

ORDINANCE NO. 4487

AN ORDINANCE SETTING FORTH THE AUTHORITY OF THE CITY PURCHASING AGENT; ESTABLISHING PURCHASE PROCEDURES; DESIGNATING CONTRACT REVIEW BOARD; AND REPEALING CHAPTERS 2.64, 2.80, AND 2.84 OF THE ALBANY MUNICIPAL CODE AND DECLARING AN EMERGENCY.

The people of the City of Albany do ordain as follows:

Section 1: Title.

This ordinance shall be known and may be cited as a Purchasing Ordinance of the City of Albany.

Section 2: Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, he or his shall be interchangeable as she or hers, words used in the present tense include the future, words in the plural number include the singular number; and words in the singular number include the plural number. The word "shall" is always directory and not mandatory.

- (1) "City" means the City of Albany, Oregon.
- (2) "City Council" means the Council of the City of Albany.
- (3) "Purchasing Agent, Purchasing Director or Public Contracting Officer" means the City Manager of the City of Albany, or any person appointed by the City Manager as his assistant to exercise the functions of Purchasing Agent in the manner prescribed by this ordinance.
- (4) "Service" means and includes all telephone, gas, water, electric light and power service, towel and cleaning service; insurance; leases for all grounds, buildings, offices or other space required by the city; and the rental, repair, or maintenance of equipment, machinery, and other personal property.
- (5) "Supplies" means and includes all supplies, materials and equipment.
- (6) "Using agency" means any department, agency, informative bureau, or other unit in the city government using supplies or procuring contractual services as provided for in this ordinance.
- (7) "Requisition," as used in the city charter means requests for supplies and equipment submitted to the Purchasing Officer.
- (8) "Contract" means any purchase, lease or sale by the City of Albany of personal property, public improvements or services other than agreements which are exclusively for personal service.

- (9) "Public improvement" means any construction of improvements on real property by or for the City of Albany.
- (10) "Board" means the Local Contract Review Board.
- (11) "Competitive bidding" means 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.
- (12) "Competitive quotes" means 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 oral.

Section 3: Designation.

- (1) The City Council is hereby designated as the Local Contract Review Board, and relative to contract concerns of the city and shall have all the power granted to the State Public Contract Review Board as it pertains to local purchasing and contracts.
- (2) The City Manager is designated as the Purchasing Agent of the City of Albany; however, he may appoint an assistant responsible to him for an indefinite term on the basis of merit and fitness to perform such duties in regard to purchasing as may be assigned to him by the City Manager. Any person authorized shall serve at the pleasure of the City Manager and shall be bonded by an official bond for the faithful performance of his duties in an amount of \$10,000.00, premiums of which shall be paid by the city; and the City Manager may assign said assistant such duties in regard to purchasing as City Manager shall see fit.

Section 4. Powers and Duties.

The City Purchasing Agent shall have the authority and it shall be his duties to:

- (1) Purchase or contract for supplies and equipment required by any using agency in accordance with purchasing procedures prescribed by this chapter, such administrative regulations as the purchasing officer shall adopt and such other rules and regulations as are prescribed by the city council;
- (2) Negotiate and recommend execution of contracts for the purchase of supplies and equipment;
- (3) Act to procure for the city the needed quality in supplies and equipment at least expense to the city;
- (4) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;
- (5) Prepare and recommend to the City Council rules governing the purchase of supplies and equipment for the city;

- (6) Prepare and recommend to the City Council revisions and amendments to the purchasing rules;
- (7) Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- (8) Prescribe and maintain such forms as are reasonably necessary to the operation of this chapter and other rules and regulations;
- (9) Supervise the inspection of all supplies and equipment purchased to insure conformance with specifications;
- (10) Recommend the transfer of surplus or unused supplies and equipment between departments as needed and the sale of all supplies and equipment which cannot be used by any agency or which have become unsuitable for city use;
- (11) Maintain a bidder list, vendors catalog file and records needed for the efficient operation of the Purchasing Department;
- (12) To make without further authorization from the Council all expenditures reasonably necessary for the orderly, uniform operation of the City of Albany as long as the same are within the budget allowances allotted for said operations for the fiscal year in which the expenditures are made. And also within said budget provisions, to make without further authorization from the Council such expenditures as are reasonably necessary for goods, wares, merchandise, services or in payment of obligations ordinarily and reasonably needed or incurred by cities in the State of Oregon of comparable size and engaging like pursuits as the City of Albany, together with authority to make all expenditures incidentally and reasonably needed in connection therewith;
- (13) The City Manager shall recommend to the Council professional people to perform professional services which are unique in nature and not ordinarily subject to competition;
- (14) To adopt as standard the minimum number of qualities, sizes and varieties of supplies to be carried in a central warehouse consistent with the efficient operation of the City government.
- (15) To prepare and adopt written specifications of all standard supplies;
- (16) To 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 5. Competitive Bids; Exemptions.

All contracts shall be based upon competitive bids except:

- (1) Contracts with public agencies. Contracts made with other public agencies or the Federal Government.

- (2) Personal service contracts. Contracts which are exclusively for personal services. Such contracts may include incidental materials such as written reports or opinions, architectural or engineering renderings, and other supplemental materials required for providing the services.
- (3) Contracts Emergency Execution. A contract may also be exempted from competitive bidding if the Board by majority vote determines the emergency condition requires prompt execution of the contract. Determination of such an emergency shall be entered into the record of the meeting at which determination was made.
- (4) Contracts under \$5,000.00. Contracts for purchase or sale where the amount does not exceed \$5,000.00.
  - (a) Where contracts are for more than \$2,500 but less than \$5,000, at least three competitive quotes shall be obtained where practicable. A written record shall be made containing the source and amount of the quotes received.
  - (b) Where contracts are for more than \$500 but less than \$2,500, competitive quotes may be obtained where practicable. A written record shall be made of the source and amount of each quote.
- (5) Contracts for price regulated items. Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by Federal, State or local regulatory authority.
- (6) 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.
- (7) Copyrighted materials. Contracts for the purchase of copyrighted materials where there is only one supplier available for such goods.
- (8) Advertising contracts. Contracts for the purchase of advertising, including that intended for the purpose of giving public notice.
- (9) Investment contracts. Contracts for the purpose of investment of public funds or the borrowing of funds.
- (10) Requirements contracts. Purchases 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 or an anticipated need at a predetermined price.
- (11) Single seller or price of product required. Contracts for purchase where there is only one seller or price of a product of the quality required available within a reasonable purchase area.

(12) 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:

- (a) Prior to selection of the contractor, reasonable efforts have been made to solicit proposals from all known vendors.
- (b) The contractor is selected on the basis of the most competitive offer in both the cost and quality of the product to be purchased or acquired.
- (c) Whenever a contract for data processing let pursuant to this exemption exceeds \$2,500, a written report shall be submitted to the board. The report shall include:
  - (i) The name of the company and, if applicable, the name of the retail vendor;
  - (ii) The reasons why competitive bidding was not appropriate; and
  - (iii) A description of the reasons why the contractor was selected and other proposals rejected.

(13) Insurance Contracts.

- (a) Contracts for the purchase of insurance where the public agency either (1) appoints an agent of record to perform insurance services on its behalf or (2) solicits proposals from insurance agents for the purpose of acquiring specific insurance contracts.

(14) 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 with the contractor subject to the following conditions:

- (a) The original contract imposes a binding obligation on the parties covering the terms and conditions regarding changes in the work;
- (b) The amended contract does not substantially alter the scope or nature of the project; or
- (c) 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 such new obligations shall not exceed 10% of the initial contract. In the event that such a change exceeds 10% of the initial contract, the changes shall be approved by the Board.

- (15) Equipment maintenance. Contracts for the purchase of services, equipment or supplies for the maintenance, repair or conversion of existing equipment are exempt if required for the efficient utilization of the equipment. Where practicable, competitive quotes shall be obtained.
- (16) Asphaltic concrete and rock. Contracts for the purchase of asphaltic concrete and rock where the material is to be used for maintenance. Where practicable, competitive quotes shall be obtained.
- (17) Bids obtained by the State for 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 that the State dealt with, and the price of the materials is the same or lower than that paid by the State.
- (18) Sale of city property. City property may be disposed of without competitive bidding under any of the following conditions.
  - (a) There are specific statutory or ordinance procedures for the sale of the type of property involved, and the property is disposed of according to those procedures;
  - (b) The property has a value of less than \$500 (unless otherwise provided by statute or ordinance); or
  - (c) The public contracting officer finds that competitive bids would be inappropriate for the type of property involved. A report of all sales made under this subsection shall be made to the Board and shall include the reasons that competitive bids were deemed inappropriate.
- (19) Franchise agreements. Where practicable competitive quotes shall be obtained.
- (20) Exemptions for additional contracts. The Board may, by resolution exempt other contracts from competitive bidding if it finds:
  - (a) The lack of bids will not result in favoritism or substantially diminish competition in awarding the contract; and
  - (b) The exemption will result in substantial cost savings. In making such finding, 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.

#### Section 6. Disposal of Surplus Property.

The Purchasing Agent shall have the authority to dispose of surplus personal property by any means he determines to be in the best interest of the city. Such methods may include, but are not limited to, sale, trade, transfer, auction, or destruction.

Section 7. Gifts and Rebates.

The agent and every officer and employee of the City are expressly prohibited from accepting, directly or indirectly, from any person, company, firm, or corporation to which any purchase order or contract is or might be awarded, any rebate, gift, money, or anything of value whatsoever, except where given for the use and benefit of the city.

Section 8. Unauthorized Purchases.

Except as provided in regulations prescribed by the City Manager, it shall be unlawful for any officer or employee of the City to purchase any supplies or make contract within the purview of this ordinance other than through the Purchasing Agent; and any purchase ordered or contract made contrary to the provisions hereof shall not be approved by the City officials; and the City shall not be bound thereby.

Section 9. Street and Sewer Improvements.

Nothing in this ordinance contained shall be construed in any manner to render invalid any street, sidewalk, or sewer improvement or assessment.

Section 10. Requisitions. Using agencies shall submit requests for supplies and equipment to the Purchasing Officer by standard Purchase Order Requisition forms for purchases exceeding \$200.00.

Section 11. Purchase Orders. Purchases of supplies and equipment shall be made only by Purchase order.

- (1) Department Purchase Orders for equipment and supplies up to \$200.00 will be processed by the user department.
- (2) Purchase Orders for equipment and supplies which exceed \$200.00 shall be issued by the Purchasing Department, initiated by the user department by the use of a Purchase Order Requisition.

Section 12. Encumbrance of funds: Except in cases of emergency, the Purchasing Officer shall not issue any purchase order for supplies or equipment unless there exists an unencumbered appropriation in the fund account against which the purchase is to be charged.

Section 13. Notice inviting bids: Notices inviting bids shall include a general description of the articles to be purchased, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

- (1) Published Notice. Notice inviting bids shall be published at least ten days before the date of opening of the bids. Notice shall be published at least once in a newspaper of general circulation, printed and published in the city.

- (2) Bidder's List. The Purchasing Officer shall also solicit sealed bids from all responsible prospective suppliers whose names are on the bidders' list or who have requested their names to be added thereto.

Section 14. Bidder's security. When deemed necessary by the Purchasing Officer, bidder's security may be prescribed in the public notices inviting bids. Bidders shall be entitled to return of bid security; provided that a successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within ten days after the notice of award of contract has been mailed, unless the city is responsible for the delay. The Board may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder. If the Board awards the contract to the next lowest bidder, the amount of the lowest bidder's security shall be applied by the City to the difference between the low bid and the second lowest bid, and the surplus, if any shall be returned to the lowest bidder.

Section 15. Bid opening procedure. Sealed bids shall be submitted to the Purchasing Officer and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty calendar days after the bid opening.

Section 16. Rejection of bids. In its discretion, the City Council may reject any and all bids presented and readvertise for bids..

Section 17. Award of contracts. Contracts shall be awarded by the City Council to the lowest responsible bidder except as otherwise provided herein.

Section 18. Tie bids. If two or more bids received are for the same total amount or unit price, quality and service being equal and if the public interest will not permit the delay of readvertising for bids, the City Council may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of the bid opening.

Section 19. Inspection and testing. The Purchasing Officer shall inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract. The Purchasing Officer shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

Section 20. Contracts--Bidder disqualification--Cause. The Board or an official designated by the Board 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 personnel of sufficient experience to perform the contract.
- (4) The person has repeatedly breached contractual obligations to public and private contracting agencies.

Section 21. Mandatory prequalification. Persons desiring to bid for contracts to perform the classes of public improvements described in subsection (1) below shall submit a completed prequalification statement to the public contracting officer. This requirement shall apply only where the public improvement contract amount exceeds five thousand dollars,

- (1) The classes of work for which prequalification is required are as follows:
  - Highway, road and street improvements;
  - Concrete paving and flatwork;
  - Rock crushing;
  - Bituminous oiling;
  - Bituminous paving;
  - Reinforced concrete construction;
  - Bridge and overcrossing construction;
  - Dredging and piledriving;
  - Excavation and grading;
  - Sewer construction;
  - Sewage treatment plants;
  - Sewage pumping stations;
  - Water lines;
  - Water reservoirs;
  - Water tanks--steel;
  - Water tanks--concrete;
  - Electrical wiring;
  - Traffic signalization;
  - Outdoor illumination;
  - Building construction;
  - Building alteration and repair;
  - Demolition and related excavation and clearing;
  - Painting and decorating;
  - Plumbing;
  - Heating;
  - Roofing;
  - Air-conditioning;
  - Irrigation and sprinkling systems;
  - Drainage;
  - Landscaping.
- (2) Applications for prequalification shall be submitted on the forms prescribed by the State Public Contract Review Board at the times designated by the board for such prequalification.
- (3) Upon establishment of the applicant's qualification, the public contracting officer shall issue a qualification statement. The statement shall inform the applicant of the nature and type of contracts and the time period for which the qualification is valid as

well as any other conditions which may be imposed on the qualification and advise the applicant to notify the public contracting officer promptly if there has been any substantial change of conditions or circumstances which would make any statement contained in the prequalification application no longer applicable or untrue. The qualification statement shall also inform the applicant that if he desires to appeal the conditions of the prequalification affecting his application, written notice must be given to the public contracting officer within three business days after receipt of the notice

- (4) If the public contracting officer does not qualify an applicant, he shall give written notice to the applicant stating the reasons that prequalification has been denied and informing the applicant of his right to appeal the decision within three business days after receipt of the notice.
- (5) Upon discovery that a person prequalified is no longer qualified, the public contracting officer shall send notification of proposed revocation of qualification to the person. The notice shall state the reason for revocation and inform the person that the revocation will be effective ten days from the date of the notice unless evidence that the deficiency has been corrected or notice of intent to appeal the revocation has been filed with the public contracting officer within ten days.
- (6) Hearing on appeal of disqualification. A person who has been disqualified as a bidder may appeal such disqualification to the Board as provided in this subsection;
  - (a) The person shall notify the City Manager in writing that he wishes to appeal a disqualification within three business days after receipt of notice of disqualification.
  - (b) Upon receipt of such written notice of appeal, the City Manager 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 10 days after receiving the notification, and shall set forth in writing the reasons for its decision.

Section 22. Retainage on public contracts.

- (1) The approved securities which shall be acceptable in lieu of retainage fees are as follows:
  - (a) Bills, certificates, notes or bonds of the United States;

- (b) Other obligations of the United States or its agencies;
  - (c) Obligations of any corporation wholly owned by the federal government;
  - (d) Indebtedness of the Federal National Mortgage Association;
  - (e) General obligation bonds of the state of Oregon or any political subdivision thereof;
  - (f) Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association or mutual savings bank duly authorized to do business in Oregon;
  - (g) Corporate bonds rated "A" or better by a recognized rating service;
  - (h) General obligation improvement warrants issued pursuant to ORS 287.502.
- (2) Deposits in lieu of retainage fees on public contracts shall be allowed as follows:
- (a)
    - (i) When a contractor elects to deposit securities with a bank or trust company in lieu of retainage on public contracts, the securities shall be held by the custodian in fully transferable form and under the control of the city.
    - (ii) Nonnegotiable securities so deposited shall have proper instruments attached to enable the city to effect transfer of title should the contractor be unable to fulfill the contract obligation.
    - (iii) The custodian bank or trust company shall issue a safekeeping receipt for the securities to the city. The receipts shall describe the securities, the par value, the name of the contractor and project number or other project identification.
    - (iv) Unless otherwise mutually agreed, the value placed upon securities shall be market value.
    - (v) Securities deposited in the manner described above shall be released by the bank or trust company only upon written instructions and authorization of the city.
    - (vi) Interest on such securities shall accrue to the contractor.
  - (b) An escrow agreement mutually acceptable to the contractor and the city and the bank or trust company may be used.

Section 23. Penalties.

Penalties for violation of this ordinance are covered in the City of Albany Infractions Ordinance #3462 dated January 14, 1970, Albany Municipal Code Chapter 1.04.

Section 24. Repealing Ordinances. Ordinance No's. 3045, 3890, 4091, 4143 and Chapters 2.64, 2.80 and 2.84 of the Albany Municipal Code are hereby repealed.

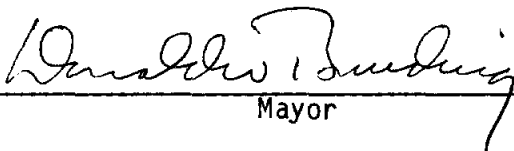
Section 25. Emergency Clause.

Inasmuch as the provisions of this ordinance are necessary for the immediate preservation of the peace, safety, good order and public welfare of the citizens and inhabitants of the City of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the City Council and its approval by the Mayor of the City of Albany, Oregon.

Passed by the Council: February 24, 1982

Approved by the Mayor: February 24, 1982

Effective Date: February 24, 1982

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder