

**A BILL FOR AN ORDINANCE AMENDING** ) **Ordinance Bill No. 2012-3**  
**CERTAIN SECTIONS IN CHAPTER 3.04 –** )  
**"PUBLIC CONTRACTS" OF THE LEBANON** )  
**MUNICIPAL CODE** ) **Ordinance No.: 2831**

**NOW, THEREFORE, THE CITY OF LEBANON ORDAINS AS FOLLOWS:**

**Section 1.** Lebanon Municipal Code Section 3.04.010 "City Council Designated as Local Contract Review Board" is hereby amended as follows:

**3.04.010 City Council Designated as Local Contract Review Board**

The Lebanon city council is designated as the local contract review board under the state of Oregon Public Contracting Code. The contract review board may, from time to time, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Lebanon Municipal Code. The City Manager (Administrator), or his or her designated purchasing agent, is designated as the city's "contracting agency" for purposes of contracting powers and duties assigned to the city of Lebanon as a "contracting agency" under the state of Oregon Public Contracting Code or the Model Rules. The City Manager (Administrator) shall cause a review of all contracts no later than six months prior to the contracts' scheduled termination. The purpose of the review shall be to evaluate the performance of the contractor and make any appropriate recommendations to the city council concerning the contract.

**Section 2.** Lebanon Municipal Code Section 3.04.030 "Public Contracts Exempt from Competitive Procurement" is hereby amended as follows:

**3.04.030 Public Contracts Exempt from Competitive Procurement**

The following classes of public contracts are exempted from competitive procurement:

- A. Any contract exempted by the state of Oregon Public Contracting Code or Model Rules;
- B. Change orders or contract amendments that are reasonably related to the scope of work under the original contract, up to seventy-five thousand dollars (\$75,000). Change orders or other amendments that increase the initial price of the contract by more than seventy-five thousand dollars (\$75,000) must be separately approved by the contract review board.
- C. Contracts for the purchase of computer equipment and software, which may be by requests for quotations, under the procedures in Lebanon Municipal Code Section 1.555(a) and (b).
- D. Purchases through federal programs, pursuant to ORS 279A.180.
- E. An emergency contract, provided that the contracting agency adheres to the requirements of ORS 279B.080 or 279C.335(5) and the Model Rules.

- F. Any other contract (including sole source and brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the contract review board adheres to the Public Contracting Code and the Model Rules in making the exemption.

**Section 3.** Lebanon Municipal Code Section 3.04.040 "Authority of City Manager (Administrator)" is hereby amended as follows:

**3.04.040 Authority of City Manager (Administrator)**

Administrative staff and departments have contracting authority and responsibilities as follows:

- A. The City Manager (Administrator) (or designee) is authorized to:
  - 1. Enter into city contracts not to exceed seventy-five thousand dollars (\$75,000) without additional authorization of the contract review board;
  - 2. Recommend that the contract review board approve or disapprove contract awards in excess of seventy-five thousand dollars (\$75,000), or change orders or amendments to contracts of more than seventy-five thousand dollars (\$75,000);
  - 3. Consistent with the Lebanon Municipal Code, adopt forms, computer software, procedures, and administrative policies or administrative rules for all city purchases; and
  - 4. Enter into contracts or permits for local concessions and street vendors (pursuant to applicable city policy) where the annual amount to be paid to or by the city is not expected to exceed seventy-five thousand dollars (\$75,000) per year.
- B. Purchases of goods from city employees shall require authorization of the City Manager (Administrator) or designee. Provision of services by city personnel shall be in accordance with the city personnel policies and other applicable law.
- C. All contracting by departments shall be according to approved city purchasing procedures adopted by the contracting agency or the contract review board.
- D. Each department shall operate within its budget, or seek supplemental budgetary authority from city council with respect to the contract.
- E. Each department shall plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities.
- F. The City Manager (Administrator) or designee shall process requisition forms and negotiate purchases on the most favorable terms in accordance with adopted ordinances, state laws, policies and procedures.

**Section 4.** Lebanon Municipal Code Section 3.04.060 "Public Improvement Contracts less than \$75,000" is hereby amended as follows:

**3.04.060 Public Improvement Contracts less than \$75,000**

Public improvement contracts estimated by the contracting agency not to exceed seventy-five thousand dollars (\$75,000) may be let by competitive quote under the following procedures:

- A. The contracting agency shall informally solicit at least three price quotes from prospective contractors. If three prospective contractors are not available, then fewer quotes may be solicited, and the contracting agency shall maintain records of the attempts to obtain quotes.
- B. The contracting agency shall award the contract to the prospective contractor whose quote will best serve the interests of the city of Lebanon, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the contracting agency shall make a written record of the basis for the award.
- C. A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section.
- D. A public improvement contract let under this section may be amended by change order as provided in Section 3.04.040(A)(2) of this chapter.
- E. Public improvement contracts in excess of seventy-five thousand dollars (\$75,000) shall be let in accordance with the provisions of ORS 279C.

**Section 5.** Lebanon Municipal Code Section 3.04.070 "Personal Services Contracts" is hereby amended as follows:

**3.04.070 Personal Services Contracts**

Personal services contracts (other than personal services contracts for architectural or engineering services), are subject to the rules established by this section:

- A. Personal service contracts will be used to retain the services of independent contractors, other than architects or engineers. Nothing in this section shall apply to the employment of regular city employees.
- B. Unless otherwise approved by the City Manager (Administrator), all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the city, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.
- C. Unless otherwise approved by the City Manager (Administrator), city personal service contracts shall contain a provision requiring the person or entity

providing the service to obtain and maintain liability insurance coverage in at least the amount of the city's tort liability limits, naming the city as an additional named insured, during the life of the contract.

- D. All city personal service contracts shall contain all contract provisions mandated by state law. These provisions may be incorporated in the personal service contract by reference to state law, unless state law provides otherwise. The city attorney's office will prepare model contract provisions for use in city personal service contracts.
- E. The following procedure shall be observed in the selection of personal service contractors:
  - 1. For personal service contracts involving an anticipated fee of seventy-five thousand dollars (\$75,000) or less per annum, the City Manager (Administrator) or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.
  - 2. For personal service contracts involving an anticipated fee of more than seventy-five thousand dollars (\$75,000) per annum, the City Manager (Administrator) or his or her designated officer shall solicit at least three prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment. In the event that the City Manager (Administrator) or the designee cannot procure at least three prospective contractors, the selection process may proceed, but the City Manager (Administrator) shall document the reasons why three contractors have not been successfully solicited;
  - 3. The City Manager (Administrator) or his or her designated officer may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate city employee or by an interview committee;
  - 4. Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the City Manager (Administrator) or his or her designated officer shall select the prospective contractor, and shall prepare a personal service contract.
- F. The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.
- G. The following criteria shall be considered in the evaluation and selection of a personal service contractor:
  - 1. Specialized experience in the type of work to be performed;
  - 2. Capacity and capability to perform the work, including any specialized services within the time limitations for the work;

3. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable;
  4. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable; and
  5. Any other factors relevant to the particular contract.
- H. The selection procedures described in this section may be waived by the City Manager (Administrator), at his or her discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.
- I. The City Manager (Administrator) is delegated the authority to sign all personal service contracts.
- J. Nothing contained in this section shall preclude the city from complying with provisions of federal or state law that require the city to utilize a different selection or contracting procedure.

**Section 6.** Lebanon Municipal Code Section 3.04.075 "Selection of Consultants for Architectural, Engineering Services, Land Surveying and Related Services" is hereby amended as follows:

**3.04.075 Selection of Consultants for Architectural, Engineering Services, Land Surveying and Related Services**

- A. Subject to state law, the selection of a candidate to perform consulting architectural, engineering, land surveying or related services for the city shall be within the sole discretion of the city, and may be adjusted to accommodate the project's scope, schedule and budget objectives for a particular project. Adjustments to accommodate the city's objectives may include provision for the direct appointment of a consultant if the value of the project does not exceed the threshold amount of seventy-five thousand dollars (\$75,000). Screening and selection procedures may include a consideration of each candidate's:
1. Specialized experience, capabilities and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;
  2. Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;
  3. Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

4. Ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses;
  5. Availability to the project locale;
  6. Familiarity with the project locale; and
  7. Proposed project management techniques.
- B. If the screening and selection procedures created in this section result in the determination by the City Manager (Administrator) or his designate that two or more candidates are equally qualified, the city may select a candidate through any process adopted by the City Manager (Administrator).
- C. The City Manager (Administrator) or his designate and the selected candidate shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation level and performance schedule, based on the scope of services. The compensation level paid must be reasonable and fair to the city as determined solely by the city. Authority to negotiate a contract under this section does not supersede any provision of state law.
- D. If the city and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the city, the city shall, either orally or in writing, formally terminate negotiations with the selected candidate. The City Manager (Administrator) or his designate may then negotiate with another candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the city terminates the consultant contracting process.
- E. For the purposes of this section, the following definitions apply:
1. "Architect" means a person who is registered and holds a valid certificate in the practice of architecture in the state of Oregon, and includes, without limitation, the terms "architect," "licensed architect" and "registered architect."
  2. "Engineer" means a person who is registered and holds a valid certificate in the practice of engineering in the state of Oregon.
  3. "Land surveyor" means a person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon.
  4. "Personal services" mean the services of a person or persons that are designated by the city's contract review board as personal services. "Personal services" includes architectural, engineering, land surveying and related services procured under this chapter.
  5. "Related services" means personal services, other than architectural, engineering and land surveying services, that are related to the planning, design, engineering or oversight of public improvement projects or components thereof, including but not limited to, landscape architectural

services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner's representative services or land-use planning services.

**Section 7.** Lebanon Municipal Code Section 3.04.080 "Disposition of Surplus Personal Property" is hereby amended as follows:

### **3.04.080 Disposition of Surplus Personal Property**

Disposition of surplus personal property may be made, at the discretion of the City Manager (Administrator) or his/her designee, under provisions of the State of Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section;

- A. From time to time and after personal property owned by the city of Lebanon is determined by the City Manager (Administrator) or his/her designee to be surplus to the needs of the city, the city may sell the property at public auction. The city may utilize a contracting firm, approved by the contract review board, for disposition of the property on terms and conditions contained in a contract approved by the contract review board. The city shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the city of Lebanon internet website, or by advertisement in a newspaper of general circulation. However, if the city manager shall determine that other disposition is beneficial to the city, he or she may make such finding and, with the approval of the contract review board, dispose of such items through donation, state surplus, or other method determined to be in the best interests of the city.
- B. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the city's general fund, subject to the terms and conditions of the contract (if any) approved by the contract review board between the city of Lebanon and a firm selected to conduct the auction.
- C. All personal property sold pursuant to this section shall be sold as-is, without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale, which shall recite that the sale is without warranty, as provided in this subsection.
- D. Unless otherwise required by a funding agency, in instances whereby the city has procured personal property as a result of funding procured by a granting agency of the federal government and such property has no further value or

need to be retained by the city, the following procedure shall apply: If an item has a value of five thousand dollars (\$5,000) or more, and has been purchased with grant funding, the funding agency shall be notified of the condition of the equipment and the equipment's potential for surplus or disposal. The funding agency shall supply in writing to the city an approval to surplus the grant funded item and the city shall follow the procedure for disposal of such item as required by this section. In the event that the funding agency should not approve, in writing, or issue disposition instructions within one hundred twenty calendar days from the date that notice is given to the funding agency, the city may dispose of the item as set forth in this section.

Passed by the Lebanon City Council and executed by the Mayor this 14<sup>th</sup> day of March, 2012 with 5 Yeas and 1 Nays.

CITY OF LEBANON, OREGON

Kenneth I. Toomb  
Kenneth I. Toomb, Mayor   
Bob Elliott, Council President

ATTESTED:

Linda Kaser  
Linda Kaser, City Clerk/Recorder