a more formal method, even if the Auditor is authorized to utilize a less formal method.

4.2. Offer Evaluation and Award. The standards described in Section 5.33.610 of the Code and ~~Sections 9-11 of~~ the PTE Manual are not applicable to the Auditor's evaluation and Award of a Contract. Instead, the Auditor will utilize the following standards:

- a. Evaluations.
 - i. For Bids, the Auditor will evaluate Offers in accordance with the Invitation to Bid and ORS 279B.055(6).
 - ii. For Proposals, the Auditor will evaluate Offers in accordance the Request for Proposals and ORS 279B.060(14).
 - iii. For Informal Solicitations, the Auditor will evaluate Offers in an equitable manner in order to determine which offer is most Advantageous to the Auditor and the City.
- b. Awards.
 - i. If a Contract is solicited through an Invitation to Bid, the Auditor shall Award the Contract to the Responsible Offeror submitting the lowest, Responsive Bid.
 - ii. If a Contract is solicited through a Request for Proposals, the Auditor shall Award the Contract to the Responsible Offeror submitting the Proposal that is most Advantageous to the Auditor and the City as determined by

~~the~~ evaluation criteria included in the Request for Proposal: or otherwise developed by the Auditor for purposes of awarding the Contract.

- iii. If a Contract is solicited through an Informal Solicitation, the Auditor shall Award the Contract to the Offeror whose quote or Offer is most Advantageous to the Auditor and the City.

5.3. Protests. Chapters 5.33 and 5.68 of the PCC permit Affected Persons to Protest various aspects of the Procurement process. For example, an Affected Person may Protest the terms and conditions of a Procurement and Protest the Award of a Contract. Specifically, the PCC provisions governing Protests of Procurements are Sections 5.33.700 through 5.33.790 for Goods & Services and 5.68.015 (and Section 10 of the PTE Manual) for PTE Services. The provisions governing Protests in the Code and the PTE Manual are not applicable to Protests of Auditor's Office-initiated Procurements. Instead, the Auditor will utilize the following standards:

- a. Appointment. With respect to any Protest, the Auditor may appoint a third-party to consider and resolve the Protest. The third-party may be another City official or employee or a person who is not a City official or employee. Otherwise, the Auditor will consider and resolve the Protest if no conflict exists preventing the Auditor from doing so.
- b. Solicitation Protests. A prospective Offeror may file a Protest if the prospective Offeror believes the Solicitation, including any proposed Contract terms, is contrary to law, unnecessarily restrictive or improperly specifies a brand name. If a prospective Offeror fails to file a Solicitation Protest in accordance with this subsection, the prospective Offeror may not challenge the Award on the grounds identified under this subsection. Unless a different time period is stated in the Solicitation Document, a Solicitation Protest must be filed no later than seven days prior to Closing. The Auditor will accept, consider and resolve a Solicitation Protest under the following circumstances:
 - i. The Solicitation Protest is in writing and is timely filed;

- ii. The prospective Offeror identifies the Solicitation that is the subject of the Protest;
 - iii. The Protest identifies the grounds that allegedly demonstrate the Solicitation is unlawful, unnecessarily restrictive or improperly specifies a brand name;
 - iv. The Protest contains evidence or documentation that supports the grounds on which it is based; and
 - v. The Protest includes a statement regarding the relief the prospective Offeror seeks.
- c. Award Protests. An Offeror may Protest the Award or the notice of intent to Award, whichever occurs first, within seven days of the Award or the notice of intent to Award, unless a different time period is stated in the Solicitation Document. The Auditor will accept, consider and resolve an Award Protest under the following circumstances:
- i. The Award Protest is in writing and is timely filed;
 - ii. The Offeror demonstrates it is adversely affected because the Offeror would be eligible for the Award if the Auditor affirmed the Protest; and
 - iii. The Offeror can show:
 - A. All lower Bids or higher ranked Proposals are nonresponsive;
 - B. The Auditor's Office evaluation of Offers or the Auditor's Award violates ORS Chapters 279A or 279B;
 - C. The Auditor's Office failed to conduct the evaluation of Offers in accordance with the Solicitation Document; or

- D. The Auditor's Office abused its discretion in rejecting the Offer as nonresponsive.
- d. Response to Protest. The Auditor will reject in writing any Protest that does not comply with the provisions in these rules governing Protests. For Protests that do comply with the provisions in these rules, the Auditor will issue a written decision responding to the Protest in a timely manner.
- i. For a Solicitation Protest, the Auditor will issue a decision responding to the Protest at least three days before Closing, unless the Auditor believes more time is needed to consider and resolve the Protest. In that case, the Auditor will issue an addendum advising prospective Offerors of the new Closing date.
- e. Alternative Protest Procedures. In the Auditor's discretion, the Auditor may impose procedures for Protests that differ from the procedures described in these rules. The Auditor may decide to impose a different procedure on a case-by-case basis. If the Auditor imposes a different Protest procedure for a given Solicitation, the Auditor will expressly describe that procedure in the Solicitation Document.

Auditor's Office Administrative Rule Information and History

Questions about this administrative rule may be directed to the [Auditor's Office's Management Services Division](#).

Adopted by the City Auditor December 11, 2017.

Amended by the City Auditor on November 7, 2023, as an interim rule for a period of no greater than 180 days.