

ORDINANCE NO. 304

AN ORDINANCE CREATING A LOCAL CONTRACT REVIEW BOARD; PRESCRIBING ITS POWERS AND DUTIES; AMENDING ORDINANCE NO. 253; AND DECLARING AN EMERGENCY.

THE CITY OF DRAIN ORDAINS AS FOLLOWS:

Ordinance No. 253 of the City of Drain is hereby amended to read and provide:

Section 1. Contract Review Board. The common council of the City of Drain is hereby designated as the Local Contract Review Board of the city and shall have all of the powers granted it by ORS Chapter 279 or the corresponding provisions of any such future law.

Section 2. Definitions. The following words and phrases shall mean:

(1) Public contract. Any purchase, lease or sale by the city of personal property, public improvements or services other than agreements which are for personal service.

(2) Public improvement. Any projects for construction, reconstruction or major renovation on real property by or for the city. "Public improvement" does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

(3) Board. The local contract review board established in section 1 of this ordinance.

Section 3. Competitive Bids; Exemptions.

(1) All public contracts shall be based upon competitive bidding except:

(a) Contracts made with other public agencies or the federal government.

(b) Contracts for any purchase of less than \$2,500.

(c) Contracts for any item which is available only through one company, firm or individual.

(2) The board may by resolution exempt other public contracts from competitive bidding if it finds:

(a) It is unlikely that the exemption will encourage favoritism or substantially diminish competition in awarding the contract; and

(b) The exemption will result in substantial cost saving to the city.

(3) In making the findings required in subsection (2) of this section, the board may consider the type, cost and dollar amount of the contract, the number of persons available to bid, and such other factors as the board may deem appropriate.

(4) Where contracts are not based upon competitive bidding, the city administrator should, where possible, obtain competitive quotes.

Section 4. Emergency Contracts. A public contract may be exempted from competitive bidding if the board, by majority vote, determines that an emergency exists and that conditions require the prompt execution of a contract. The board shall adopt a resolution, indicating the nature of the emergency and stating with particularity the emergency conditions necessitating the prompt execution of the contract. The exemption granted by such a resolution shall expire within 60 days unless the board grants an extension.

Section 5. Brand Name Specification in Contracts.

(1) Specifications for public contracts shall not require any product by brand name or mark, nor the product of any particular manufacturer or seller, unless the product is exempted from these requirements by the board under this section. However, this section shall not be construed to prevent reference in the specification to a particular product as a description of the type of item required.

(2) The board may by resolution exempt certain products or classes of products from subsection (1) of this section upon any one of the following findings:

(a) It is unlikely that the exemption will encourage favoritism in the award of the contract or substantially diminish competition;

(b) The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost saving to the city;

(c) There is only one manufacturer or seller of the product of the quality required; or

(d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

Section 6. Exemption Hearing. Whenever the board is considering an exemption to the requirements for competitive bidding or brand name specification, it shall provide notice to the public and an opportunity for a public hearing upon whether the exemption should be allowed.

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Section 7. Bid Rejection. The board, or its designated representative, may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject all bids if it is in the public interest to do so.

Section 8. Bidder Disqualification. The board, or its designated representative, may disqualify any person as a bidder on a contract if:

(1) The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

(2) The person does not have available equipment to perform the contract;

(3) The person does not have key personnel of sufficient experience to perform the contract; or

(4) The person has repeatedly breached previous contractual obligations.

Section 9. Appeal of Disqualification. A person who has been disqualified as a bidder may appeal the disqualification to the board as follows:

(1) The person shall, within three business days after receipt of notice of the disqualification, file a written notice of appeal with the city recorder. The notice of appeal shall specify in detail why the appellant believes that the disqualification was in error.

(2) Immediately upon receipt of the appeal, the city recorder shall inform the board or its designated representative of the filing of the appeal.

(3) Upon receipt of notice from the recorder, the board shall notify the appellant of the time and place of an appeal hearing. The hearing shall be held within 10 days from the date of filing the appeal.

(4) The board shall conduct the hearing according to the provisions of ORS 279.045(3), and shall set forth in writing the reasons for its decision.

Section 10. Adoption of Rules. Until the board adopts new rules by amending this ordinance and except as provided in this ordinance to the contrary, the following rules of the State Public Contract Review Board as they existed on June 30, 1983, OAR Chapter 127, Divisions 10, 20, 40 and 50 shall be the rules of the board. When applying the rules: the board under this ordinance shall have the powers of the board in the rules, and any publication of notice requirements before the board may act shall be met by placing the

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item on the agenda published in compliance with ORS 192.640.

Section 11. The city administrator shall file a copy of this ordinance with the Board of County Commissioners of Douglas County.

Section 12. Emergency Clause. That the matters contained herein concern the public welfare and safety and therefore, an emergency is hereby declared to exist, and this ordinance shall become effective immediately upon its passage by the council and approval by the mayor.

Passed by the Council this 12 day of Dec., 1983.

Approved by the Mayor this 12 day of Dec., 1983.

Grant J. Lewis  
Mayor

ATTEST:

Robert A. Gray  
City Administrator