

**RESOLUTION NO. 2005-06**

**A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES AND PROCEDURES**

WHEREAS, the City of Lafayette ("City") is an Oregon municipal corporation which is subject to Oregon's public contracting laws; and

WHEREAS, in 2003 the Oregon Legislature substantially revised the Oregon Public Contracting Code, and most of these revisions will take effect March 1, 2005; and

WHEREAS, on March 1, 2005, the City's existing public contracting rules will become void, and the City is required to adopt new public contracting rules consistent with the revised Public Contracting Code; and

WHEREAS, ORS 279A.065(5) provides that a local contracting agency may adopt its own rules of procedure for public contracting that:

- (A) Specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency; and
- (B) Prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General;

**NOW, THEREFORE, BE IT RESOLVED:**

1. That, except as otherwise provided herein, the City hereby adopts the Oregon Attorney General's Model Public Contracting Rules (2004) ("Model Rules") as the contracting rules for the City, as such Model Rules now exist or are later modified.
2. That the City adopts the public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to, and shall supersede any conflicting provisions in, the Model Rules.
3. That the City shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Exhibit A Rules are consistent with current law.

**APPROVED AND ADOPTED** on February 24, 2005

VOTE: Ayes: 5 Nays: 0 Abstentions: 0 Absent: 1

APPROVED:

  
\_\_\_\_\_  
Mayor Don Leard

ATTESTED:

  
\_\_\_\_\_  
Diane Rinks, City Administrator

## EXHIBIT A

### PUBLIC CONTRACTING RULES AND PROCEDURES

#### A. Personal Services.

(1) **Definition.** As adopted by the City's Local Contract Review Board in Resolution No. 2005-05, "Personal Services" shall be defined to include those services that 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; computer programmers; artists; designers; performers; and consultants. The City Administrative or designee shall have the authority to determine whether a particular service is a "personal service" under this definition.

(2) **Contracts for Personal Services other than Architectural, Engineering and Surveying Services and Related Services.** These personal services contracts shall be awarded according to the procedures described in ORS 279B.060. However, by separate resolution, the Local Contract Review Board may authorize certain personal services contracts, or a class of personal services contracts, to be exempted from competitive proposal requirements according to the requirements of ORS 279B.085. Contracts exempted from competitive proposal processes may be awarded by direct appointment. Personal services contracts existing on the effective date of these Rules may be extended by direct appointment.

(3) **Contracts with architects, engineers, and land surveyors.** Unless otherwise provided in this Section, contracts for Architectural, Engineering and Surveying Services and Related Services shall be awarded according to the procedures for competitive proposals described in ORS 279B.060 and these rules, and consistent with ORS 279C.110.

A contract for Architectural, Engineering and Surveying Services may be entered into by direct appointment if such contract is estimated not to exceed \$15,000 in a calendar year, or if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.

#### B. Delegation.

(1) Except as otherwise provided in these rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the City Council.

(2) Unless expressly limited by the Local Contract Review Board or these Rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the City Administrator or the City Administrator's designee, including the authority to enter into emergency contracts pursuant to ORS 279B.080.

(3) All public contracts estimated to cost \$15,000 or more in a calendar year must be approved by the City Council. All public contracts estimated to cost less than \$15,000 in a

calendar year may be entered into by the City Administrator or designee without Council approval. However, emergency contracts may be entered into by either the Council or the City Administrator or designee pursuant to paragraph G of these Rules, regardless of dollar limits, subject to ORS 294.455.

**C. Special Procurements and Exemptions.**

(1) The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.

(2) The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

**D. Small Procurements (Under \$5,000).**

(1) Public contracts under \$5,000 are not subject to competitive bidding requirements. The City Administrator or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the City.

(2) The City may amend a public contract awarded as a small procurement beyond the \$5,000 limit in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.

**E. Intermediate Procurements.**

(1) A contract for procurement of goods and services estimated to cost between \$5,000 and \$150,000 in a calendar year, or a contract for a public improvement that is estimated to cost between \$5,000 and \$100,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.

(2) The City may amend a public contract awarded as an intermediate procurement beyond the stated limitations in accordance with OAR 137-047-0800, provided the cumulative amendments shall not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.

**F. Methods for Awarding Contracts Using Request for Proposal Process.**

In making an award using the request for proposal process in ORS 279B.060, the City may use any evaluation method determined to be most appropriate for the selection process, including, but not limited to, the processes described in ORS 279B.060(6)(b), as well as direct appointment of personal services contracts if direct appointment is determined to be most advantageous to the City. The evaluation process(es) to be used shall be stated in the Request for Proposals. OAR 137-047-0261 through 137-047-0263 shall apply to evaluation of proposals.

## **G. Emergency Contracts.**

(1) “Emergency” shall be defined as follows: “Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.”

(2) The Mayor, the City Administrator, or a designee of the City Administrator shall have authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor shall be documented.

(3) Emergency contracts may be awarded as follows:

- (a) Goods and Services. Emergency contracts for procurement of goods and services may be awarded pursuant to ORS 279B.080 and section C, “Delegation,” of these Rules.
- (b) Public Improvements. The City hereby adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.

## **H. Disposal of Surplus Property.**

(1) “Surplus Property” is defined as any personal property of the City that has been determined by the City Administrator or designee as being of no use or value to the City.

(2) The City Administrator or designee may dispose of surplus property as follows: The City Administrator shall submit a request to the City Council for a declaration that certain property is of no further use or value to the City. The City Council shall, by resolution, declare such property “surplus” and authorize the means by which the City Administrator may dispose of the property, including granting the City Administrator discretion to dispose of the property in any appropriate manner. The City Council may require the City Administrator to obtain an appraisal of the property prior to disposition.

(3) Surplus property may be disposed of in the manner that is most advantageous to the City or the community at large, including, but not limited to, the following:

- (a) Public Auction. Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the property. Employees of the City may purchase surplus property from the City only at an advertised auction, and only if the employee submits the highest bid for such property.
- (b) Donation. Surplus property may be donated or sold to any non-profit organization, any other local government, or any state or federal program created to dispose of surplus property.

- (c) Disposal. Surplus property determined to be of insufficient value to merit auction or donation may be disposed of in any appropriate manner.

**I. Appeals of Prequalification Decisions and Debarment Decisions.**

(1) Review of the City's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply to hearings on such decisions by the LCRB:

- (a) Notices shall be submitted in writing to the City Administrator. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
- (b) Upon opening of the hearing, City staff shall explain the City's decision being appealed and the justification thereof. The appellant shall then be heard. Time for the appellant's testimony shall be established by the Mayor. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Mayor.
- (c) Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the City's decision shall be provided time to be heard, with time limits established by the Mayor. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Mayor shall close the hearing.
- (d) When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

**J. Concession Agreements.**

(1) A "concession agreement" is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned by the City, and under which the concessionaire makes payments to the City based, in whole or in part, on the concessionaire's sales revenues. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

(2) Concession agreements are not required to be competitively bid. However, when it is in the City's best interests to do so, the City may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

**K. Purchases from Federal Catalogs.**

(1) By Resolution No. 2005-05, the LCRB has adopted the following rules for procurement of goods from federal catalogues:

Subject to applicable Council approval requirements stated in the City's Contracting Rules, the City may purchase goods from federal catalogues without competitive bidding when the procurement is pursuant to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal laws will be permitted upon a finding by the Local Contract Review Board that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.