

ORDINANCE NO. 05-251

AN ORDINANCE RELATING TO PROCEDURES FOR PUBLIC CONTRACTING, DECLARING AN EMERGENCY AND STATING AN EFFECTIVE DATE.

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 operative date of March 1, 2005, and

WHEREAS: The Public Contracting Code requires the City of Lakeside 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."

THE CITY OF LAKESIDE ORDAINS AS FOLLOWS:

Section 1. The Lakeside 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 Lakeside Ordinances. The City Administrator, or his/her designated purchasing agent, and the City Public Works Department are designated as the city's "Contracting Agency" for purposes of contracting powers and duties assigned to the City of Lakeside as a "Contracting Agency" under the State of Oregon Public Contracting Code or the Model Rules.

Section 2. Except as specifically provided herein, Public contracts shall be let by the City of Lakeside 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 Lakeside Ordinances. Definitions provided by the State of Oregon Public Contracting Code or the Model Rules shall apply to City of Lakeside procurements, except as may be specifically provided herein.

Section 3. The following classes of public contracts are hereby exempted from competitive procurement:

§§ a. Any contract exempted by the State of Oregon Public Contracting Code or Model Rules;

§§ b. Change orders or contract amendments 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.

§§ c. Contracts for the purchase of computer equipment and software, which may be by requests for quotations, under the procedures in Section 6(a) and (b).

§§ d. Purchases through federal programs, pursuant to ORS 279A.180.

§§ e. Contracts made with or the cost of which is provided by other public agencies or the federal government;

§§ f. Contracts between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract for which:

- a. The original contract met the requirements of this chapter;
- b. The contract allows other public agency usage of this contract; and
- c. The original contracting public agency concurs.

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

§§ h. A Public Facility Improvement Agreement entered into between the City of Lakeside and a person responsible for carrying out conditions of approval of a land use decision of the City of Lakeside. The term "Land Use Decision" has the meaning provided by ORS 197.015.

§§ i. 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.

Section 4. Administrative staff and departments have contracting authority and responsibilities as follows:

§§ a. The City Administrator (or 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 of more than \$50,000.
- (3) Consistent with the Lakeside Ordinances, adopt forms, computer software, procedures, and administrative policies for all city purchases.
- (4) Enter into contracts or permits for local concessions and street vendors (pursuant to applicable city policy) where the annual amount to be paid to or by the city is not expected to exceed \$50,000 per year.

§§ b. The City of Lakeside Department of Public Works, shall have the authority to enter into city contracts not to exceed \$10,000 without additional authorization of the City Administrator.

§§ c. Purchases of goods from city employees shall require authorization of the City Administrator or designee. Provision of services by city personnel shall be in accordance with the City Personnel Policies and other applicable law.

§§ d. Departments (other than the Public Works Dept.), shall not contract for amounts above \$5,000. Solicitations and contracts above \$5,000 may be made upon approval of the Contracting Agency. All contracting by departments shall be according to approved city purchasing procedures adopted by the Contracting Agency or the Contract Review Board.

§§ e. Each department shall operate within its budget, or seek supplemental budgetary authority from City Council with respect to the contract.

§§ f. Each Department shall plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities.

§§ g. The Public Works Department or designee shall process requisition forms and negotiate purchases on the most favorable terms in accordance with adopted ordinances, state laws, policies and procedures.

Section 5. 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.

Section 6. 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 Lakeside, 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.

§§ d. A public improvement contract let under this section may be amended by change order as provided in Lakeside Ordinances Section 3.

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

Section 7. Personal services contracts (other than personal services contracts for architectural or engineering services), are subject to the rules established by this section:

§§ a. 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.

§§ b. Unless otherwise approved by the City Administrator, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the city, 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.

§§ c. 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.

§§ d. 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. The City Attorney's Office will prepare model contract provisions for use in city personal service contracts.

§§ e. The following procedure shall be observed in the selection of personal service contractors:

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

(2) 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.

(3) The City Administrator or his or her designated officer 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.

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

§§ f. The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.

§§ g. The following criteria shall be considered in the evaluation and selection of a personal service contractor:

- (1) Specialized experience in the type of work to be performed.
- (2) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
- (3) 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; and
- (4) 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.
- (5) Any other factors relevant to the particular contract.

§§ h. 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.

§§ i. The City Administrator is delegated the authority to sign all personal service contracts.

§§ j. 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.

Section 8. 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:

§§ a. From time to time and after personal property owned by the City of Lakeside is determined by the City Administrator or his/her designee to be surplus to the needs of the city, the city may sell the property at public auction. The city may utilize a contracting firm, approved by the Contract Review Board, for disposition of the property on terms and conditions contained in a contract approved by the Contract Review Board. The city shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the City of Lakeside Internet Website, or by advertisement in a newspaper of general circulation.

§§ b. Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the city's general fund, subject to the terms and conditions of the contract (if any) approved by the Contract Review Board between the City of Lakeside and a firm selected to conduct the auction.

§§ c. 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.

Section 9. 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:

§§ a. 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.

§§ b. Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.

§§ c. 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.

§§ d. The Contracting Agency will adhere to the provisions of ORS 279C.340 in applying this section.

Section 10. The Contracting Agency shall adopt appropriate purchasing policies dealing with ethics, environmental considerations and the like, subject to review and modification by the Contract Review Board.

Section 11. In the event of a conflict between any provision of the State of Oregon Public Contracting Code or the Model Rules and the Lakeside Ordinances, the provisions of the State of Oregon Contracting Code or the Model Rules shall control.


Section 12. 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 upon its passage.

Read for the first time the 10 day of Feb, 2005.

Read for the second time this 10 day of Feb, 2005.

Placed upon its passage this 10 day of Feb, 2005.

Signed by the Mayor this 10 day of Feb, 2005.


MAYOR

ATTEST:


City Administrator