

CHAPTER 33: FINANCE

Section

Liens

- 33.01 Lien Docket established
- 33.02 Record of liens; information
- 33.03 Interest rate
- 33.04 Collection; delinquent liens
- 33.05 Enforcement

Contracts; Rules and Procedures

- 33.15 Rules and procedures; purpose
- 33.16 Definitions
- 33.17 Business license required
- 33.18 Personal Property
- 33.19 Competitive bids; exemptions
- 33.20 Additional exemptions
- 33.21 Emergency contracts
- 33.22 Brand name specification
- 33.23 Bidder disqualification
- 33.24 Right of bid rejection
- 33.25 Surety Bond
- 33.26 Waiver of security and performance bond
- 33.27 Appeals

Cross-reference:

Public Contract Review Board, see § 32.20 et seq.

Merrill—Administration

LIENS

§ 33.01 LIEN DOCKET ESTABLISHED

The City Recorder shall keep a record of all liens imposed or assessed upon the property for any purpose by the city, and such a record shall be known as the lien docket.
(Ord. 166, passed 12-7-1971)

§ 33.02 RECORD OF LIENS, INFORMATION.

Each lien shall be recorded under separate headings in the lien docket. The record of liens shall state the nature of the lien, the description of each lot or parcel of land or other property upon which the lien is imposed, the name of the owner of the property subject to the lien, the amount of the lien which is unpaid, the amount paid or credited to the lien, and other data as may be required by the City Recorder.
(Ord. 166, passed 12-7-1971)

§ 33.03 INTEREST RATE.

Unless otherwise provided for by ordinance or code provision, a lien or assessment shall bear interest at the rate of 9% a year from the date of entry in the lien docket.
(Ord. 166, passed 12-7-1971; Am. Ord. 180, passed 4-11-1974)

§ 33.04 COLLECTIONS; DELINQUENT LIENS

The Recorder shall cause to be collected all unpaid liens or assessments and shall likewise enforce delinquent liens or assessments and maintain records relating to the collection proceedings.
(Ord. 166, passed 12-7-1971)

§ 33.05 ENFORCEMENT.

Unless otherwise provided for by ordinance or code provision, all liens shall be enforced and assessments collected in the manner established by O.R.S. 233.505-223.590.
(Ord 166, passed 12-7-1971)

Finance

CONTRACTS; RULES AND PROCEDURES

§ 33.15 RULES AND PROCEDURES; PURPOSE.

These rules are promulgated by the city Contract Review Board, as designated by city ordinance pursuant to the authority granted to that Board by O.R.S. Chapter 279, for the purpose of establishing the rules and procedures for contracts entered into by the city. The Attorney General's Model Public Contracting Rules do not apply in the city.

(Ord. 273, passed 9-10-1991)

§ 33.16 DEFINITIONS

For the purpose of this sub chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD. The city Contract Review Board as established by this subchapter and § 32.20 *et seq.* of this code.

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

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

PUBLIC CONTRACT. Any purchase, lease, or sale by the city of personal property, public improvements, or services other than agreements which are for personal services.

PUBLIC CONTRACTING OFFICER. The Recorder or other person or persons designated by the Council to negotiate public contract for the city.

PUBLIC IMPROVEMENT. Any construction, reconstruction, or major renovation of improvements on real property by the city. It does not include emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a **PUBLIC IMPROVEMENT.**

(Ord. 273, passed 9-10-1991)

Merrill – Administration

§ 33.17 BUSINESS LICENSE REQUIRED.

It shall be the policy of the city to require a valid city business license of any party contracting for the sale of goods or services to the city. This policy requirements shall apply to all contracts awarded through the city.

(Ord.273, passed 9-10-1991)

§ 33.18 PERSONAL PROPERTY

Personal property may be purchased, leased, sold on behalf of the city by the City Recorder pursuant to these rules without further approval, provided the transaction is within budget restriction and the public contract does not exceed \$500. Any challenge to or dispute over the exercise of this authority may be appealed to the Board under §33.27 of this code.

§ 33.19 COMPETITIVE BIDS; EXEMPTIONS.

All contracts shall be based upon competitive bids except;

(A) *Contracts with public agencies.* Contracts made with other public agencies or the federal government;

(B) *Personal service contracts.* Contracts which are for personal services. These contracts may include incidental materials such as written reports or opinions, architectural or engineering renderings, and other supplemental materials required for providing the services;

(C) *Contracts under certain dollar amounts.*

1) The city, in its discretion, may let public contracts not to exceed \$15,000 without formal competitive bidding, if the city has determined that the awarding of the contract without formal competitive bidding will result in cost savings and the following conditions are complied with;

A) The contract is for a single project, and is not component of or related to any other project;

B) When the amount of the contract does not exceed \$1,000, the city should where feasible, obtain competitive quotes; and

C) When the amount of the contract is more than \$1,000 but less than \$15,000, the city shall obtain a minimum of three competitive quotes, The Public Contracting Officer shall keep a written record of the source and the amount of the quotes received. If three

Finance

quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

2) When the contract is for maintenance, repair of roads, highways, or parking lots and is more than \$10,000 but less than \$25,000, the city may let the contract without formal competitive bidding if a minimum of three competitive quotes are obtained. The public Contracting Officer shall keep a written record of the source and amount of the quotes received. If three quotes are not available a lesser number will suffice provided a written record is made of the effort to obtain the quotes.

(D) Contracts for price regulated items. Contract 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;

(E) Allocated Petroleum Products. Contract for the purchase of petroleum products if the purchase is required to be made from a particular supplier as a result of a federal allocation of future supply of those products;

(F) Copyright Materials, Contracts for the purchase of copyrighted materials where there is only one supplier available for those goods;

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

(H) Investment contracts. Contracts for the purpose of investment of public funds or the borrowing of funds;

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

(J) 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 or where efficient utilization of existing equipment or supplies specifications of a compatible product which is available only through one seller;

(K) Employee benefit insurance contracts. Contracts for all kinds of employee benefit insurance.

(L) Contract Amendments. Any contract amendment, not already covered by American Public Works Association standards, including change orders, extra work, field

Merrill- Administration

orders. Or other change in the original specifications which changes an original contract price or alters the work to be performed, may be made with the contractor 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; and

(2) The amended contract does not substantially alter the scope or nature of the project; or if the amendment had 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 25% of the initial contract.

(M) 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.

(N) Bids to obtained by the state for same materials. Contracts for the purchase or material where competitive bids for the same materials have been obtained by the state, 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;

(O) Sale of personal Property. Personal property may be disposed of by the Public Contracting Officer without competitive bidding under any of the following conditions:

(1) 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.

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

(3) The Public Contracting Officer finds that competitive bids would be inappropriate for the type of property involved.

(P) Donations of Personal Property.

(1) The city may transfer personal property, including recyclable or reclaimed materials, without remuneration or only remuneration without competitive bids to the following activities:

(A) Another public agency;

Finance

(B) Any sheltered workshop, work activity center, or group care home which operated under contract or agreement with, or grant form, any state agency and which is certified to receive federal surplus property; or

(C) Any recognized nonprofit activity which is certified to receive federal surplus property.

(2) The city may donate or sell, without competitive bids, surplus personal property to recognized private nonprofit social or health services activities subject to the following conditions;

(A) A determination has been made that the property is not needed for other public purposes;

(B) If the property has a current value of \$500 or more, the donation or sale shall:

1. Be approved by the City Council; and
2. Be documented to be clearly in the public interest.

(C) The city determines this is the most efficient and cost-effective method for disposing of the property.

(Q) Employment contracts for handicapped. Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.

(R) Paper products. Contracts for the purchase of paper products. Where practicable, competitive quotes shall be obtained;

(S) Communication System. Contract for all kinds of communications systems;

(T) Gasoline, diesel fuel, heating oil, lubricants, gravels, rocks, and asphalts. Contracts for the purchase of gasoline, diesel fuel, heating oil, lubricants, gravels, rock and asphalts, provided competitive quotes are obtained at least once every fiscal year from a majority of vendors in the area and purchase is made from the least expensive source;

(U) Copying Equipment Purchases. Contracts for the purchase or acquisition of office copying equipment. When acquiring this type of equipment, the city shall fully consider the operation capabilities, limitations, and cost of each brand or model and select that brand which will produce the best combination of performance and cost per copy for each application.

Merrill- Administration

(V) Insurance contracts. Contracts for insurance where wither the annual or aggregate premium exceeds \$5,000 must be let by formal competitive bidding or by one of the following procedures.

(1) *Agent of record.* The City Council may appoint a licensed insurance agent (“agent of record”) to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which agent of record is given responsibility.

(A) Prior to the selection of an agent of record, the city shall make reasonable efforts to inform know insurance agents in the competitive market area that it is considering such a selection. These efforts shall include a public advertisement in at least one newspaper or general circulation in the area. The advertisement shall generally describe the nature of the insurance that the public contracting agency will require. If the amount of the annual premium for insurance, other than employee benefits insurance, is likely to exceed \$10,000 per year. The notice shall also include a public advertisement in at least one insurance trade publication of general circulation in the state.

(B) Any appointment period shall not exceed three years. Agents may server more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(C) In selecting an agent of record, the Council shall select the agent(s) most likely to perform the most cost-effective services.

(2) *Specific proposals for insurance contracts.* The city may solicit proposals from licensed insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(A) The City shall make reasonable efforts to inform known insurance agents in the competitive market are of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. These efforts shall include public advertisement in at least one newspaper of general circulation in the area. If the amount of annual premium for insurance, other than employee benefits insurance, is likely to exceed \$10,000 per year, the notice shall also include a public advertisement in at least on insurance trade publication of general circulation if the state, and

(B) The Council shall select an agent on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

(W) Affirmative action contracts. Public contracts may be let without competitive bidding of the letting of the contract is pursuant to a specific affirmative action plan. Affirmative action is a program designed to ensure equal opportunity in employment and

Finance

business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age, or physical or mental handicap, including but not limited to, personnel practices of contractors, "set-aside" programs, and minority business enterprises;

(X) Purchases of used personal property. The city may purchase used personal property for \$10,000 or less without competitive bidding if the officer has determined that the direct purchase without competitive bidding will be cost savings. For purchases of used personal property over \$10,000, three competitive quotes shall be obtained. If three quotes are not available, a written record must be made of the attempt to obtain quotes; and

(Y) Request for proposal. The city may, at its discretion, use request-for-proposal competitive procurement methods subject to the following condition:

(1) Contractual requirements are stated clearly in the solicitation documents;

(2) Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation documents. 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;

(3) The solicitation documents clearly states all complaint processes and remedies available; and

(4) The solicitation documents states the provisions made for vendors to comment on any specification which they feel limit competition.

(Ord. 273, passed 9-10-1991)

§ 33.20 ADDITIONAL EXEMPTIONS

A. The Board may, by resolution, exempt other contracts from competitive bidding if it finds:

1) The lack of bids will not result in favoritism or substantially diminish competition in awarding the contract; and

2) The exemption will result in substantial cost savings.

B. In Making this finding, the Board may consider the type, cost, amount of the contract, number of persons available to bid, and other facts as the Board may deem appropriate.

(Ord. 273, passed 9-10-1991)

Merrill – Administration

§ 33.21 EMERGENCY CONTRACTS

A contract may also be exempted from competitive bidding if the Council, by majority vote of members present, determines that emergency conditions require prompt execution of the contract. A determination of such an emergency shall be entered into the record of the meeting at which the

determination is made. The contracts shall be awarded within 60 days of the date of the vote, unless Board grants an extension.

(Ord. 273, passed 9-10-1991)

§ 33.22 BRAND NAME SPECIFICATIONS

- A. Specification for contracts shall not require any products by any brand name or make, nor the product of any particular manufacturer or seller, unless the product is exempt from this requirement under the provisions of divisions (B) or (C). However, this section shall not be constructed to prevent reference in the specification to a particular product as a description of the type of item required.
- B. A contract shall be exempt from the requirement of this section under the following conditions.
- 1) The specification is for a specific copyrighted product. This exemption does not include patented or trademark 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 of a particular manufacturer or seller, a contract may specify the 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 kinds 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 the vendors have been invited to submit competing proposals. If the amount of the purchase does not exceed \$5,000, the notice and invitation may be informal. If the amount of the purchase exceeds \$5,000, the 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

Finance

- c) If the amount of the purchase exceeds \$100 and this contract is not also pursuant to the data processing exemption in § 33.19(K) of this code, the Public Contracting Officer, shall notify the Board of the specification. The notice shall be written and included will be 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 or sellers that were rejected. The description shall also include the efforts made to notify and invite the 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 manufacturers or sellers may be specified in accordance with the following products prequalification procedure.
 - a) Reasonable efforts shall be made to notify all know manufacturers or vendors of competitive products of the intention to accept applications for inclusion in the list of prequalified products. Notification shall be including advertisement in a trade journal of statewide distribution when possible. In lieu of advertising, notification may be made to vendors and manufacturers appearing on the appropriate list maintained by the Department of General Services of the state;
 - b) Applications for prequalification of similar products are permitted up to 15 days prior to advertisement for bids on the product; and
 - 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 days after receipt of the notice, appeal the denial or revocation to the Board according to the procedure in §33.27 of this code.
- C. The Board, may, by resolution, exemption contain additional products or classes of products upon any of the following findings;
- 1) It is unlikely that the 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 product of the quality required or;
 - 4) Efficient utilization of existing equipment or supplies require the acquisition of compatible equipment or supplies. (*Ord. 273, passed 9-10-1991*)

Merrill – Administration

§ 33.23 BIDDER DISQUALIFICATION

The Public Contracting Officer may disqualify any person as a bidder on a contract if;

- A. 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. If no performance band is required, the Public Contracting Officer may require information as he or she deems necessary to determine the bidder's financial responsibility;
- B. The person does not have equipment available to perform the contract;
- C. The person does not have key personnel or sufficient experience to perform the contract; or
- D. The person has repeatedly breached contractual obligations to public and private contracting agencies.
(Ord. 273, passed 9-10-1991)

§ 33.24 RIGHT OF BID REJECTION.

The Public Contracting Officer may 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.

(Ord. 273, passed 9-10-1991)

§ 33.25 SURETY BOND

The surety, bid, performance, and other bonds required to be filed with the city pursuant to code provisions or contractual agreements shall be issued by companies with a rating of "A" or better as determined by the most recent edition of Best's Key Rating Guide published by A.M. Best Company.

(Ord. 273, passed 9-10-1991)

§ 33.26 WAIVER OF SECURITY AND PERFORMANCE BOND.

- A. The City Council may, in its discretion, waive the bid security requirements for contracts other than those for public improvements.

Finance

- B. The City Council, may in its discretion, waive bid security requirements and performance bond requirements if the amount of the contract for the public improvements is less than \$10,000.
- C. No performance bonds or security shall be required for any contract whereby the city makes no payment until final completion or the contact services or improvements.
(Ord. 273, passed 9-10-1991)

§ 33.27 APPEALS

The procedure for appeals shall be as follows:

- A. Notice of appeal need not be in any particular form so long as it is in writing addressed to the Public Contracting Officer.
- B. Immediately upon receipt of the written notice of appeal, the Public Contracting Officer 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 O.R.S. 279.045(3) and decide the appeal within ten days after receiving the notification and shall set forth in writing the reasons for its decisions.
(Ord. 273, passed 9-10-1991)