

CITY OF PHILOMATH ORDINANCE #813

AN ORDINANCE AMENDING PHILOMATH MUNICIPAL CODE CHAPTER 3.20, PUBLIC CONTRACTING PROCEDURES.

THE CITY OF PHILOMATH ORDAINS AS FOLLOWS:

Section 1. Section 3.20.020, Definitions, of the Philomath Municipal Code is amended to read as follows:

3.20.020

Definitions.

As used in this chapter, the following words and phrases shall have the following meanings. All words or phrases not defined in this section shall have the meanings ascribed to them in the Public Contracting Code or the Model Rules or Oregon Administrative Rules adopted by the Oregon Attorney General thereunder (“Model Rules”):

“City” means the City of Philomath, the City Manager or the designated purchasing agent acting on behalf of the City of Philomath, as the context requires.

“Informal quote” means the procedure through which the City shall seek at least three informally solicited competitive proposals from prospective contractors. The quote process does not allow negotiation over price after a quote is received. The City shall keep a written record of the sources of the quotes or proposals received. If three quotes are not reasonably available, fewer will suffice provided the contracting agency makes a written record of the effort to obtain quotes.

“Written quote” means the procedure through which written offers are solicited by advertising, electronic posting, or verbal inquiry, stating the quantity and quality of goods or services to be acquired, and through which written offers are received by the City on or before a stated date. The quote process does not allow negotiation over price after a quote has been received. In soliciting written quotes, the City shall seek a sufficiently large number of potential offerors to insure sufficient competition to meet the best interests of the City. An award based on less than three written quotes may be made provided the contracting agency makes a written record of the effort to obtain quotes.

If a contract is awarded it shall be awarded to the offeror whose quote or proposal will best serve the interests of the contracting agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.

“Competitive sealed bid” means the process to solicit and award a public contract (or multiple public contracts) for goods or services through a formal process which includes providing public notice of the invitation to bid, opening bids publicly at the time, date and place designated, and considering bid security requirements. The price of the good or service is the primary consideration for award of a contract under this process, as specified quality and suitability for the particular purpose should be set out in the invitation. Criteria that will affect the bid price and will be considered in the evaluation of bids, such as, but not limited to, discounts, transportation costs and total cost of ownership or operation of a product over its life must be objectively measurable.

“Competitive sealed proposal” means the process to solicit and award a public contract (or multiple public contracts) for goods or services through a formal process which includes providing public notice of the request for proposals, considering proposal security requirements, evaluation of proposals, discussions with proposing vendors or multistep approaches to obtain a best offer or best and final offer that is in the best interest of the public.

“Personal services contract” means a contract to retain the services of an independent contractor whose services require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects; engineers; surveyors; attorneys; accountants; auditors; insurance agents; risk managers; investment advisor; computer programmers; artists; designers; performers; and consultants The contracting agency shall have the authority to determine whether a particular service is a “personal service” under this definition. [Ord. 785 § 1, 2013; Ord. 730 § 2, 2005.]

Section 2. Section 3.20.030, Public contracts for goods and services, of the Philomath Municipal Code is amended to read as follows:

3.20.030

Public contracts for goods and services.

This section applies to public contracts that are not contracts for public improvements or contracts for personal services. A public contract shall not be artificially divided or fragmented to qualify for a different award procedure than that provided by this section.

A. The following classes of public contracts and respective award procedures are created:

1. The contracting agency may award a contract for procurement of goods or services that does not exceed \$10,000 in any manner the contracting agency deems practical or convenient, including by direct selection or award.

2. The contracting agency may award a contract for procurement of goods or services that exceeds \$10,000 but does not exceed \$30,000 based on informal quotes.

3. The contracting agency may award a contract for procurement of goods or services that exceeds \$30,000 but does not exceed \$150,000 based on written quotes.

4. A public contract for an amount which is valued at more than \$150,000 shall be awarded by the city council based on competitive sealed bids or competitive sealed proposals.

5. The contracting agency may award a special contract for the purpose of entering into a series of contracts over time for a single project or a series of contracts over time for multiple projects. The contracting agency shall award the contract to the offeror the contracting agency determines to be the most advantageous to the contracting agency. Contracts with an annual cost of less than \$30,000 will be awarded by the contract agency based on written quotes. Contracts with an annual cost of \$30,000 or more will be awarded by the City Council.

B. Amendments. Amendments to public contracts for goods or services may not cause the contract price to exceed an amount that is 25 percent over the original contract price.

C. Exemptions.

1. The requirements of subsection (A) of this section do not apply to the following classes of public contracts:

a. Equipment repair and overhaul;

b. Purchases through federal, state, or other cooperative purchase programs.

2. For public contracts predominantly for services, one extension not exceeding the original term of the contract or annual renewals, if provided in the contract, is permitted without going through competitive procurement requirements.

3. Amendments to contracts exceeding the limits in subsection (A) of this section shall be exempt if the City Council determines that it is not reasonably feasible to require additional competitive procurement to complete the purpose of the contract; otherwise the amendment shall comply with subsection (B) of this section or the City Council shall direct additional competitive procurement and the competitive procurement procedure required for the amendment.

4. By resolution, the City Council may exempt other public contracts or classes of public contracts from the requirements of subsection (A) of this section pursuant to ORS 279B.085.

D. Notice of solicitation documents may be published electronically, in lieu of publication in a newspaper of general circulation, if it results in a sufficiently large number of potential offerors to insure sufficient competition to meet the best interests of the city. [Ord. 785 § 2, 2013; Ord. 730 § 3, 2005.]

Section 3. Section 3.20.040, Public Improvement Contracts, of the Philomath Municipal Code is amended to read as follows:

3.20.040

Public Improvement Contracts

(I) Legislative findings: The City of Philomath has evaluated the administrative cost and expense to the public in requiring formal bids for all public improvement contracts with a value of \$5,000 or more. The City Council, as the Contract Review Board makes the following findings :

A. An exemption from the formal bid process for contracts from \$5,000 to \$40,000 will not encourage favoritism or diminish competition, so long as the contract agency require at least three written quotes prior to awarding public improvements contracts in this price range;

B. The awarding of public improvement contracts between \$5,000 and \$40,000 through soliciting three written quotes rather than a formal bid process will save the City substantial costs in administration, staff time and unneeded delays;

C. The written quote process is an alternative contracting method that the City has used successfully for smaller contracts, saving time and money.

(II) Description: A public improvement contract is defined pursuant to the Public Contracting Code and does not include a public contract for emergency work, minor alterations, ordinary repair and maintenance necessary to preserve a public improvements, contracts for projects for which no funds of the city are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection, and does not include any other construction contract that is not defined as a public improvement under the Public Contracting Code. A public improvement contract shall not be artificially divided to qualify for a different award procedure than that provided by this section.

A. The following classes of public improvement contracts and respective award procedures are created:

1. The contracting agency may award a public improvement contract valued at less than \$5,000 in any manner the contracting agency deems practical or convenient, including by direct selection or award.

2. Public improvement contracts valued at \$5,000 or more, but no more than \$40,000, shall be awarded by the contract agency based on written quotes.

3. All public improvement contracts over \$40,000 shall be awarded by the City Council based on competitive sealed bids pursuant to the Public Contracting Code, except as stated hereinafter.

B. Exemptions. The requirements of subsection (A) of this section, and the procedures applicable to the award of those contracts, do not apply to the following classes of public improvement contracts:

1. Emergency public improvement contracts may be exempted from competitive bidding if the contracting agency determines that an emergency exists and that conditions require the prompt execution of a contract. Emergency public improvement contracts shall be awarded in accordance with the Public Contracting Code. The contracting agency shall provide the City Council with a written statement indicating the nature of the emergency and stating with particularity the emergency conditions and why they pose an imminent threat to the public health, safety or welfare. The contracting agency shall not declare the same emergency more than two times in any 90-day period.

2. By resolution, the City Council may exempt from competitive bidding a public improvement contract or class of public improvement contracts not otherwise exempt under this section pursuant to ORS 279C.335.

3. When an exemption allows for award of the contract through competitive proposals, the provisions of ORS 279C.400 through 279C.410 shall apply.

C. Amendments to public improvement contracts may not cause the contract price to exceed an amount that is 25 percent over the original contract price.

D. The performance and payment bonds requirements and exceptions of the Public Contracting Code shall apply to all public improvement contracts.

E. Notice of solicitation documents may be published electronically, in lieu of publication in a newspaper of general circulation, if it results in a sufficiently large number of potential offerors to ensure sufficient competition to meet the best interests of the city.

F. The city may undertake to construct a public improvement using its own equipment and personnel if doing so will result in the least cost to the city or public, in accordance with ORS 279C.305.

G. If all responsive offers on a public improvement contract exceed the budget for the project, the contracting agency may, prior to contract award, negotiate for a price within the budget under the following procedures:

1. Negotiations shall start with the lowest responsive, responsible offeror. If negotiations are not successful, then the contracting agency may negotiate with the second lowest responsive, responsible offeror, 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 solicitation documents.

4. The records of an offeror used in contract negotiations under this section are not subject to public inspection until after the negotiated contract has been awarded or the negotiation process has been terminated.

H. The use of brand name, mark or manufacturer specifications in public improvement contracts shall be made in accordance with ORS 279B.125. [Ord. 730 § 4, 2005.]

Section 4. Section 3.20.050, Offeror disqualification, of the Philomath Municipal Code is amended to read as follows:

3.20.050

Offeror disqualification.

A. The City Council or contracting agency, whoever is awarding a public contract, may disqualify any person as an offeror 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 available equipment to perform the contract;

3. The person does not have key personnel of sufficient experience to perform the contract; or

4. The person has breached previous contractual obligations with the City of Philomath.

5. The person has been debarred or disqualified by any State Agency or by the City of Philomath under ORS 279B.130 or 279C.440.

6. The person is on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

B. The provisions of the Public Contracting Code regarding disqualification of persons shall apply in addition to this section with respect to public improvement contracts.

C. A person who has been disqualified as an offeror may appeal the disqualification to the City Council in accordance with the procedures in Chapter 279C of the Public Contracting Code. [Ord. 730 § 5, 2005.]

Section 5. Section 3.20.060, Personal services contracts, of the Philomath Municipal Code is amended to read as follows:

3.20.060

Personal services contracts.

A. The following procedures shall apply to the award of personal services contracts:

1. Personal services contracts involving an anticipated annual fee of \$5,000 or more, but less than \$25,000, shall be awarded by the contracting agency following solicitation of offers for personal services by written invitation, ~~or~~ advertisement, or electronic publication. The contracting agency shall determine the selection criteria to be included in the solicitation and shall have authority to negotiate and enter into the contract.

2. Personal services contracts having an anticipated annual fee of \$25,000 or more shall be awarded by the City Council following solicitation of offers based on the procedure and selection criteria adopted by the City Council before offers are solicited.

3. Except as otherwise provided in the Public Contracting Code, for all other personal services contracts, including amendments to and annual renewals or extensions of existing contracts and emergencies, the City may enter into the contract without a solicitation of offers. A personal services contract shall not be artificially divided or fragmented to qualify for the award procedures provided by this subsection.

B. The following criteria shall be considered in the evaluation and selection of a personal services contractor. The criteria are not listed in order of preference or importance. This section does not preclude the use of other additional criteria:

1. Timeliness of delivery of services;
2. Expertise of the contractor in the area of specialty called for;
3. References from successfully completed projects managed by the contractor;
4. Utilization of locally procured goods, services, or personnel;
5. Other services provided by the contractor not specifically listed in the request for proposal;
6. Total cost to the agency for delivery of services; and
7. Other criteria specially listed in the solicitation document on a case by case basis. [Ord. 730 § 6, 2005.]

Section 6. Section 3.20.070, Disposition of personal property, of the Philomath Municipal Code is amended to read as follows:

3.20.070

Disposition of personal property.

A. The city manager shall have the authority to determine when personal property owned by the City, with an expected market value of less than \$10,000, or that is to be traded in on the purchase of replacement equipment is surplus.

B. The City Council shall determine when all other property is to be considered surplus.

C. When property is determined to be surplus, the City Manager shall select the method of disposal which maximizes the value the City will realize from disposal of the surplus property. The City Manager shall consider whether the cost of disposal or delivery is greater than the value of the surplus property.

D. All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind. [Ord. 730 § 7, 2005.]

Section 7. Chapter 3.20 of the Philomath Municipal Code is amended to include new Section 3.20.075 as follows:

3.20.075

Disposition of real property.

- A. The City Council shall determine if it is necessary or convenient to sell or trade real property or any interest therein.
- B. The City Council shall publish a notice of the proposed sale or trade, in a newspaper of general circulation in the city, and or by electronic publication. The notice shall be published no more than 10 days or less than 5 days prior to the public hearing. The notice shall state the time and place of the public hearing, a description of the property or interest to be sold, the proposed uses for the property and the reasons why the city council considers it necessary or convenient to sell or trade the property.
- C. The City Council shall hold a public hearing concerning the sale or trade no earlier than 5 days after publication of the notice. The nature of the proposed sale or trade and the general terms thereof, including an appraisal or other evidence of the market value of the property, shall be fully disclosed by the city council at the public hearing. Any resident of the city shall be given an opportunity to present written or oral testimony at the hearing.

PASSED by the Council this 24th day of October 2016.

APPROVED by the Mayor this 24th day of October 2016.

SIGNED:
Rocky Sloan, Mayor

ATTEST:
Ruth Post, MMC, City Recorder