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ORDINANCE NO. 4143

TITLE: AN ORDINANCE ADOPTING RULES FOR THE LOCAL CONTRACT REVIEW BOARD OF THE CITY OF ALBANY AND DECLARING AN EMERGENCY.

Section 1: Purpose.

These rules are promulgated by the Local Contract Review Board, as designated by Ordinance No. 3890 pursuant to the authority granted to that board by ORS Chapter 279, for the purpose of establishing the rules and procedures for contracts entered into by the City of Albany.

Section 2: Definitions.

The following words and phrases mean:

Board. The City Contract Review Board as established by ordinance No. 3890.

Competitive Bidding. The solicitation of competitive offers which follow the formal process for advertising, bid and bid opening required by ORS Chapter 279 and applicable rules of the board.

Competitive Quotes. The solicitation of offers from competing vendors. The solicitation may be by advertisement or a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

Public Contract. Any purchase, lease or sale by the City of personal property, public improvements or services other than agreements which are exclusively for personal services.

Public Contracting Officer. The council or the person or persons designated by the council to negotiate public contracts for the city.

Section 3: Competitive Bids; Exemptions.

All contracts shall be based upon competitive bids except:

(1) Contracts with public agencies. Contracts made with other public agencies or the federal government.

(2) Personal service contracts. Contracts which are exclusively for personal services. Such contracts may include incidental materials such as written reports or opinions, architectural or engineering renderings, and other supplemental materials required for providing the services.

(3) Contracts under \$5,000.00. Contracts for purchase or sale where the amount does not exceed \$5,000.00.

(a) Where contracts are for more than \$2,500, at least three competitive quotes shall be obtained where practicable. A written record shall be made containing the source and amount

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of the quotes received.

(b) Where contracts are for more than \$500 but less than \$5,000, competitive quotes may be obtained where practicable.

(c) No contractor may be awarded, in the aggregate, within the fiscal year, contracts in excess of \$20,000 under this subsection without competitive bidding. In computing the aggregate under this subsection, awards under \$500 need not be included.

(4) Contracts for price regulated items. Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.

(5) Allocated petroleum products. Contracts for the purchase of petroleum products if such purchase is required to be made from a particular supplier as a result of a federal allocation or if purchase from other than an established supplier could jeopardize an allocation or future supply of such petroleum products.

(6) Copyrighted materials. Contracts for the purchase of copyrighted materials where there is only one supplier available for such goods.

(7) Advertising contracts. Contracts for the purchase of advertising, including that intended for the purpose of giving public notice.

(8) Investment contracts. Contracts for the purpose of investment of public funds or the borrowing of funds.

(9) Requirements contracts. Purchases of goods or services from a supplier when the price of the goods and services has been established under a previously competitive bid requirements contract whereby it is agreed to purchase requirements or an anticipated need at a predetermined price.

(10) Single seller or price of product required. Contracts for purchase where there is only one seller or price of a product of the quality required available within a reasonable purchase area.

(11) Data processing contracts. Contracts for purchase or acquisition of data processing (hardware or software) may be let without competitive bid subject to the following conditions:

(a) Prior to selection of the contractor, reasonable efforts have been made to solicit proposals from all known vendors. If the amount of the contract exceeds \$5,000, written proposals shall be by the Data Systems Division of the Executive Branch of the State of Oregon or by publication of an advertisement in a major trade publication of general circulation.

(b) The contractor is selected on the basis of the most competitive offer in both the cost and quality of the product to be purchased or acquired.

(c) Whenever a contract for data processing let pursuant to this exemption exceeds \$2,500, a written report shall be

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submitted to the board. The report shall include:

(i) The name of the company and, if applicable, the name of the retail vendor;

(ii) The reasons why competitive bidding was not appropriate; and

(iii) A description of the reasons why the contractor was selected and other proposals rejected.

(12) Insurance contracts.

(a) Contracts for the purchase of insurance where the public agency either (1) appoints an agent of record to perform insurance services on its behalf or (2) solicits proposals from insurance agents for the purpose of acquiring specific insurance contracts.

(13) Contract amendments. Any contract amendment, including change orders, extra work, field orders, or other change in the original specifications which changes the original contract price or alters the work to be performed, may be made with the contractor subject to the following conditions:

(a) The original contract imposes a binding obligation on the parties covering the terms and conditions regarding changes in the work;

(b) The amended contract does not substantially alter the scope or nature of the project; or

(c) If the amendment has the effect of substantially altering the scope or nature of the project, the amount of the aggregate cost change resulting from all amendments creating such new obligations shall not exceed 10% of the initial contract.

(14) Equipment maintenance. Contracts for the purchase of services, equipment or supplies for the maintenance, repair or conversion of existing equipment are exempt if required for the efficient utilization of the equipment. Where practicable, competitive quotes shall be obtained.

(15) Asphaltic concrete and rock. Contracts for the purchase of asphaltic concrete and rock where the material is to be used for maintenance. Where practicable, competitive quotes shall be obtained.

(16) Bids obtained by the State for same materials. Contracts for the purchase of materials where competitive bids for the same materials have been obtained by the State of Oregon, and the contract is awarded to the same party that the state dealt with, and the price of the materials is the same or lower than that paid by the state.

(17) Sale of personal property. Personal property may be disposed of without competitive bidding under any of the following conditions:

(a) There are specific statutory or ordinance procedures for the sale of the type of property involved, and the property is disposed of according to those procedures;

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(b) The property has a value of less than \$500 (unless otherwise provided by statute or ordinance); or

(c) The public contracting officer finds that competitive bids would be inappropriate for the type of property involved. A report of all sales made under this subsection shall be made to the board and shall include the reasons that competitive bids were deemed inappropriate.

(18) Franchise agreements. Where practicable competitive quotes shall be obtained.

Section 4: Exemptions for Additional Contracts:

The board may, by resolution exempt other contracts from competitive bidding if it finds:

(1) The lack of bids will not result in favoritism or substantially diminish competition in awarding the contract; and

(2) The exemption will result in substantial cost savings. In making such findings, the board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the board may deem appropriate.

Section 5: Emergency Contracts:

A contract may also be exempted from competitive bidding if the council, by majority vote of members present, determines that emergency conditions require prompt execution of the contract. A determination of such an emergency shall be entered into the record of the meeting at which the determination is made.

Section 6: Brand Name Specification in Contracts.

Specifications for contracts shall not require any product by any brand name or mark, nor the product of any particular manufacturer or seller, unless the product is exempt from this requirement under the provisions of subsection (1) or (2). However, this section shall not be construed to prevent reference in the specifications to a particular product as a description of the type of item required.

(1) A contract shall be exempt from the requirement of this section under any of the following conditions:

(a) The specification is for a specific copyrighted product. This exemption does not include patented or trade mark goods.

(b) 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 manufacturer or seller, a contract 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

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costs related to quality or conversion;

(ii) Prior to awarding the contract, reasonable efforts have been made to notify all known vendors of competing or comparable products of the intended specifications; and such vendors have been invited to submit competing proposals. If the amount of the purchase does not exceed \$5,000, such notice and invitation may be informal. If the amount of the purchase exceeds \$5,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timed to allow competing vendors a reasonable opportunity to make proposals; and

(iii) If the amount of the purchase exceeds \$2,500 and the contract is not also pursuant to the data processing exemption in Section 3(9), the public contracting officer shall notify the board of the specification. The notice shall be written and include a brief description of the proposed contract, a detailed description of the reasons why the product and/or the seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts made to notify and invite proposals from competing vendors.

(c) When it is impractical to create specific design or performance specifications for a type of product to be purchased, a list of approved products by reference to particular manufacturers or sellers may be specified in accordance with the following product prequalifications procedure:

(i) Reasonable efforts shall be made to notify all known manufacturers or vendors of competitive products of the intention to accept applications for inclusion in the list of prequalified products. Notification shall include advertisement in a trade journal or statewide distribution when possible. In lieu of manufacturers appearing on the appropriate list maintained by the Department of General Services of the State of Oregon.

(ii) Applications for prequalification of similar products are permitted up to 15 days prior to advertisement for bids on the product.

(iii) If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, the applicant shall be notified in writing. The applicant may, within three days after receipt of the notice, appeal the denial or revocation to the board according to the procedure in Section 9.

(2) The board may by resolution exempt certain additional products or classes of products upon any of the following findings:

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(a) It is unlikely that such exemption will encourage favoritism in the awarding of the contract or substantially diminish competition.

(b) 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.

(c) There is only one manufacturer or seller of the product of the quality required.

(d) Efficient utilization of existing equipment or supplies require the acquisition of compatible equipment or supplies.

Section 7: Bidder Disqualification.

(1) The public contracting officer may disqualify any person as a bidder on a contract if:

(a) The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability. If no performance bond is required, the public contracting officer may require such information as he deems necessary to determine the bidder's financial ability;

(b) The person does not have equipment available to perform the contract;

(c) The person does not have available personnel of sufficient experience to perform the contract; or

(d) The person has repeatedly breached contractual obligations to public and private contracting agencies.

(2) A bidder who has been disqualified shall, within three business days after receiving notice of disqualifications, in writing notify the public contracting officer that he wishes to appeal his disqualification.

Section 8: Bid Rejection.

The public contracting officer may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject all bids if it is in the public interest to do so.

Section 9: Appeals.

The procedures for appeals shall be as follows:

(1) Notices of appeal need not be in any particular form so long as they are in writing addressed to the public contracting officer.

(2) Immediately upon receipt of such written notice of appeal, the public contracting officer shall inform the board.

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(3) Upon receipt of notice of appeal, the board shall notify the person appealing of the time and place of the hearing.

(4) The board shall conduct the hearing according to the provisions of ORS 279.045(3) and decide the appeal within 10 days after receiving the notification and shall set forth in writing the reasons for its decision.

Section 10: Mandatory Prequalification.

Persons desiring to bid for contracts to perform the classes of public improvements described in (1) below shall submit a completed prequalification statement to the public contracting officer. This requirement shall apply only where the public improvement contract amount exceeds \$ 5,000.00,

(1) The classes of work for which prequalification is required are as follows:

- Highway, road and street improvements
- Concrete paving and flatwork
- Rock crushing
- Bituminous oiling
- Bituminous paving
- Reinforced concrete construction
- Bridge and overcrossing construction
- Dredging and piledriving
- Excavation and grading
- Sewer construction
- Sewage treatment plants
- Sewage pumping stations
- Water lines
- Water reservoirs
- Water tanks - steel
- Water tanks - concrete
- Electrical wiring
- Traffic signalization
- Outdoor illumination
- Building construction
- Building alteration and repair
- Demolition and related excavation and clearing
- Painting and decorating
- Plumbing
- Heating
- Roofing
- Air Conditioning
- Irrigation and sprinkling systems
- Drainage
- Landscaping

(2) Applications for prequalification shall be submitted on the forms prescribed by the State Public Contract Review Board at the times designated by the board for such prequalification.

(3) Upon establishment of the applicant's qualification, the public contracting officer shall issue a qualification statement. The statement shall inform the applicant of the nature and type of contracts and the time period for which the qualification is valid as well as any other conditions which may be imposed on the qualifi-

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cation and advise the applicant to notify the public contracting officer promptly if there has been any substantial change of conditions or circumstances which would make any statement contained in the prequalification application no longer applicable or untrue. The qualification statement shall also inform the applicant that if he desires to appeal the conditions of the prequalification varying his application, written notice must be given to the public contracting officer within three business days after receipt of the notice.

(4) If the public contracting officer does not qualify an applicant, he shall give written notice to the applicant stating the reasons that prequalification has been denied and informing the applicant of his right to appeal the decision within three business days after receipt of the notice.

(5) Upon discovery that a person prequalified is no longer qualified, the public contracting officer shall send notification of proposed revocation of qualification to the person. The notice shall state the reason for revocation and inform the person that the revocation will be effective 10 days from the date of the notice unless evidence that the deficiency has been corrected or notice of intent to appeal the revocation has been filed with the public contracting officer within 10 days.

Section 11: Retainage on Public Contracts.

(1) The approved securities which shall be acceptable in lieu of retainage fees are as follows:

(a) Bills, certificates, notes or bonds of the United States.

(b) Other obligations of the United States or its agencies.

(c) Obligations of any corporation wholly owned by the federal government.

(d) Indebtedness of the Federal National Mortgage Association.

(e) General obligation bonds of the State of Oregon or any political subdivision thereof.

(f) Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association or mutual savings bank duly authorized to do business in Oregon.

(g) Corporate bonds rated "A" or better by a recognized rating service.

(h) General obligation improvement warrants issued pursuant to ORS 287.502.

(2) Deposits in lieu of retainage fees on public contracts shall be allowed as follows:

(a) (i) When a contractor elects to deposit securities with a bank or trust company in lieu of retainage on public contracts, the securities shall be held by the custodian in fully transferable form and under the control of the city.

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(ii) Non-negotiable securities so deposited shall have proper instruments attached to enable the city to effect transfer of title should the contractor be unable to fulfill the contract obligation.

(iii) The custodian bank or trust company shall issue a safekeeping receipt for the securities to the city. The receipt shall describe the securities, the par value, the name of the contractor and project number or other project identification.

(iv) Unless otherwise mutually agreed, the value placed upon said securities shall be market value.

(v) Securities deposited in the manner described above shall be released by the bank or trust company only upon the written instructions and authorization of the city.

(vi) Interest on said securities shall accrue to the contractor.

(b) An escrow agreement mutually acceptable to the contractor and the city and the bank or trust company may be used.

(c) Retainage as accumulated may be deposited in an interest bearing account for the benefit of the public contracting agency. Interest earned on such an account shall accrue to the contractor.

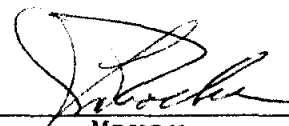
Section 12: Emergency Declared.

Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health and safety of the City of Albany, Oregon, an emergency is hereby declared to exist and this ordinance shall be in full force and effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council: June 28, 1978

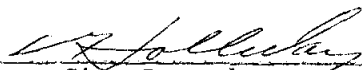
Approved by the Mayor: June 28, 1978

Effective Date: June 28, 1978



Mayor

ATTEST:



City Recorder

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