



Resolution 2005-006

A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES

WHEREAS, the 2003 Legislature enacted House Bill 2341 (HB 2341) that revised the state public contracting laws;

WHEREAS, as of March 1, 2005, HB 2341 repeals all existing local government public contracting rules and public contracting exemptions;

WHEREAS, HB 2341 created a new Oregon Public Contracting Code (Code), codified in ORS chapters 279A, 279B and 279C;

WHEREAS, in accordance with HB 2341, the Attorney General adopted Model Rules to implement the Code, and they are found in OAR 137, divisions 46, 47, 48 and 49;

WHEREAS, the Code and the Model Rules apply to all public contracts first advertised, or if not advertised then executed on or after March 1, 2005; and

WHEREAS, the Code and the Model Rules allow local governments to adopt contracting rules different from or in addition to those in the Model Rules so long as they are consistent with the Code.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1. Public Contracting Rules for the City of Sherwood.

1.10.010 General provisions

- (1) Except as provided within these rules, City public contracting is governed by the Code and the Model Rules.
- (2) The Sherwood City Council is the City's Contract Review Board (Board). Except as otherwise provided in these rules, the powers and duties of the Board under the Code and Model Rules will be exercised by the Board and the powers and duties given or assigned to contracting agencies by the Code or Model Rules will be exercised by the City Manager acting as the City's contracting agent.
- (3) For the purposes of these rules, "City Manager" means the City Manager for the City of Sherwood, or the City Manager's designee.

1.10.020 Personal service contracts

- (1) "Personal service contract" means a contract for personal or professional services performed by an independent contractor, primarily for the provision of services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of attorneys, accounting and auditing services, information technology services, planning and development services, artists, designers, performers, property managers and consultants. The City Manager has discretion to determine whether a particular contract or service falls within this definition. For the purposes of this section, personal services contracts do not include such contracts for architectural, engineering and land surveying services. The procedures for those contracts are found in the Model Rules, OAR 137, Division 48.
- (2) The following formal selection procedure will be used when the estimated payment to the contractor exceeds \$25,000.
 - (a) Announcement. The City will give notice of its intent to procure personal services through the League of Oregon Cities, and any other means the City deems appropriate, including contacting prospective contractors directly. Announcements will include:
 - (A) A description of the proposed project;
 - (B) The scope of the services required;
 - (C) The project completion dates;
 - (D) A description of special requirements;
 - (E) When and where the application may be obtained and to whom it must be returned;
 - (F) The closing date; and
 - (G) Other necessary information.
 - (b) Application. Applications will include a statement that describes the prospective contractor's credentials, performance data, examples of previous work product or other information sufficient to establish contractor's qualification for the project, references, and other information identified by the City as necessary to make its selection.

- (c) Initial screening. The City Manager will evaluate the qualifications of all applicants and select a prospective contractor or prospective contractors whose application demonstrates that the contractor is best qualified to meet the City's needs.
- (d) Final selection.
 - (A) The City Manager will interview the finalists selected from the initial screening. At the City Manager's discretion, the interviews may be conducted before the Board.
 - (B) After the interview process concludes, the City Manager will make the final selection. If the interviews are conducted before the Board, the Board will make the final selection.
 - (C) The final selection will be based upon applicant capability, experience, project approach, compensation requirements, references and any other criteria identified by the City as necessary for the City to select a contractor.
- (3) The following informal selection procedure may be used when the estimated payment to the contractor is under \$25,000 or when the City Manager determines that the informal procedures will not interfere with competition among prospective contractors, reduce the quality of services or increase costs. The City Manager will contact a minimum of three prospective contractors qualified to offer the services sought. The City Manager will request an estimated fee, and make the selection consistent with the City's best interests. If three quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.
- (4) The City Manager may enter personal service contracts not exceeding an estimated \$5,000 without following the procedures under subsection (2) or (3). However, the City Manager must make reasonable efforts to choose the most qualified contractor to meet the City's needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.
- (5) The City Manager may negotiate with a single source for personal services if the services are available from only one contractor, or the prospective contractor has special skills uniquely required for the performance of the services. The City must make written finds to demonstrate why the proposed contractor is the only contractor who can perform the services desired.
- (6) The City Manager may select a contractor without following any procedures when conditions require immediate action to protect life or property. In such

instances, the City Manager must make written declarations of the circumstances that justify the emergency appointments.

1.10.030 Authority to electronically advertise solicitations for goods and services

- (1) The City Manager is authorized to develop an “electronic procurement system” in accordance with OAR 137-047-0300(2)(b). As described in OAR 137-046-0110(15), this is an information system accessible through the internet that allows the City to post electronic advertisements and receive electronic offers for goods and services. When an electronic procurement system is in place, the Model Rules allow procurement solicitations to be advertised exclusively on the internet. This saves the City time and money over newspaper advertisements.
- (2) Prior to any development of an electronic procurement system, the City may advertise solicitations for goods and services on the internet in addition to newspaper advertisements.

1.10.040 Authority to electronically advertise solicitations for public improvements

- (1) For all public improvement contracts with an estimated cost not exceeding \$125,000, the City Manager may electronically advertise solicitations in a manner deemed appropriate. This method of advertising will save the City time and money, may be used exclusively, and is allowed under ORS 279C.360(1).
- (2) An advertisement for a public improvement contract with an estimated cost over \$125,000 must be published at least once in a trade newspaper of general statewide circulation, such as the Daily Journal of Commerce.

1.10.050 Small procurements

- (1) As provided by ORS 279B.065, any procurement of goods or services not exceeding \$5000 may be awarded in any manner the City Manager finds practical or convenient, including direct selection or award.
- (2) A small procurement contract may be amended in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total contract price to greater than \$6000.
- (3) A procurement may not be artificially divided or fragmented to qualify for this section.

1.10.060 Sole-source procurements

- (1) Pursuant to ORS 279B.075(1), the City Manager is authorized to declare in writing certain goods and services to be available from only one source.

- (2) The determination of a sole-source must be based on findings required by ORS 279B.075(2), and otherwise be processed in accordance with OAR 137-047-0275.

1.10.070 Notice of intent to award certain contracts

- (1) At least seven days before the award of a public contract solicited under a traditional invitation to bid or request for proposals, the City will post or provide to each bidder or proposer notice of the City's intent to award a contract.
- (2) If stated in the solicitation document, the City may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of the City's intent.
- (3) As an alternative, the City may provide written notice to each bidder or proposer of the City's intent to award a contract. This written notice may be provided electronically or through non-electronic means.
- (4) The City may give less than seven days notice of its intent to award a contract if the City determines in writing that seven days is impracticable as allowed by ORS 279B.135.
- (5) This section does not apply to goods and services contracts awarded under small procurements under these rules, or other goods and services contracts awarded in accordance with ORS 279B.070, 279B.075, 279B.080 or 279B.085.
- (6) This section does not apply to any public improvement contract or class of public improvement contracts exempted from competitive bidding requirements.
- (7) A protest of the City's intent to award a contract may only be filed in accordance with OAR 137-047-0740 or OAR 137-049-0450, as applicable.

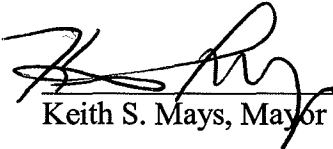
1.10.080 Procedure for surplus property

- (1) Surplus property is property owned by the City such as, office furniture, computers, equipment, vehicles, excluding real property, the City Manager determines is surplus and no longer useful to the City.
- (2) For surplus property deemed by the City Manager to have a value of \$5000 or less, the City Manager may authorize the property to be sold, to be donated, or to be destroyed. For surplus property deemed by the City Manager to have a value of more than \$5000, the City Council may authorize the property to be sold, to be donated, or to be destroyed.
- (3) Surplus property may be sold through the informal solicitation of bids or through an auction, including an online auction. The City Manager has the discretion to advertise the sale of surplus property in a newspaper of city-wide circulation.

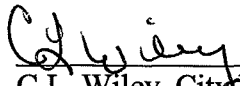
- (4) City employees may purchase surplus property, so long as at least three individuals or entities have bid on the property and the employee's bid is the highest bid.

Section 2. This resolution is effective on March 1, 2005, or on the date of its adoption if that date is later than March 1, 2005.

Duly passed by the City Council this 1st day of March, 2005.


Keith S. Mays, Mayor

ATTEST:


C.L. Wiley, City Recorder