

AN ORDINANCE ESTABLISHING THE CITY COUNCIL AS THE LOCAL CONTRACT REVIEW BOARD FOR THE CITY OF MILWAUKIE AND ADOPTING RULES AND REGULATIONS, AND DECLARING AN EMERGENCY.

The City of Milwaukie does ordain as follows:

Section 1. Contract Review Board. The City Council is hereby designated as the local Contract Review Board and relative to contract concerns of The City of Milwaukie shall have all the powers granted to the State Public Contract Review Board.

Section 2. Definitions. The following words and phrases shall mean:

(1) Public Contract. Any purchase, lease or sale by the City of Milwaukie of personal property, public improvements or services other than agreements which are exclusively for personal service.

(2) Public Improvement. Any construction of improvements on real property by or for the City of Milwaukie.

(3) Board. The local contract review board as established in Section 1 of this ordinance.

Section 3. Competitive Bids; Exemptions. All contracts shall be based upon competitive bids except:

(1) Contracts with public agencies. Contracts made with, or the cost of which is provided by, 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 under \$10,000. Contracts for purchase where the amount does not exceed \$10,000.

(4) 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.

(5) 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.

(6) Copyrighted materials. Contracts for the purchase of advertising, including that intended for the purpose of giving public notice.

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

(9) 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.

(10) 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.

(11) 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. If the amount of the contract exceeds \$10,000, written proposals shall be solicited from the appropriate vendors appearing on the list composed by the Data Systems Division of the Executive Branch of the State of Oregon or by publication of an advertisement in a major trade publication of general circulation.

(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 \$5,000, 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.

(12) Insurance contracts. Contracts for insurance.

(13) 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.

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

(15) 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.

(16) 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.

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

(a) There are specific statutory 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

(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.

Section 4. Emergency Contracts. A contract may also be exempted from competitive bidding if the board, by unanimous vote, 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 was made.

Section 5. Brand Name Specification in Contracts.

(1) 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 exempted from this requirement by the board under this section. However, this section shall not be construed to prevent reference in the specification to a particular product as a description of the type of item required.

(2) The board may by resolution exempt certain products or classes of products upon any of the following findings:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of the contract or substantially diminish competition.

(b) 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.

(c) There is only one manufacturer or seller of the product of the quality required.

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

Section 6. Exemption Hearing. Whenever the board is considering an exemption to the requirements for competitive bids or brand name specification, other than those specifically allowed by this ordinance, it shall provide for notice to the public and an opportunity for a public hearing on whether the exemption should be allowed.

Section 7. Bid Rejection. The City Council or an official designated by the City Council 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.

Section 8. Bidder Disqualification. The City Council or an official designated by the City Council may disqualify any person as a bidder on a contract if, in their opinion,

(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; or

(4) The person has repeatedly breached contractual obligations to public and private contracting agencies.

Section 9. Appeal of Disqualification.

A person who has been disqualified as a bidder may appeal such disqualification to the board as provided in this section:

(1) The person shall, within three business days after receipt of notice of disqualification, in writing notify the City Manager that he wishes to appeal his disqualification.

(2) Immediately upon receipt of such written notice of appeal, the City Manager shall inform the board.

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

(4) 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 decisions.

Section 10. Additional Authority of the Board.

In addition to the powers and duties established by this ordinance, the board shall have such additional powers as authorized by state law.

Section 11. Affect of Invalidity in Part.

If any clause, sentence, paragraph, subsection, section or other part of this ordinance or the application thereof to any person or circumstances shall be held invalid, such holdings shall not effect, impair or invalidate the remainder of this ordinance or the application of such part held invalid to any other person or circumstances, but shall be confined in its operation to the part thereof directly involved in such holdings or to the person or circumstances therein involved.

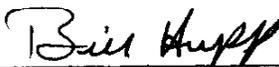
Section 12. Emergency Clause.

It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public health, peace, safety and best interests of the inhabitants of the City of Milwaukie, Oregon, therefore an emergency is hereby declared to exist, and this ordinance shall take effect and be in full force and effect from and after its passage by the Council and signing by the Mayor.

Read the first time this 6th day of June, 1977 and passed to its second reading by unanimous vote of the City Council.

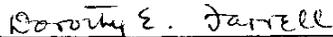
Read the second time and adopted by the City Council this 6th day of June, 1977.

Signed by the Mayor this 6th day of June, 1977.



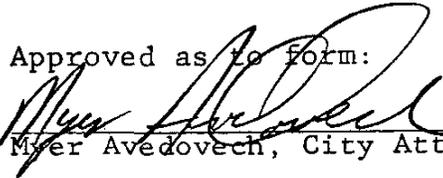
Bill E. Hupp, Mayor

ATTEST:



Dorothy E. Farrell, Recorder

Approved as to form:



Myer Avedovech, City Attorney