

ORDINANCE NO. 63**AN ORDINANCE CONTINUING A LOCAL CONTRACT REVIEW BOARD; ESTABLISHING THE RULEMAKING PROCEDURE; AND REPEALING ORDINANCE NO. 10.**

The City of Coos Bay Ordains as follows:

Section 1. Contract Review Board. Pursuant to ORS chapter 279, the City Council of the City of Coos Bay is hereby continued as the Local Contract Review Board for the city. The Board shall have all the powers granted it by ORS 279.055.

Section 2. Rules of the Board. The Board shall not exercise its authority until it has adopted rules to carry out its powers and duties. The rules in effect at the time of adoption of this ordinance shall remain effective until superseded by the Board.

Section 3. Rulemaking Procedure. Notice of intent to adopt rules shall be published in a newspaper of general circulation within the city and posted in City Hall for at least one week prior to the scheduled adoption. The proposed rules shall be available for inspection for at least one week prior to adoption from the City Recorder. At the time adoption of the rules is scheduled, any interested person is invited to comment.

Section 4. Repeal. Ordinance No. 10, enacted February 13, 1984, is repealed.

Passed by the Council and approved by the Mayor January 27, 1986.

CITY OF COOS BAY
RULES OF LOCAL CONTRACT REVIEW BOARD

Section 1. Purpose. These rules are adopted by the Local Contract Review Board, pursuant to the authority granted by ORS Chapter 279, to establish procedures for contracts entered into by the City of Coos Bay.

Section 2. Rules of Decision. For any issue not specifically provided for by these rules, the rules of decision shall be the Oregon Attorney General's Model Public Contract Rules Manual, 1995 edition.

Section 3. Definitions. The following words and phrases mean:

Board. The City Contract Review Board as established by Ordinance No. 63.

Competitive Bidding. The solicitation of competitive offers which follow the formal process for advertising, bid, and bid opening required by ORS Chapter 279 and applicable rules of the Board.

Competitive Quotes. The solicitation of offers from competing vendors. The solicitation may be by advertisement or a request to vendors to make an offer. The solicitation and the offer may be in writing or may be oral.

Director. The City Manager.

Public Improvements. Projects for construction, reconstruction or major renovation on real property by or for the City. Public improvements does not include any emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

Responsible Bidder. Any bidder who has:

- (a) Adequate financial resources to perform the contract, or the ability to obtain such resources. If a bond is required to insure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish adequate financial resources. Evidence of ability to obtain required resources may also include a commitment or specific arrangement, that will be in existence at the time of the contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, or other resources;
- (b) The ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and public business commitments of the bidder;
- (c) A satisfactory performance record. Evidence that the person has repeatedly breached contractual obligations to public and/or private contracting agencies constitutes strong evidence of nonresponsibility. The Board shall consider the number of contracts involved and the extent of the deficiency of each in making this evaluation;
- (d) Key personnel available of sufficient experience, as determined by the Board, to perform the contract;
- (e) The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain these skills and abilities, as required to satisfactorily perform the contract. These may include, as appropriate, such elements as production control procedures,

property control systems, and quality assurance measures applicable to materials to be produced or services to be performed by the bidder and its proposed subcontractor(s);

(f) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and

(g) Is otherwise qualified and eligible to receive the contract under applicable laws and regulations.

Responsive Bid or Proposal. A bid or proposal which complies in all material aspects with an Invitation to Bid (ITB) or Request for Proposals (RFP) and with all prescribed public bidding procedures and requirements.

Non-responsive Bid or Proposal. Except in the case of minor informalities, any bid or proposal which:

(a) Omits, or is unclear as to, the price;

(b) Offers goods or services of a quality or quantity different from that requested in the ITB or RFP;

(c) Requires a delivery date different from that required in the ITB or RFP;

(d) Takes exception to the terms and conditions of the ITB or RFP, unless the ITB or RFP specifically allow for an exception to be taken;

(e) Is conditional upon the public contracting agency's acceptance of terms and conditions different from those contained in the ITB or RFP; or

(f) Contains a deviation which, if the bid or proposal were accepted, would give the bidder or proposer a substantial advantage or benefit not shared by other bidders or proposers to the ITB or RFP;

For the purposes of these rules, a minor informality is defined as any minor matter as to the form of the bid or proposal, rather than the substance, which is evident from documents as submitted by the bidder or proposer, or any informality which does not affect the price, quantity, quality, or delivery.

Section 4. Award of Contracts.

(a) Evaluation of Bids or Proposals. The Board shall accept and consider for award only those bids or proposals which are responsive as defined by these rules. Nonresponsive bids or proposals shall be rejected, as provided in Section 3.

(b) Award of Contracts Above \$25,000. Any public contract where the amount of purchase exceeds \$25,000 shall be awarded by the City Council, acting in its capacity as the Board. The City Council shall authorize the purchase through the budget process or by ordinance, resolution or motion. Following staff review of bids or proposals received and recommendation concerning the award, the City Council shall award the contract to the lowest responsible bidder or the best proposer who has submitted the lowest bid or best proposal which is in the best interest of the City, based upon the criteria set forth in the solicitation documents.

Section 5. Competitive Bids - Exemptions. All contracts shall be based on competitive bids or proposals except:

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

(b) Contracts with Nonprofit Agencies. Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.

(c) Personal Service Contracts. Contracts which are exclusively for personal services. A contract for personal services is any contract which calls for specialized skill knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Personal services contracts may include, but are not limited to, the following:

(1) Contracts for services performed as an independent contractor, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; data processing consultant or broadcaster.

(2) Contracts for services as an artist in the performing or fine arts, including but not limited to persons identified as photographer, filmmaker, painter, weaver, or sculptor.

(3) Contracts for services of a specialized, creative and research-oriented, noncommercial nature.

(4) Contracts for services as a consultant.

(5) Contracts for educational and human custodial services.

(d) Contracts under \$25,000. Contracts for purchase of goods, materials, supplies and services or for construction, maintenance, repair, or similar labor and materials contracts where the amount does not exceed \$25,000 may be exempted subject to the following conditions:

(1) For purchases up to the sum of \$500, an authorized City employee may use a field purchase order to purchase needed items, without any other approval.

(2) For purchases in an amount in excess of \$500, and up to \$2,500, a department head can approve a purchase only after obtaining at least three (3) competitive quotes by telephone from responsible and responsive bidders.

(3) For purchases in an amount in excess of \$2,500 and up to \$7,500, a department head can approve a purchase only after obtaining at least three (3) written quotes from responsible and responsive bidders.

(4) For purchases in an amount in excess of \$7,500 and up to \$25,000 a purchase order must be approved by the Director only after three (3) written quotes have been obtained from responsible and responsive bidders.

(e) Contracts for Price Regulated Items. Contracts for the purchase of goods or services where the

rate or price for the goods or services purchased is established by federal, state or local regulatory authority.

(f) Allocated Petroleum Products. Contracts for the purchase of petroleum products, if such purchase is required to be made from a particular supplier as a result of a federal allocation or if purchase from other than an established supplier could jeopardize an allocation or future supply of such petroleum products.

(g) Oil or Hazardous Material Removal. Contracts for the cleanup of oil or hazardous waste, when ordered by the Department of Environmental Quality (DEQ) pursuant to its authority under ORS 466.605 through 466.680, and such order requires prompt performance of the contract for compliance with the statutes regarding the spill or release of oil or hazardous materials. In exercising its authority under this exemption, the Board shall:

- (1) 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;
- (2) Make written findings describing the circumstances requiring cleanup and including a copy of the DEQ order ordering such cleanup;
- (3) Make written findings recording the measures taken under subsection (1) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reasons for selecting the particular contractor; and
- (4) Not enter into a contract pursuant to this exemption unless the order from DEQ to cleanup a site contains a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

(h) Copyrighted Materials. Contracts for the purchase of copyrighted materials where there is only one supplier available for such goods.

(i) Advertising Contracts. Contracts for the purchase of advertising, including that intended for the purpose of giving public notice.

(j) Investment Contracts. Contracts for the purpose of investment of public funds or the borrowing of funds.

(k) Requirements Contracts. Purchase of goods or services from a supplier when the price of the goods and services has been established under a previously competitive bid requirements contract whereby it is agreed to purchase requirements on an anticipated need at a predetermined price.

(l) Single Seller or Price of Product Required. Contracts for purchase where there is only one seller or price for a product of required quality available within a reasonable purchase area.

(m) Data processing Contracts. Contracts for purchase or acquisition of data processing hardware or software may be let without competitive bid subject to the following conditions:

- (1) Prior to selection of the contractor, reasonable efforts have been made to solicit proposals from all known vendors. If the amount of the contract exceeds \$25,000 written proposals shall be solicited from vendors.

(2) The contractor is selected on the basis of the most competitive offer in both cost and quality of the product to be purchased or acquired.

(3) Whenever a contract for data processing is let pursuant to this exemption exceeds \$15,000, a written report shall be submitted by the Director to the Board. The report shall include:

(A) The name of the company and, if applicable, the name of the retail vendor;

(B) The reasons why competitive bidding was not appropriate; and

(C) A description of the reasons why the contractor was selected and other proposals rejected.

(n) Insurance Contracts. Contracts for employee benefit insurance.

(o) Contract Amendments. Any contract amendment, including change orders, extra work, field orders, or other change in the original specifications which changes the original contract price or alters the work to be performed, may be made subject to the following conditions:

(1) The original contract imposes a binding obligation on the parties covering the terms and conditions regarding changes in the work;

(2) The amended contract does not substantially alter the scope and nature of the project; or

(3) If the amendment has the effect of substantially altering the scope or nature of the project, the amount of the aggregate cost change resulting from all amendments creating new obligations shall not exceed ten percent (10%) of the initial contract price.

(p) Equipment Maintenance. Contracts for the purchase of services, equipment, or supplies for the maintenance, repair or conversion of existing equipment, if required for the efficient utilization of the equipment. Where practicable, competitive quotes shall be obtained.

(q) Bids Obtained by the State for the Same Materials. Contracts for the purchase of materials where competitive bids for the same materials have been obtained by the State of Oregon, and the contract is awarded to the same party with whom the State dealt, and the price of the materials is the same or lower than that paid by the State.

(r) Sale of Personal Property. Personal property may be disposed of without competitive bidding under any of the following conditions:

(1) There are specific procedures provided by statute or ordinance for the sale of the type of property involved, and the property is disposed of according to those procedures;

(2) The property has a value of less than \$2,500 unless otherwise provided by statute or ordinance; or

(3) The Director finds that the number, value and nature of the items to be sold make it probable that the cost of conducting a sale by competitive bid will be such that a liquidation sale will result in substantially greater net revenue to the City.

(s) Franchise Agreements. Where practicable competitive quotes shall be obtained.

Section 6. Request for Proposal. The Board may, at its discretion, use request-for-proposal (RFP) competitive procurement methods.

(a) Prerequisites. Any contract let through the RFP process shall be made only after the following findings have been made:

- (1) The lack of bids will not result in favoritism or substantially diminish competition in awarding the contract;
- (2) The exemption will result in substantial cost savings. In making such findings the Board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the board may deem appropriate; and
- (3) Where appropriate, the Board shall direct the use of alternate contracting and purchasing practices that take into account market realities and modern or innovative contracting and purchasing methods which are also consistent with the public policy of encouraging competition.

(b) Contents of the Solicitation Document. Any RFP solicitation document shall contain a clear statement of the following:

- (1) Contractual requirements;
- (2) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee. Criteria used to identify the proposal that best meets the public contracting needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential; and
- (3) Provisions for vendors to comment on any specifications which they feel limit competition.

Section 7. Emergency Contracts.

(a) Emergency Contracts Under \$25 000. Pursuant to ORS 279.015 (3) and (4), the Board may, in its discretion, let public contracts without formal competitive bidding if an emergency exists, and the emergency consist of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen, which requires prompt execution of a contract to remedy the condition.

- (1) The Director, or another officer authorized by the City, may declare the existence of an emergency, which shall authorize the City to enter into an emergency contract with a price under \$25,000. The Director, or his duly authorized designee, must make written findings describing the emergency conditions necessitating prompt execution of the contract.
- (2) Any contract awarded under this exemption shall be awarded within 60 days following declaration of the emergency unless an extension is granted by the Board.

(b) Emergency Contracts in Excess of \$25,000. The Board may enter into a public contract in excess of \$25,000, without competitive bidding when circumstances that could not reasonably be anticipated

necessitate the prompt establishment and performance of the contract in order to preserve public funds, property, or the uninterrupted provision of government services. In exercising its authority under this exemption, the Board shall:

- (1) 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;
- (2) Make written findings describing the circumstances that require the prompt performance of the contract, and of the harm anticipated to result from failing to establish the contract on an expedited basis;
- (3) Make specific finding of the measures taken under Subsection (1) of this section to encourage competition, the amounts of the quotes or proposals obtained, if any, and the reason for selecting the particular contractor; and
- (4) No contract shall be let pursuant to this subsection in the absence of a substantial risk of loss, damage, or interruption of services that would occur if contract performance awaited the time necessary, given the complexity of the project, to solicit, receive and analyze bids or proposals.

Section 8. Brand Name Specification in Contracts. Specifications for contracts shall not require any product by any brand name or mark nor the product of any particular manufacturer or seller, unless the product is exempt from this requirement under the provisions of subsection (a) or (b). However, this section shall not be construed to prevent reference in the specifications to a particular product as a description of the type of item required.

(a) A contract shall be exempt from the requirement of this section under any of the following conditions:

- (1) The specification is for a specific copyrighted product. This exemption does not include patented or trade mark goods.
- (2) If there is only one manufacturer or seller of a product of the quality required, or if the efficient utilization of the existing equipment or supplies requires a compatible product of a particular manufacturer or seller, a contract may specify such particular product subject to the following conditions:

(A) The product is selected on the basis of the most competitive offer considering quality and cost. The term "cost" includes not only the product price but also other items of expense such as costs related to quality or conversion;

(B) Prior to awarding the contract, reasonable efforts have been made to notify all known vendors of competing or comparable products of the intended specifications; and such vendors have been invited to submit competing proposals. If the amount of the purchase does not exceed \$25,000 such notice and invitation may be informal. If the amount of the purchase exceeds \$25,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timed to allow competing vendors a reasonable opportunity to make proposals; and

(C) If the amount of the purchase exceeds \$25,000, and the contract is not exempt under Section 3 (12) the Director shall notify the Board of the specification. The notice shall be written and include a brief description of the proposed contract, a detailed description of the reasons why the product and/or seller was selected and any competing products and/or sellers that were rejected. The description shall also include the efforts made to notify and invite proposals from competing vendors.

(3) When it is impractical to create specific design or performance specifications for a type of product to be purchased, a list of approved products by reference to particular manufacturer or sellers may be specified in accordance with the following product prequalification procedure:

(A) Reasonable efforts shall be made to notify all known manufacturers or vendors of competitive products of the intention to accept applications for inclusion in the list of prequalified products. Notification shall include advertisement in a trade journal or statewide distribution when possible. In lieu of advertising, notification may be made to vendors and manufacturer appearing on the appropriate list maintained by the Department of General Services of the State of Oregon.

(B) Applications for prequalification of similar products are permitted up to 15 days prior to advertisement for bids on the product.

(C) If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, the applicant shall be notified in writing. The applicant may, within three (3) days after receipt of the notice, appeal the denial or revocation to the Board according to the procedure in Section 10.

(b) The Board may by resolution exempt certain additional products or classes of products upon any of the following findings:

(1) It is unlikely that such exemption will encourage favoritism in the awarding 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 savings.

(3) There is only one manufacturer or seller of the produce of the quality required

(4) Efficient utilization of existing equipment or supplied require the acquisition of compatible equipment or supplies.

Section 9. Insurance Contracts. An Agent of Record may be appointed by the Board to perform insurance services for the City in connection with more than one insurance contract. Prior to selection, the City shall advertise in at least one newspaper of general circulation in the region its intention to appoint an Agent of Record. If the amount of annual premiums for insurance (excluding employee benefit insurance) is likely to exceed \$10,000, such notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the State. In selecting an agent, the City shall select the agent most likely to perform the most cost effective services. The period for appointment may not be for more than three years, although an agent of record may be reappointed for additional terms, upon the same procedure being followed.

Section 10. Investigation of Bidders or Proposers for Responsibility; Disqualification of Bidders or Proposers for Nonresponsibility.

- (a) The Director has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible, as defined by these rules. This investigation may include an inquiry into the responsibility of the bidder's proposed subcontractors and suppliers. If a bidder fails to promptly supply, or have supplied, information required by the Director during its responsibility investigation, such failure shall be grounds for finding of nonresponsibility.
- (b) A responsible proposer is one who has the attributes, qualities or capabilities of a responsible bidder as defined by these rules. The Director has the right, to make such investigations as necessary to determine whether a proposer is responsible.
- (c) If the prospective bidder or proposer is disqualified for nonresponsibility, the notice shall specify the reasons for the disqualification and shall advise the person that any appeal of the disqualification must be filed by giving written notice to the Director within three (3) business days after receipt of the notice.

Section 11. Cancellation of Invitations to Bid or Request for Proposals.

- (a) Cancellation in the Public Interest. An invitation to bid or request for proposal may be canceled in whole or in part when it is in the public interest as determined by the Board. The reasons therefore shall be stated in writing, and shall be made part of the bid or proposal file.
- (b) Notice of Cancellation. When an invitation to bid or request for proposal is canceled prior to the bid or proposal opening, notice of cancellation shall be sent to all holders of bid or proposal documents. Such notice of cancellation shall:
 - (1) Identify the invitation to bid or request for proposals;
 - (2) Briefly explain the reason for cancellation; and
 - (3) Where appropriate, explain that an opportunity will be given to compete on any resolicitation.

Section 12. Rejection of Bids and Proposals. The Board may reject any bid or proposal not in compliance with all prescribed public bidding procedures and requirements, and may, for good cause, reject any or all bids or proposals upon a written findings that it is in the public interest to do so, as based upon the criteria for rejection set forth in the Oregon Attorney General's Model Public Contract Rules Manual. In any case where competitive bids or proposals are required, all bids or proposals are rejected, and the proposed contract is not abandoned, new bids or proposals may be called for as in the first instance.

Section 13. Appeals of Disqualifications as Bidder or Proposer. The procedures for appeals shall be as follows:

- (a) Any person who wishes to appeal disqualification as a bidder or proposer shall, within three (3) business days after receipt of notice of disqualification, notify the Director that the person appeals the disqualification. Notices of appeal need not be in any particular form so long as they are in writing addressed to the Director.
- (b) Immediately upon receipt of such written notice of appeal, the Director shall inform the Board.

(c) Upon receipt of notice of appeal, the Board shall notify the person appealing of the time and place of the hearing.

(d) The Board shall conduct the hearing according to the provisions of ORS 279.045(3) and decide the appeal within ten (10) days after receiving the notification from the Director and shall set forth in writing the reasons for its decisions.

Section 14. Protest of Award of Contract.

(a) Notice of Award. The notice of award shall only be sent to a bidder or proposer who either submitted a letter stating that no bid or proposal would be submitted or who submitted a qualified bid or proposal prior to the deadline specified in the solicitation documents.

(b) Protest.

(1) Only an adversely affected bidder or proposer shall have the right to protest the award. An adversely affected bidder or proposer is that bidder or proposer who can claim eligibility for award of the contract by virtue of his or her status as the next lowest responsible bidder or next best proposer. i.e., the adversely affected bidder or proposer must be able to claim that all lower bidders or better proposers are ineligible for the award because they are nonresponsive or nonresponsible.

(2) Unless otherwise provided by specific provision in the solicitation documents, such adversely affected bidder or proposer shall have ten (10) calendar days after receipt of notice of award to submit to the City the written protest of the Board's decision to award the contract. No protest shall be entertained unless filed within the time period specified in this rule or in the solicitation documents.

(3) The written protest shall specify with particularity the basis for the protest, and shall contain such facts as to establish the bidder's or proposer's right to protest under paragraph (1) of this subsection.

(c) Procedure. The Director shall promptly notify the Board upon receipt of the protest of award. Within fourteen (14) days after receipt of the protest, the Board shall conduct a hearing to review the protest and issue a written opinion affirming or denying the protest. The written decision denying a protest shall only be sent to the adversely affected bidder or proposer.

(d) Finality of Award. If no written protest is filed within the period provided, the written notice of award shall constitute a final decision of the Board to award the contract. If a protest is timely filed, the notice of award is a final decision of the Board only upon issuance of a written decision denying the protest and affirming the award.

The foregoing Rules of the Contract Review Board were adopted by the City Council of the City of Coos Bay on the 16th day of May, 1995.