

ORDINANCE NO. 1618

(An Ordinance Continuing the City Council as the Local Contract Review Board; Prescribing its Powers and Duties and Repealing Chapter 2.32 of the Hood River Municipal Code)

The City of Hood River finds as follows:

1. That the following situations require certain contracts identified in Section 4 of this ordinance be exempt from competitive bidding because strict compliance with the public contract law will result in useless expense to the city without furthering the public policy of encouraging competition:

a. ORS 279.015(1)(d) authorizes a public agency to exclude from competitive bidding all contracts for supplies with the value less than \$2,500.00. If formal competitive bids based on detailed specifications and advertised solicitation of bid were used to award public contracts under \$2,500.00, the cost of procurement would be disproportionate to any benefit received from competitive bids. The entity designated herein to award contracts of certain value is best qualified to establish procedures for such contracts that reasonably balance the value of competitive bids with the administrative costs.

b. It is a useless public expense to use competitive bidding procedures to acquire goods and services that are available only through a single source. The investigation that there is only a single source is best performed by the

purchasing agent. Because of the public policy supporting competition and because competition generally exists in the market place, the use of the sole source exemption should be limited.

c. When the city acquires goods and services from suppliers whose prices are set by governmental regulation, such as utility services, there is no need for competitive bidding. In such instances the city has the obligation to pay the regulated price. Competitive bids would be a useless expense.

d. During the course of performing some of the contracts when it becomes apparent that changes in the specifications or quantities are required or that modifications to the work being performed are required, it is less costly to the public to provide some flexibility for adjusting public contracts at a time that work is being performed. Further, before some public contracts are undertaken, it is impossible to fully ascertain the nature of the goods and services required. Therefore, within limits, it is in the public interest to allow amendments, change orders or modifications to public contracts previously awarded rather than to terminate work on public contracts long enough to complete a competitive bid process.

Because of the foregoing situations, the classes of contracts described in Section 3 are unlikely to encourage favoritism in the awarding of public contracts or

substantially diminish competition for public contracts and further that the awarding of such public contracts will result in substantial cost savings to the city. In making these determinations, the council has considered the type, cost, amount of the contract, the number of persons available to bid, the city's historic contracting practices and experience.

2. There exists an on-going need for the city to dispose of its goods in a convenient, inexpensive procedure that does not require the council's attention. More revenues will be realized from the disposal of low-value surplus goods through auction procedures than would result from competitive bidding. Other higher-valued surplus goods may also yield greater net revenue at the auction than through competitive bidding. Sometimes the surplus property returns the greatest value to the city when traded in at the time the city purchases its replacement. The purchasing agent is the most qualified person to select the established method for disposal of the city's surplus goods that will yield the greatest net revenue.

The City of Hood River Ordains as follows:

Section 1. 2.32.010 - Contract Review Board. The council of the city of Hood River, Oregon, is hereby designated to continue as the local contract review board of the city and shall have all of the powers granted it by ORS Chapter 279 or the corresponding provisions of any such future law.

Section 2. 2.32.020 - Definitions. The following words

and phrases shall mean:

(1) Bid. A competitive offer in which price, delivery (or project completion) and conformance to specifications will be the predominant award criteria; or a competitive proposal in which other criteria in addition to price, delivery and conformance to specification is the dominant award criteria.

(2) Formal Bid. A procedure in which written sealed bids are solicited by advertising using bidding instructions, specifications, and are opened at an announced place, date and time.

(3) Formal Quotations. A procedure in which written bids are solicited by advertising or other writing stating the quantity and quality of goods or services to be acquired, and which bids are received by the city on or before a stated date.

(4) Goods. Except for works of art, any tangible personal property, including but not limited to, materials, supplies and equipment.

(5) Informal Quotation. A procedure in which written or verbal bids are gathered by correspondence, telephone or personal contact.

(6) Lowest Responsible Bid. The bid that is found to be the most acceptable on the basis of:

(a) Provision of the goods or services which substantially comply with all prescribed public bidding procedures and requirements, and bid specifications;

(b) Provision of the goods or services at the lowest cost to the city of those bids which meet (a) above;

(c) Vendor qualifications to execute and perform the contract to supply those goods or services;

(d) Conformance to other published criteria which will be the dominant criteria used in evaluating the bids received.

(7) Personal Services Contract. A contract with an independent contractor predominantly for services requiring special training or certification, independent judgment, skill and experience. It may include, but is not limited to, a contract for the services of professionals, performing artists, visual artists, consultants, researchers, and computer programmers.

(8) Public Contract. Any purchase, lease or sale by the city of personal property or services except:

(a) Contracts made with other governmental agencies;

(b) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped;

(c) Personal services contracts.

(9) Public Improvement. Any projects for construction, reconstruction or major renovation on real property by or for the city, the amount of which is \$2,000.00 or more. "Public Improvement" does not include emergency work, minor

alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

(10) Purchasing Agent. The city administrator or the administrator's designee.

(11) Visual Artists. Practitioners in the visual arts who are generally recognized by critics and peers as professionals of serious intent, and who produce works of art.

(12) Works 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, etc., 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 or combination of materials, calligraphy, and mixed media, any combination of forms of media, including collage.

Section 3. 2.32.030 - Public Contracts, Public Improvements and Surplus Personal Property.

(1) The following classes of public contracts are hereby 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:

(a) Public Contracts Valued at Less Than \$2,500.00.

All public contracts for an amount which is valued at less than \$2,500.00 shall be awarded by the purchasing agent based on informal quotations. In soliciting informal quotations, the purchasing agent shall seek quotations from a sufficiently large number of potential bidders to insure sufficient competition to meet the best interests of the city. An award based on less than three informal quotations may be made only on a determination by the purchasing agent that potential bidders were given a reasonable opportunity to submit quotes.

(b) Public Contracts, \$2,500.00 to \$10,000.00.

All public contracts for an amount which is valued \$2,500.00 or more, but less than \$10,000.00, shall be awarded by the council based on formal quotations. In soliciting bids, the purchasing agent shall seek quotations from a sufficiently large number of potential bidders to insure sufficient competition to meet the best interests of the city. An award based on less than three formal quotations may be made only on a determination by the council that potential bidders were given a reasonable opportunity to submit quotes.

(c) Public Contracts over \$10,000.00.

All public contracts in excess of \$10,000.00 in value shall be awarded by the council based on formal bids. The solicitation for bids shall be published at least once in a newspaper of general circulation in the Hood River area.

(2) Contracts for Public Improvements. The following

classes of contracts for public improvements are hereby 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:

(a) Contracts for Public Improvements Valued at Less Than \$2,000.00. All contracts for public improvements for an amount which is valued at less than \$2,000.00 shall be awarded by the purchasing agent based on informal quotations. In soliciting informal quotations, the purchasing agent shall seek quotations from a sufficiently large number of potential bidders to insure sufficient competition to meet the best interests of the city. An awarded based on less than three informal quotations may be made only on a determination by the purchasing agent that potential bidders were given a reasonable opportunity to submit quotes.

(b) Contracts for Public Improvements in Excess of \$2,000.00. The specifications for all contracts for public improvements valued in excess of \$2,000.00 shall be approved by the council before soliciting bids and shall be awarded by the council based on formal bids. The solicitation for bids shall be published at least once in a newspaper of general circulation in the Hood River area.

(c) Contracts for Public Improvements in Excess of \$50,000.00. The specifications for all contracts for public improvements valued in excess of \$50,000.00 shall be approved

by the council before soliciting bids and shall be awarded by the council based on formal bids. The solicitation for bids shall be published at least once in a newspaper of general circulation in the Hood River area and shall be published in a trade newspaper of general state wide circulation.

(3) Surplus Personal Property.

(a) All personal property which the city has acquired and used, when it is declared surplus by the council shall be:

(1) Sold to the highest qualified buyer meeting the sale terms when the purchasing agent has determined the value of each item so offered is less than \$2,000.00 and the sale thereof has been advertised at least once in a newspaper of general circulation in the Hood River area not less than one week prior to the sale;

(2) Traded in on the purchase of replacement equipment or supplies; or

(3) Sold at public auction advertised at least once in a newspaper of general circulation in the Hood River 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.

(b) The purchasing agent shall select the method of disposal which maximizes the value the city will realize from disposal of the surplus property.

(4) Advertisements for Bids. All advertisements for bids shall comply with the requirements of ORS 279.025(2) as amended.

Section 4. 2.32.040 - Exemptions.

(1) The following classes of public contracts are exempt from competitive bidding as public contracts that do not encourage favoritism or substantially diminish competition and that result in substantial cost savings:

(a) Contracts for goods and services under \$2,500.00;

(b) Contracts determined by the purchasing agent to be available only through a sole supplier of goods, services, or both;

(c) Contracts for which the prices are established by governmental regulatory authorities;

(d) Contracts for the purchase of commissioning of works of art;

(e) Contract amendments for additional goods, services, or both, or for changes in the original specifications which increase the original contract price, provided:

(1) The original contract terms and conditions apply to the performance of the amendments; or

(2) The cost of all amendments does not exceed 10% of the original contract price. This 10% limitation may be increased upon determination by the council that it is not

reasonably feasible to require additional bidding to complete the purpose of the contract.

(2) A public contract valued at less than \$25,000.00 may be exempted from competitive bidding if the council, by majority vote, determines that an emergency exists and that conditions require the prompt execution of a contract. The council shall adopt a resolution, indicating the nature of the emergency and stating with particularity the emergency conditions necessitating the prompt execution of the contract and thereafter the contract shall be awarded within 60 days unless the council grants an extension.

(3) The council may by resolution exempt other public contracts from competitive bidding if it finds:

(a) It is unlikely that the exemption will encourage favoritism or substantially diminish competition in awarding the contract; and

(b) The exemption will result in a substantial cost savings to the City.

(4) In making the findings required in subsection (3) of this section, the council may consider the type, cost, and dollar amount of the contract, the number of persons available to bid, and such other factors as the council may deem appropriate.

Section 5. 2.32.050 - Brand Name Specifications in Contracts.

(1) Specifications for public contracts and contracts

for public improvements shall not require any product by brand name or make, nor the product of any particular manufacturer or seller unless the product is exempted under this section. However, this section shall not be construed to prevent reference in the specification to a particular product as a description of the type of item required.

(2) The council or the purchasing agent, whomever is awarding a public contract or contract for public improvement, may exempt certain products or classes of products from subsection (1) of this section upon any one of the following findings:

(a) It is unlikely that the exemption will encourage favoritism in the award 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 to the city;

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

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

Section 6. 2.32.060 - Personal Services Contracts.

(1) Except as provided in subsection (2) of this section, for all personal service contracts under \$10,000.00 in value, the purchasing agent shall solicit by invitation or

advertising proposals for personal services in sufficient number to provide a choice for the city from among qualified service providers. The criteria to be used in selecting the personal service provider shall be stated in the solicitation.

(2) Without a solicitation of proposals, the purchasing agent may enter into personal service contracts:

(a) With an existing service provider whose personal service contract is being renewed on an annual basis;

(b) With service providers determined by the purchasing agent to be sole suppliers of the services needed;

or

(c) For \$5,000.00 or less in any fiscal year.

(3) Except as provided in this section, all personal service contracts shall be awarded by the council based on the procedure and selection criteria adopted by the council before bids are solicited.

Section 7. 2.32.070 - Bid Rejection. The council or the purchasing agent, whomever is awarding a public contract, may reject any bid not in compliance with any bid specification or any prescribed public bidding procedure or requirement and may reject any and all bids if it is in the public interest to do so.

Section 8. 2.32.080 - Bidder Disqualification. The council or the purchasing agent, whomever is awarding a public contract, may disqualify any person as a bidder on a contract if:

(1) 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;

(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 previous contractual obligations.

Section 9. 2.32.090 - Appeal of Disqualification. A person who has been disqualified as a bidder may appeal the disqualification to the council as follows:

(1) The person shall, within three business days after receipt of notice of the disqualification, file a written notice of appeal with the city recorder. The notice of appeal shall specify in detail why the appellant believes that the disqualification was in error.

(2) Within five days of receipt of the appeal, the city recorder shall inform the council, or its designated representative, of the filing of the appeal.

(3) Upon receipt of notice from the recorder, the council shall notify the appellant of the time and place of an appeal hearing. The hearing shall be held within 10 days from the date the notice is provided to the council.

(4) The council, or its designated representative, shall

conduct the hearing according to the provisions of ORS 279.045(3), and the council shall set forth in writing the reasons for its decision.

Section 10. 2.32.100 - Adoption of Rules.

(1) Except as provided in subsections (2), (3) and (4) of this section, Oregon Administrative Rules (OAR) Chapter 137, Divisions 30 and 40 are hereby adopted as the rules to be used by the city in its public contracting.

(2) (a) The provisions of this ordinance shall prevail when in conflict with OAR Chapter 137 Divisions 30 and 40.

(b) Sections OAR 137-30-005 regarding competitive bidding and OAR 137-30-045 regarding brand name products are deleted from the rules adopted by subsection (1).

(c) Except when this ordinance specifically requires the council to take action or exercise its discretion, all references to "public agency" shall mean the city administrator.

(3) A variance from the provisions of the rules adopted by this section may be granted by the city administrator upon determination that:

(a) The variance is unlikely to encourage favoritism or substantially diminish competition in awarding the contract, and

(b) The variance will result in a substantial cost savings to the city.

(4) The rules adopted by this section may be amended by

resolution of the council.

Section 11. 2.32.110. The City of Hood River shall prefer goods or services that have been manufactured or produced in the state of Oregon if price, fitness, availability and quality are otherwise equal.

(1) Where a public contract is awarded to a foreign contractor and the contract price exceeds \$10,000.00, the contractor shall promptly report to the Oregon Department of Revenue the total contract price, terms of payment, length of contract and such other information as the Oregon Department of Revenue may require before final payment may be received on the public contract from the City of Hood River. The city council shall satisfy itself that the requirement of this section has been complied with before it issues a final payment on a public contract.

(2) For purposes of this section, a foreign contractor is one not domiciled in or registered to do business in the state of Oregon.

Section 12. 2.32.120. The city administrator shall file a copy of this ordinance with the Board of County Commissioners of Hood River County.

Section 13. 2.32.130. Chapter 2.32 of the Hood River Municipal Code is hereby repealed. All actions taken or existing contracts awarded under said ordinance are hereby ratified and affirmed.

Read for the first time: August 14, 1989.

Read for the second time: August - 14, 1989.

PASSED BY the City Council of the City of Hood River
this 14th day of August, 1989.

Gene McAdams
Gene McAdams, City Recorder

Approved by the Mayor of the City of Hood River this
14th day of August, 1989.

Kenneth A. Jernstedt
Kenneth A. Jernstedt, Mayor