

ORDINANCE NO. 688

AN ORDINANCE MODIFYING PUBLIC CONTRACTING PROCEDURES AND AMENDING CHAPTER 2.24 OF THE TROUTDALE MUNICIPAL CODE.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City has promulgated its public contracting procedures in Chapter 2.24 of the Troutdale Municipal Code.
2. Recent laws enacted by the State Legislature, including SB 271, HB 2024, HB 2025, HB 2574, and HB 2895 require changes to those public contracting procedures.
3. The proposed ordinance addresses those changes, which include:
 - a. A change in the definition of "lowest responsible bidder" (Section 2.24.010).
 - b. An increase from \$50,000 to \$125,000 as the "least-cost" threshold (Section 2.24.080).
 - c. An increase from \$50,000 to \$125,000 as the minimum amount which would require publishing the advertisement for bids in at least one trade newspaper of general statewide circulation (Section 2.24.090, Paragraph A).
 - d. The transfer of certain requirements from the advertisement for bids (Section 2.24.090, Paragraph B) to the bid documents (Section 2.24.100, Paragraph A).
 - e. Adding subcontractor disclosure requirements (Section 2.24.100, Paragraph C).
 - f. Adding mandated requirements to be included in public contracts (Section 2.24.105).
 - g. Adding the requirement to check the list created by the Construction Contractors Board for unqualified bidders (Section 2.24.110, Paragraph B).
 - h. Updating the procedures for disqualifying a potential bidder (Section 2.24.150).
 - i. Clarifying that the City elects to use its own public contracting procedures rather than the Attorney General's Model Rules (Section 2.24.190).
 - j. Repealing a Section that was moved to another portion of the Code (Section 2.24.265).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. That portion of Section 2.24.010 of the Troutdale Municipal Code pertaining to "Lowest Responsible Bidder" is amended to read:

"Lowest responsible bidder" means the lowest bidder who: (a) is not on the list established by the Construction Contractors Board pursuant to state law; (b) has substantially complied with all prescribed public bidding procedures and requirements; (c) has met the standards of responsibility, and; (d) has not been disqualified under Sections 2.24.150 or 2.24.160.

Section 2. Section 2.24.080 of the Troutdale Municipal Code is amended to read:

- A. It is the policy of the City that the City shall make every effort to construct public improvements at the least cost to the City.
- B. Not less than thirty 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 on site 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 one hundred twenty-five thousand dollars, then the City shall also show that its decision conforms to the policy stated in subsection A of this section. 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 one hundred twenty-five thousand dollars, 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 this section, resurfacing of highways, roads or streets at a depth of two or more inches and at an estimated cost that exceeds one hundred twenty-five thousand dollars is a public improvement.

Section 3. Section 2.24.090 of the Troutdale Municipal Code is amended to read:

- 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 one hundred twenty-five thousand dollars, 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 state law or the Davis-Bacon Act (40 U.S.C. 276a);
2. The date and time after which the City will not receive bids, which 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 Section 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 office 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 publicly will open the bids.

Section 4. Section 2.24.100 of the Troutdale Municipal Code is amended to read:

A. Bid documents prepared by the City for a public contract shall include:

1. A statement that, if the contract is for a public work subject to state law or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered by the City unless the bid contains a statement by the bidder as a part of its bid that the provisions of state law or the Davis-Bacon Act are to be complied with;
2. The date and time after which bids will not be received, which shall be not less than five days after the date of the last publication of the advertisement;
3. The date that prequalification applications must be filed under Section 2.24.160 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
4. The character of the work to be done or the material or things to be purchased;
5. The office 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 that the City will publicly open the bids;
8. A statement that each bid must identify whether the bidder is a resident bidder, as defined in Section 2.24.010;
9. A statement that the City may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any or all bids upon a finding by the City that it is in the public interest to do so;

10. Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720;
11. A statement that no bid for a construction contract shall be received or considered by the City unless the bidder is registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530; and
12. If a public improvement contract, a statement referencing federal, state, and local agencies that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect performance of the contract and referencing known conditions at the project site that may require the successful bidder to comply with those ordinances or regulations.

B. All bids made to the City shall be:

1. In writing.
2. Filed with the person designated for receipt of bids by the City.
3. Opened publicly by the City at the time designated in the advertisement.

C. Subcontractor Disclosure

1. Within four working hours of the date and time of the deadline when the bids were due to the City for a public improvement, a bidder shall submit to the City a disclosure of any first-tier subcontractor that will be furnishing labor or materials in connection with the public improvement and whose contract value is equal to or greater than:
 - a. Five percent of the total project bid or \$15,000, whichever is larger; or
 - b. \$500,000, regardless of the percentage of the total project bid.
2. The disclosure of first-tier subcontractors shall include:
 - a. The name and address of each subcontractor;
 - b. The registration number assigned to the subcontractor by the Construction Contractors Board if the subcontractor is required to have a certificate of registration issued by the board; and
 - c. The amount of the contract of the subcontractor.
3. For each contract to which this subsection applies, the City shall designate a deadline for submission of bids that has a date and time that is on Monday through Thursday or that is on Friday prior to 12 noon.
4. This subsection shall apply only to public improvements with a contract value of more than \$75,000.

D. After having been opened the bids shall be filed for public inspection.

- E. A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, 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 pursuant to Section 2.24.140. Such security shall not exceed 10 percent of the amount bid for the contract.

Section 5. Chapter 2.24 of the Troutdale Municipal Code is amended by adding the following Section 2.24.105:

2.24.105 Requirements for Contracts.

A. Every public contract shall contain a condition that:

1. The contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.
2. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
3. The contractor shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished.
4. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. The contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.
6. The contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
7. If the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contracts as such claim becomes due, the City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract.
8. No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services, the employee shall be paid at least time and a half pay:
 - a. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
 - b. For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

c. For all work performed on Saturday and on any legal holiday specified in ORS 279.334.

9. The contractor shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of employees pursuant to any laws, contract or agreement for the purpose of providing or paying for such service.
10. All employers working under the contract are subject employers that will comply with ORS 656.017.

B. Every public improvement contract shall contain a condition that:

1. The contractor shall demonstrate that an employee drug-testing program is in place.
2. If the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract within 30 days after receipt of payment from the City or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279.445(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279.445. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the City or from the contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.
3. If the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279.445.
4. The contractor shall include in each subcontract for property or services entered into by the contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:
 - a. A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the City under this contract; and
 - b. An interest penalty clause that obligates the contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection.

5. The contractor shall include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (4) of this section in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

C. Every public works contract shall contain a condition that:

1. Workers shall be paid not less than the prevailing rate of wage as defined in ORS 279.348.
2. The contractor shall pay a fee to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279.375 (1).

Section 6. Subsection B of Section 2.24.110 is amended to read:

B. In determining the lowest responsible bidder, the city administrator shall:

1. If the contract is for a public improvement, check the list created by the Construction Contractors Board for bidders who are not qualified to hold a contract for a public improvement; and
2. For the purpose of awarding the contract, add a percent increase on the bid of a non-resident bidder equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides. The list of states that give preference to in-state bidders with the percent increase applied in each such state which is published by the Oregon Department of Administrative Services on or before January 1 of each year may be used in determining the lowest responsible bidder.

Section 7. Section 2.24.150 of the Troutdale Municipal Code is amended to read:

A. The City may disqualify a person from consideration for award of City contracts for the reasons listed in subsection B of this section after providing the person with notice and a reasonable opportunity to be heard. The disqualification shall not be for a period of more than three years.

B. A person may be disqualified from consideration for award of City contracts for any of the following reasons:

1. Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense

indicating a lack of business integrity or business honesty that currently, seriously and directly affects the person's responsibility as a contractor.

3. Conviction under state or federal antitrust statutes.
 4. Violation of a contract provision that is regarded by the City to be so serious as to justify disqualification. A violation may include but is not limited to failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for disqualification.
- C. The City shall issue a written decision to disqualify a person pursuant to this section. The decision shall:
1. State the reasons for the action taken; and
 2. Inform the disqualified person of the appeal right of the person under Section 2.24.180.
- D. A copy of the decision issued under subsection C of this section shall be mailed or otherwise furnished immediately to the disqualified person.

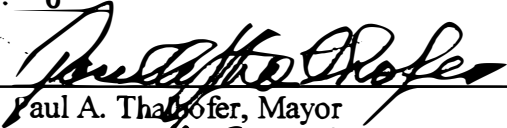
Section 8. Section 2.24.190 of the Troutdale Municipal Code is amended to read as follows:

2.24.190 Attorney General's Model Public Contract Rules.

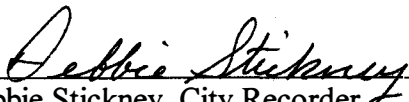
The model rules adopted by the Attorney General under ORS 279.049 do not apply to the City. The rules of procedure contained in this Chapter 2.24 of the Troutdale Municipal Code will be used by the City for public contracts. In situations where the rules in this Chapter do not address an issue that arises, the Attorney General's model rules may be used as a guide to resolve the issue.

Section 9. Section 2.24.265 of the Troutdale Municipal Code is repealed.

YEAS: 5
NAYS: 0
ABSTAINED: 0



Paul A. Thayer, Mayor
Dated: 6-30-00



Debbie Stickney, City Recorder
Adopted: 6-27-00

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