

BE IT REMEMBERED, that at a regular term of the City Council of the City of Wallowa, State of Oregon, sitting for the transaction of City business, begun and held at the City Hall in the City of Wallowa, in said City and State, on Tuesday of said month and the time fixed by law for holding a regular term of said Council, when were present:

The Honorable Marge Sarmiento, Mayor
[Signature], Council Member
[Signature], Council Member
[Signature], Council Member
[Signature], Council Member

WHEN, on Tuesday, the 12th day of August, 2003, among others the following proceedings were had to-wit:

IN THE MATTER OF ADOPTING)
THE RULES FOR CITY OF WALLOWA)
OF THE LOCAL) ORDINANCE
CONTRACT REVIEW BOARD UNDER)
OREGON REVISED STATUTES,) NO. 333-03
CHAPTER 279)

WHEREAS, 279.055 provides that a City by ordinance may create a Local Contract Review Board for the City, which shall formulate and adopt rules, and

WHEREAS, the provisions of ORS 279.049(5)(a), a public contract agency may elect to establish its own rules for procedure for public contracts, and

WHEREAS, the City states that the model rules adopted by the attorney general under ORS 279.049(5)(a), do not apply to the agency and that the City desires to prescribe its own rules of procedure that the City will use for public contracts, and

WHEREAS, ORS 279.049(5)(b), provides that once the City has adopted its own rules under ORS 279.049(5)(a), that those rules shall be reviewed every two years at the time the attorney general adopts a modification of the model rules to determine if any modifications need to be adopted by the City to insure compliance with statutory changes; and

WHEREAS, under the provisions of ORS 279.015, the Rules exempt certain public contracts or classes of public contracts from the requirements of competitive bidding.

WHEREAS, the City finds that such exemptions will not result in favoritism or substantially diminish competition in awarding contracts and the exemptions will result in substantial cost savings.

NOW THEREFORE, BE IT RESOLVED that the City of Wallowa is appointed as the "Local Contract Review Board", and shall operate as the public contracting agency for all City contracting business and that the following rules are hereby established as "Rules of Local Contract Review Board".

SECTION 1. PURPOSE. These rules are promulgated by the Local Contract Review Board pursuant to the authority granted to the City by ORS Chapter 279, as amended by this Resolution for the purpose of establishing the rules and procedures for contracts entered into by City of Wallowa - the public contracting agency.

SECTION 2. DEFINITIONS AS USED IN THIS RESOLUTION UNLESS THE CONTEXT REQUIRES OTHERWISE:

- A. "Board" The Local Contract Review Board for the City of Wallowa as established by this resolution pursuant to ORS 279.055.
- B. "Commission" The City of Wallowa which is also the Local Contract Review Board.
- C. "Department" means the Department of General Services.
- D. "Director" means the Director of the Department of General Services.
- E. "Public agency" or "Public contracting agency" means any agency of the State of Oregon or any political subdivision including City of Wallowa authorized by law to enter into public contracts or any public body created by intergovernmental agreement.
- F. "Public contract" means any purchase, lease or sale by a public agency of personal property, public improvements or services other than agreements which are for personal service.
- G. "Public Improvement" means projects for construction, reconstruction or major renovation on real property by or for a public agency. "Public Improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

- H. "Requirements contract" means an agreement in which the vendor agrees to supply all the purchaser's requirements that arise for an item or items within a specified time period.
- I. "Price agreement" means the same as requirements contract defined above.
- J. "Service" means work performed to meet a demand, especially work that is not connected with manufacturing a product.
- K. "Service Contract" means a contract that calls primarily for a contractor's time an effort rather than for an end product.
- L. "Request for Proposal" means the solicitation of competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.
- M. "Personal property" means everything subject to ownership which is not real property and has exchangeable value.
- N. "Personal service contracts" means the types of contracts defined in Section 4(K).
- O. "Invitation to bid" means the solicitation of competitive offers in which specification, price and delivery (or project completion) will be the predominant award criteria.
- P. "Competitive bidding" means the issuing of invitations to bid which follow the formal process for advertising, bid, and bid opening required by ORS Chapter 279.
- Q. "Competitive quotes" means the solicitation by the public contracting agency of offers from competing vendors. The solicitation may be by advertisement or by the public contracting agency initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

SECTION 3. GENERAL EXEMPTIONS All Public contracts shall be based upon formal competitive bidding except the following:

- A. Contracts made with other public agencies or the federal government;

- B. Contracts which are for personal services and are covered by Section 4(K);
- C. Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped;
- D. A contract for supplies if the value of the contract is less than \$5,000.00.
- E. Contracts specifically exempted by this resolution under the provisions of Section 4(A) through Section 7, infra.
- F. Contracts between public agencies utilizing an existing solicitation or current requirements contract of one of the public agencies that is a party to the contract for which:
 - (1) The original contract met the requirements of this chapter;
 - (2) The contract allows other public agency usage of the contract; and
 - (3) The original contracting public agency concurs.
- G. If a project is competitively bid and all responsive bids from responsible bidders exceed the public agency's cost estimate, the public agency, in accordance with rules adopted by the public agency, may negotiate with the lowest responsive, responsible bidder, prior to awarding the contract, in order to solicit value engineering and other options to attempt to bring the project within the agency's cost estimate. A negotiation with the lowest responsive, responsible bidder pursuant to this paragraph shall not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal. Notwithstanding any other provision of law, the records of a bidder used in contract negotiation pursuant to this paragraph are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.
- H. Other contracts that the Local Contract Review Board may exempt from public bidding pursuant to provisions of ORS 279.015 (2) - (3).

SECTION 4. PUBLIC CONTRACT EXEMPTIONS UNDER SECTION 3E

A. Contracts Under Certain Dollar Amounts

- (1) Public contracting agencies may, in their discretion, let public contracts not to exceed \$30,000 for the purchase of goods, materials, supplies and services without formal competitive

bidding, if the agency has determined that the awarding of the contract without formal competitive bidding will result in cost savings and the following conditions are complied with:

- (a) The contract is for a single project, and is not a component of or related to any other project.
- (b) When the amount of the contract does not exceed \$5,000, the public contracting agency should, where feasible, obtain competitive quotes.
- (c) When the amount of the contract is more than \$5,000, but less than \$30,000, the public contracting agency shall obtain a minimum of three competitive quotes. The public contracting agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(2) Public contracting agencies may, in their discretion, let public contracts for trade related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts without formal competitive bidding if the agency has determined that the awarding of the contract without formal competitive bidding will result in cost savings and the following conditions are compiled with:

- (a) The contract is for a single project, and is not a component of or related to any other project.
- (b) When the amount of the contract does not exceed \$5,000, the public contracting agency should, where feasible, obtain competitive quotes.
- (c) When the amount of the contract is more than \$5,000, but less than \$30,000, except as provided in subsection (1) of this section the public contracting agency shall obtain a minimum of three competitive quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.
- (d) When the purpose of the contract is for maintenance or repair of roads, highways or parking lots and is more than \$30,000, but less than \$60,000, the public contracting

agency may let the contract without formal competitive bidding if a minimum of three competitive quotes are obtained. The public contracting agency shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.

B. Emergency Contracts

- (1) Public contracting agencies may, in their discretion, let public contracts without formal competitive bidding if an emergency exists and the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy the condition.
- (2) Public contracting agencies required to act by governing body shall adopt a resolution indicating the existence of the emergency stating with specificity the emergency conditions necessitating the prompt execution of the contract.
- (3) Public contracting agencies with a single executive officer must make detailed written findings describing the emergency conditions necessitating prompt execution of the contract.
- (4) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless extension is granted by the Commission.

C. Equipment Repair and Overhead

- (1) Contracts for equipment repair or overhaul may be let without formal competitive bidding, subject to the following conditions:
 - (a) Service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
 - (b) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.

- (2) If the contract exceeds \$15,000, the public contracting agency shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical.

D. Contracts for Price Regulated Items

- (1) Public Contracting agencies may, without competitive bidding, Contract for the direct purchase of goods and/or services where the rate or price for the goods and/or services being purchased is established by federal, state, or local regulatory authority.

E. Gasoline, Diesel Fuel, Heating Oil, Lubricants, Aggregate and Asphalt

- (1) Public contracting agencies are exempt from formal competitive bidding requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants, aggregate and asphalt if the agency seeks competitive quotes from a majority of vendors in the area, make its purchase from the least expensive source, and retains written justification for the purchase made.

F. Copyrighted Materials

- (1) If the contract is for the purchase of copyrighted materials and there is only one known supplier available for such goods, the public contracting agency may contract for the purchase of the goods without competitive bidding.

G. Periodicals

- (1) Public contracting agencies may purchase subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding.

H. Purchases of Used Personal Property

- (1) Public contracting agencies may purchase used personal property for \$30,000, or less without competitive bidding if the agency has determined that the direct purchase without competitive bidding will result in cost savings. For purchases of used personal property over \$30,000, three competitive quotes shall be obtained. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

I. Advertising Contracts

- (1) Public Contracting agencies may purchase advertising without competitive bidding.

J. Investment Contracts

- (1) Public contracting agencies may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds by a public agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

K. Personal Service Contracts

- (1) The following are personal service contracts and are exempt from competitive bidding:
 - (a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; data processing consultant or broadcaster.
 - (b) Contracts for services as an artist in the performing or fine arts, including but not limited to persons identified as photographer, filmmaker, painter, weaver, or sculptor.
 - (c) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.
 - (d) Contracts for services as a consultant.
 - (e) Contracts for educational and human custodial care services.
- (2) The following are not personal service contracts and are not exempt from competitive bidding and are subject to the provisions of this ordinance:

- (a) Contracts, even though in a professional capacity, if predominately for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the shrubs and trees is predominately for a tangible product.
- (b) A service contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, crop spraying, laundry and landscape maintenance service contracts.
- (c) Contracts for trade-related activities considered to be labor and material contracts.
- (d) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

L. Single Seller of Product Required

- (1) Public contracting agencies may purchase without competitive bidding if there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.

M. Employee Benefit Insurance

- (1) Public contracting agencies may purchase employee benefit insurance without competitive bidding.

N. Insurance Contracts

- (1) Contracts for insurance where either the annual or aggregate premium exceeds \$15,000 must be let by formal competitive bidding or by one of the following procedures:
- (2) Agent of Record: The public contracting agency may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility:

- (a) Prior to the selection of an agent of record, the public contracting agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in the area where the contract is performed. The advertisement shall generally describe the nature of the insurance that the public contracting agency will require. If the amount of the annual premium for insurance, other than employee benefits insurance is likely to exceed \$30,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.
 - (b) Any appointment period shall not exceed three years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.
 - (c) In selecting an agent of record, the public contracting agency shall select the agent(s) most likely to perform the most cost-effective services.
- (3) Specific Proposals for Insurance Contracts: The public contracting agency may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:
- (a) The public contracting agency shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts shall include public advertisements in at least one newspaper of general circulation in the area where the public contracting agency is located. If the amount of annual premium for insurance, other than employee benefits insurance is likely to exceed \$30,000 per year, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.
 - (b) The public contracting agency shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

O. Affirmative Action Contract

- (1) Public contracts may be let without competitive bidding if the letting of the contract is pursuant to a specific affirmative action plan. Affirmative action is a program designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age, or physical or mental handicap, including, but not limited to, personnel practices of contractors, "set-aside" programs and minority business enterprises.

P. Contract Amendments (Including Change Orders and Extra Work)

- (1) Any contract amendment for additional work including change orders, extra work, field orders, or other change in the original specifications which increases the original contract price, may be made with the contractor without competitive bidding subject to the following conditions:
- (2) The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or
- (3) The amount of the aggregate cost increase resulting from all amendments shall not exceed 10% of the initial contract, or 20% of the initial contract when the initial contract when the initial contract is for a face amount not exceeding \$200,000. Amendments made pursuant to section (1) of this rule are not included in computing the aggregate amount under this section.

Q. Ballots, Ballot Pages, and Ballot Cards

- (1) City of Wallowa is exempt from competitive bidding requirements for the printing of ballots, including ballot pages and labeling of ballot cards.

R. Requirement Contracts

- (1) Public contracting agencies may enter into requirements contracts whereby it is agreed to purchase requirements for an anticipated need at a pre-determined price providing the following conditions are complied with:

- (2) The contract must be let by competitive procurement process pursuant to the requirements of this resolution.
- (3) The term of the contract including renewals does not exceed three years.

S. Purchases Under Requirements Contracts

- (1) When the prices of goods and services has been established by a requirements contract pursuant to Section 3(r), supra, public contracting agencies may purchase the goods and services from the supplier without subsequent competitive bidding.
- (2) One public contracting agency may use the requirements contract entered into by another public contracting agency when a formal inter-agency agreement exists between the two agencies.

T. Specific Exemptions By Local Contract Review Board

- (1) Public contracting agencies may request a ruling from their appropriate public contract review authority exempting a particular contract or contracts from the bidding requirements of ORS 279.015 which are not otherwise exempted under these rules. The request shall contain the following:
 - (a) The nature of the project;
 - (b) Estimated cost of the project;
 - (c) A narrative description of the cost savings anticipated by the exemption from the competitive bidding and the reasons competitive bidding would be inappropriate;
 - (d) Proposed alternative contracting and purchasing practices to be employed; and
 - (e) The estimated date by which it would be necessary to let the contract.
- (2) The review authority may require such additional information as is deemed necessary to determine whether a specific contract is to be exempt from competitive bidding.

U. Request for Proposal

Public contracting agencies may, at their discretion, use request-for-proposal competitive procurement methods subject to the following conditions:

- (1) Contractual requirements are stated clearly in the solicitation document.
 - (a) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document.
 - (b) Criteria used to identify the proposal that best meets the public contracting needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential.
- (2) Solicitation document clearly states all complaint processes and remedies are available.
- (3) Solicitation document states the provisions made for vendors to comment on any specifications which they feel limit competition.

SECTION 5. INFORMATION SYSTEM CONTRACTS EXEMPTIONS

A. Data and Word Processing Contracts

Contracts for acquisition of data and word processing hardware and systems software may be let using alternate competitive procurement methods subject to the following conditions:

- (1) If the contract amount does not exceed \$30,000, the public contracting agency shall, as a minimum, follow informal competitive procurement methods. Prior to selection of a vendor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the agency.
- (2) If the contract amount exceeds \$30,000, the public contracting agency may use the request for proposal process Section 4 (U) of this resolution and shall solicit written proposals. Solicitations shall be requested from appropriate vendors appearing on lists compiled by the agency or by advertising in an appropriate trade publication of general circulation when required by statute. The

agency shall document the evaluation and award process, which will be part of the public record justifying the award.

- (3) If the amount of the contract exceeds \$750,000, in addition to the requirements of subsection A(2), supra the public contracting agency shall:
 - (a) Provide an opportunity for vendors to review requirements and, prior to submitting proposals, comment on any specifications which they feel limit competition;
 - (b) Provide that residual values be considered only if they are clearly ascertainable; and
 - (c) Provide that cost of conversion will be minimized by the agency. Vendors competing in this category of procurement shall be given the opportunity to review the evaluation of their proposal before final management review and selection. If there is less than a 1% difference between the performance/cost ratio of the highest ranked proposals, appropriate consideration must be given to the procurement of equipment which will encourage competition.

B. Office Copier Purchases

- (1) Public contracting agencies may enter into a multiple price agreements or requirements contracts for either the purchase or lease of office copying equipment. Except for this multiple award exemption, such agreements shall otherwise conform to the requirements of Section 4 (R) of this resolution.
- (2) In exercising this exemption the public agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

SECTION 6. BRAND NAMES AND TRADEMARKS EXEMPTIONS

A. Specifications of Particular Brand Names or Products

- (1) Specifications for Public Contracts shall not expressly or implicitly require any product of any particular manufacturer or seller except pursuant to an exemptions under Section 4 (F) (Copyrighted Materials), Section 6 (C) (Single Manufacturer and Compatible

Products; Section 6 (D) (Product Prequalification) and, Section 6 (E) (Brand Name or Trade Mark Exemption Applications)

- (2) If there is no other practical method of specification, public contracting agencies may designate a particular brand name, make, or product "or equal", but this practice should be avoided wherever practicable.

B. Copyrighted Materials

- (1) Public contracting agencies may specify a specific copyrighted product. This exemption does not include patented or trade mark goods.

C. Single Manufacturer or Compatible Products

- (1) If there is only one manufacturer or seller of a product of the quality required, or if the required product is data processing equipment which will be used for research where there are requirements for exchange of software and data with other research establishments, or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, a public contracting agency may specify such particular product subject to the following conditions:
 - (a) The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product price but also other items of expense such as costs related to qualify or conversion.
 - (b) Prior to awarding the contract, the public contracting agency has made reasonable effort to notify all known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals. If the purchase does not exceed \$30,000, such notice and invitation may be informal. If the amount of the purchase exceeds \$30,000, 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 timely to allow competing vendors a reasonable opportunity to make proposals.
- (2) If the amount of the purchase exceeds \$30,000 and is not pursuant to the data and word processing exemption, Section 5 (A)

Data and Word Processing Contracts, the public contracting agency shall document its actions in the bid file. Such documentation shall include:

- (a) A brief description of the proposed contract or contracts.
 - (b) A detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts taken by the public contracting agency to notify and invite proposals from competing vendors.
- (3) If the public contracting agency intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed two years, it may so state in the documentation required by subsection C. (1)(b) and Subsection C. (2) of Section 6, and such documentation shall be sufficient notice as to subsequent purchases.

D. Product Prequalification

- (1) When it is impractical to create specific design or performance specification for a type of product to be purchased, a public contracting agency may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product prequalification procedure:
- (a) The agency has made reasonable efforts to notify all known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of prequalified products. Notification shall include advertisement in a trade journal of state-wide distribution when possible. In lieu of advertising, an agency may notify vendors and manufacturers appearing on the appropriate list maintained by the Department.
 - (b) The agency permits application for prequalification of similar products up to 15 days prior to advertisement for bids on the product.
- (2) If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, the agency shall notify the applicant in writing. The applicant may appeal to the appropriate contract review authority.

E. Brand Name or Trade Mark Exemption Application

A public contracting agency may apply for an receive a brand name or trade mark exemption ruling from the appropriate contract review authority for current and contemplated future purchases. Applications shall contain the following information:

- (1) A brief description of the contract or contracts to be covered. The description should include contemplated future purchases.
- (2) The brand name, trade mark, or product to be specified.
- (3) The reasons the agency is seeking exemption.

F. Conditions of Exemptions

The public contract review authority may grant exemptions if any of the following conditions are met:

- (1) The exemption is not likely to encourage favoritism in public contracts or substantially diminish competition and will result in cost savings.
- (2) There is only one manufacturer or seller of the product of the quality required, or efficient utilization of existing equipment or supplies requires acquisition of compatible equipment or supplies.
- (3) The exemptions requested for the purchase of a particular product to be used in an experimental project.

SECTION 7. PROPERTY DISPOSITION EXEMPTIONS

A. Auction Sales of Personal Property

- (1) Personal property may be sold at auction if the agency responsible for the sale determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive written bid.

B. Sale of Personal Property

Public contracting agencies may sell personal property, including recyclable or reclaimed materials, without formal competitive bidding if the agency has

determined that a negotiated sale will result in increases net revenue and the following conditions are complied with:

- (1) The personal property has been made available to other state agencies and local government units in accordance with ORS 283.235, if the seller is the State of Oregon; and
- (2) When the current market value per item is deemed to be less than \$5,000, the public contracting agency may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms; or
- (3) When the current value per item is deemed to exceed \$5,000, the personal property must be offered for competitive written bid and be advertised in accordance with ORS 279.025, or be offered for sale at public auction in accordance with Section 7 (A), supra. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected and the public contracting agency may negotiate a sale subject to the following conditions:
 - (a) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or
 - (b) The sale amount exceeds the highest bid received through the bidding or auction process.

C. Sales of Personal Property

Public contracting agencies may sell personal property through a commercially recognized third party liquidator if the agency has determined that a liquidation sale will result in increased net revenue and the following conditions are complied with:

- (1) The personal property has been made available to other state agencies and local governmental units in accordance with ORS 283.235, if the seller is the State of Oregon; and
- (2) The selection of the liquidator was conducted, as a minimum, by the competitive request-for-proposal process governed by Section 4 (U).

D. Donations of Personal Property

- (1) Public agencies may transfer personal property, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following activities:
 - (a) Another public agency; or
 - (b) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or
 - (c) Any recognized non-profit activity which is certified to receive federal surplus property.
- (2) Public agencies may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service activities, subject to the following conditions:
 - (a) A determination has been made that the property is not needed for other public purposes;
 - (b) If the property has a current market value of \$500 or more, the donation or sale shall:
 - A. Be approved by the public agency's chief executive officer;
 - B. Be documented by the agency to be clearly in the public interest;
 - (c) The agency determines this is the most efficient and cost-effective method for disposing of the property.
- (3) The public contracting agency shall maintain a record of all transfers, donations or sales authorized by subsequent D(1) and D(2) of section 7 of this resolution.

SECTION 8. WAIVER OF SECURITY BID AND PERFORMANCE BOND EXEMPTIONS

- (1) Bid Security Requirements. A public contracting agency may in its discretion, waive the bid security requirements of ORS 279.027 for contracts other than those for public improvements.
- (2) Contracts Under \$30,000. A public contracting agency may, in its discretion, waive the bid security requirements of ORS 279.027 and performance bond requirements of ORS 279.029 if the amount of the contract for the public improvements is less than \$30,000.

SECTION 9. REQUIREMENTS FOR BID DOCUMENTS AND BIDS; DISCLOSURE OF FIRST TIER SUBCONTRACTORS.

A public contracting agency preparing bid documents for a public contract shall comply with the provisions of ORS 279.027 including those requiring the disclosure of first tier subcontractors. Failure of a bidder to comply with the provisions of ORS 279.027(3)(a) shall be grounds for disqualification.

SECTION 10. CONDITIONS OF PUBLIC CONTRACT CONCERNING PAYMENT OF LABORERS AND SUPPLIERS OF MATERIALS, CONTRIBUTIONS TO INDUSTRIAL ACCIDENT FUND, LIENS, WITHHOLDING TAXES AND EMPLOYEE DRUG TESTING:

Every public contract shall contain a provision that the contractor shall comply with the provisions of ORS 279.312, including the provision that every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place.

SECTION 11. STATUTORY REQUIREMENTS

Contracts will be awarded to the lowest bidder except in the following circumstances:

- A. After the bids are opened and a determination is made that no contract is to be awarded.
- B. The bidder has failed to substantially comply with either the specifications or statutory requirements relating to public contracting.
- C. The bidder is disqualified pursuant to the applicable statutes or Section 10 of this Resolution, *infra*.

SECTION 12. BIDDER QUALIFICATIONS FOR PUBLIC CONTRACTS

- A. The Board does not require contractors to prequalify prior to bidding on public contracts.
- B. The Board and/or the public contracting agency, reserves the right prior to awarding any contract to make such investigation as necessary to determine whether a firm is qualified to perform the contract. In accordance with ORS 279.037, a low bidder may be disqualified if:
- (1) The bidder has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (2) The bidder has been convicted under state or federal laws of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the persons responsibility as a contractor;
 - (3) Conviction under state or federal anti-trust statutes.
 - (4) Violation of a contract provision that is regarded by the public contracting agency to be so serious as to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of the contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by actions beyond the control of the contractor may not be considered a basis for a disqualification.
 - (a) A public contracting agency shall issue a written decision to disqualify a person pursuant to this section. This decision shall:
 - (i) State the reasons for the action taken;
 - (ii) Inform the disqualified person of the appeal right of the person under ORS 279.043 and ORS 279.045;
 - (iii) A copy of the decision shall be mailed or otherwise furnished immediately to the disqualified person.

- (5) The bidder does not have sufficient financial ability to perform the contract;
- (6) The bidder does not have equipment available to perform the contract;
- (7) The bidder does not have key personnel available of sufficient experience to perform the contract; or
- (8) The bidder has repeatedly breached contractual obligations to public and private contracting agencies.
- (9) If a bidder fails to promptly supply information requested by the Board and/or the Public Contracting Agency, such failure will also be grounds for disqualification.
- (10) The bidder is on the list established by the construction contractors board pursuant to ORS 701.227.

SECTION 13. BID REJECTION

The public contracting agency 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. If all bids are rejected then new bids may be called for.

SECTION 14. 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.
- (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 decisions.

SECTION 15. 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 rates "A" or better by a recognized rating service.
- (2) Deposits in lieu of retainage fees on public contracts shall be allowed as follows:
 - (a) 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.
 - (b) 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 obligations.
 - (c) 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.

- (d) Unless otherwise mutually agreed, the value placed upon said securities shall be market value.
- (e) 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.
- (f) In lieu of the above, an escrow agreement mutually acceptable to the contractor and the city and the bank or trust company may be used.

BE IT FURTHER RESOLVED by the City Council of the City of Wallowa that an emergency exists and that it is in the interest of the health, safety and welfare of the citizens of the City of Wallowa that this ordinance go into effect immediately upon final passage by the City Council.

DATED this 12th day of August, 2003.

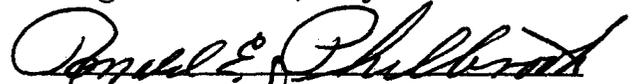
APPROVED BY:


 Legal Counsel


 Marge Sarmiento, Mayor

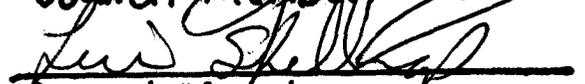
ATTEST:


 Recording Clerk


 Council Member


 Council Member


 Council Member


 Council Member

Leon N. Fisher, Mayor

ATTEST:

Debbie McDaniel, City Recorder