

ORDINANCE NO. 646

AN ORDINANCE REPEALING CHAPTER 2.24 (CONTRACT REVIEW BOARD) OF THE TROUTDALE MUNICIPAL CODE; ADOPTING A NEW CHAPTER 2.24 OF THE TROUTDALE MUNICIPAL CODE (PUBLIC CONTRACTS); AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Subject to the provisions of Section 3 of this ordinance, Chapter 2.24 of the Troutdale Municipal Code entitled "Contract Review Board" is repealed.

Section 2. A new Chapter 2.24 of the Troutdale Municipal Code entitled "Public Contracts" is adopted to read and provide as follows:

PUBLIC CONTRACTS

2.24.010 Definitions

For the purposes of this chapter the following words and phrases mean:

- A. "Bid" means a competitive offer in which price, delivery (or project completion), and conformance to specification is the predominant award criteria.
- B. "Bidder" means a person who submits a bid.
- C. "Bidding period" means the time between the date of the request for bids and the time and date set for receipt of bids. A bidding period is at least 14 calendar days unless a shorter time is deemed necessary in the public interest.
- D. "City administrator" means the City administrator or the administrator's designee.
- E. "Compensation requirements" means a general indication of the cost of professional services based on factors which may include the professional's costing procedures on pricing structure, hourly rates and fee schedule, overhead costs and fee range based on previous similar projects.
- F. "Competitive bidding" means the formal process for advertisement and requests for bids, bidding instructions, sealed bids, and bid opening at an announced place, time, and date, resulting in an award to the lowest responsible bidder.

- G. "Competitive quotes" means written or oral bids received after solicitation by correspondence, telephone, or personal contact.
- H. "Council" means the City council.
- I. "Consultant" means a person that has been found qualified to do specified types of work under contract with the City.
- J. "Lowest responsible bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disqualified under TMC 2.24.150 or 2.24.160.
- K. "Nonresident bidder" means a bidder who is not a resident bidder.
- L. "Person" means any individual, group, organization, firm, business, corporation, or any other association.
- M. "Personal services contract" means a contract predominantly for services performed by an independent contractor (as defined under ORS 670.600) and designated as a personal services contract under TMC 2.24.220. "Personal services contracts" include contracts for services performed by a professional, an artist in the performing arts, or a consultant, and contract for services of a specialized, creative, and research-oriented, noncommercial nature, and for educational and human custodial care services.
- N. "Proposal" means a competitive written offer, binding on the offeror, submitted in response to a request for proposals.
- O. "Public contract" means any purchase, lease, or sale by the City of personal property, public improvements, or services other than personal services contracts and employment contracts.
- P. "Public improvement" means any project for construction, reconstruction, or major renovation on real property by or for the City. "Public improvement" does not include emergency work, minor alteration, ordinary repair, or maintenance necessary to preserve a public improvement. "Public improvement" also does not include improvements mandated by the City when it issues a permit for work affecting a public way or when it sells or leases real property and retains no occupancy rights except by default or through an easement.
- Q. "Request for proposals" or "RFP" means the City's written document soliciting competitive written proposals or offers and setting forth the criteria and method to be used by the City to select the best proposals, when specification and price will not necessarily be the predominant award criteria.

- R. "Request for qualifications" or "RFQ" means the City's written document describing a proposed project indicating the type of particular services needed, and requesting a written statement of the respondent's specific experience and qualifications for performing the type of services required.
- S. "Resident bidder" means a bidder who has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, and has a business located in this state.
- T. "Works of art" means all forms of original creations of visual art, including but not limited to painting, sculpture, film, and videotape.

2.24.015 Policies on Competition For Public Contracts

- A. All public contracts of the City shall be made under conditions that foster competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:
 - 1. Writing specifications and procurement documents in a simple and easy to read format;
 - 2. Searching for new sources of supply;
 - 3. Attempting to make solicitation documents simple and inviting;
 - 4. Everyday courtesy shown to prospective suppliers and contractors; and
 - 5. The way information on contracting opportunities is provided to suppliers.
- B. The City may evaluate every aspect of competition in its effort to purchase products or services, choose the appropriate solicitation process in accordance with the criteria set out in subsections C and D of this section, and arrive at offers that represent optimal value to the City.
- C. It is the policy of the City to encourage public contracting competition that supports openness and impartiality to the maximum extent possible.
- D. The City council finds that:
 - 1. Competition exists not only in prices, but in the technical competence of suppliers, in their ability to make timely deliveries, and in the quality and performance of their products and services; and that a balance must exist between performance competition and price competition;

2. The nature of effective competition varies with the product or service being procured and while competitive sealed bids are a common method of procurement, it is not always the most advantageous or practical method of source selection;
3. Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:
 - a. Price competition as represented by the initial or acquisition price;
 - b. Competition as represented by price and performance evaluations of the competing items and suppliers;
 - c. Competition as represented by evaluation of the capabilities of bidders or proposers to perform needed services;
 - d. Competition as represented by evaluation of the capabilities of the bidders or proposers to perform the services followed by a negotiation on price; or
 - e. Competition as represented to another method of procurement that is reasonably calculated to satisfy the City's need.

2.24.020 Designation of Local Public Contract Review Board

The City Council of Troutdale is designated as the local public contract review board for the City and shall have all the powers granted by state law to a local public contract review board.

Ordinances and resolutions of the City council governing the award of contracts shall be deemed the rules of the City council sitting as a local public contract review board. The procedures governing City council adoption of ordinances and resolutions shall be the procedures governing the City council as a local public contract review board in the adoption of rules.

2.24.025 Authority of City Administrator

The City administrator shall be the contracting and purchasing agent for the City. The City administrator is authorized to award all City contracts for which there is an appropriation, subject to any provision to the contrary in the municipal charter. The award shall comply with this code and state law. The City administrator shall keep a record of all awarded City contracts, including bids solicited and received and determinations made.

2.24.030 Competitive Bids Required – Exceptions

- A. All public contracts shall be based upon competitive bids or proposals except:

1. Contracts made with other public agencies or the federal government.
2. Contracts made with qualified non-profit agencies providing employment opportunities for disabled individuals or other training programs.
3. Contracts exempt under TMC 2.24.035 (council action exemptions) or under TMC 2.24.040 (emergency exemptions).
4. Contracts for the purchase of goods, materials, supplies and services, and trade-related projects (i.e., construction, maintenance, repair or similar labor, and materials contracts) not to exceed \$25,000, subject to the following:
 - a. Competitive quotes are not required when the amount of the contract is less than \$2,500.
 - b. A minimum of three competitive quotes shall be obtained where the amount of the contract is \$2,500 or more. The City administrator shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes.
5. Contracts for equipment repair or overhaul if:
 - a. The service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
 - b. The service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.
 - c. The service or parts required are known and available from a sole, specific source to match existing equipment.
6. Contracts for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.
7. Contracts for insurance where either the annual or aggregate premium is less than \$5,000 or where the insurance is procured pursuant to ORS 30.282. Insurance contracts with higher premiums must be let either by formal competitive bidding or by one of the procedures set forth in TMC 2.24.045.
8. Contracts for the purchase of gasoline, diesel fuel, heating oil, lubricants, and asphalt if:

- a. The City administrator seeks competitive purchase from the least expensive source; and
 - b. The City administrator retains written justification for the purchase made.
9. Contracts for subscriptions for periodicals, including journals, magazines, and similar publications.
10. Contracts for the purchase of used personal property if the City administrator determines that the award of the contract without competitive bidding will result in cost savings.
11. Contracts for the investing of public funds or the borrowing of funds by the City when the investment or borrowing is contracted under the duly enacted statute, ordinance, charter, or constitutional provision.
12. Contract amendments for additional work, including change orders, extra work, field orders, or other changes in the original specifications which increases the original contract price if:
 - a. The original contract was let by competitive bidding, unit prices or bid alternatives were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or
 - b. The amount of the aggregate cost increase resulting from all amendments does not exceed 20% of the initial contract. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding 33% of the initial contract. Amendments made pursuant to subsection a. above are not included in computing these aggregate amounts.
13. Contracts for the purchase of copyrighted materials where there is only one known supplier available for such material.
14. Contracts for the purchase of requirements for an anticipated need at a predetermined price if:
 - a. The contract is let by a competitive procurement process; and
 - b. The term of the contract including renewals does not exceed three years.

When the price of goods and services has been established by a requirements contract under these provisions, the City administrator may purchase the goods and services from the supplier without subsequent competitive bidding.

15. Contracts for the purchase of employee benefit insurance.
16. Contracts for products where there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only a single seller, subject to the requirements of single manufacturer or compatible products provisions under TMC 2.24.050.
17. Contracts for the acquisition of data and word processing or telecommunications systems hardware and systems software.
18. Contracts for telecommunications services, subject to the provisions of OAR 125-320-025.
19. Contracts for the purchase or lease of office copiers and telefax equipment. The City administrator may enter into multiple price agreements or requirements contracts for either the purchase or lease of office copying and telefax equipment. The agreements shall conform with the limitations on requirements contracts set out above. In exercising this exception, the City administrator shall fully consider the operating capabilities, limitations, and cost of each brand or model and select that brand which will produce the best combination of performance and cost per copy or transmission.
20. Contracts for the purchasing or commissioning of works of art.
21. Contracts for goods purchased for resale to consumers.
22. Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is a party to the contract for which the original contract met the requirements of ORS ch. 279, the contract allows other public agency usage of the contract, and the original contracting public agency concurs.
23. Contracts with temporary service or employment agencies.

2.24.035 Exemptions by Council Action

- A. Following a request by the City administrator, the council may by resolution exempt particular contracts or classes of contracts from competitive bidding if it finds:
 1. It is unlikely that the exemption will result in favoritism or substantially diminish competition for the contract; and
 2. The exemption will result in substantial cost savings to the City.

In making those findings the council may consider the type, cost, amount of the contract, number of persons available to bid, and other factors the council deems appropriate.

B. A request for exemption by the City administrator shall include:

1. The nature of the project;
2. The estimated cost of the project;
3. A narrative description of the cost savings anticipated by the exemption from competitive bidding and the reasons competitive bidding would be inappropriate;
4. Proposed alternative contracting and purchasing practices to be employed;
5. The estimated date by which it would be necessary to let the contract.

The council may require such additional information as is deemed necessary to determine whether a specific contract is to be exempt from competitive bidding.

C. In granting exemptions pursuant to this section, the council shall:

1. 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 public policy of encouraging competition; and
2. Require written justification by the City administrator sufficient to justify the awarding of a particular public contract or a class of public contracts without competitive bidding.

2.24.040 Exemptions – Emergencies and Surplus Personal Property

A public contract also may be exempt from competitive bidding requirements if the City adopts written findings that either of the conditions set forth in subsections A or B of this section exist. When making these findings the City, when appropriate, shall direct the use of alternative contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods which are also consistent with the public policy of encouraging competition.

A. Emergency conditions require prompt execution of the contract.

1. An emergency shall be justified by circumstances creating a substantial risk of loss, damage, interruption of services, or threat to public health or safety that could not

have been reasonably foreseen and which require prompt execution of a contract to remedy the condition.

2. The council shall, by motion, order, or resolution, declare the existence of the emergency. It shall state with specificity in the order or resolution the justification of the emergency necessitating the prompt execution of the contract.
 3. The City administrator may declare the existence of an emergency and authorize the City to enter into an emergency contract with a price under \$25,000. The City administrator shall make written findings describing the justification of the emergency necessitating prompt execution of the contract.
 4. Any contract awarded under the emergency exemption shall be awarded within 60 days following the declaration of the emergency unless the council grants an extension.
 5. To the extent reasonable under the circumstances, the City administrator shall encourage competition by making informal solicitations or obtaining informal quotes from potential suppliers of goods or services. A written record of these measures shall be kept.
- B. Surplus property is to be sold and the number, value, and nature of surplus personal property to be sold makes it likely that a liquidation sale will result in substantially greater net revenue to the City as compared with a sale by competitive bidding.

2.24.045 Exemptions – Insurance

Contracts for insurance where either the annual or aggregate premium exceeds \$5,000 must be let by formal competitive bidding or by one of the following procedures.

- A. **Agent of Record:** The City administrator may appoint a licensed insurance agent (“agent of record”) to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverage for which the agent of record is given responsibility.
1. Prior to the selection of an agent of record, the City administrator shall make reasonable efforts to inform known insurance agents in the competitive market area that the City is considering selecting an agent. These efforts shall include a public advertisement in at least one newspaper of general circulation in the Portland metropolitan area. The advertisement shall generally describe the nature of the insurance required by the City. If the amount of the annual premium for insurance, other than employee benefits insurance, is likely to exceed \$10,000 per

year, the notice shall be advertised in at least one insurance trade publication of general circulation in the state.

2. Any appointment period shall not exceed three years. Agents may serve more than one appointment period, but must qualify for appointment prior to each period.
3. In selecting an agent of record, the City administrator shall select the agent likely to perform the most cost-effective services.

B. **Specific Proposals for Insurance Contracts:** The City administrator may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

1. The City administrator shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. These efforts shall include public advertisements in at least one newspaper of general circulation in the Portland metropolitan area. If the amount of annual premium for insurance, other than employee benefits insurance, is likely to exceed \$10,000 per year, the notice shall be advertised in at least one insurance trade publication in the state.
2. The council shall select a contract on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

C. **City/County Insurances Services Trust (CIS):** The City administrator may be authorized by resolution to contract with the CIS Trust for the purpose of acquiring specific insurance coverages for three-year periods. Contract renewal for three-year periods may occur provided that:

1. The CIS Trust offers continuing cost stability and the potential for long-term savings.
2. The City administrator finds that membership in the CIS is of benefit in managing the risks involved in providing services to its citizens.

2.24.050 Specifications for Contracts – Exemptions

A. **General Rule:** Specifications for contracts shall not require any product by any brand name or mark, nor the product of any particular manufacturer or seller, unless the product is exempt under this section. However, this prohibition shall not be construed to prevent reference in a specification to a particular product as a description of the type of product required.

B. Exemptions by Council: The council may, by motion, resolution, or ordinance, exempt certain products or classes of products from subsection A. upon any of the following written findings:

1. It is unlikely the exemption will encourage favoritism or substantially diminish competition in the awarding of the contract;
2. The specification of a product by brand name or make, or the product of a particular manufacturer or seller, would result in a substantial cost savings;
3. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

C. Single Manufacturer or Compatible Products: If there is only one manufacturer or seller of a required product of the quality required, or if the required product is data processing equipment which shall be used for research where there are requirements for exchange of software and data with other research establishments, or if efficient use of existing equipment or supplies requires a compatible product of a particular manufacturer or seller, the City administrator may specify a particular product subject to the following conditions:

1. The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only price but also other items of expense, such as costs related to quality, installation, or conversion.
2. Prior to awarding the contract, the City administrator has made reasonable efforts to notify known vendors of competing or comparable products of the intended specifications and has invited these vendors to submit competing proposals.
3. If the amount of the purchase is \$25,000 or more, the City administrator shall document the administrator's actions in the bid file. This documentation shall include:
 - a. A brief description of the proposed contract or contracts;
 - b. A detailed explanation of why the product or seller was selected and why any competing products or sellers were rejected. The description shall also include the efforts made by the City administrator to notify and invite proposals from competing vendors.
4. If the City administrator intends to make several purchases of the product of a particular manufacturer or seller for a period not to exceed two years, the administrator may so state in the required documentation, and this documentation shall be sufficient notice as to subsequent purchases.

D. **Product Pre-qualification:** When it is impractical to create specific design or performance specifications for a type of product to be purchased, the City administrator may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following pre-qualification procedure:

1. The City administrator has made reasonable efforts to notify all known manufacturers or vendors of competitive products of the administrator's intention to accept application for inclusion in its list of pre-qualified products. Notification shall include advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, the City administrator may notify vendors and manufacturers on an appropriate list maintained by the Oregon Department of General Services.

a. The City administrator permits application for pre-qualification of similar products up to 15 days prior to advertisement for bids on the product.

b. If an application for inclusion in a list of pre-qualified products is denied, or an existing pre-qualification revoked, the City administrator shall notify the applicant in writing. The applicant may appeal to the council in the manner provided in TMC 2.24.060.

E. **Copyrighted Materials:** The City administrator may specify a specific copyrighted product. This exemption does not include patented or trademarked goods.

F. **Brand Name or Make Exemption Applications:** The City administrator may apply for and receive a brand name or make exemption ruling from the council for current and contemplated future purchases. Applications shall contain the following:

1. A brief description of the contract or contracts to be covered, including contemplated future purchases;

2. The brand name, mark, or product to be specified; and

3. The reasons the City administrator is seeking the exemption.

2.24.060 Exemption Procedure – Hearing and Findings

A. Whenever an exemption to the requirements for competitive bids under TMC 2.24.035, or brand name specification under TMC 2.24.050F, or product pre-qualification that is appealed under TMC 2.24.050D is considered, the council shall provide for notice in at least one newspaper of general circulation in the Portland metropolitan area and an opportunity for a public hearing on whether the exemption should be allowed.

B. The council's decision shall be supported by findings.

2.24.070 Preference for Oregon Contractors

- A. In all public contracts, the City shall prefer goods or services that have been manufactured or produced in this state if price, fitness, availability, and quality are otherwise equal.
- B. When a public contract is awarded to a foreign contractor and the contract price exceeds \$10,000, the contractor shall promptly report to the Oregon Department of Revenue on forms to be provided by the Department the total contract price, terms of payment, length of contract, and other information the Department requires before final payment can be received on the public contract. The City administrator shall determine that this requirement has been satisfied before final payment on a public contract is issued.

2.24.080 Least Cost Policy

- A. It is the policy of the City that the City shall make every effort to construct public improvements and enter into public contracts at the least cost to the City.
- B. Not less than 30 days prior to adopting its budget the City shall prepare and file with the Commissioner of the Oregon Bureau of Labor and Industries a list of every public improvement that the City plans to fund in the budget period, identifying each improvement by name and estimating the total onsite construction costs. The list shall also contain a statement as to whether the City intends to perform the construction by a private contractor. If the City intends to perform construction work using the City's own equipment and personnel on a project estimated to cost more than \$50,000, then the City shall also show that its decision conforms to the policy stated in subsection A. The list is a public record and may be revised periodically by the City.
- C. Before the City constructs a public improvement with its own equipment or personnel:
 - 1. If the estimated cost exceeds \$50,000, the City shall prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost of the work shall include a reasonable allowance for the cost, including investment cost, of any equipment used. As used here, "adequate" means sufficient to control the work performance and to assure satisfactory construction quality by City personnel;
 - 2. The City shall cause to be kept and preserved a full, true, and accurate account of the costs of performing the work, including all engineering and administrative expenses and the cost, including investment costs, of any equipment used. The final account of the costs shall be a public record.

- D. For the purposes of the section, resurfacing of highways, roads, or streets at a depth of two or more inches and at an estimated cost that exceeds \$50,000 is a public improvement.

2.24.090 Requirements for Bid Advertisements

- A. Each advertisement for bids shall be published at least once in at least one newspaper of general circulation in the Portland metropolitan area, and in as many additional issues and publications as the council determines. If the contract is for a public improvement with an estimated cost in excess of \$50,000, the advertisement for bids shall also be published in at least one trade newspaper of general statewide circulation. The council may require an advertisement for bids to be published more than once or in one or more additional publications.
- B. All advertisements for bids shall state:
1. If the contract is for a public work subject to ORS 279.348 to 279.363 or the Davis-Bacon Act (40 U.S.C. 276a), then the City shall not receive or consider any bid unless the bid contains a statement that the bidder will comply with the provisions of ORS 279.350 or 40 U.S.C. 276a;
 2. The date after which the City will not receive bids, which date shall be not less than five days after the date of the last publication of the advertisement;
 3. The date that pre-qualification applications must be filed under TMC 2.24.160 and the class or classes of work for which bidders must be pre-qualified if pre-qualification is a requirement;
 4. The character of the work to be done or the material or things to be purchased;
 5. The place where the specifications for the work, material, or things may be reviewed;
 6. The name and title of the person designated for receipt of bids;
 7. The date, time, and place where the City administrator publicly will open the bids;
 8. That each bid must contain a statement as to whether the bidder is a resident bidder, as defined in TMC 2.24.010;
 9. That the City administrator may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject any or all bids upon a finding that it is in the public interest to do so; and

10. Whether or not a contractor or subcontractor must be licensed under ORS 468A.720.
11. That no bid for a construction contract shall be received or considered unless the bidder is registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530.

2.24.100 Requirements for Bids

- A. All bids made to the City shall be:
 1. In writing;
 2. Filed with the person designated by the City administrator to receive bids;
 3. Opened publicly at the time stated in the advertisement.
- B. After opening, the bids shall be filed for public inspection.
- C. A surety bond, cashier's check, or certified check of the bidder shall be attached to all bids as bid security unless the contract for which the bid is submitted has been exempted from this requirement as provided by TMC 2.24.140. The security shall not exceed 10% of the amount bid for the contract.

2.24.110 Award of Contract – Bond

- A. After the bids are opened as required, and after a determination is made that a contract is to be awarded, the City administrator shall award the contract to the lowest responsible bidder.
- B. In determining the lowest responsible bidder, the City administrator shall add a percent increase on the bid of a nonresident bidder equal to the percent of the preference given to that bidder in the state in which the bidder resides. A report of the Oregon Department of General Services may be used in determining the amount of these preferences.
- C. The successful bidder shall:
 1. Promptly execute a formal contract;
 2. If the contract is for a public improvement, execute and deliver to the City a sufficient bond for the faithful performance of the contract in a sum equal to the contract price, as well as a bond for the payment of all obligations incurred in performance. Instead of a surety bond, the City administrator may permit the successful bidder to submit a cashier's check or certified check in a sum equal to the contract price.

- D. The requirement of furnishing performance and payment bonds may be excused fully or conditionally by a declaration of emergency, or a declaration that the interest or property of the City probably would suffer material injury by delay or other cause. The declaration shall be by unanimous vote of the Council.

2.24.120 Bid Rejection

The City administrator may reject any bid not complying with all prescribed public bidding procedures and requirements and may reject all bids if it is in the public interest to do so. If competitive bids are required and all bids are rejected, and the proposed contract is not abandoned, new bids may be called for as in the first instance.

2.24.130 Return or Retention of Bid Security

Upon the execution of the contract and bond by the successful bidder, the bid security of the successful bidder shall be returned to the bidder. The bidder who is awarded a contract and who fails promptly and properly to execute the contract or bond shall forfeit the bid security as liquidated damages and not as a penalty. The bid security of unsuccessful bidders may be returned to them when the bids have been opened and the contract has been awarded, and shall not be retained by the City after the contract has been signed.

2.24.140 Exemption of Contracts from Bid Security and Bond

Contracts, including contracts for public improvements, in amounts of less than \$10,000, shall be exempt from the requirement to submit a bid security or a performance or payment bond. However, the City administrator may, in appropriate cases, require bid security and a sufficient performance and payment bond even though the contract is less than \$10,000. The council may also exempt certain other contracts or classes of contracts from the requirements of bid security and performance and payment bonds.

2.24.150 Disqualification of Bidder

- A. The City administrator may disqualify any person as a bidder on a public contract if the City administrator finds that the person:
1. Does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a performance bond in the amount and type required shall be sufficient to establish financial ability;
 2. Does not have equipment available to perform the contract;

3. Does not have key personnel available of sufficient experience to perform the contract;
 4. Has repeatedly breached contractual obligations to public or private contracting agencies; or
 5. Has discriminated against minorities, women, or emerging small business enterprises in the award of subcontracts in previous contracts with the City, contrary to TMC 2.24.210.
- B. The City administrator may investigate the qualifications of a person. A bidder or prospective bidder may be disqualified for failure to supply promptly information requested by the City in an investigation.
- C. Information submitted by a bidder or prospective bidder pursuant to an investigation of qualifications, or in a pre-qualification statement or request under TMC 2.24.160, is a trade secret and protected under the public records disclosure laws if confidentiality is requested by the person submitting the information.

2.24.160 Pre-qualification of Bidders – Notification – Investigation – Revocation

- A. The council may adopt a resolution requiring mandatory pre-qualification for persons desiring to bid for some public contracts that are to be let by the City. This resolution shall include the time for submitting pre-qualification applications and a general description of the type and nature of the contract that may be let.
- B. A pre-qualification applicant shall submit an application to the City on a form prescribed by the City administrator. The City administrator shall investigate and determine qualification within 30 days after receipt of an application. The prospective bidder may request an early decision to allow more bid preparation time. A person may be disqualified only for the reasons listed in TMC 2.24.150A. The City administrator shall promptly notify the person of the determination. The notice must specify the basis for any disqualification. Unless reasons are specified, the bidder is deemed to be qualified.
- C. The City administrator's notice of qualification shall state the nature and type of contract on which that person is qualified to bid and the period of time for which the qualification is valid. A notice of disqualification shall inform the person of the right to a hearing under TMC 2.24.180.
- D. If the City administrator has reasonable cause to believe there has been a substantial change in the conditions of a pre-qualified person and that the person is no longer qualified or is less qualified, the City administrator may revoke or may revise and reissue the pre-qualification after reasonable notice to the pre-qualified person. The notice shall

state the reasons found under TMC 2.24.150 for revocation or revision of the pre-qualification of the person and inform the person of the right to a hearing under TMC 2.24.180. A revocation or revision does not affect any bid which has been advertised previously under TMC 2.24.090.

2.24.180 Appeals

- A. A person who has been disqualified as a bidder may appeal the disqualification to the council in the following manner:
 - 1. Within five business days after receipt of notice of disqualification, the person shall notify the City administrator in writing that the person wishes to appeal the disqualification.
 - 2. Upon receipt of written notice of appeal, the City administrator shall inform the council and notify the person of the time and place of the appeal hearing.
- B. Hearings before the council shall be conducted under rules of procedure adopted by the council for decisions on quasi-judicial land use matters as applicable. The council shall consider the notice of disqualification, the record of the investigation made by the City, and any evidence provided by the parties. The disqualified party shall have the burden of proof to show his or her qualifications. The council may delegate the hearing to a hearings officer.
- C. A written decision on the appeal shall be issued if possible within thirty days after receipt of the notice of appeal.

2.24.190 Adoption of Bidding Procedures

The Attorney General's Model Public Contract Rules, OAR 137-30-000 to 137-40-045 are adopted by reference and incorporated herein, except to the extent any part of those rules is inconsistent with a provision of this chapter. The City recorder shall maintain a copy of these rules for public use and inspection. These rules shall govern the bidding process and public improvement contracts. They include provisions on bid documents, bid preparations, bidder submissions, bid security, pre-bid conferences, protest of bid specifications, addenda to bid documents, pre-opening modification or withdrawal, bid opening, late bids, bid evaluation, low tie bids, rejection of bids, and other procurement matters.

2.24.200 Federal Law

Applicable federal law governs in any case where federal funds are involved and the federal law conflicts with any provision of this chapter or requires additional public contract conditions not authorized by this chapter.

2.24.210 Discrimination – Disqualifications

A contractor with the City shall not discriminate against minorities, women, or emerging small business enterprises in awarding subcontracts. The contractor shall certify in the bid documents that the contractor has not discriminated against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.

2.24.215 Advertisement and Requirements of Requests for Qualifications, Requests for Proposals

- A. When used, advertisements for requests for qualifications and requests for proposals shall describe briefly:
1. The proposed project;
 2. The scope of the services sought and any special contractual requirements;
 3. Project completion dates;
 4. The deadline for submitting a response; and
 5. Where copies of the solicitation documents may be obtained.
- B. Requests for Qualifications.
1. Requests for qualifications shall include:
 - a. General background information, including the information described in the RFQ advertisement;
 - b. A statement of the particular personal services qualifications required for the project;
 - c. The screening or evaluation method to be used;
 2. A request for qualification may request the following written information from respondents:
 - a. The person's capability to perform the required services, and current and projected workloads;
 - b. The number, qualification, and experience of personnel available to perform the services required by the project;

- c. A list of similar projects completed by the respondent with the names of persons familiar with performance of these projects; and
- d. Copies of past performance records maintained by governmental entities.

C. Requests for Proposals.

1. Requests for proposals shall include:

- a. General background information, including the information described in the RFP advertisement;
- b. Special contract requirements, including but not limited to affirmative action participation goals or good faith efforts and federal requirements where federal funds are involved;
- c. The approximate start date and the estimated time for completion of the contract and, where possible, the anticipated phases of the contract;
- d. The evaluation process and the criteria which will be used to select the recipient of the contract, including the weight or points applicable to each criterion;
- e. Whether interviews are anticipated and the role of any evaluation committee;
- f. A sample of the contract the consultant will be expected to execute, unless the City requires the consultant to provide the contract document;
- g. The deadlines and place for submission of proposals;
- h. A statement that the City reserves the right to seek clarifications of the proposed project approach, projected costs, or the assignment of resources and reserves the right to negotiate a final contract which is in the best interest of the City; and
- i. A statement that the City reserves the right to reject any or all proposals if it would be in the public interest to cancel the solicitation.

2. A request for proposal may request the following written information from respondents:

- a. The information required by TMC 2.24.215B2;

- b. A description of the respondent's proposed project approach, including a schedule and an estimate of the amount of time that the respondent will need to complete each major task;
- c. The proposed fee;
- d. The availability of any required specific resources or equipment; and
- e. The identity of any proposed subcontractors and the portions of the work to be performed by subcontractors.

2.24.220 Personal Service Contracts – General Requirements

- A. Contracts for auditing and financial services, legal services, architectural and engineering services, planning services, and technical inspection services are hereby designated as personal service contracts.
- B. The council by resolution may designate additional service contracts or classes of service contracts as personal service contracts if the following conditions apply:
 - 1. Specialized skills, knowledge, and resources are not available within the City staff;
 - 2. The work cannot be done in a reasonable time with the City's own work force;
 - 3. An independent and impartial evaluation of a situation is required by a consultant with recognized professional expertise and stature; or
 - 4. It will be less expensive to contract for the work.
- C. Persons who are interested in performing services for the City may submit their areas of interest to the City Administrator, who will compile a list of prospective consultants. This list may be used in lieu of an advertisement when issuing a request for qualifications or a request for proposals for a specific project.

2.24.230 Personal Service Contracts – Formal Selection Process

- A. This procedure shall be used whenever the estimated fee to the contractor exceeds \$25,000. The City may use the formal selection process when the estimated fee to the contractor is less than \$25,000.
- B. Solicitation of Proposals.
 - 1. Responses shall be solicited through public advertisement or notice to persons on the City's consultant list, inviting response to either:

- a. A request for proposals (RFP); or
 - b. A request for qualifications (RFQ) to establish a short list, followed by an RFP.
2. The advertisement, when used, shall appear at least once in at least one newspaper of general circulation in the Portland metropolitan area. The solicitation may be advertised in additional issues and publications to achieve adequate competition or to reach the minorities, women, and emerging small business enterprise audiences. The advertisement(s) shall be published no fewer than 21 days before the deadline for responding. A shorter time may be used if compelled by an immediate public need.

C. Use of Request for Qualifications.

1. An RFQ used to evaluate qualifications, screen potential consultants, and establish a short list shall contain the information required by TMC 2.24.215B.
2. The City administrator shall review, score, and rank the consultants according to the solicitation criteria and the results of any oral interview. The City administrator may delegate this screening to a committee composed of highly qualified professional employees of the City or other agencies. The committee may include private practitioners of the work encompassed by the project.
3. Following screening and evaluation, the City administrator shall establish a short list of at least three qualified consultants. If four or fewer persons respond to the RFQ, then a short list of fewer than three qualified consultants may be established or the RFQ may be canceled and an RFP issued.
4. Every qualified consultant placed on a short list shall receive an RFP under TMC 2.24.215C and have an opportunity to submit a proposal. No person shall be eligible for placement on a short list during the period in which any of the person's principals, partners, or associates is a member of the City administrator's evaluation committee.
5. Publication of an RFQ shall not make the City responsible for any consultant costs and expenses incurred in submitting responses to an RFQ. All potential consultants who respond to an RFQ do so solely at the consultant's cost and expense.
6. Any reasonable evaluation method may be used to establish a short list of qualified consultants, including but not limited to:
 - a. Requiring potential consultants to achieve a threshold score to be placed on a short list;

- b. Placing the highest scoring qualified consultants on a short list; or
- c. Placing on a short list only those consultants who possess certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

D. Request for Proposals

- 1. A meeting may be held for all interested consultants to discuss the proposed project and the required services. Attendance at such a meeting, if held, may be mandatory.
- 2. An RFP consultant selection committee of at least three persons shall be appointed by the City administrator to review, score, and rank the consultants' responses to the RFP. If the RFP follows an RFQ, the RFP consultant selection committee may be the same as any RFQ consultant evaluation committee. The RFP consultant selection committee may interview consultants. The committee may be composed of highly qualified professional employees of the City or other agencies and may include private practitioners of the work encompassed by the project. The council may establish a different consultant selection committee when selection of the consultant is done by the mayor or council.
- 3. No person or firm shall be eligible for award of a consultant contract during the period in which any of the person's principals, partners, or associates is a member of the consultant selection committee.
- 4. The RFP consultant selection committee shall review, score, and rank all responsive proposals according to criteria listed in the RFP. These criteria may include but are not limited to the following:
 - a. Availability and capability to perform the work;
 - b. Experience of key staff on comparable project(s);
 - c. Demonstrated ability to successfully complete similar projects on time and within budget;
 - d. References and recommendations from past clients, public and private;

- e. Consultant's performance history in (i) meeting deadlines; (ii) submitting accurate estimates; (iii) producing quality work; and (iv) meeting financial obligations;
- f. Status and quality of any required licensing or certification;
- g. Consultant's knowledge and understanding of the project as shown in the consultant's approach to the project's staffing and scheduling needs;
- h. Fees required, whether estimated or firm;
- i. Results from oral interviews, if conducted;
- j. Design philosophy and project approach; and
- k. Any other criteria that are deemed to be relevant to the project, including where the nature and budget of the proposed project so warrant, a design competition between competing professional consultants.

Each of the evaluation criteria shall be of equal weight unless the RFP provides otherwise and states the weights or points applicable to each criterion.

- 5. The City may at any time during the solicitation process or during contract negotiation reject all proposals and cancel the solicitation without liability. The City shall not be responsible for any consultant costs and expenses incurred in submitting responses to the solicitation. All prospective consultants who respond to an RFP do so solely at the consultant's cost and expense.
- 6. An awarded project may become inactive, lapse, or change as a result of project phasing, insufficient appropriations, or other reasons. If the project is reactivated, the City may retain the same qualified consultant to complete the project. The City administrator shall make a written finding that the City's interests are best served by retaining the same consultant.

2.24.240 Personal Service Contracts – Informal Selection Process

- A. A personal service contract may be awarded using an informal selection process when the estimated fee to the consultant does not exceed \$25,000 or, at the discretion of the City administrator, when the project consists of work which has been substantially described, planned, or otherwise previously studied or rendered in an earlier City contract, if the original selection procedure used for the project was a formal procedure. This procedure shall not be used when the estimated fee to a consultant exceeds \$25,000 except by approval of the council.

- B. Selection. The City administrator shall contact a minimum of three prospective contractors with which the City or other jurisdictions in the Portland metropolitan area have had previous successful experience. A projected fee shall be requested and a selection made by the City administrator based upon the consultant's capability, experience, project approach, and compensation requirements.

2.24.250 Personal Service Contracts – Emergency Appointment Procedure

The City administrator may recommend direct consultant appointments when conditions require prompt action for the best interest of the City or when necessary to protect life or property. The recommended appointment and a written description of the conditions requiring emergency appointment shall be submitted by the City administrator to the council. The council shall determine whether an emergency exists, declare the emergency, and when appropriate, approve the appointment. The preceding does not restrict the City Administrator's authority to declare an emergency and authorize an emergency contract with a price under \$25,000 as provided in Section 2.24.040A.3.

2.24.260 Personal Service Contracts – Protest Procedure

- A. Solicitation Protest. Unless a different deadline is specified in the solicitation document, prospective consultants may submit a written protest or request for change of particular solicitation provisions, specifications, or contract terms and conditions to the City no later than five calendar days prior to the close of the solicitation. Such protest or request for change shall include the reasons for the protest or request and any proposed changes to the solicitation provisions, specifications, or contract terms and conditions. No protest against selection of a consultant or award of a consultant contract, because of the contract terms and conditions, shall be considered after the deadline established for submitting such protest.
- B. Selection Protest. Unless a different deadline is specified in the solicitation document, a prospective consultant who has submitted a proposal and claims to have been aggrieved by the City's selection of a competing consultant, shall have 14 calendar days after the City's notice of selection of the competing consultant to submit a written protest of the selection to the City. To be aggrieved for purposes of having a right to submit a protest, a proposer must claim that the proposer was the highest ranked qualified consultant eligible for selection, i.e., the protester must claim that all higher ranked consultants were ineligible for selection because their proposals were non-responsive or the consultants non-responsive. The City shall not consider a selection protest submitted after the time period established in this section nor any selection protest submitted after the deadline provided in the City's solicitation.
- C. The City administrator has authority to settle or resolve a written protest submitted in accordance with this section. The City administrator shall promptly issue a written

decision on the protest. The action of the City administrator shall be the final action of the City on the matter.

2.24.265 Bureau of Labor and Industries Fee

Every contract, and the specifications for every contract, for a public work which exceeds \$25,000 and is not regulated under the Davis-Bacon Act (40 USC 276a) must contain a provision stating that the contractor shall pay a fee to the Bureau of Labor and Industries pursuant to ORS 279.352. The fee shall be equal to one-tenth of one percent of the price of the contract, but not less than \$100 nor more than \$5,000.

2.24.270 Terms and Conditions Applicable to Public Contracts

The City administrator may establish standard terms and conditions for City public contracts in addition to those required by ORS 279.310 to ORS 279.575. These parts of state law require public contracts to include various provisions, including obligations related to payment of laborers, hours of labor, environmental law compliance, maximum hours and overtime, prevailing wage rates, retainage, labor and material liens, and other matters.

2.24.280 Delegation of Authority

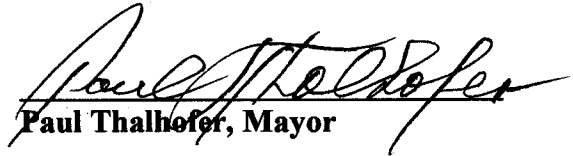
The City Administrator may delegate authority granted in this chapter to appropriate City employees. Such delegation must be in writing.

Section 3. The former provisions of Chapter 2.24 of the Troutdale Municipal Code continue to apply to any public contract of the City which is in a procurement process as of the effective date of this ordinance. This ordinance applies to any public contract solicited or advertised after the effective date of this ordinance.

Section 4. The City council finds that those portions of this ordinance which exempt classes of contracts from the requirement of public bidding are justifiable under ORS 279.015(2). The exemption from public bidding for these types of contracts will not encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts and the award of these kinds of contracts without bidding will result in substantial cost savings to the City of Troutdale.

Section 5. The effective date of this Ordinance is January 1, 1997.

YEAS:	<u>7</u>
NAYS:	<u>0</u>
ABSTAINED:	<u>0</u>


Paul Thalhofer, Mayor

Dated: 12/3/96


George Martinez, City Recorder

Adopted: November 26, 1996

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