

ORDINANCE NO. 713

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

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The recent session of the State Legislature enacted bills affecting public contracting, as follows:
 - a. HB 2052 modifies the procedure for subcontractor disclosure, requiring a change to Section 2.24.100 of the Troutdale Municipal Code.
 - b. SB 507 modifies the language pertaining to workers' compensation, requiring a change to Section 2.24.105 of the Troutdale Municipal Code.
 - c. HB 2617 modifies the provisions for disqualifying a bidder, requiring a change to Section 2.24.150 of the Troutdale Municipal Code.
 - d. HB 3424 directs that the City submit the subcontractor disclosure to the Bureau of Labor and Industries, requiring a change to Section 2.24.185 of the Troutdale Municipal Code.
2. A staff review of the City's public contracting ordinance revealed a need to clarify the language in Section 2.24.240 of the Troutdale Municipal Code pertaining to the informal selection process for personal services contracts.
3. The City Council desires to incorporate all of the changes identified above into Chapter 2.24 (Public Contracts) of the Troutdale Municipal Code.

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

Section 1. Section 2.24.100, Paragraphs C and D, of the Troutdale Municipal Code are amended to read as follows:

C. Subcontractor Disclosure

1. Within four working hours after the date and time of the deadline when the bids are due to the City for a public improvement, a bidder shall submit to the City a disclosure of the first-tier subcontractors that:
 - a. Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement; and

- b. Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.
2. The disclosure of first-tier subcontractors shall include:
 - a. The name of each subcontractor; and
 - b. The category of work that each subcontractor will be performing.
3. The City shall accept the subcontractor disclosure. The City shall consider the bid of any contractor that does not submit a subcontractor disclosure to the City to be a nonresponsive bid and will not award the contract to the contractor. The City is not required to determine the accuracy or the completeness of the subcontractor disclosure.
4. 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.
5. This subsection shall apply only to public improvements with a contract value of more than seventy-five thousand dollars.
6. This subsection does not apply to public contracts for public improvements that have been exempted from competitive bidding requirements under Section 2.24.035.

D. After having been opened, the bids and the subcontractor disclosure shall be filed for public inspection.

Section 2. **Section 2.24.105**, Paragraph (A)(10), of the Troutdale Municipal Code is amended to read as follows:

10. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

Section 3. **Section 2.24.150** of the Troutdale Municipal Code is amended to read as follows:

2.24.150 Disqualification of Bidder

- A. The City may disqualify or petition the Construction Contractors Board to 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. The person has been convicted 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. The person has been convicted 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. The person has been convicted under state or federal antitrust statutes;
 4. The person has committed a violation of a contract provision that is regarded by the City or the Construction Contractors Board 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.
 5. The person does not carry workers' compensation or unemployment insurance as required by statute.
- C. The City or the Construction Contractors Board 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 if the decision to disqualify was issued by the City or under ORS 183.310 to 183.550 if the decision to disqualify was issued by the Construction Contractors Board.
- 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 4. Section 2.24.185 of the Troutdale Municipal Code is added to read as follows:

Section 2.24.185 Award Notification

Within thirty (30) days after the award of a contract subject to the provisions of ORS 279.348 to 279.380, the City shall so notify the Commissioner of the Bureau of Labor and Industries in writing on a form prescribed by the Commissioner. The notification shall include a copy of the disclosure of first-tier subcontractors that was submitted under Section 2.24.100(C).

Section 5. Section 2.24.240 of the Troutdale Municipal Code is amended to read as follows:

Section 2.24.240

A. A personal service contract may be awarded using an informal selection process under any of the following circumstances:

1. When the estimated fee to the consultant does not exceed twenty-five thousand dollars;
2. When the project consists of work which has been substantially described, planned, or otherwise previously studied or rendered in an earlier City contract;
3. When the contract is with bond underwriters;
4. When the contract is with financial advisors providing expert opinions for the purpose of negotiated bond sales.
5. When the contract is for legal services.

B. In the informal selection process, the City administrator shall contact one or more prospective contractors with whom the City or other jurisdictions have had previous successful experience and request a brief proposal which should address the work to be performed, the prospective contractor's experience with the type of work to be performed, and the prospective contractor's compensation requirements to perform the work. The City administrator shall evaluate the proposal(s) received, using those criteria in Section 2.24.230D(4) deemed appropriate, and do one of the following:

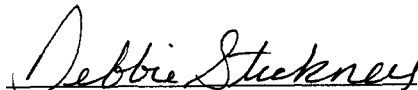
1. Make an award based on the proposals received.
2. Reject the proposals received and solicit proposals from other prospective contractors using the informal selection process.
3. Reject the proposals received and solicit proposals using the formal selection process.
4. Cancel the solicitation and make no award.

YEAS: 7

NAYS: 0

ABSTAINED: 0


Paul A. Thalkofer, Mayor
Dated: 1-10-02


Debbie Stickney, City Recorder
Adopted: 1-8-02