

ORDINANCE NO. 397

AN ORDINANCE AMENDING THE DRAIN CODE REGARDING PUBLIC CONTRACTING PROCEDURES, REPEALING RESOLUTION NO. R9495-06 AND DECLARING AN EMERGENCY

WHEREAS, The Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) ("The Public Contracting Code"), which was signed by the Governor, and has an effective date of March 1, 2005, and

WHEREAS, The Public Contracting Code requires the City of Drain to designate a Local Contract Review Board, and to adopt contracting rules in areas not covered by the Public Contracting Code or "Model Rules" adopted by the Attorney General, and

WHEREAS, The Public Contracting Code divides powers and duties for contracting into two categories: those that must be performed by the local "Contract Review Board"; and those that must be performed by the city's "Contracting Agency," now, therefore,

THE CITY OF DRAIN ORDAINS AS FOLLOWS:

Section 1. Drain Code Sections 2.300 through 2.350 are repealed effective March 1, 2005 for all procurements first advertised, or if not advertised, entered into, on or after March 1, 2005, and the following sections are adopted to provide as follows:

CITY CONTRACTS

- 2.300 Contract Review Board and Contracting Agency
- 2.305 Adoption of State Procedures and Model Rules
- 2.310 Exemptions
- 2.315 Authority of City Administrator
- 2.320 Electronic Notice of Public Improvement Contracts
- 2.325 Public Improvement Contracts
- 2.330 Bid security and performance bonds
- 2.335 Negotiation with bidders
- 2.340 Personal Services Contracts
- 2.345 Disposition of surplus personal property
- 2.350 Conflict with State Contracting Code

2.300 Contract Review Board and Contracting Agency.

The Drain 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 Drain Code. The City Administrator, or his/her designated purchasing agent, is designated as the city's "Contracting Agency" for purposes of contracting powers and duties assigned to the City of Drain as a "Contracting Agency" under the State of Oregon Public Contracting Code or the Model Rules.

2.305 Adoption of State Procedures and Model Rules.

Except as specifically provided herein, public contracts shall be let by the City of Drain according to the State of Oregon Public Contracting Code, including the Model Rules adopted by the Oregon Attorney General as they now exist and as they may be amended in the future, and the Drain Code. Definitions provided by the State of Oregon Public Contracting Code or the Model Rules shall apply to City of Drain procurements, except as may be specifically provided herein.

2.310 Exemptions.

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

- (1) Any contract exempted by the State of Oregon Public Contracting Code or Model Rules;
- (2) Change orders or contract amendments that are reasonably related to the scope of work under the original contract, up to \$50,000. Change orders or other amendments that

increase the initial price of the contract by more than \$50,000 must be separately approved by the Contract Review Board.

(3) Contracts for the purchase of computer equipment and software, which may be let after obtaining requests for quotations.

(4) Purchases through federal programs, pursuant to ORS 279A.180.

(5) An emergency contract, provided that the Contracting Agency adheres to the requirements of ORS 279B.080 or 279C.335(5) and the Model Rules.

(6) 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.

2.315 Authority of City Administrator.

The City Administrator or his or her designee is authorized to:

(1) Enter into city contracts not to exceed \$50,000 without additional authorization of the Contract Review Board.

(2) Recommend that the Contract Review Board approve or disapprove contract awards in excess of \$50,000, or change orders or amendments to contracts that increase the initial price of the contract by more than \$50,000.

2.320 Electronic Notice of Public Improvement Contracts.

Notice of public improvement contracts may be published electronically where the Contracting Agency finds that such publication is likely to be cost effective, as provided in ORS 279C.360.

2.325 Public Improvement Contracts.

(1) Public improvement contracts estimated by the Contracting Agency not to exceed \$50,000 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 Drain, 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; and

(d) A public improvement contract let under this section may be amended by change order as provided in Drain Code Section 2.310 (2).

(2) Public improvement contracts in excess of \$50,000 shall be let in accordance with the provisions of ORS 279C.

2.330 Bid security and performance bonds.

(1) Except when waived or modified by the City council, for public improvement contracts of \$50,000 or more, bids shall be accompanied by proper bid security in an amount not less than 10% of the contractor's bid price which shall be retained by the City

of Drain in the event the bidder who is awarded the contract fails to promptly and properly execute the contract.

(2) Performance and payment bonds shall be required in accordance with ORS 279C.375 and ORS 279C.380.

2.335 Negotiation with bidders.

If bids are solicited for a public improvement contract, and all bids exceed the budget for the project, the Contracting Agency may, prior to contract award, negotiate for a price within the project budget under the following procedures:

(1) Negotiations will begin with the lowest, responsive and responsible bidder. If negotiations are not successful, then the Contracting Agency may begin negotiations with the second lowest responsive, responsible bidder, and so on.

(2) Negotiations may include value engineering and other options to attempt to bring the project cost within the budgeted amount.

(3) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.

(4) The Contracting Agency will adhere to the provisions of ORS 279C.340 in applying this section.

2.340 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:

(1) 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.

(2) Unless otherwise approved by the City Administrator, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the City of Drain, 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.

(3) Unless otherwise approved by the City 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.

(4) 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.

(5) The following procedure shall be observed in the selection of personal service contractors:

(a) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, the City Administrator, or his/her designee may negotiate a contract for such services with any qualified contractor of his or her selection;

(b) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, the City Administrator or his or her designated officer shall solicit at least three (3) 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;

(c) The City Administrator 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; and

(d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the City Administrator, or his/her designee shall select the prospective contractor, and shall prepare a personal service contract.

(6) The following criteria shall be considered in the evaluation and selection of a personal service contractor:

(a) Specialized experience in the type of work to be performed;

(b) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.;

(c) 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;

(d) 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

(e) Any other factors relevant to the particular contract.

(7) The selection procedures described in this section may be waived by the City 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.

(8) The City Administrator is delegated the authority to sign all personal service contracts.

(9) The above provisions regarding selection procedures do not apply to amendments, modifications, supplements or extensions to executed personal service contracts which may be accomplished by means of direct negotiation with the existing contractor.

(10) 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.

2.345 Disposition of surplus personal property.

(1) Disposition of surplus personal property may be made, at the discretion of the City 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.

(2) The City Administrator has the authority to determine when personal property owned by the City of Drain is surplus to the needs of the city.

(3) The City Administrator shall select the method of disposal which maximizes the value the city will realize from disposal of the surplus property. Methods of disposal may include the following:

(a) Traded in on the purchase of replacement equipment or supplies;

(b) Sold at public auction advertised at least once in a newspaper of general circulation in the Drain area not less than one week prior to the auction. The published notice shall specify the time, place and terms upon which the personal property shall be offered and a general description of the personal property to be sold;

(c) Sold at a fixed retail price if doing so is anticipated to result in substantially greater net revenue to the city; or

(d) Sold in such other manner as may be provided by resolution of the council.

(4) 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 sub-section.

2.350 Conflict with State Contracting Code.

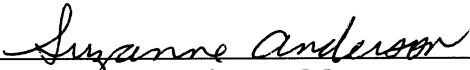
In the event of a conflict between any provision of the State of Oregon Public Contracting Code and this chapter of the Drain Code, the provisions of the State of Oregon Contracting Code shall control.

Section 2. Emergency declared to exist. Because the revised State Public Contracting Code takes effect on March 1, 2005, the public fiscal welfare requires that this ordinance take effect immediately and apply to all contracts first advertised, or if not advertised, entered into, on or after March 1, 2005.

Section 3. Ratification. All actions taken and contracts entered into under the previous provisions of the Drain Contracting Code are hereby ratified and affirmed.

Section 4. Repeal. Drain Resolution No. R 9495-06 relating to Purchasing and Procurement is hereby repealed.

PASSED BY THE CITY COUNCIL OF THE CITY OF DRAIN, DOUGLAS COUNTY, OREGON, THIS 14TH DAY OF FEBRUARY, 2005.



Suzanne Anderson, Mayor

ATTEST:



Carl A. Patenode, City Administrator