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ORDINANCE NO. NS \_\_\_\_

**AN ORDINANCE AMENDING THE BEND CODE RELATING TO  
PROCEDURES FOR PUBLIC CONTRACTING**

WHEREAS: The Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794) (“The Public Contracting Code”), which was signed by the Governor, and has an operative date of March 1, 2005, and

WHEREAS: On February 16, 2005 the City of Bend adopted Ordinance No. NS- 1960 to implement the new Public Contracting Code. Following several months of experience with the new ordinance, it has become apparent that some changes are necessary. The necessary changes are set forth herein.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

**Section 1.** Bend Code Sections 1.550 through 1.590 is amended to read as follows:

**PUBLIC CONTRACTS**

**1.550** The Bend City Council is designated as the local Contract Review Board under the State of Oregon Public Contracting Code.

- (a) The Contract Review Board may, from time to time, and in addition to delegations made under this ordinance, delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Bend Code.
- (b) The City Manager, or his/her designated purchasing agent, and the Purchasing Division of the City of Bend Finance Department are designated as the city’s “Contracting Agency” for purposes of contracting powers and duties assigned to the City of Bend as a “Contracting Agency” under the State of Oregon Public Contracting Code or the Model Rules. ***The director of any department of the City or his/her designee may solicit bids/quotations under the rules in this section and under the direction of the Contracting Agency.***
- (c) Except as provided in these rules, and as may be determined by future delegations of authority, the powers and duties of the Contract Review Board shall be exercised by the Contract Review Board, and all powers and duties given or assigned to the Contracting Agency shall be exercised or performed by the Contracting Agency.

- 1.551** Except as specifically provided herein, Public contracts shall be let by the City of Bend according to the State of Oregon Public Contracting Code, including the Model Rules adopted by the Oregon Attorney General as they now exist and as they may be amended in the future, and the Bend Code. Definitions provided by the State of Oregon Public Contracting Code or the Model Rules shall apply to City of Bend procurements, except as may be specifically provided herein.
- 1.552** The following classes of public contracts are hereby exempted from competitive procurement:
- (a) Any contract exempted by the State of Oregon Public Contracting Code or Model Rules;
  - (b) Contracts under \$5,000, which may be entered into by direct award under rules and procedures adopted by the Contracting Agency.
  - (c) Contracts for the purchase of computer equipment and software, which may be by requests for quotations, under the procedures in Bend Code Section 1.555(a) and (b).
  - (d) Purchases through federal programs, pursuant to ORS 279A.180.
  - (e) An emergency contract, provided that the Contracting Agency adheres to the requirements of ORS 279B.080 or 279C.335(5) and the Model Rules. ***In addition: (1) The City Manager or designee is authorized to sign all purchase order/contract, agreements; (2) In the event the emergency is of a nature that requires immediate action to prevent damage to property or health (e.g., a major water line break or sewage overflow) the department may use all the means necessary to meet the emergency and if the expenditure is in excess of \$100,000, as soon as time allows, bring the matter before the Contract Review Board for ratification or other action consistent with law.***
  - (f) A Public Facility Improvement Agreement entered into between the City of Bend and a person responsible for carrying out conditions of approval of a land use decision of the City of Bend. The term "Land Use Decision" has the meaning provided by ORS 197.015.
  - (g) Any other contract (including sole source and brand name specification contracts) where the public interest would be promoted by exempting the contract from the competitive bidding process, provided that the Contract Review Board adheres to the Public Contracting Code and the Model Rules in making the exemption.

**1.553** Administrative staff and departments have contracting authority and responsibilities as follows:

- (1) The City Manager (or designee) is authorized to enter into ~~city contracts not to exceed the limits of the Public Contracting Code and Model rules~~ ***all City contracts that are within the approved current year budget*** without further review from the Contract Review Board, provided that ~~funds for such contract are in the current year budget~~ ***all major contracts (over \$100,000.00) shall have financial review and approval by the Finance Director or her/his designee prior to award. Contracts over \$100,000 that are not approved in the current year budget will require additional authority from the Contract Review Board prior to execution.***
- (2) The Contracting Agency shall, consistent with the Bend Code, adopt forms, computer software, procedures, and administrative policies for all city purchases. In addition, the Contracting Agency may adopt purchasing limits and procedures for City Departments and rules establishing change order authority, provided that such rules are consistent with the Public Contract Code and Model Rules.
- (3) The City of Bend Department of Finance, Purchasing Division (referred to as the “Purchasing Division”), shall have the authority to enter into city contracts ***or acquisitions*** not to exceed \$20,000 without obtaining additional authority from the City Manager, provided that funds for such contract are in the current year budget.
- (4) Purchases of goods from city employees, or sale of goods to city employees, shall require authorization of the City Manager or designee. Provision of services by city personnel shall be in accordance with the City Personnel Policies in Chapter 5 of the City Policy Manual, and other applicable law.
- (5) Each department shall operate within its budget, or seek supplemental budgetary authority from City Council with respect to any contract that is not within the adopted budget for such department for the current year.
- (6) ***Purchase of used equipment: The City will purchase used (vehicles and the like) under the same procedures as new equipment. In addition, the City will adopt procedures to insure the equipment is suitable for City use: verifying source, manufacturer, seller, the condition of the equipment - checked by***

*experts/professionals of that equipment. City will not buy used equipment if new equipment is available at a compatible price and within budget.*

**(7) *ADA: The City of Bend shall comply with Americans with Disabilities rules, regulations, & procedures, and will not discriminate on the basis of disability in its purchasing and contracting policies, practices, and procedures. The prospective contractor shall execute and provide a certification that it is in compliance with ADA in its employment practices, and that it shall perform its contractual obligations consistently with ADA federal requirements/regulations, state disability law, and applicable regulations.***

**(8) *Sustainability - Policy Statement: The City of Bend recognizes that the actions it takes in its operations, policies and planning efforts will have impacts on sustainability in our community. It is the City of Bend's policy to encourage implementation of sustainable purchasing. Sustainable practices incorporate three broad factors: environmental stewardship, life cycle costing and equal opportunities for every person impacted by a purchase. By including sustainability in purchasing decisions, The City of Bend can promote practices that improve public and worker health, utilize economic resources responsibly, conserve natural resources, and reward environmentally conscious manufacturers while maintaining cost excellence and value standards.***

**1.554** Notice of public improvement contracts may be published electronically where the Contracting Agency finds that such publication is likely to be cost effective, as provided in ORS 279C.360.

**1.555** *Public contracts will be let in accordance to the ORS 279 Procedures, the Attorney General Model Rules, and the City Policy.*

**(a) *Contracts under \$5000.00 may be let without competitive quotes.***

**(b) *Contracts not to exceed \$50,000 may be let by competitive quote under the following procedures. The Contracting Agency or director of any department of the City or his/her designee, acting under the supervision of the Contracting Agency, shall informally solicit at least three price quotes from prospective contractors. If three prospective contractors are not available, then fewer quotes may be solicited, and the Contracting Agency shall maintain records of the attempts to obtain quotes.***

- (c) *Contracts over \$50,000 will be let by a formal competitive process (for the purpose of this section, formal solicitation is defined as an advertised solicitation with prepared bid documents). This process may be waived by the City Manager or designee if the procurement is (1) under \$100,000 allowing for informal solicitation or (2) exempted under 1.552 of this code.*
- (d) The Contracting Agency shall award the contract to the prospective contractor whose quote will best serve the interests of the City of Bend, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the Contracting Agency shall make a written record of the basis for the award. *The Contracting Agency will ensure the prospective contractor complies with the requirements of the Americans with Disabilities Act.*
- (e) A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section
- (f) *Change orders to the purchase order/contract will follow the same rules as the original agreement (excluding competitive solicitation). Engineer/Project Manager or designee will issue an "Engineering Change Order" in accordance to the established engineering format on all public improvement (labor) contracts.*

**1.556** Personal services contracts (other than ~~personal services contracts for architectural or engineering services~~ *those specifically exempted by the Public Contracting Code or Model Rules*), are subject to the rules established by this section:

- (a) Personal service contracts will be used to retain the services of independent contractors. Nothing in this section shall apply to the employment of regular City employees.
- (b) Unless otherwise approved by the City Manager, 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 there-under and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.
- (c) Unless otherwise approved by the City Manager, City personal service contracts shall contain a provision requiring the person or entity providing

the service to obtain and maintain liability insurance coverage in at least the amount of the City's tort liability limits, naming the City as an additional named insured, during the life of the contract.

- (d) All City personal service contracts shall contain all contract provisions mandated by State *and Federal* law. These provisions may be incorporated in the personal service contract by reference to State *or Federal laws* provides otherwise. The Contracting Agency will prepare model contract provisions for use in City personal service contracts. ***All personal service contracts will contain specific language with regard to discrimination under the Americans with Disabilities Act. Independent contractors are required to adhere to federal accessibility requirements.***
- (e) The following procedure shall be observed in the selection of personal service contractors:
  - (1) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, the City Manager or his or her designated officer may negotiate a contract for such services with any qualified contractor of his or her selection.
  - (2) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, the City Manager or his or her designated officer shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.
  - (3) The City Manager or his or her designated officer 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.
  - (4) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the City Manager or his or her designated officer shall select the prospective contractor, and shall prepare a personal service contract.
- (f) The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.
- (g) The following criteria shall be considered in the evaluation and selection of a personal service contractor:

- (1) Specialized experience in the type of work to be performed.
  - (2) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
  - (3) 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
  - (4) 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.
  - (5) Any other factors relevant to the particular contract.
- (h) The selection procedures described in this section may be waived by the City Manager, at his or her discretion where ***(1) an emergency exists; (2) there is only one consultant/individual available to perform the services; (3) the award of the contract is in the public's best interest; or (4) the contract is for legal services or professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which the City is or may become interested.***
- (i) The City Manager ***or his/her designee*** is delegated the authority to sign all personal service contracts.
- (j) Nothing contained in this section shall preclude the City from complying with provisions of Federal or State law (***including requirements of grant awards***) that require the City to utilize a different selection or contracting procedure, including circumstances where applicable rules require a different procedure for selecting architects, engineers and land surveyors.

**1.557** Disposition of surplus personal property may be made, at the discretion of the City Manager or his/her designee, under provisions of the State of Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section:

- (a) From time to time and after personal property owned by the City of Bend is determined by the City Manager or his/her designee to be surplus to the needs of the City, the city may sell the property at public auction. The city may utilize a contracting firm, approved by the Contract Review Board,

for disposition of the property on terms and conditions contained in a contract approved by the Contract Review Board. The City shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the City of Bend Internet Website, or by advertisement in a newspaper of general circulation.

- (b) Auction sales may be (but are not required to be) conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the City, subject to the terms and conditions of the contract (if any) approved by the Contract Review Board between the City of Bend and a firm (if any) selected to conduct the auction.
- (c) All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale or receipt, which shall recite that the sale is without warranty, as provided in this sub-section.

**1.558** If bids are solicited for a public improvement contract, and all bids exceed the budget for the project, the Contracting Agency may, prior to contract award, negotiate for a price within the project budget under the following procedures:

- (a) Negotiations will begin with the lowest, responsive and responsible bidder. If negotiations are not successful, then the Contracting Agency may begin negotiations with the second lowest responsive, responsible bidder, and so on.
- (b) Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.
- (c) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.
- (d) The Contracting Agency will adhere to the provisions of ORS 279C.340 in applying this section.

**1.559** The Contracting Agency shall adopt appropriate purchasing policies dealing with ethics, environmental (*recycling*) and *sustainability* considerations and the like, subject to review and modification by the Contract Review Board.

- (a) *See attached "Purchasing Ethics/Environmental" attached (Contract Review Board to review)*

(b) See 1.553(8) Sustainability

**1.560** In the event of a conflict between any provision of the State of Oregon Public Contracting Code or the Model Rules and this chapter of the Bend Code, the provisions of the State of Oregon Contracting Code or the Model Rules shall control.

Read for the first time the \_\_\_\_ day of \_\_\_\_\_, 2007.

Read for the second time this \_\_\_\_ day of \_\_\_\_\_, 2007.

Placed upon its passage this \_\_\_\_ day of \_\_\_\_\_, 2007.

YES: \_\_\_\_\_ NO: \_\_\_\_\_

Authenticated by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
APRIL

ATTEST:

\_\_\_\_\_  
City Recorder