

ORDINANCE NO. 1284

AN ORDINANCE IMPLEMENTING A PROCUREMENT AND CONTRACT ADMINISTRATION POLICY FOR THE CITY OF TILLAMOOK, OREGON; AND REPEALING ORDINANCE NO. 927 AND ANY OTHER PRIOR INCONSISTENT CITY RESOLUTIONS, ORDERS AND/OR ORDINANCES AND DECLARING AN EMERGENCY

The people of the city of Tillamook, Oregon, do ordain as follows:

Section 1. Purposes.

The purpose of this ordinance is to create and express a set of simple public contracting policies and processes for the city of Tillamook, Oregon (hereafter “City”), to achieve effective outcomes at optimal values in contracts for goods, services and public improvements with those persons who do business with the City. These policies and processes should instill public confidence through ethical and fair dealing, honesty and good faith in the City and in those who do business with City. These policies and processes should promote impartial and open competition, efficient use of City resources, and modern, evolving procurement practices.

Section 2. City Council is Local Contract Review Board.

The members of the Tillamook City Council are designated the City’s Local Contract Review Board (hereafter “Board”) in which body is vested all the rights, responsibilities and duties pertaining thereto under Oregon law, including without limitation the right to adopt and maintain rules of procedure that the contracting agency will use for public contracts.

Section 3. Oregon Attorney General’s Model Rules do not apply.

The model rules adopted by the Oregon Attorney General on or before this date for public contracting by local contracting agencies do not apply to the city of Tillamook, Oregon.

Section 4. Local Public Contracting Rules Prescribed.

The initial local public contracting policies and procedures which apply to public contracts with the City are expressed in **Exhibit A** entitled “Procurement Policies and Procedures for the city of Tillamook, Oregon”, attached and incorporated here by reference. The Board, consistent with section 2 above, is delegated the authority to amend these rules, and to enact and amend future rules, by resolution following the due process of a public notice and public hearing for this purpose. Such amendment shall be as needed. However, the Board shall review its rules each time the Oregon Attorney General (“AG”) modifies the AG’s model rules to determine whether the Board should modify the Board’s rules to ensure compliance with state statutory changes. Actions by the Board shall be designated as “BY THE TILLAMOOK LOCAL CONTRACT REVIEW BOARD” and signed by the presiding member or designee. Actions pursuant to authority delegated by the Tillamook Local Contract Review Board shall be signed and subscribed “Agent for the Tillamook Local Contract Review Board”.

Section 5. Matters not covered by Local Public Contracting Rules.

Those model public contracting rules adopted by the Oregon Attorney General now and in the future covering public contracting procedures and/or criteria which are not superseded by City’s “Procurement Policies and Procedures for the city of Tillamook, Oregon” shall apply to City contracts, subject to the Board’s authority in Section 4 to enact local public contracting policies and procedures appropriate to City

EXHIBIT "A"

SECTION I: PROCUREMENT POLICY AND PROCEDURES FOR THE CITY OF TILLAMOOK

A. Policies and Procedures: Procurements, contracts and purchases for goods and services and personal services shall be made in the following manner:

(1) General Purchases. The City Manager, Recorder/Treasurer, Department Heads, or other designated individuals delegated in writing by the City Manager may make purchases with petty cash, City VISA card or City check not to exceed \$1,000.00, any amount greater than this will require approval. Every effort shall be made to consolidate purchases among all departments to ensure that the price obtained is the most advantageous to the City. To eliminate the potential for abuse or misuse, the City Manager shall request that the City Recorder make periodic audits of the petty cash fund and/or VISA or Check purchases and report the results to the City Manager or the Designated Alternate.

(2) Small Procurements. A highly informal procedure for small procurements, contracts, and purchases of goods and services, personal services including architectural, engineering, land surveying and related services and public improvement including minor alterations, repair and maintenance involving a single project and a dollar amount of \$5,000 or less (ORS 279B.065). The Agent for the Tillamook Local Contract Review Board, otherwise known hereinafter as the "Contracting Agency", shall informally solicit quotation(s) orally, by telephone, or in writing and make direct selection and award. Procurements may not be fragmented or artificially divided to be included in small procurements procedures.

(a) A written transaction file shall be kept with abstracts of invitations made, offers received, and awards made. Within one fiscal year, no individual contractor may be awarded contracts, in the aggregate of \$30,000 without formal competitive bidding.

(b) Subject to the provisions of subsections F through I below, Personal Service Contract requirements are detailed in Section II.

(3) Intermediate Procurements. For Intermediate procurements, contracts and purchases for goods and services (including minor alterations, ordinary repair and maintenance) and personal service contracts including architectural, engineering, land surveying and related services in excess of \$5,000 but less than \$150,000.00 (ORS 279B.070), the Contracting Agency shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. A written record will be kept of all quotations and proposals, including related communications. The Tillamook Local Contract Review Board may make award to the contractor whose quote or proposal best serves the interests of the City, taking into account but not limited to price, experience, expertise, product functionality, suitability and contractor responsibility.

(4) For procurements, contracts and purchases for goods and services including minor alterations, ordinary repair and maintenance and personal service contracts including architectural, engineering, land surveying and related services in excess of \$150,000.00 competitive sealed bidding procedures will be made for either competitive quotes or competitive Qualification Based proposals with contract award being made by the Contracting Review Board.

- a) Should three quotes or Qualification Based proposals from contractors not be available, award shall be made with a written record and details of the efforts made to obtain the sources maintained. Procurements will not be artificially divided or fragmented to meet the informal solicitations procedures.
- b) All procurement methods shall comply with the statutory requirements.
- c) Subject to the provisions of subsections F through I below, Personal Service Contract requirements are detailed in Section II.

B. Procurement and contracts of Public Improvement Contracts for construction, maintenance and repair of City property shall be made in the following manner:

(1) For contracts and procurements valued at not more than \$150,000 the Contracting Agency shall follow the procedures described in Section I. A (3) above for "Intermediate Procurement", by soliciting informal competitive price quotes or competitive proposals from at least three prospective contractors, with contract award being granted to the contractor's quote or proposal that best meets the needs of the City.

(2) For contracts and procurements greater than \$30,000.00, but not to exceed \$100,000, or not to exceed \$50,000 in the case of contracts for transportation projects, formal bidding procedures shall be used for competitive quotes or proposals. The Contract Review Board shall make the award to the contractor whose quotation or proposal best meets the needs of the City, with a written record maintained of all quotations and proposals, including related communications.

(3) For contracts and procurements in excess of \$100,000, and \$50,000 for transportation projects, competitive bidding procedures will be used in accordance with the provisions of ORS 279C.360, 365, and 370.

C. Sole Source Procurement. In accordance with the provisions of ORS 279B.075 and when authorized by the Contract Review Board, the Contracting Agency may award a contract for goods and services without competition when a determination, in writing, is made that the goods or services, or class of goods or services are available from only one source. To the extent reasonably practical, the Contracting Agency shall negotiate with the sole source to obtain contract terms advantageous to the City. The determination of sole source must be based on written findings that may include:

(1) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;

(2) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;

(3) That the goods or services are for use in a pilot or an experimental project;

(4) Or other findings that support the conclusion that the goods or services are available from only one source.

D. Emergency Procurements. Public improvement contracts, contracts for goods and services and contracts for personal services may be exempted from competitive bidding if the Contracting Agency head, or designee, or Contract Review Board authorizes a defined "emergency" procurement, with certain

documentation in accordance with ORS 279B.080. Should an emergency procurement be required and conditions require prompt execution of a contract, documentation will be made of all transactions, including but not limited to, the nature of the emergency, method used to select the contractor, and scope and price of the contract.

E. Special Procurement Contracts. Special procurements may be made without competitive solicitation as provided in the ORS 279B.085.

F. Partial Listing of Procurement Options. The City reserves the right to:

(1) cancel, reject, or delay all invitations for bids or requests for proposal in accordance with ORS 279B.100.

(2) prequalify prospective bidders and proposers in accordance with ORS 279B.120, and

(3) enter into Contract Negotiations in the event all responsive bids exceed the contracting agency's cost estimate with the lowest apparent bidder in accordance with ORS 279C.340.

G. Prevailing Wage. Contracts for public improvements for \$50,000.00 or less are not subject to Prevailing Wage Rates. In such cases, ORS 279C.800-870 does not apply.

H. Contract Amendments. The Contracting Agency is authorized to amend the original contract amount up to but not to exceed 15 percent of the original contracting price. Prior approval of the Contract Review Board is required for amendments greater than 15 percent. However, if the original contract was awarded through the competitive bidding process and a fixed unit price was established, the contract amount can only be amended by a negotiated change in contract scope or other previously unforeseen requirements.

I. Conflict of Interest. Employees, officers, or agents of the City shall not participate in the selection, negotiation, administration or award of any contract of the City if a conflict of interest, real or apparent, would be involved. Included in this prohibition are: immediate family members, his or her partner, an organization which employs or is about to employ any of aforementioned, or anyone who has a financial or other interest in the firm selected for award. City officers, employees, or agents are prohibited from soliciting, accepting gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

SECTION II:

PERSONAL SERVICE CONTRACTING POLICY FOR THE CITY OF TILLAMOOK

A. Personal services contract means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The Contracting Agency shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

(1) The following criteria shall be considered in the evaluation and selection of a personal service contractor:

- a. Specialized experience in the type of work to be performed.
- b. Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
- c. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable; and
- d. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
- e. Any other factors relevant to the particular contract.
- f. The City reserves the right to enter into direct contracts for services for architects, engineers and land surveyors in accordance with ORS 279C.115 (2).
- g. On contracts where the construction value is greater than \$900,000 and 10% or more of the funding is coming from State sources, Qualification Based (QBS) selection of architectural, engineering or land surveyor services in accordance with ORS 279C.11 0 will apply.

(2) The selection procedures described in this section may be waived by the Contracting Agency, at his or her discretion where an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures.

(3) Nothing contained in this section shall preclude the City from complying with provisions of Federal or State law that require the city to utilize a different selection or contracting procedure.

(4) Personal service contracts are those exclusively for the rendering of services where the particular skill or experience of the contractor is of the essence, or which involves a relation of special trust and confidence between the City and the contractor.

(5) Personal service contracts shall not be used to engage persons who would be deemed City employees, rather than independent contractors.

(6) All personal service contracts shall require the contractor to defend, indemnify, and hold harmless the City, its officers, agents and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance.

(7) Prior to selection of a contractor, the City Recorder shall verify that the insurance requirements for particular services protect the City's interests.

B. The Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate City employee, or by an interview committee. Following a review of the qualifications and interviews, where conducted, of the interested prospective contractor, the Tillamook Local Contract Review Board shall select the prospective contractor, and the Contracting Agency shall prepare a personal service contract based upon model contract provisions.

contracts to replace the AG's rules.

Section 6. Severability and Saving Clause.

The sections and subsections of this Ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections. Ordinances repealed hereby shall remain in force until the effective date of this Ordinance.

Section 7. Repeal.

Ordinance No. 927 enacted October 18, 1978, and all City existing ordinances, orders and/or resolutions or parts thereof inconsistent with this ordinance shall be, and the same are, hereby repealed on the effective date of this ordinance, a date not less than 30 days after its adoption.

Section 8. Effective Date. The City Council of Tillamook finds the health, safety and welfare of Tillamook citizens will best be served by this Ordinance taking immediate effect, whether by an emergency now declared or, alternatively, by its effective date retroactively applied to the date this ordinance is passed by this Council. Therefore, the City Council hereby declares this ordinance shall be in full force and effect from the time of its passage and approval.

PASSED 1st reading by the Tillamook City Council this 16th day of December, 2013.

PASSED 2nd reading by the Tillamook City Council this 16th day of December, 2013.

APPROVED by the Tillamook City Council this 16th day of December, 2013.



Suzanne Weber, Mayor

ATTEST:



Abigail Donowho, City Recorder