

ORDINANCE NO. 761

AN ORDINANCE PERTAINING TO PUBLIC CONTRACTS AND PURCHASING PROCEDURES AND AMENDING CHAPTER 2.24 OF THE TROUTDALE MUNICIPAL CODE

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

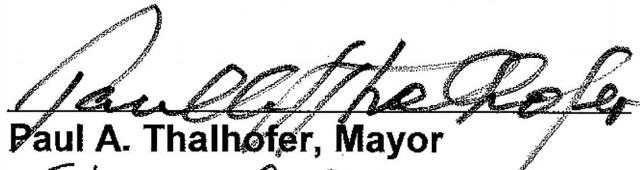
1. The 2003 session of the state legislature revised ORS 279 pertaining to public contracts and purchasing.
2. ORS 279A.065 requires that contracting agencies which do not adopt their own rules of procedure for public contracts and purchasing are subject to the model rules adopted by the Attorney General.
3. The City of Troutdale desires to adopt its own rules of procedure rather than be subject to the model rules adopted by the Attorney General.
4. The City Council was unable to meet on January 25, 2005, at which time the Council was scheduled to adopt this ordinance. The public contract provisions in state law, which this ordinance implements, take effect on March 1, 2005. To comply with state law this ordinance must be adopted with an effective date of March 1, 2005.

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

Section 1. Chapter 2.24 of the Troutdale Municipal Code is amended to read as provided in Attachment A.

Section 2. In accordance with Section 30 of the Troutdale Charter, and for the reasons described in finding 4 above, an emergency is hereby declared. This ordinance shall become effective March 1, 2005. However, contracting and purchasing actions commenced prior to March 1, 2005 shall be administered under the provisions of the Troutdale Municipal Code in effect at the time those actions were initiated.

YEAS: 5
NAYS: 0
ABSTAINED: 0



Paul A. Thalhofer, Mayor
February 9, 2005

Date



Sarah Greif, Office Support Specialist

Adopted: February 8, 2005

Chapter 2.24

Public Contracts and Purchasing

Sections:

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- 2.24.190 Exemption from Competitive Bidding for a Public Improvement Contract**
- 2.24.200 Negotiations with Lowest Bidder for a Public Improvement Contract**
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- 2.24.230 Bid Security for a Public Improvement Contract**
- 2.24.240 Performance and Payment Bonds for a Public Improvement Contract**

2.24.010 Title

This chapter shall be titled "Public Contracts and Purchasing".

2.24.020 Purpose

The purpose of this chapter is to implement the public contracts and purchasing policies of the State of Oregon and the City of Troutdale.

2.24.030 Local Contract Review Board

The Troutdale City Council is designated the Local Contract Review Board. Actions taken by the City Council governing public contracts and purchasing shall be deemed the actions of the Local Contract Review Board. The procedures governing City Council adoption of ordinances and resolutions shall be the procedures governing the City Council as a Local Contract Review Board.

2.24.040 Model Rules Not Applicable

- A. The model rules adopted by the Attorney General in accordance with ORS 279A.065 do not apply to the City of Troutdale.
- B. The City will use the rules of procedure in this Chapter 2.24 for public contracts and purchasing.

2.24.050 Authority of City Administrator

- A. The City Administrator shall be the purchasing officer for the City and is authorized to award all City contracts. Such awards must be in compliance with state law and this chapter, and funds must be available for the purchase. The City Administrator shall keep a record of all awarded City contracts, including bids solicited and received and determinations made.
- B. The City Administrator may delegate the authority granted in subsection A to other City employees as deemed appropriate for the efficient accomplishment of City business.

2.24.060 Disposition of Personal Property

- A. The City shall dispose of personal property in accordance with Chapter 2.52 of the Troutdale Municipal Code.
- B. The City may also dispose of personal property by trade-in toward the acquisition of other personal property when the trade-in value received is fair and reasonable.

2.24.070 Public Notice of Solicitations

For the purposes of giving public notice of competitive sealed bidding and competitive sealed proposals, the newspaper of general circulation to be used shall be the Gresham Outlook and any other publication(s) the City deems appropriate. Notices shall be published at least fourteen (14) days prior to the solicitation closing date, and the last notification shall be published no less than seven (7) days prior to the solicitation closing date.

2.24.080 Small Procurement

- A. Any procurement of goods or services not exceeding \$5,000 per item may be awarded in any manner deemed practical or convenient by the purchasing officer or designee, including by direct selection or award.
- B. A contract awarded under this section may be amended to exceed \$5,000 only upon approval of the purchasing officer.
- C. A procurement may not be artificially divided or fragmented so as to constitute a small procurement under this section.

2.24.090 Intermediate Procurement

- A. Any procurement of goods or services exceeding \$5,000 but not exceeding \$25,000 may be awarded after seeking three (3) informally solicited competitive price quotes or competitive proposals from prospective contractors. If three quotes or proposals are not reasonably available, fewer will suffice but the purchasing officer or designee shall make a written record of the effort to obtain the quotes or proposals.
- B. A contract awarded under this section may be amended to exceed \$25,000 only upon approval of the purchasing officer.
- C. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section.

2.24.100 Formal Procurement and Exemptions

- A. Any procurement of goods or services exceeding \$25,000 shall be awarded only after a formal competitive solicitation process unless otherwise provided for in this chapter.
- B. The City Council reaffirms that the following are exempt from the requirement of subsection A of this section:
 - 1. Contracts made with other public agencies or the federal government.
 - 2. Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.
 - 3. 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, or
 - c. The service or parts required are known and available from a sole, specific source to match existing equipment.
 - 4. 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.
 - 5. Contracts for subscriptions for periodicals, including journals, magazines, and similar publications.
 - 6. 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.
 - 7. 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.
 - 8. Contract amendment 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.
 - 9. Contracts for the purchase of copy-righted materials where there is only one known supplier available for such material.
 - 10. 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.

11. Contracts for the purchase of employee benefit insurance.
12. Contracts for the acquisition of data and word processing or telecommunications systems hardware and systems software.
13. Contracts for telecommunications services, subject to the provisions of OAR 125-320-025.
14. 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.
15. Contracts for the purchasing or commissioning of works of art.
16. Contracts for goods purchased for resale to consumers.
17. 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 Chapter 279, the contract allows other public agency usage of the contract, and the original contracting public agency concurs.
18. Contracts with temporary service or employment agencies.

2.24.110 Modification and Withdrawal of Offers; Cancellation of Awards or Contracts

- A. An offeror may modify its offer in writing prior to the closing of the solicitation. Any modification must include the offeror's statement that the modification amends and supercedes the prior offer. The modification must be submitted to the same name and address and contain the same markings as required for the offer. The modification must be received by the City prior to the closing of the solicitation.
- B. An offeror may withdraw its offer by written notice prior to the closing of the solicitation. The withdrawal must be submitted to the same name and address as required for the offer. The withdrawal must be received by the City prior to the closing of the solicitation.
- C. An offeror may not modify nor withdraw its offer after the closing of the solicitation.
- D. An award or a contract shall not be cancelled based on a bid mistake.

2.24.120 Sole Source Procurement

- A. The City Council may award a contract for goods or services without competition when it determines in writing, based on written findings in subsection B of this section, that the goods or services, or class of goods or services, are available from only one source.
- B. The determination of a sole source must be based on written findings that shall include one or more of the following:
 1. That the efficient utilization of existing goods requires the acquisition of compatible goods or services.

2. That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source.
 3. That the goods or services are for use in a pilot or an experimental project.
 4. Other findings that support the conclusion that the goods or services are available from only one source.
- C. To the extent reasonably practical, the City shall negotiate with the sole source to obtain contract terms advantageous to the City.

2.24.130 Emergency Procurement

- A. The purchasing officer or designee may make or authorize others to make emergency procurement of goods or services in an emergency in an amount not to exceed \$100,000 without utilizing competitive procurement procedures.
- B. The Mayor, or Council President in the absence of the Mayor, may make or authorize others to make emergency procurement of goods or services in an emergency in an amount not to exceed \$250,000 without utilizing competitive procurement procedures.
- C. The nature of the emergency and the method used for the selection of the particular contractor must be documented.
- D. A majority of the City Council must concur that an emergency exists.

2.24.140 Notice of Intent to Award

- A. At least seven days before the award of a public contract, the City shall provide to each bidder or proposer notice of its intent to award a contract. Notice shall be in writing and mailed to the address provided by the bidder or proposer.
- B. Subsection A of this section does not apply to a contract awarded as a small procurement, an intermediate procurement, a sole-source procurement, an emergency procurement, or a special procurement.

2.24.150 Protests of Approvals of Special Procurements

- A. Any person may file a protest of the approval of a special procurement if he believes such approval was in violation of state law or this chapter.
- B. A protest under this section:
 1. Must be filed in writing with the City Administrator no more than five days after the approval is made.
 2. Must state the special procurement approval that is the subject of the protest, the reason why the approval was contrary to state law or this chapter, and the relief sought.
 3. Must be considered and approved or disapproved by the City Council within 30 days after receipt.
- C. The City Administrator shall notify the protester of the City Council's decision in writing within five days after such decision is rendered.

2.24.160 Protests of Solicitations

- A. A prospective bidder, proposer, or offeror for a competitive sealed bid, competitive sealed proposal, or special procurement may file a protest if he believes that the procurement process is contrary to law, or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. If a prospective bidder, proposer, or

offeror fails to file such a protest at least ten (10) days before the closing of the solicitation, the prospective bidder, proposer, or offeror may not challenge the contract on grounds under this section in any future legal or administrative proceeding.

- B. A protest under this section must be filed in writing with the City Administrator and contain the following:
 - 1. Sufficient information to identify the solicitation that is the subject of the protest.
 - 2. The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name.
 - 3. Evidence or supporting documentation that supports the grounds on which the protest is based.
 - 4. The relief sought.
- C. If the protest meets the requirements of subsection B of this section and is timely filed, the City Administrator shall consider the protest and issue a decision in writing within seven (7) days. Otherwise, the City Administrator shall promptly notify the prospective bidder, proposer, or offeror that the protest is untimely or that the protest failed to meet the requirements and give the reason for the failure.
- D. Before seeking judicial review, a prospective bidder, proposer, or offeror must file a protest with the City and exhaust all available administrative remedies.

2.24.170 Protests of Contract Award

- A. A bidder or proposer may protest the award of a public contract or a notice of intent to award a public contract, whichever occurs first, if
 - 1. The bidder or proposer is adversely affected because the bidder or proposer would be eligible to be awarded the public contract in the event the protest were successful; and
 - 2. The reason for the protest is that:
 - a. All lower bids or higher ranked proposals are nonresponsive;
 - b. The City has failed to conduct the evaluation of proposals in accordance with the criteria or process described in the solicitation materials;
 - c. The City has abused its discretion in rejecting the protestor's bid or proposal as nonresponsive; or
 - d. The City's evaluation of bids or proposals or the City's subsequent determination of award is otherwise in violation of ORS Chapters 279A or 279B.
- B. The bidder shall submit the protest to the City Administrator in writing no more than seven (7) days following the award of a public contract or a notice of intent to award a public contract, whichever occurs first. The protest shall specify the grounds for the protest to be considered by the City.
- C. Late protests shall not be considered.
- D. The City Administrator shall respond in writing to a protest within ten (10) days after receipt. After the City Administrator issues the response, the bidder or proposer may seek judicial review in the manner provided in ORS 279B.415. When judicial review is sought, the City may not proceed with contract execution unless the City determines that there is a compelling government interest in proceeding or that the goods and services are urgently needed. If the City makes such a determination, it shall set forth the reasons for the determination in writing and immediately provide them to the complainant.

2.24.180 Personal Services

- A. Personal Services include, but are not limited to, architectural, engineering, land surveying, auditing, financial, legal, planning, and technical inspection/testing services.
- B. Contracts for personal services may be entered into using the procedures in this section.
- C. The City may enter into a personal services contract directly with a contractor if the work described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the contractor that was awarded in accordance with this chapter and the new contract is a continuation of that work.
- D. The City may enter into a personal services contract directly with a contractor if the cost does not exceed \$25,000.
- E. Except as provided in subsections C or D of this section, the City may enter into a personal services contract only by soliciting and evaluating proposals. Proposals may be requested by public advertisement, by issuing a request for proposals to firms on a standing list, or by issuing a request for qualifications to establish a short list, followed by a request for proposals to the short-listed firms.
 - 1. A public advertisement for personal services, when used, shall include the following:
 - a. The scope of services sought.
 - b. The desired start date and completion date of the services.
 - c. The deadline for submitting a response.
 - d. Where copies of the solicitation documents may be obtained.
 - e. Other information the requester deems relevant.
 - 2. A Request for Proposals shall include the following:
 - a. The scope of services sought.
 - b. All required contractual terms and conditions.
 - c. The desired start date and completion date of the services.
 - d. The deadline and procedures for submittal of the proposal.
 - e. The process for evaluation of the proposal and selection of the recipient of the contract, including the relative importance of each evaluation factor.
 - f. 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.
 - g. A statement that the City reserves the right to reject any or all proposals if it would be in the public interest to do so.
 - h. Other information the requester deems relevant.
 - 3. A Request for Qualifications, when used, shall include the following:
 - a. The scope of services sought.
 - b. The particular personal services qualifications required.
 - c. A requirement for respondents to submit (as applicable) information concerning personnel availability and experience, workload, and similar work performed in the past.
 - d. The desired start date and completion date of the services.
 - e. The deadline and procedures for submittal of qualifications.
 - f. The process for evaluation of the qualifications and selection of those to be short-listed.
 - g. Other information the requester deems relevant.

4. Protests of personal services solicitations shall be administered in accordance with Section 2.24.160. Protests of personal services contract awards shall be administered in accordance with Section 2.24.170.
5. The procedures in this section also shall be used by the City for the final selection of a consultant for architectural, engineering, and land surveying services for local government public improvements procured through a state agency in accordance with ORS 279C.125.

2.24.190 Exemption from Competitive Bidding for a Public Improvement Contract

- A. The City Council may exempt a public improvement contract or a class of public improvement contracts from competitive bidding upon approval of the following written findings and, before final adoption of the findings, holding a public hearing for which notification is published in the Daily Journal of Commerce and any other publication(s) the City deems appropriate at least 14 days before the hearing:
 1. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
 2. The awarding of public improvement contracts under the exemption will result in substantial cost savings to the City.
- B. In granting an exemption under this section, the City shall, when appropriate, use alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.
- C. A public improvement contract may be exempted from competitive bidding if emergency conditions require prompt execution of the contract. If the City declares an emergency, any contract awarded under this subsection must be awarded within 60 days following declaration of the emergency.
- D. An exemption under this section may authorize or require the award of a public improvement contract by competitive proposals. A contract awarded under this subsection may be amended only upon approval of the City Administrator.

2.24.200 Negotiations with Lowest Bidder for a Public Improvement Contract

- A. If a public improvement contract is competitively bid and all responsive bids from responsible bidders exceed the City's cost estimate, the City may negotiate with the lowest responsive, responsible bidder prior to awarding the contract in order to solicit value engineering and other options to attempt to bring the contract within the City's cost estimate.
- B. A negotiation with the lowest responsive, responsible bidder under this section may not result in the award of the contract to that bidder if the scope of the project is significantly changed from the original bid proposal.
- C. The records of a bidder 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.

2.24.210 Brand Name Specifications for a Public Improvement Contract

- A. Specifications for public improvement contracts may not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller, unless the product is exempt under subsection B of this section.

- B. The City Council may exempt certain products or classes of products from subsection A of this section upon any of the following findings:
1. It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts;
 2. The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the City;
 3. There is only one manufacturer or seller of the product of the quality desired; or
 4. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

2.24.220 Subcontractor Disclosure for a Public Improvement Contract

The First-Tier Subcontractor Disclosure Form, when required by ORS 279C.370 for a public improvement contract, must be submitted to the City with the bid or proposal for that public improvement contract.

2.24.230 Bid Security for a Public Improvement Contract

- A. A bid submitted in response to a solicitation for a public improvement contract shall be accompanied by a bid security in the amount of 5% of the total bid amount.
- B. The bid security may be in the form of a bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check, or certified check.
- C. A public improvement contract in an amount less than \$25,000 is exempt from the requirements in subsection A and B of this section. The City Council may also exempt other contracts or classes of contracts from the requirements in subsections A and B of this section.

2.24.240 Performance and Payment Bonds for a Public Improvement Contract

- A. A successful bidder for a public improvement contract shall promptly execute and deliver to the City a performance bond and a payment bond, each in an amount equal to the full contract price.
- B. A cashier's check or certified check may be submitted in lieu of the required bond.
- C. A public improvement contract in an amount less than \$25,000 is exempt from the requirements in subsections A and B of this section. The City Council may also exempt other contracts or classes of contracts from the requirements in subsections A and B of this section.