

ORDINANCE 2003-1152  
CITY OF SHERWOOD, OREGON

AN ORDINANCE OF THE SHERWOOD CITY COUNCIL, ACTING IN ITS CAPACITY AS THE CITY'S LOCAL CONTRACT REVIEW BOARD (PURSUANT TO THE TERMS OF ORS 279.015(2)) ADOPTING BOTH FINDINGS ALLOWING FOR THE CREATION OF EXEMPT CLASSES OF PUBLIC CONTRACTS FROM COMPETITIVE BIDDING AND ADOPTING RULES REGARDING THE SAME.

WHEREAS, the City Council, acting as the Local Contract Review Board for the City of Sherwood, believes it in the City's interest to enact rules exempting certain public contracts and classes of public contracts which the City periodically enters into from the standard requirement imposed on public bodies by state statute that contracts shall be based upon competitive bids or proposals;

WHEREAS, under the terms of ORS 279.015(2), local contract review boards may adopt rules exempting certain public contracts and classes of public contracts from the requirement that all public contracts be based upon competitive bids or proposals provided certain findings are approved by the local contract review board;

WHEREAS, the City Council, acting as the Local Contract Review Board for the City of Sherwood believes the most effective way to identify those classes of contracts meeting the requirements imposed on the City by the terms of ORS 279.015(2) is to adopt provisions generally consistent with the substantive requirements and standards imposed by the rules exempting certain public contracts from competitive bidding set out in Oregon Administrative Rules (OAR) Chapter 125, Divisions 310 to 330 (2003) inclusive.

NOW THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. The Sherwood City Council, acting in its capacity as the Sherwood Local Contract Review Board, hereby approves the following:

Findings

1. The awarding of public contracts pursuant to the exemptions identified in this ordinance are unlikely to encourage favoritism in the awarding of public contracts by the City of Sherwood nor will the exemptions identified in those provisions substantially diminish competition for public contracts offered by the City of Sherwood;
2. the awarding of public contracts pursuant to the exemptions identified in this ordinance and its Exhibit 1 will result in substantial cost savings to the City.

Sections 2. The City Recorder is directed to give notice in at least one (1) trade newspaper of general statewide circulation that the City intends to hold a public hearing during the time set by the City Council for its December 9, 2003 City Council meeting to take comments on the City's draft findings concerning the list of exemptions the Sherwood Local Contract Review Board has identified as being appropriate.

Section 3. A new provision relating to exemptions from the competitive bidding requirements to

read as follows is hereby enacted.

**Contracts Exempt from Competitive Bidding Requirements.**

(A). The following classes of contract identified as exempt from the competitive bidding requirements are hereby declared to be exempt from the public bidding requirements for the City of Sherwood.

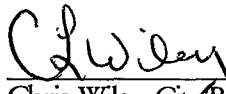
1. Advertising Contracts;
2. Contract Amendment(s) including Change Orders and Extra Work;
3. Contracts under Certain Dollar Amounts;
4. Emergency Contracts;
5. Equipment Repair and Over-Haul;
6. Contracts for Price Regulated Items;
7. Purchases Under Federal Contracts;
8. Copyrighted Materials;
9. Investment Contracts;
10. Food Contracts;
11. Product Prequalification;
12. Requirements Contracts;
13. Single Seller of Product Required;
14. Purchase of Used Personal Property;
15. Information Technology Contracts;
16. Telecommunications Systems Contracts;
17. Telecommunications Services;
18. Hazardous Material Removal and Oil Cleanup; and
19. Employee Benefit and Insurance contracts.

(B). The City shall, to the extent it reasonably believes is practical employ the same practices, protocol and procedure(s) used by state agencies for each class of exempt contract identified above.

Section 4. The substantive terms of the rules identified above are attached hereto as Exhibit 1.

ADOPTED this 9th day of December, 2003.

ATTESTED BY:

  
Chris Wiley, City Recorder

  
Mark Cottle, Mayor

## EXHIBIT 1

### CITY OF SHERWOOD ORDINANCE NO. \_\_\_\_ RULES FOR EXEMPTIONS FROM COMPETITIVE BIDDING FOR PUBLIC CONTRACTS

#### Section 1. Advertising Contracts.

The City may purchase advertising, regardless of dollar value, without competitive bidding.

#### Section 2. Contract Amendments (Including Change Orders and Extra Work)

1. An amendment for additional work or product which is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders, or other change in the original specifications that increases the original contract price, may be made with the contractor or without competitive bidding if the original contract was The original contract:
  - a. was let by competitive bidding or alternative procurement process; or
  - b. unit prices or additive alternates were provided that established the cost basis for the additional work or product and a binding obligation exists on the parties covering the terms and conditions of the additional work; or
  - c. pursuant to a declaration of emergency; or
  - d. the additional work is required to deal with the prevention of environmental pollution and the preservation of natural resources that affect performance of the original contract; or
  - e. the original contract was for the renovation or remodeling of a building.
2. Except for amendments entered into pursuant to subsections 1(a) through (d) above, the aggregate increase resulting from all amendments to a contract shall not exceed 20 percent of the initial contract price. Contracts for the renovation or remodeling of buildings may have aggregate amendments not exceeding 33 percent of the initial contract price.
3. If the original contract required the contractor to provide a performance and payment bond, and the City has terminated the contract and notified the surety of such termination, the City may allow the contractor's surety an opportunity to provide a substitute contractor to complete performance of the original contract. Such substitute performance and any amendment of the original contract that makes a substitute contractor a party to the contract and is not an award of a public contract subject to the competitive procurement provisions of ORS Chapter 279.

#### Section 3. Contracts Under Certain Dollar Amounts

1. The City may, in its discretion, let public contracts not to exceed \$75,000 for the purchase of goods, materials, supplies and services without competitive bidding, if the City has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are met:
  - (a) The contract is for a single project, and is not a component of or related to any other project;
  - (b) When the amount of the contract does not exceed \$5,000, the City is exempt from competitive bidding (pursuant to ORS 279.015(1)(d)); however, the City shall, where practical, obtain competitive quotes;
  - (c) When the amount of the contract is more than \$5,000, but less than \$75,000, the City shall, at minimum, obtain three informally solicited, competitive quotes. The City shall

- keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes; and
- (d) The required goods, materials, supplies or services are unavailable from a Qualified Rehabilitation Facility as provided in ORS 279.850.
2. The City may in its discretion, let public contracts for trade-related projects, i.e., construction, maintenance, repair, or similar labor and materials contracts, without competitive bidding if the City has determined that the awarding of the contract without competitive bidding will result in cost savings and the following conditions are met:
- (a) The contract is for a single project, and is not a component of or related to any other project;
- (b) When the amount of the contract does not exceed \$5,000, the City should, where feasible, obtain competitive quotes;
- (c) Except for the circumstances provided for in subsection (d) dealing with "public improvements, the maintenance or repair of roads, highways and parking lots, when the amount of the contract is more than \$5,000 but less than \$75,000, the City shall obtain a minimum of three competitive quotes. The City shall keep a written record of the source and amount of the quotes received. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes;
- (d) When the contract is for a "public improvement" as defined in ORS 279.011(8) or maintenance or repair of roads, highways or parking lots and is less than \$75,000, the City may let the contract without competitive bidding if at least three competitive quotes are obtained. The City shall keep a written record of the source and amount of the quotes received and comply with the requirements, as applicable, of subsection (2)(f) of this rule. If three quotes are not available, a lesser number will suffice provided a written record is made of the effort to obtain the quotes;
- (e) When the contract is for a "public improvement" as defined in ORS 279.011(8) or for "public works" as defined in ORS 279.348(3) and the contract price exceeds \$25,000 but is less than \$75,000, the City and the contractor shall comply with:
- (i) The prevailing wage provisions of ORS 279.348 to 279.365, when applicable;
- (ii) The performance bond requirements of ORS 279.029;
- (iii) The contractor registration requirements of ORS 701; and
- (iv) Any other law applicable to such a contract.
3. If more than one supplier may be available and the total purchase is estimated to exceed \$75,000, the City shall select a contractor through competitive bidding.

#### **Section 4. Emergency Contracts.**

1. Pursuant to the requirements of this rule, the City may enter into a public contract without competitive solicitation if an emergency exists. "Emergency" means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety requiring prompt execution of a contract to remedy the condition.
2. Regardless of the dollar value of the contract, when the City enters into an emergency contract, it shall:
- (a) Make a written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the contract, stating the anticipated harm from failure to establish the contract on an expedited basis; and
- (b) Encourage competition to the extent reasonable under the circumstances; and
- (c) Record the measures taken under subsection (b) of this section to encourage competition, the amounts of the bids, quotes or proposals obtained, and the reason for selecting the

contractor.

3. The City Council, City Manager or another officer authorized by the City shall declare the existence of the emergency as required by subsection (2) of this section which shall authorize the City to enter into an emergency contract.
4. Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted by the City Council.

#### **Section 5. Equipment Repair and Overhaul**

1. The City may enter into a public contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:
  - a. Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
  - b. Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.
2. Regardless of the price of the contract, the City shall document the reasons why either competitive bids or quotes were deemed impractical.

#### **Section 6. Contracts for Price Regulated Items.**

The City may regardless of dollar value and without competitive bidding, contract 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.

#### **Section 7. Purchases Under Federal Contracts.**

When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, the City may purchase the goods and services in accordance with the federal contract without competitive bidding. In exercising this exemption, the City shall:

- a. Include in the contract file a letter or memoranda from the appropriate federal agency granting permission to the City to purchase under the federal contract; and
- b. Include in the contract file documentation showing the cost savings to be gained from anticipated purchases from the federal contract.

#### **Section 8. Copyrighted Materials.**

The City may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one known supplier available for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new adopted textbooks, workbooks, curriculum kits, reference materials, audio and visual media, and non-mass-marketed software.

#### **Section 9. Investment Contracts**

The City may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter or constitution.

#### **Section 10. Food Contracts**

The intent of this rule is to provide a method for the City to procure food products which are available for a limited period of time at "lower than normal" prices (also referred to as "spot buys"). The City may procure an unlimited dollar value of food using a competitive bid or quote process when the following conditions are present:

- a. A non-exclusive requirements contract or regularly scheduled bid process already exists for

- the item being purchased;
- b. The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing requirements contract or recent bid and the amount saved exceeds additional administrative costs incurred;
- c. The product being purchased has limited availability;
- d. Any requirements contracts currently in place for the item being purchased contain clauses allowing for the use of this exemption; and
- e. The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing requirements contract.

### **Section 11. Product Prequalification**

1. When specific design or performance specifications must be met or such specifications are impractical to create or reproduce, for a type of product to be purchased, the City may specify a list of approved or qualified products by reference to the prequalified product(s) of particular manufacturers or sellers in accordance with the following product prequalification procedure:
  - a. Reasonable efforts have been made to notify all known manufacturers and vendors of competing products of the City's intent to compile a list of prequalified products and of the opportunity to submit applications for including their product(s) on the list of prequalified products. Notice may be provided by advertisement in a trade journal of state-wide distribution, when possible; or, instead of advertising, the City may provide direct written notice to manufacturers and vendors appearing on the appropriate list maintained by the City; and
  - b. Manufacturer and vendor applications to include products in the City's list of prequalified products are accepted up to fifteen (15) calendar days (unless otherwise specified in the advertisement or the City's written notice) prior to the initial advertisement for bids or proposals, on the type of product to be purchased.
2. If an application for including a product in a list of prequalified products is denied, the City shall provide the applicant with written notice of the denial. The applicant may appeal to the City Council requesting review and reconsideration of the denial.

### **Section 12. Requirements Contracts.**

Requirements contracts may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory and reducing lead time for ordering. The City may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at a predetermined price provided the contract is let by a competitive procurement process pursuant to ORS 279.005 to 279.111. The City may purchase the goods and services from a contractor awarded a requirements contract without first undertaking additional competitive solicitation, subject to a five (5) year limitation unless exempted by the Council.

### **Section 13. Single Seller of Product Required**

The City may purchase without competitive bidding if there is only one seller of a product of the quality required, or if the efficient utilization of existing equipment or supplies requires specification of a compatible product for which there is only one seller.

### **Section 14. Purchase of Used Personal Property.**

1. Subject to the provisions of this rule, the City may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if has determined that the purchase will result in cost savings to the City and will not diminish competition or encourage favoritism. "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized

in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the City purchase. "Used personal property or equipment" generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

2. For purchases of used personal property or equipment costing less than \$75,000, the City where feasible, obtain three competitive quotes, unless the City has determined and documented that a purchase without obtaining competitive quotes will result in cost savings to the City and will not diminish competition or encourage favoritism.
3. For purchases of used personal property or equipment totaling \$75,000, the City shall obtain and keep a written record of the source and amount of quotes received. If three quotes are not available, a written record must be made of the attempt to obtain quotes.

#### **Section 15. Information Technology Contracts.**

1. The City may enter into a contract to acquire information technology hardware and software, without competitive bidding, subject to the following conditions:
2. If the contract amount does not exceed \$75,000, the City shall comply with the required imposed under these rules for such contracts. Prior to selecting a contractor, reasonable efforts shall be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the City.
3. If the contract amount exceeds \$75,000, the City shall determine and use the best procurement method (pursuant to ORS 279.005 through 279.111) and shall solicit written proposals. The City shall document the evaluation and award process, which will be part of the public record justifying the award.

#### **Section 16. Telecommunications Systems Contracts.**

1. The City may enter into a contract to acquire telecommunications system hardware and software, without competitive bidding, subject to the following conditions:
  - a. If the contract amount does not exceed \$75,000, the City shall as a minimum obtain competitive quotes. Prior to selection of a contractor, reasonable efforts will be made to solicit proposals from three or more vendors. Justification of award shall be documented and become a public record of the City;
  - b. If the contract amount exceeds \$75,000, the City shall determine and use the best procurement method, pursuant to ORS 279.005 through 279.111 and shall solicit written proposals.
2. The telecommunications solicitation authorized in subsection (1)(b) of this rule shall:
  - a. State the contractual requirements in the solicitation document;
  - b. State the evaluation criteria to be applied in awarding the contract and the roles of any evaluation committee. Criteria that would be used to identify the proposal that best meets the City's needs including (but are not limited to) cost, quality, service and support, compatibility and interconnectivity with the city's existing telecommunications system, product or system reliability, vendor viability and financial stability, operating efficiency, and expansion potential;
  - c. State the provisions made for bidders or proposers to comment on any specifications which they feel limit competition; and
  - d. Be advertised in accordance with ORS 279.025.

#### **Section 17. Telecommunications Services.**

1. The City may seek telecommunications services on a sole source basis if the City determines that competition does not exist for the type or scope of service desired. In determining the whether competition exists, the City may consider the following factors:
  - a. The extent to which alternative providers exist;

- b. The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance;
  - c. The extent to which alternative providers can respond to the City's interests in consistency and continuity of services, volume discounts, equitable service for all users, centralized management and limiting City liability.
2. The City must document for the record its findings on these factors or any other factors used in determining whether competition exists. Upon determining that competition does not exist, the City may secure the service on a sole source basis.

**Section 18. Hazardous Material Removal and Oil Cleanup.**

1. The City may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, especially ORS 466.605 through 466.680, and such DEQ order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. In exercising its authority under this exemption the City shall:
- a. To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
  - b. Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup; and
  - c. Record the measures taken to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.
2. The City shall not contract pursuant to this exemption in the absence of an order from DEQ to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

**Section 19. Insurance and Employee Benefits.**

The City may purchase employee benefit insurance without competitive bidding, regardless of dollar amount.