

ORDINANCE NO. 1750

(An ordinance amending Chapter 2.32
of the Hood River Municipal Code
– Local Contract Review Board)

WHEREAS, the City Council of the City of Hood River has determined that its local contract review board ordinance needs to be updated to accommodate changes in state law; and

WHEREAS, the City Council finds that it is in the best interests of the City to amend its ordinance pertaining to public contracting;

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Chapter 2.32 is amended to read as follows:

Sections:

- 2.32.010 Contract review board.
- 2.32.020 Definitions.
- 2.32.030 Public contracts, public improvements and ~~surplus~~ personal property.
- 2.32.040 Exemptions.
- 2.32.050 Brand name specifications in contracts.
- 2.32.060 Personal services contracts.
- 2.32.070 Bid rejection.
- 2.32.080 Bidder disqualification.
- 2.32.090 Appeal of disqualification.
- 2.32.100 Adoption of rules.
- 2.32.110 State goods or services preference--Foreign contractors.
- 2.32.120 Filing of ordinance with county commissioners.

2.32.010 Contract review board. The city council is 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. (Ord. 1618 §1, 1989).

2.32.020 Definitions. The following words and phrases shall be defined as follows:

A. "Bid" means 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.

“Emergency” means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

B. "Formal bid" means 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.

C. "Formal quotations" means 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.

~~D. Goods. Except for works of art~~ **“Goods,” except for works of art,** means any tangible personal property, including but not limited to, materials, supplies and equipment.

E. "Informal quotation" means a procedure in which written or verbal bids are gathered by correspondence, telephone or personal contact.

F. "Lowest responsible bid" means the bid is found to be the most acceptable on the basis of:

1. Provision of the goods or services which substantially comply with all prescribed public bidding procedures and requirements and bid specifications;
2. Provision of the goods or services at the lowest cost to the city of those bids which meet the requirements of subdivision (1) above;
3. Vendor qualifications to execute and perform the contract to supply those goods or services;
4. Conformance to other published criteria which will be the dominant criteria used in evaluating the bids received.

G. "Personal services contract" means 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.

H. "Public contract" means any purchase, lease or sale by the city of personal property, **public improvements** or services except:

1. Contracts made with other ~~governmental~~ **public** agencies;

2. Contracts made with qualified nonprofit agencies providing employment opportunities for ~~the handicapped~~ **disabled individuals**;
3. Personal services contracts.

—~~I.~~ "Public improvement" means any projects for construction, reconstruction or major renovation on real property by or for the city, the amount of which is two thousand dollars or more. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

~~J.~~ "Purchasing agent" means the city manager or the manager's designee.

~~K.~~ "Visual artists" means practitioners in the visual arts who are generally recognized by critics and peers as professionals of serious intent, and who produce works of art.

~~L.~~ "Works of art" means all forms of original creations of visual art, including but not limited to:

1. Painting: all media, including both portable and permanently affixed or integrated works such as murals;
2. Sculpture: in the round, bas-relief, high relief, mobile, fountain, kinetic, electronic, etc., in any material or combination of materials.
3. 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. (Ord. 1618 §2, 1989).

2.32.030 Public contracts, public improvements and surplus personal property.

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 ~~Three Thousand, Seven Hundred and Fifty Five Thousand Dollars. Except as provided in Section 2.32.040(A), A~~all public contracts for an amount which is valued at less than ~~three thousand, seven hundred and fifty five thousand~~ **thousand** Dollars shall be awarded by the ~~city manager or the city manager's designee~~ **purchasing agent** based on informal quotations. In soliciting informal quotations, the ~~city manager or the city manager's designee~~ **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 city manager or the city manager's designee~~ **provided the purchasing agent makes a written record of the effort to obtain that potential**

~~bidders were given a reasonable opportunity to submit quotes. (Ord 1728, part 1996)~~

2. Public Contracts, ~~Three Thousand, Seven Hundred and Fifty Five Thousand~~ Dollars to ~~Fifteen Twenty-five~~ Thousand Dollars. All public contracts for an amount which is valued at ~~three thousand, seven hundred and fifty five thousand~~ dollars or more, but less than ~~fifteen twenty-five~~ thousand dollars, shall be awarded by the council based on formal quotations. In soliciting bids, ~~the city manager or the city manager's designee~~ **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 **provided only on a determination by the council finds that the purchasing agent made an effort to obtain an adequate number of that potential bidders were given a reasonable opportunity to submit quotes.** (Ord 1728, part 1996)

3. Public Contracts Over ~~Fifteen Twenty-five~~ Thousand Dollars. All public contracts in excess of ~~fifteen twenty-five~~ thousand dollars 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. (Ord 1728, part 1996)

B. Contracts for Public Improvements. **Exemptions for contracts for public improvements from competitive bidding may be made in accordance with section 2.32.040(C)-(E).**

1. **In the event of circumstances beyond the city's control that require prompt execution of the contract but that do not constitute an emergency, the purchasing agent may solicit contractors for the alternative contracting method at the same time that the notice referenced in section 2.32.040(D) is published. Responses shall not be due prior to five days after the meeting and approval of findings.**

2. **The solicitation for bids for public improvement contracts with an estimated cost in excess of \$125,000 shall be published in at least one trade newspaper of general statewide circulation.**

3. **The city may undertake to construct a public improvement using its own equipment and personnel. For purposes 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 public improvement. If the city decides to construct a public improvements estimated to cost more than \$125,000 using its own personnel and equipment, the city shall:**

a. **First make a finding, in addition to the findings required above, that constructing the improvement itself will result in the least cost to the public; and**

b. Prepare adequate plans and specifications and the estimated unit cost of each classification of work in accordance with ORS 279.023(3).

4. Upon completion of and final payment for any public improvement contract in excess of \$100,000 for which competitive bidding was not used, the purchasing agent shall prepare an deliver to the city council an evaluation of the public improvement project in accordance with ORS 279.103, as amended. ~~The following classes of contracts for public improvements 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. Contracts for Public Improvements Valued at Less than Three Thousand Dollars: All contracts for public improvements for an amount which is valued at less than three thousand dollars shall be awarded by the city manager or the city manager's designee based on informal quotations. In soliciting informal quotations, the city manager or the city manager's designee 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. (Ord 1728, part 1996)~~

~~— 2. Contracts for Public Improvements in Excess of Three Thousand Dollars: The specifications for all contracts for public improvements valued in excess of three thousand dollars 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. (Ord 1728, part 1996)~~

~~— 3. Contracts for Public Improvements in Excess of Seventy five Thousand Dollars: The specifications for all contracts for public improvements valued in excess of seventy five thousand dollars 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 statewide circulation. (Ord 1728, part 1996)~~

C. Surplus Personal Property.

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

a. 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 two thousand dollars 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;

b. Traded in on the purchase of replacement equipment or supplies; ~~or~~

c. 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, or

d. Sold at a fixed price retail sale if doing so will result in substantially greater net revenue to the city.

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

3. Alternatively, the city council may direct the purchasing agent to negotiate with one or more private or public entities for the use, operation and maintenance of personal property owned by or under the control of the city. Prior to approval of such a contract, the city council shall make a finding that the contract will promote the economic development of the city.

D. Advertisement for Bids. All advertisements for bids shall comply with the requirements of ORS 279.025(2) as amended. (Ord. 1618 §3, 1989).

2.32.040 Exemptions.

A. 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:

1. Contracts for ~~goods and~~ **products, services, or supplies** under ~~two thousand five hundred~~ **five thousand** dollars;

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

3. Contracts for which the prices are established by governmental regulatory authorities;

4. Contracts for the purchase or commissioning of works of art;

5. Contract amendments for additional ~~goods,~~ **products**, services, **and/or supplies or both**, or for changes in the original specifications which increase the original contract price, provided:

a. The original contract terms and conditions apply to the performance of the amendments, or

b. The cost of all amendments does not exceed ten percent of the original contract price. This ten percent 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.

B. A public contract valued at less than ~~twenty-five~~ **fifty** thousand dollars 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 sixty days unless the council grants an extension.

C. The council may by resolution exempt other public contracts from competitive bidding if it finds:

1. It is unlikely that the exemption will encourage favoritism or substantially diminish competition ~~in awarding the~~ **for public** contracts; and

2. The exemption will result in a substantial cost savings to the city.

D. With respect to exemptions of public improvement contracts, prior to final adoption of the findings required by subsection (C), the city council shall hold a public hearing. Notification of the public hearing shall be published at least one trade newspaper of general statewide circulation a minimum of 14 days prior to the hearing. The notice shall state that the public hearing is for the purpose of taking comments on the city council's draft findings for an exemption for a public improvement contract from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public.

D.E. In making the findings required in subsection (C) 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. (Ord. 1618 §4, 1989).

F. In granting exemptions under this section, the council shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the policy of encouraging competition.

2.32.050 Brand name specifications in contracts.

A. 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.

B. 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 (A) of this section upon any one of the following findings:

1. It is unlikely that the exemption will encourage favoritism in the award of the contract or substantially diminish competition;

2. 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;

3. There is only one manufacturer or seller of the product of the quality required;
or

4. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies. (Ord. 1618 §5, 1989).

2.32.060 Personal services contracts.

A. Except as provided in subsection (B) of this section, for all personal service contracts under ten thousand dollars 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.

B. Without a solicitation of proposals, the purchasing agent may enter into personal service contracts:

1. With an existing service provider whose personal service contract is being renewed on an annual basis;
2. With service providers determined by the purchasing agent to be sole suppliers of the services needed; or
3. For five thousand dollars or less in any fiscal year.

C. Except as provided in this section all other personal service contracts shall be awarded by the council based on the procedure and selection criteria adopted by the council before bids are solicited. (Ord. 1618 §6, 1989).

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 do so. **However, if all bids exceed the cost estimate, the council or purchasing agent may negotiate with the lowest responsible bidder prior to awarding the contract in order to solicit value engineering and other options to attempt to bring the project within the cost estimate. A negotiation with the lowest responsible bidder pursuant to this section 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 provisions of the law, records of the bidder used in negotiations shall not be subject to public inspection until after the contract is awarded or negotiations ended.** (Ord. 1618 §7, 1989).

(NOTE: THESE CRITERIA ARE NOT PART OF THE HRMC PROPER - BUT ARE INCLUDED AS ADOPTED BY COUNCIL FOR REFERENCE)

CITY OF HOOD RIVER

*PROCEDURE AND SELECTION CRITERIA
FOR
PERSONNEL SERVICES CONTRACTS*

Approved by Hood River City Council on July 11, 1994:

- 1. Total cost to the agency for delivery of services.*
- 2. Expertise of the contractor in the area of specialty called for.*
- 3. References from successfully completed projects managed by the contractor.*
- 4. Utilization of locally procured goods, services, or personnel.*
- 5. Other services provided by the contractor not specifically listed in the request for proposal.*
- 6. Timeliness of delivery of services.*
- 7. Other criteria specially listed in the Request For Proposal on a case by case basis.*

The criteria are to be considered in the selection of the successful consultant however are not necessarily in order of importance or limited to those items listed.

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:

- 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;
- B. The person does not have available equipment to perform the contract;
- C. The person does not have key personnel of sufficient experience to perform the contract; or
- D. The person has breached previous contractual obligations. (Ord. 1618 §8, 1989).

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

- A. 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.
- B. 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.

C. 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 ~~ten~~ **thirty** days from the date the notice is provided to the council.

D. 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 **which must be made within thirty days after receiving notice from the city recorder.** (Ord. 1618 §9,1989).

2.32.100 Adoption of rules.

A. Except as provided in ~~subsections (B), (C) and (D)~~ of this section, Oregon Administrative Rules (OAR) Chapter 137, Divisions 30 and 40, **as they may be amended from time to time,** are adopted as the rules to be used by the city in its public contracting.

B. ~~1.~~—The provisions of this chapter shall prevail when in conflict with OAR Chapter 137 Divisions 30 and 40.

C. ~~2.~~—Sections OAR 137-30-005 regarding competitive bidding and OAR 137-30-~~045011~~ regarding brand name products are deleted from the rules adopted by subsection (A) of this section.

D. ~~3.~~—Except when this chapter specifically requires the council to take action or exercise its discretion, all references to "public agency" shall mean the ~~city manager~~ **purchasing agent.**

~~E.~~ A variance from the provisions of the **administrative** rules adopted by this section may be granted by the city manager upon determination that:

1. The variance is unlikely to encourage favoritism or substantially diminish competition in awarding the contract, and

2. The variance will result in a substantial cost savings to the city.

~~F.~~ The **administrative** rules adopted by this section may be amended by resolution of the council. (Ord. 1618 §10, 1989).

2.32.110 State goods or services preference--Foreign contractors.

A. The city 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.

B. Where a public contract is awarded to a foreign contractor and the contract price exceeds ten thousand dollars, 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. 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.

C. For purposes of this section, a foreign contractor is one not domiciled in or registered to do business in the state of Oregon. (Ord. 1618 §11, 1989).

2.32.120 Filing of ordinance with county commissioners. The city administration shall file a copy of the ordinance codified in this chapter with the board of county commissioners of Hood River County. (Ord. 1618 §12, 1989).

Read for the first time: March 9, 1998.

Read for the second time and passed: March 23, 1998, to become effective thirty (30) days hence.

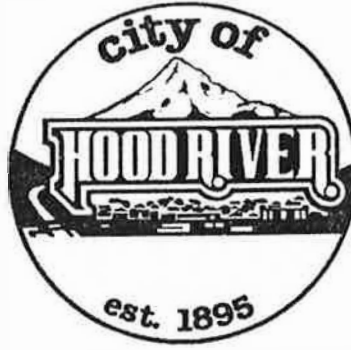


Paul G. Cummings, Mayor

ATTEST:



Anita R. Smith, City Recorder



Mayor:
Paul Cummings

Councilors:
Robert Hastings
W T Nelson
Andrea Klaas
Tom Turck
Carrie Nelson
Linda Rouches

January 11, 1999

Hood River County Commissioners
309 State Street
Hood River OR 97031

Re: City of Hood River
Local Contract Review Board Ordinance

Dear Commissioners:

The City of Hood River's Local Contract Review Board Ordinance, amended in March 1998, requires that a copy be filed with the County Commissioners. I am not certain that the filing was done when the ordinance was adopted. Please accept the filing at this time, and my apology for the delay.

Sincerely,

A handwritten signature in cursive script that reads "Anita R. Smith".

Anita R. Smith
City Recorder

Encl.