

ORDINANCE NO. 1869

(An ordinance repealing and replacing Chapter 2.32—Public Contracting of the Hood River Municipal Code)

WHEREAS, the Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) (the “Public Contracting Code”), which is operative on March 1, 2005;

WHEREAS, the Public Contracting Code requires the City to designate a local contract review board and to adopt public contracting rules;

WHEREAS, the following public contracting rules contain exemptions to the competitive bidding requirements of the Public Contracting Code and the City Council adopts the findings of fact set forth in Exhibit A to this Ordinance in support of the exemptions;

WHEREAS, the City has provided notice and a public hearing (February 14, 2005) in accordance with the Public Contracting Code procedure for adoption of exemptions to the competitive bidding requirements of the Public Contracting Code; and

WHEREAS, because the effective date of the Public Contracting Code is March 1, 2005, the public fiscal welfare requires that this ordinance take effect at the same time.

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

Chapter 2.32 of the Hood River Municipal Code is repealed and replaced to read as follows:

CHAPTER 2.32 – PUBLIC CONTRACTING

Sections:

- 2.32.010 Contract Review Board
- 2.32.020 Definitions
- 2.32.030 Public Contracts for Goods and Services
- 2.32.040 Public Improvement Contracts
- 2.32.050 Offeror Disqualification
- 2.32.060 Personal Services Contracts
- 2.32.070 Disposition of Personal Property

2.32.080 Adoption of Code and Rules

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 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 Manager, 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 the Public Contracting Code.

2.32.020 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 the Model Rules adopted by the Oregon Attorney General thereunder ("Model Rules"):

Electronic Procurement System: An electronic information system remotely accessible that may be established by the Contracting Agency in accordance with the Public Contracting Code.

Formal Quote: Procedure pursuant to which written offers are solicited by advertising or other writing stating the quantity and quality of goods or services to be acquired, and which offers are received by the Contracting Agency on or before a stated date. In soliciting formal quotes, the Contracting Agency shall seek quotes from a sufficiently large number of potential offerors to insure sufficient competition to meet the best interests of the City. An award based on less than three formal quotes may be made provided the Contracting Agency makes a written record of the effort to obtain quotes.

Informal Quote: Procedure pursuant to which written or verbal offers are gathered by correspondence, telephone or personal contact stating the quantity and quality of good or services to be acquired. In soliciting informal quotes, the Contracting Agency shall seek quotes from a sufficiently large number of potential 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.

Personal Services 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. The City Council or the Contracting Agency, as the case may be, shall have discretion to determine whether a particular type of contract or service is a personal services contract.

Sole Source Procurement: A contract for goods or services, or a class of goods or services, available from only one source, as determined by the Contracting Agency.

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.

2.32.030 Public Contracts for Goods and Services. This section applies to public contracts that are not contracts for public improvements or contracts for personal services. A public contract shall not be artificially divided or fragmented to qualify for a different award procedure than that provided by this section.

A. The following classes of public contracts and respective award procedures are created:

1. Public Contracts Valued at Less than \$5,000. A public contract for an amount which is valued at less than Five Thousand Dollars shall be awarded by the Contracting Agency based on informal quotes. Amendments to public contracts under this section may not cause the contract price to exceed Six Thousand Dollars, unless the amendment(s) is for the purchase of additional goods or services for which the contract was awarded.

2. Public Contracts Valued at \$5,000 or More But Less than \$25,000. A public contract for an amount which is valued at Five Thousand Dollars or more, but less than Twenty-five Thousand Dollars, shall be awarded by the Contracting Agency based on formal quotes. Amendments to public contracts under this section may not cause the contract price to exceed an amount that is twenty-five percent (25%) over the original contract price.

3. Public Contracts From \$25,000. A public contract for an amount which is valued at Twenty-five Thousand Dollars or more shall be awarded by the City Council based on competitive sealed bidding or competitive sealed proposals pursuant to the Public Contracting Code.

B. Amendments. Subject to the limits in subsection (A), amendments to public contracts shall comply with the Public Contracting Code.

C. 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 279A.180.
4. Contracts for products or supplies under \$5,000.

5. Contracts for the purchase or commissioning of works of art.
6. For public contracts predominantly for services, one extension not exceeding the original term of the contract or annual renewals, if provided in the contract.
7. Amendments to contracts exceeding the limits in subsection (A) above if the City Council determines that it is not reasonably feasible to require additional competitive procurement to complete the purpose of the contract; otherwise the amendment shall comply with subsection (B) or the Council shall direct additional competitive procurement and the competitive procurement procedure required for the amendment.
8. By resolution, the City Council may exempt other public contracts or classes of public contracts from the requirements of subsection (A) pursuant to ORS 279B.085.

D. Notice of Solicitation Documents. Notice of Solicitation Documents may be published on the City's Electronic Procurement System in lieu of publication in a newspaper of general circulation.

2.32.040 Public Improvement Contracts. A public improvement contract is defined pursuant to the Public Contracting Code and does not include contracts for minor alterations, ordinary repair and maintenance of public improvements, contracts for projects for which no funds 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 improvement under the Public Contracting Code. A public improvement contract shall not be artificially divided to qualify for a different award procedure than that provided by this section.

A. Generally. All public improvement 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) and the procedures applicable to the award of those contracts do not apply to the following classes of public improvement contracts.

1. Public Improvement Contracts Valued at Less than \$5,000. Public improvement contracts valued at less than Five Thousand Dollars shall be awarded by the Contracting Agency based on informal quotes.

2. Public Improvement Contracts Valued at \$5,000 or More But Less than \$25,000. Public improvement contracts valued at Five Thousand Dollars or more but less than Twenty-five Thousand Dollars shall be awarded by the Contracting Agency based on formal quotes.

3. Emergency Public Improvement Contracts. 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.

4. 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 ORS 279C.335.

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

C. Amendments. Amendments to public improvement contracts shall comply with the Public Contracting Code.

D. Bonds. The performance and payment bonds requirements and exceptions of the Public Contracting Code shall apply to all public improvement contracts.

E. Notice of Solicitation Documents. Notice of Solicitation Documents may be published on the City's Electronic Procurement System in lieu of publication in a newspaper of general circulation.

F. City Construction Services. 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 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 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.

G. Negotiations. 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 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 within 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.

H. Brand Name Specifications. The use of brand name, mark or manufacturer specifications in public improvement contracts shall be made in accordance with ORS 279B.215.

2.32.050 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. 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.

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 disqualification to the City Council in accordance with the procedures in Chapter 279C of the Public Contracting Code.

2.32.060 Personal Services Contracts.

A. The following procedures shall apply to the award of personal services contracts:

1. Personal Service Contracts for \$5,000 to \$10,000. Personal services contracts involving an anticipated fee of Five Thousand Dollars or more but less than Ten Thousand Dollars per fiscal year shall be awarded by the Contracting Agency following solicitation of offers for personal services by written invitation or advertisement in sufficient number to provide a choice for the City from among qualified service providers. The Contracting Agency shall determine the selection criteria to be included in the written invitation or advertisement and shall have authority to negotiate and enter into the contract.

2. Personal Service Contracts From \$10,000. Personal services contracts to which subsection (1) does not apply and having an anticipated fee of Ten Thousand Dollars or more shall be awarded by the City Council following solicitation of offers based on the procedure and selection criteria adopted by the City Council before offers are solicited.

3. Except as otherwise provided in the Public Contracting Code, for all other personal services contracts, including amendments to and annual renewals or extensions of existing contracts and emergencies, the Contracting Agency may enter into the contract

without a solicitation of offers. A personal services contract shall not be artificially divided or fragmented to qualify for the award procedures provided by this subsection.

B. The following criteria shall be considered in the evaluation and selection of a personal services contractor. The criteria are not listed in order of preference or importance. This section does not preclude the use of other additional criteria:

1. Timeliness of 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. Total cost to the agency for delivery of services.
7. Other criteria specially listed in the solicitation document on a case by case basis.

2.32.070 Disposition of Personal Property

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

B. The City Manager 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 the 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 Hood River 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 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;
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 Manager 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 express or implied, of any kind.

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

2.32.080 Adoption of Code and Rules.

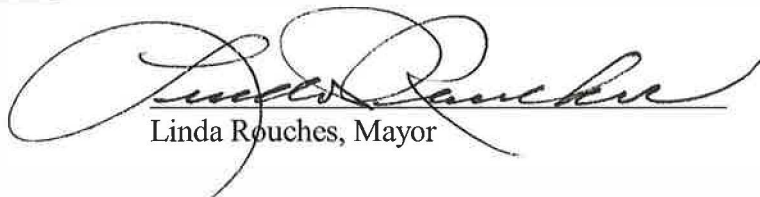
A. Except as specifically provided in this chapter, public contracts shall be awarded, administered and governed according to the Public Contracting Code and the Model Rules, as they now exist and may be amended in the future.

B. In the event of a conflict between any provisions of this Chapter and the Public Contracting Code or Model Rules, the provisions of the Public Contracting Code or Model Rules shall prevail.

Read for the first time: February 28, 2005.

Read for the second time and passed: February 28, 2005, to become effective March 1, 2005.

Signed March 1, 2005.


Linda Rouches, Mayor

ATTEST:


Jean Hadley, City Recorder

MEMO

DATE: February 14, 2005
TO: City Council
FROM: Alexandra Sosnkowski, City Attorney
RE: Findings for Exemptions to Public Contracts and Public Improvement Contracts Competitive Bidding Requirements

INTRODUCTION:

The City is in the process of revising its public contracting code to be consistent with the new Oregon Public Contracting Code contained in ORS Chapters 279A, B & C. The Oregon Public Contracting Code allows the City to exempt certain classes of public contracts and public improvement contracts from the competitive bidding requirements contained in the Code if it makes findings in support of the exemptions.

The proposed revisions to the City's public contracting code contain the exemptions listed below. This memo contains the proposed findings in support of the exemptions. As the City's local contract review board, the Council must adopt these findings to implement the exemptions in the City's code.

I. PUBLIC CONTRACT EXEMPTIONS

The following classes of public contracts are proposed to be exempt from the competitive bidding or competitive proposal requirements of the Oregon Public Contracting Code because the proposed alternative procedures will be unlikely to encourage favoritism in the awarding of public contracts, will be unlikely to substantially diminish competition for public contracts, and will result in substantial cost savings to the City.

1. Public Contracts Valued at Less than \$5,000. A public contract for an amount which is valued at less than Five Thousand Dollars shall be awarded by the Contracting Agency based on informal quotes. Amendments to public contracts under this section may not cause the contract price to exceed Six Thousand Dollars
2. Public Contracts Valued at \$5,000 or More But Less than \$25,000. A public contract for an amount which is valued at Five Thousand Dollars or more, but less than Twenty-five Thousand Dollars, shall be awarded by the Contracting Agency based on formal quotes. Amendments to public contracts under this section may not cause the contract price to exceed an amount that is greater than twenty-five percent (25%) of the original contract price.
3. Contracts for the purchase or commissioning of works of art.
4. For public contracts predominantly for services, one extension not exceeding the original term of the contract or annual renewals, if provided in the contract.

5. Amendments to contracts exceeding the limits in subsection (A) above if the City Council determines that it is not reasonably feasible to require additional competitive procurement to complete the purpose of the contract; otherwise the amendment shall comply with subsection (B) or the Council shall direct additional competitive procurement and the competitive procurement procedure required for the amendment.
6. Sole Source procurements pursuant to ORS 279B.075.
7. Emergency procurements pursuant to ORS 279B.080.
8. Purchases through federal programs pursuant to ORS 279A.180.
9. Contracts for products or supplies under \$5,000.

The first two proposed exemptions contain alternative procurement methods called “informal quotes” and “formal quotes”. Informal quotes allow the City Manager (or their designee, such as the City Engineer) to obtain written or verbal quotes responding to a written or verbal request for goods or services. Formal quotes allow the City Manager to obtain written quotes (no verbal quotes) responding to a written or advertised request for goods or services, and which must be received by a particular date. In both cases, the City Manager must try to obtain quotes from a sufficiently large number of people “to insure sufficient competition to meet the best needs of the City.” Three quotes is generally considered a minimum, although an award may be based on less than three quotes if the City Manager makes a written record of his effort to obtain at least three. Amendments to these two classes of contracts follow the Oregon Public Contracting Code and ensure that the exemption is not being used to circumvent a more competitive process and that the cost savings enjoyed by using the exemption is not unduly diminished.

Both exemptions are unlikely to encourage favoritism or substantially diminish competition because of the minimum quote requirements. Under the Public Contracting Code, public contracts valued at less than \$5,000 may be awarded directly, which is less competitive than the informal quote method which requires at least some effort to seek more than one contractor. The City would also realize substantial costs savings on these small procurements by not having to incur the administrative costs of a more formal procurement process better designed for more substantial procurements.

These exemptions mirror the exemptions under the City’s existing public contracting ordinance, which have been in place since 1999. The City’s experience with these exemptions has shown no favoritism, no diminishment of competition, and substantial cost savings to a small city with a limited budget.

The third exemption is for the purchase of works of art. This exemption will substantially promote the public interest in a manner that could not be practicably realized by complying with the competitive procurement requirements of the Public Contracting Code because procuring works of art is primarily a subjective exercise.

The fourth exemption is for renewals of public contracts that are predominantly for services. This exemption allows the City to extend or renew these types of contracts only for the same term once or on an annual basis, if provided in the contract. This exemption will also substantially promote the public interest because these types of renewals and extensions are limited in scope and will provide flexibility when needed. In addition, competition will not be diminished and favoritism will not be encouraged because of the limited scope. Substantial cost savings will result because the renewal or extension will allow a needed service to be continue to be provided and will allow the City sufficient time to determine whether a new contract is needed and under what terms.

The fifth exemption allows the contract review board to approve an amendment when it determines that it is simply not feasible to require additional competitive procurement to complete the purpose of the contract. Because of the limit on the contract review board's discretion under this exemption, competition will not be diminished and favoritism will not be encouraged. In addition, substantial cost savings will result because the amendment will be for the purpose of completing the purpose of the contract.

The sixth through ninth reflect existing exemptions under the Public Contracting Code which the Oregon Legislature has considered not subject to competitive requirements and for which, therefore, no further findings are required.

II. PUBLIC IMPROVEMENT CONTRACT EXEMPTIONS

The following classes of public improvement contracts are proposed to be exempt from the competitive bidding requirements of the Oregon Public Contracting Code because the proposed exemptions are unlikely to encourage favoritism in the awarding of public improvement contracts, will be unlikely to substantially diminish competition for public improvement contracts, and the award of public improvement contracts pursuant to the exemptions will result in substantial cost savings to the City.

1. Public Improvement Contracts Valued at Less than \$5,000. Public improvement contracts valued at less than Five Thousand Dollars shall be awarded by the Contracting Agency based on informal quotes.
2. Public Improvement Contracts Valued at \$5,000 or More But Less than \$25,000. Public improvement contracts valued at Five Thousand Dollars or more but less than Twenty-five Thousand Dollars shall be awarded by the Contracting Agency based on formal quotes.
3. 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.

The alternative contracting procedures are the same alternative procedures discussed above.

As with public contracts, the first two proposed exemptions for public improvement contracts track the City's procedure for these small procurements that the City has used for the last six years (and last 16 years with slight variation). The City's experience with these alternative procedures for awarding public improvement contracts has shown that no favoritism has resulted nor has competition been substantially diminished. This is due in large part to the fact that competition is still required, but just on a less formal basis, and because of the minimum quote requirements. As noted above, in instances when warranted for contracts between \$5,000 and \$25,000, the Contracting Agency can include advertisement of the contract. These alternative procedures take into account market realities and modern practices because they deal with contracts of relatively small size, yet still ensure a certain level of competition by not allowing direct contracting.

By maintaining these exemptions and continuing to use these alternative procedures, the City would also continue to realize substantial costs savings on these small procurements by not having to incur the administrative costs of a more formal procurement process better designed for more substantial procurements.

Amendments to these two classes of contracts must follow the guidelines of the Oregon Public Contracting Code, which ensure that the exemption is not being used to circumvent a more competitive process and that the cost savings enjoyed by using the exemption is not unduly diminished.

The third exemption for emergency contracts reflects an exemption under the Public Contracting Code which the Oregon Legislature has considered not subject to competitive requirements and for which, therefore, no further findings are required.