

ORDINANCE 336-05

Public Contracting Ordinance

An Ordinance Amending The Wallowa Code Relating To Procedures For Public Contracting

WHEREAS: The Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) ("The Public Contracting Code"), which was signed by the Governor, and has as operative date of March 1, 2005, and

WHEREAS: The Public Contracting Code requires the City of Wallowa to designate a Local Contract Review Board, and to adopt contracting rules in areas not covered by the Public Contracting Code or "Model Rules" adopted by the Attorney General, 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 city's "Contracting Agency."

THE CITY OF WALLOWA DOES ORDAIN AS FOLLOWS:

PUBLIC CONTRACTS

Section 1. Contract Review Board. The city council is designated to continue is designated to continue as the local contract review board of the city and shall have all of the rights, powers and authority necessary to carry out the provisions of ORS Chapters 279A, 279B and 279C (the "Public Contracting Code"). Except as otherwise provided in this Chapter, the City Mayor, or their designated purchasing agent, is designated as the City's Contracting Agency for purposes of contracting powers and duties assigned to the City as a contracting agency under Public Contracting Code.

Section 2. Definitions. As used in this Chapter, the following words or phrases shall have the following meanings. All words and phrases not defined in this section shall have the meanings ascribed to them in the Public Contracting Code or Model Rules adopted by the Oregon Attorney General there under ("Model Rules"):

Informal Quote: Procedure pursuant to which written or verbal offers are gathered by correspondence, telephone or personal contact.

Personal Service Contract: A contract to retain the services of an independent contractor, including architects, engineers, land surveying and related services. The contract shall be predominantly for services requiring special training or certification, independent judgment, skill and experience.

Sole Source Procurement: A contract for goods or services, or a class of goods or services, available from only one source.

Work of Art: All forms of original creations of visual art, including but not limited to:

(a): Painting: all media; including both portable and permanently affixed or integrated works such as murals;

(b): Sculpture: in the round, bas-relief, high relief, mobile, fountain, kinetic, electronic, ect., in any material or combination of materials:

(c): Miscellaneous art: prints, clay, drawings, stained glass, mosaics, photography, fiber and textiles, wood, metal, plastics and other materials, calligraphy, and mixed media, any combination of forms of media, including collage.

Section 3. Public Contracts for Goods and Services. This section applies to the public contracts that are not contracts for public improvements or contracts for personal services.

A. The following classes of public contracts are created and the procedures for awarding such contracts are determined not to encourage favoritism or substantially diminish competition and to result in substantial cost savings.

1. **Public Contracts Valued at Less than \$150,000.** All public contracts for an amount, which is valued at less than Five Thousand Dollars, shall be awarded by the Contracting Agency based on informal quotes. In soliciting informal quotes the Contracting Agency shall seek quotes from at least three offerors to insure sufficient competition to meet the best needs of the City. An award based on less than three quotes may be made, provided the Contracting Agency makes a written record of the effort to obtain quotes. Amendments to public contracts under this section may not cause the contract price to increase to an amount that is greater than twenty-five percent (25%) of the original contract price.

2. **Public Contracts over \$150,000.** All public contracts in excess of \$150,000 in value shall be awarded by the City Council based on competitive sealed bidding or competitive sealed proposals pursuant to the Public Contracting Code.

B. **Exemptions.** The requirements of subsection (A) do not apply to the following classes of public contracts:

1. Sole Source procurements pursuant to ORS 279B.075.
2. Emergency procurements pursuant to ORS 279B.080.
3. Purchases through federal programs pursuant to ORS 279.180.
4. Contracts for products or supplies under \$5,000.
5. Contracts for the purchase or commissioning of work of art.
6. Amendments to contracts exceeding the limits in subsection (A) above the City Council determines that it is not reasonably feasible to require additional competitive procurement to complete the purpose of the contract.
7. The City Council may exempt other public contracts or classes of public contracts from the requirements of subsection (A) pursuant to ORS 279B.085.

Section 4. Public Improvement Contracts. A public improvement contract shall be defined pursuant to the Public Contracting Code. A public improvement contract does not include contracts for minor alterations, ordinary repair and maintenance of public improvements, contracts projects for which no fund of the City are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection, and does not include any other construction contract that is not defined as a public improvements under the Public Contracting Code.

- A. All public improvements contracts shall be awarded by the Council based on competitive sealed bids pursuant to the Public Contracting Code.
- B. Exemptions. The requirements of subsection (A) do not apply to the following classes of public improvement contracts. The following from competitive sealed bidding are unlikely to encourage favoritism or substantially diminish competitive and awarding contracts under these exemptions will result in substantial cost savings to the City or public.
 1. Public improvement contracts valued at less than \$75,000 may be awarded by the Contracting Agency based on informal quotes.
 2. Emergency public improvement contracts may be exempted from competitive bidding if the Contracting Agency determines that an emergency exists and that conditions require the prompt execution of a contract. Emergency public improvement contracts shall be awarded in accordance with the Public Contracting Code.

- a. The Contracting Agency shall provide the Council with a written statement indicating the nature of the emergency and stating with particularity the emergency conditions and why they pose an imminent threat to the public health, safety or welfare. The Contracting Agency shall not declare the same emergency more than two times in any 90 day period.

3. By resolution, the City Council may exempt from competitive bidding a public improvement contract or class of public improvement contracts not otherwise exempt under this section pursuant to the procedure in the Public Contracting Code.

4. When an exemption allows for award of the contract through competitive proposals, the provisions of ORS 279C.400 to 279C.410 shall apply.

C. The performance and payment bonds requirements and exemptions of the Public Contracting Code shall apply to all public improvement contracts.

D. The City may undertake to construct a public improvement using its own equipment and personnel if doing so will result in the least cost to the City or public. For purpose of this section, resurfacing of roads at a depth of two or more inches and at an estimated cost of more than \$125,000 is a public improvement. If the City decides to construct a public improvement estimated to cost more than \$125,000 using its own personnel and equipment, the city shall prepare adequate plans and specifications and the estimated unit cost of each classification of work, and maintain an accurate accounting in accordance with ORS 279C.305.

E. If all responsive offers on a public improvement contract exceed the budget for the project, the Contracting Agency may prior to contract award, negotiate for a price for the project, the Contracting Agency may, prior to contract award, negotiate for a price within the budget under the following procedures:

1. Negotiations shall start with the lowest responsive, responsible offeror. If negotiations are not successful, then the Contracting Agency may negotiate with the second lowest responsive, responsible offeror, and so on.

2. Negotiations may include value engineering and other options to attempt to bring the project cost with in the budgeted amount.

3. A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original solicitation documents.

4. The records of an offeror used in contract negotiations under this section are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

Section 5. Offeror Disqualification.

A. The council or Contracting Agency, whoever is awarding a public contract, may disqualify any person as an offeror on a contract if:

1. The person does not have sufficient financial ability to perform the contract.
2. The person does not have available equipment to perform The Contract.
3. The person does not have key personnel of sufficient experience to perform the contract; or
4. The person has breached a previous contractual obligation.

B. The provisions of the Public Contracting Code regarding disqualification of persons shall apply in addition to this section with respect to public improvement contracts.

C. A person who has been disqualified as an offeror may appeal the disqualifications to the City Council in accordance with the procedures in Chapter 279C of the Public Contracting Code.

Section 6. Personal Services Contracts.

Personal services contracts (other than personal service contracts for architect or engineering services), are subject to the rules established by this section:

- (a) Personal service contracts will be used to retain the services of independent contractors, other than architects or engineers. Nothing in this section shall apply to the employment of regular city employees.
- (b) Unless otherwise approved by the City Mayor, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless to the city, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to ORS 30.287 indemnification and defense.
- (c) Unless otherwise approved by the City Mayor, city personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the city's tort liability limits, naming the city as an additional named insured, during the life of the contract.

- (d) All city personnel service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. The City Attorney's Office will prepare model contract provisions for use in city personal service contracts.
- (e) The following procedure shall be observed in the selection of personal service contractors:
 - (1) For personal service contracts involving as anticipated fee of \$10,000 or less per annum, the City Mayor or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.
 - (2) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, the City Mayor or his or her designated officer shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor's interest and ability to perform the proposed assignment.
 - (3) The City Mayor or his or her designated officer may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate city employee or by an interview committee.
 - (4) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the City Mayor or his or her designated officer shall select the prospective contractor, and shall prepare a personal service contract.
- (f) The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.
- (g) The following criteria shall be considered in the evaluation and selection of a personal service contractor:
 - (1) Specialized experience in the type of work to be performed.
 - (2) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.

- (3) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, ability to meet schedules, and contract administration, where applicable; and
 - (4) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable; and
 - (5) Any other factors relevant to the particular contract.
- (h) The selection procedures described in this section may be waived by the City Mayor, at his or her discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.
 - (i) The City Mayor is delegated the authority to sign all personal service contracts.
 - (j) Nothing contained in this section shall preclude the city from complying with provisions of Federal or State law that require the city to utilize a different selection or contracting procedure.

Section 7. Disposition of Personal Property

A. The City Mayor shall have the authority to determine when personal property owned by the City is surplus.

B. The City Mayor shall select the method of disposal, which maximizes the value the city will realize from disposal of the surplus property. Surplus personal property shall be disposed of as follows:

1. Sold to the highest qualified buyer meeting sale terms when the value of each item so offered is less than two thousand dollars and the sale has been advertised at least once in a newspaper of general circulation in the City of Wallowa area not less than one week prior to the sale;
2. Traded in on the purchase of replacement equipment or supplies;
3. Sold at public auction advertised at least once in a newspaper of general circulation in the Wallowa area

not less than one week prior to the auction. The published notice shall specify the time, place and terms upon which the personal property shall be offered and a general description of the personal property to be sold;

4. Sold at a fixed price retail sale if doing so will result in substantially greater net revenue to the city; or
5. Contracted for use, operation or maintenance by one or more private or public entities. Prior to approval of such a contract, the City Mayor shall determine that the contract will promote the economic development of the city.

C. All personal property sold pursuant to this section shall be sold as is without any warranty, either expressed or implied, of any kind.

D. Sales of surplus personal property may be conducted electronically.

Section 8. Adoption of Code and Rules

- A. Except as specifically provided in this chapter, public contracts shall be awarded, administered and governed according to the Public Contracting Code and the Model Rules, as they now exist and may be amended in the future.
- B. In the event of a conflict between any provision of this Chapter and the Public Contracting Code or Model Rules, the provisions of the Public Contracting Code or Model Rules shall prevail.

Passed at the March 15, 2005
Council Meeting

ATTEST:



City Recorder, Lori Waters

 3-23-05

Mayor, Ron Philbrook DATE