

ORDINANCE 324

**AN ORDINANCE CREATING A LOCAL CONTRACT REVIEW BOARD;
PRESCRIBING ITS POWERS AND DUTIES; REPEALING ORD. 253
and ORDINANCE 304; ADOPTING ADMINISTRATION SECTIONS
2.300 TO 2.350; AND DECLARING AN EMERGENCY**

The City Council of the City of Drain finds:

1. That the following situations require certain contracts identified in the proposed Section 2.315 of the Drain Municipal Code be exempt from competitive bidding because strict compliance with the public contract law will result in useless expense to the City without furthering the public policy of encouraging competition:

(a) ORS 279.015(1)(d) authorizes a public agency to exclude from competitive bidding all contracts for supplies with the value less than \$2,500. If formal competitive bids based on detailed specifications and advertised solicitation of bid were used to award public contracts under \$2,500, the cost of procurement would be disproportionate to any benefit received from competitive bids. The entity designated herein to award contracts of certain value is best qualified to establish procedures for such contracts that reasonably balance the value of competitive bids with the administrative costs.

(b) It is a useless public expense to use competitive bidding procedures to acquire goods and services that are available only through a single source. The investigation that there is only a single source is best performed and determined by the purchasing agent. Because of the public policy supporting competition and because competition generally exists in the market place, the use of the sole source exemption should be limited.

(c) When the City acquires goods and services from suppliers whose prices are set by governmental regulation, such as utility services, there is no need for competitive bidding. In such instances the City has the obligation to pay the regulated price. Competitive bids would be a useless expense.

(d) When the City can take advantage of bids received by another public agency that is subject to public bidding requirements, there is no need for the City to engage in additional public bidding. By basing its contracts for the purchase of personal property, public improvements, or services on contracts awarded by other public agencies, the City saves the expense of public bidding and may enjoy

quantity discounts. At the same time, competition is not substantially diminished.

(e) Because of copyright law and other factors which control the market for copyrighted materials the purchase of most such materials is not compatible with competitive bidding.

(f) During the course of performing some of the contracts when it becomes apparent that changes in the specifications or quantities are required or that modifications to the work being performed are required, it is less costly to the public to provide some flexibility for adjusting public contracts at the time the work is being performed. Further, before some public contracts are undertaken it is impossible to fully ascertain the nature of the goods and services required. Therefore, within limits, it is in the public interest to allow amendments, change orders or modifications to public contracts previously awarded rather than to terminate work on public contracts long enough to allow going through a competitive bid process.

(g) When the City's equipment must be repaired and overhauled, the cost and nature of the repair often cannot be determined without extensive preliminary dismantling of the equipment. Further, specially trained personnel are required who are available from only one source. Therefore, it is in the public interest to avoid the delay and useless expense involved in a competitive bidding process for equipment repair contracts.

Because of the foregoing situations, the classes of contracts described in the proposed Section 2.310 of the Administrative Code of the Drain Municipal Code are unlikely to encourage favoritism in awarding of public contracts or substantially diminish competition for public contracts and further that the awarding of such public contracts will result in substantial cost savings to the City. In making these determinations the Council has considered the type, cost, amount of the contract, the number of persons available to bid, the City's historic contracting practices and experience.

2. That there exists an on-going need for the City to dispose of its goods in a convenient, inexpensive procedure that does not require the Council's attention. More revenues will be realized from the disposal of low value surplus goods through advertised sale or auction procedures than would result from competitive bidding. Other highly valued surplus goods may also yield greater net revenue at the auction than through competitive bidding. Sometimes the surplus property returns the greatest value to the City when traded in at the time the City purchases

its replacement. The purchasing agent is the most qualified person to select the established method for disposal of the City's surplus goods that will yield the greatest net revenue.

The City of Drain Ordains as Follows:

Section 1. Based upon the above findings, which are hereby adopted, Sections 2.300 thru 2.350 of the Drain Administrative Code and the Index thereto are hereby adopted:

CITY CONTRACTS

SECTION:

- 2.300 Contract review board
- 2.305 Definitions
- 2.310 Competitive bids
- 2.315 Exemptions
- 2.320 Brand name specification in contract
- 2.325 Personal services contracts
- 2.330 Exemption and waiver of bid and performance bonds
- 2.335 Bid rejection
- 2.340 Bidder disqualification
- 2.345 Appeal of disqualification
- 2.350 Adoption of rules

2.300 Contract review board.

The council of the City of Drain, Oregon, is hereby designated as the local contract review board of the city and shall have all the powers granted it by ORS Chapter 279 or the corresponding provisions of any such future law.

2.305 Definitions.

The following words and phrases shall mean:

"Bid". A competitive offer in which price, delivery (or project completion) and conformance to specifications will be the predominant award criteria; or a competitive proposal in which other criteria in addition to price, delivery and conformance to specification is the dominant award criteria.

"Formal bid". A procedure in which written sealed bids are solicited by advertising using bidding instructions, specifications, and are opened at an announced place, date and time.

"Formal quotation". A procedure in which written bids are solicited by advertising or other writing stating the quantity and quality of goods or services to be acquired, and which bids are received by the city on or before a stated date.

"Goods". Except for works of art, any tangible personal property including but not limited to materials, supplies and equipment.

"Informal quotation". A procedure in which written or verbal bids are gathered by correspondence, telephone or personal contract.

"Lowest responsible bid". The bid that is found to be the most acceptable on the basis of:

1. Provision of the goods or services which substantially comply with all prescribed public bidding procedures and requirements, and bid specifications;
2. Provision of the goods or services at the lowest cost to the city of those bids which meet (a);
3. Vendor qualifications to execute and perform the contract to supply those goods or services;
4. Conformance to other published criteria which will be the dominant criteria used in evaluating the bids received.

"Personal services contract". A contract with an independent contractor predominantly for services requiring special training or certification, independent judgment, skill and experience. It may include but is not limited to a contract for the services of professionals, performing artists, visual artists, consultants, researchers, and computer programmers.

"Public contract". Any purchase, lease or sale by the city of personal property, public improvements or services except:

1. Contracts made with other governmental agencies;
2. Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped;
3. Personal services contracts.

"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 or improvements mandated by the city when it sells or leases real property and retains no right to occupy the real property except upon default of the purchaser or except by easement.

"Purchasing agent". The city administrator or the administrator's designee.

"Visual artists". Practitioners in the visual arts who are generally recognized by critics and peers as professionals of serious intent, and who produce works of art.

"Works of art". All forms of original creations of visual art, including but not limited to:

1. **Painting:** all media, including both portable and permanently affixed or integrated works such as murals.
2. **Sculpture:** in the round, bas-relief, high relief, mobile, fountain, kinetic, electronic, etc. in any material or combination of materials.
3. Prints, clay, drawings, stained glass, mosaics, photography, fiber and textiles, wood, metal, plastics and other materials or combination of materials, calligraphy, and mixed media, any combination of forms of media, including collage.

2.310 Competitive bids.

- A. Except as provided in Section 2.315, all public contracts shall be based upon competitive bidding and awarded to the lowest responsible bidder.
- B. The following classes of public contracts are hereby created and the procedures for awarding such contracts are determined not to encourage favoritism or substantially diminish competition and to result in substantial cost savings:
 1. **Contracts \$2,500 to \$7,500.** All contracts for an amount which is valued \$2,500 or more but less than \$7,500 shall be awarded by the city council based on informal quotations. In soliciting informal quotations the purchasing agent shall seek quotations from a sufficiently large number of potential bidders to insure sufficient competition to meet the best interests of the city. An award based on receiving less than three informal quotations may be made only on a determination by the city council that potential bidders were given a reasonable opportunity to submit quotes.
 2. **Contracts \$7,500 to \$50,000.** All contracts for an amount which is valued \$7,500 or more but less than \$50,000 shall be awarded by the council based on informal quotations. In soliciting informal quotations the purchasing agent shall seek quotations from a

sufficiently large number of potential bidders to insure sufficient competition to meet the best interests of the city. An award based on receiving less than three informal quotations may be made only on a determination by the council that potential bidders were given a reasonable opportunity to submit quotes.

3. **Contracts over \$50,000.** All contracts for over \$50,000 value shall be awarded by the council based on formal bids. The solicitation for bids shall be published at least once in a newspaper of general circulation in the Drain area and if the proposed contract is for a public improvement over \$50,000 value, the solicitation shall also be published in a trade newspaper of general state-wide circulation.

2.315 Exemptions.

- (1) The following classes of public contracts are exempt from competitive bidding as public contracts that do not encourage favoritism or substantially diminish competition and that result in substantial cost savings:
 - (a) Contracts for goods and services under \$2,500;
 - (b) Contracts determined by the purchasing agent to be available only through a sole supplier of goods, services, or both;
 - (c) Contracts for which the prices are established by governmental regulatory authorities;
 - (d) Contracts for the purchase or commissioning of works of art;
 - (e) Contracts for the purchase of copyrighted materials;
 - (f) Contract amendments for additional goods, services, or both, or for changes in the original specifications which increase the original contract price, provided:
 - i. The original contract terms and conditions apply to the performance of the amendment; or
 - ii. The cost of amendments does not exceed 10% of the original contract price. This 10% limitation may be increased upon determination by the purchasing agent that it is not reasonably feasible to require additional bidding to complete the purpose of the contract.
 - (g) Contracts for equipment repair or overhauling, provided

the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.

- (h) Contracts for the purchase of personal property, public improvements, or services that are based upon contracts awarded by any other public agency that is governed by state competitive bidding requirements.
- (2) All personal property which the city has acquired and used, when it is declared surplus by the purchasing agent shall be:
- (a) Traded in on the purchase of replacement equipment or supplies; or
 - (b) Sold as provided by state law or city ordinance.

The purchasing agent shall select the method of disposal which maximizes the value the city will realize from disposal of the surplus property.

- (3) A public contract may be exempted from competitive bidding if the council, by majority vote, determines that an emergency exists and that conditions require the prompt execution of a contract. The council 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 council grants an extension.
- (4) The council 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 a substantial cost saving to the city.
- (5) In making the findings required in subsection (4) of this section, the council may consider the type, cost and dollar amount of the contract, the number of persons available to bid, and such other factors as the council may deem appropriate.

2.320 Brand name specifications in contract.

- A. 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 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.

- B. The council or the purchasing agent, whomever is awarding a public contract, may exempt certain products or classes of products from subsection 2.320.A upon any one of the following findings:
1. It is unlikely that the exemption will encourage favoritism in the award of the contract or substantially diminish competition;
 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 saving to the city;
 3. There is only one manufacturer or seller of the product of the quality required; or
 4. Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.
- C. A prospective bidder may, up to five days before bid closing, appeal in writing to the council any brand name, brand mark or product exemption decision of the purchasing agent made pursuant to subsection 2.320.B. The notice of appeal shall state the reasons for the protest and any proposed changes to the specifications. Unless the appellant and the council agree to a longer period, an appeal shall be heard within 15 days of the receipt of the notice of intent to appeal. At least 10 days before the hearing, the council shall mail notice of the time and location of the hearing to the appellant. The council shall hear and determine the appeal on the basis of the appellant's written statement, the purchasing agent's written report of his or her findings and the product(s) exempted, and any additional evidence the council deems appropriate. The council may permit this appellant to present testimony and oral argument. The bid opening date shall be extended if necessary to allow consideration of the appeal and issuance of addenda to bid documents.

2.325 Personal services contract.

- (1) Except as provided in subsection (2) of this section, for all personal service contracts under \$25,000 in value, the purchasing agent shall solicit by invitation or advertising proposals for personal services in sufficient number to

provide a choice for the city from among qualified service providers. The criteria to be used in selecting the personal service provider shall be stated in the solicitation.

- (2) Without a solicitation of proposals, the purchasing agent may enter into personal service contracts:
 - (a) With an existing service provider whose personal service contract is being renewed on an annual basis;
 - (b) With service providers determined by the purchasing agent to be sole suppliers of the services needed; or
 - (c) For \$10,000 or less in any fiscal year.
- (3) Except as provided in this section, all personal service contracts shall be awarded by the council based on the procedure and selection criteria adopted by the council before bids are solicited.

2.330 Bid and performance bonds.

- (1) Except when waived by the council or as provided in subsection (5) of this section, for public contracts of \$25,000 or more, bids shall be accompanied by proper bid security and the contractor shall post a good and sufficient bond to assure performance of the contract and payment of the obligations incurred in the performance.
- (2) Except when required by the purchasing agent, all public contracts under \$25,000 are exempt from the requirements for bid security and good and sufficient bond to assure performance of the contract and payment of the obligations incurred in the performance.
- (3) For contracts awarded under subsection 2315.(3), the council may waive the requirements for bid security and good and sufficient bond to assure performance of the contract and payment of the obligations incurred in the performance.

2.335 Bid rejection.

The council or the purchasing agent, whomever is awarding a public contract, 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.

2.340 Bidder disqualification.

The council or the purchasing agent, whomever is awarding a public contract, 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 equipment available 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.

2.345 Appeal of disqualification.

A person who has been disqualified as a bidder may appeal the disqualification to the council 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 administrator. 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 administrator 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.
- (3) The council shall conduct the hearing according to the provisions of ORS 279.045(3), and the council shall set forth in writing the reasons for its decision.

2.350 Adoption of rules.

- (1) Except as provided in subsections 2 and 3 of this section, Oregon Administrative Rules (OAR) Chapter 137, Divisions 30 and 40 are hereby adopted as the rules to be used by the city in its public contracting.
- (2)
 - (A) The provisions of this ordinance shall prevail when in conflict with OAR Chapter 137 Divisions 30 and 40.
 - (B) Sections OAR 137-30-005 regarding competitive bidding and OAR 137-30-045 regarding brand name products are deleted from the rules adopted by subsection (1).
 - (C) Except when this chapter specifically requires the council take action or exercise its discretion, all

reference to "public agency" in the rules adopted by subsection (1) of this section shall mean the city administrator.

- (3) A variance from the provisions of the rules adopted by this section may be granted by the city administrator upon determination that:
- (A) The variance is unlikely to encourage favoritism or substantially diminish competition in awarding the contract, and,
 - (B) The variance will result in a substantial cost saving to the city.
- (4) The rules adopted by this section may be amended by resolution of the council.

Section 2. The city administrator shall file a copy of this ordinance with the Board of County Commissioners of Douglas County.

Section 3. All actions taken or existing contracts awarded under the provisions of Ordinance 304 are hereby ratified and affirmed.

Section 4. Ordinance 304 and any ordinance in conflict herewith are hereby repealed.

Section 5. 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 11th day of May, 1987.

Approved by the Mayor this 11th day of May, 1987.



Mayor

ATTEST:



City Administrator