

ORDINANCE NO. 511

AN ORDINANCE AMENDING WC 2.310 CONTRACT REVIEW BOARD DEFINITIONS BY ADOPTING STATE FINDINGS, POLICIES, AND METHODS OF FOSTERING COMPETITION AND DEFINITIONS CONSISTENT THEREWITH, AMENDING WC 2.314 TO PROVIDE FOR COMPETITIVE PROPOSALS, SECURING OF FORMAL OR INFORMAL COMPETITIVE BIDS OR PROPOSALS, PROVIDING FOR CONTRACTING OFFICERS AND THE CREATION OF PROCEDURES FOR THE SCREENING AND SELECTION OF PERSONAL SERVICES.

WHEREAS, the State of Oregon has made the following policy regarding competition in public contracting in ORS 279.005:

“(1) It is the policy of the State of Oregon to encourage public contracting competition that supports openness and impartiality to the maximum extent possible.

“(2) The Legislative Assembly finds that:

“(a) Competition exists not only in prices, but in the technical competence of suppliers, in their ability to make timely deliveries and in the quality and performance of their products and services and that a balance must exist between performance competition and price competition;

“(b) The nature of effective competition varies with the product or service being procured and that while competitive sealed bids are a common method of procurement, it is not always the most advantageous or practical method of source selection; and

“(c) Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:

“(A) Price competition as represented by the initial or acquisition price;

“(B) Competition as represented by price and performance evaluations of the competing items and suppliers;

“(C) Competition as represented by evaluation of the capabilities of bidders or proposers to perform needed services;

“(D) Competition as represented by evaluation of the capabilities of the bidders or proposers to perform the services followed by a negotiation on price; or

“(E) Competition as represented by another method of procurement that is reasonably calculated to satisfy the public contracting agency’s need.”

WHEREAS, the State of Oregon has set forth the following methods of fostering competition in ORS 279.007:

“(1) All public contracts shall be made under conditions that foster competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:

“(a) Writing specifications and procurement documents in a simple and easy to read format;

“(b) Searching for new sources of supply;

“(c) Attempting to make solicitation documents simple and inviting;

“(d) Everyday courtesy shown to prospective suppliers and contractors; and

“(e) The way information on contracting opportunities is provided to suppliers, including but not limited to advertisement in publications of general circulation or the Oregon Department of Administrative Services’ electronic bulletin board services, and any other reasonable methods that encourage competition and that are consistent with ORS 279.025.

“(2) A public contracting agency may evaluate every aspect of competition in its effort to purchase products or services, choose the appropriate solicitation process in accordance with the criteria described in ORS 279.005 and arrive at offers that represent optimal value to the state.”

WHEREAS, the City of Wilsonville currently restricts its public contracts to competitive bids in WC 2.314(1) and does not expressly provide for competitive proposals and should be amended to effect the state policies and methods regarding the fostering of competition; and

WHEREAS, in keeping with the above policies, the definitions provided in WC 2.310 need to be amended; and

WHEREAS, HB 2024(5)(a), which is effective October 23, 1999, provides: “A public contracting agency may elect to establish its own rules of procedures for public contracts that: ***(B) Prescribe the rules of procedure that the agency will use for public contracts, which may include portions of the Model Rules adopted by the Attorney General” and it is the intent of the City Council to hereinafter adopt prescribed rules which include as a supplement the Model Rules adopted by the Attorney General.

WHEREAS, the City Council annually oversees and adopts the City budget and through this process determines revenues and appropriations for contracts and purchases; and

WHEREAS, the City Council desires efficient and effective administration of budget expenditures through managed implementation by the City Manager and City staff rather than the City Council, which will provide more time at City Council meetings for policy consideration by the City Council;

NOW, THEREFORE, THE WILSONVILLE CITY COUNCIL ORDAINS AS FOLLOWS:

1. The title of WC 2.310 shall be amended to read:
“2.310. Public Contract Review Board.”
2. WC 2.310 shall be amended to read as follows:
“(1) Policy. It is the policy of the City of Wilsonville to encourage public contracting that supports openness and impartiality to the maximum extent possible. The City finds

“(a) Competition exists not only in prices, but in the technical competence of suppliers, in their ability to make timely deliveries and in the quality and performance of their products and services and that a balance must exist between performance competition and price competition;

“(b) The nature of effective competition varies with the product or service being procured and that while competitive sealed bids are a common method of procurement, it is not always the most advantageous or practical method of source selection; and

“(c) Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:

“(A) Price competition as represented by the initial or acquisition price;

“(B) Competition as represented by price and performance evaluations of the competing items and suppliers;

“(C) Competition as represented by evaluation of the capabilities of bidders or proposers to perform needed services;

“(D) Competition as represented by evaluation of the capabilities of the bidders or proposers to perform the services followed by a negotiation on price; or

“(E) Competition as represented by another method of procurement that is reasonably calculated to satisfy the public contracting agency’s need.

“(2) Methods of fostering competition. (a) All public contracts shall be made under conditions that foster competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:

“(A) Writing specifications and procurement documents in a simple and easy to read format;

“(B) Searching for new sources of supply;

“(C) Attempting to make solicitation documents simple and inviting;

“(D) Everyday courtesy shown to prospective suppliers and contractors; and

“(E) The way information on contracting opportunities is provided to suppliers, including but not limited to advertisement in publications of general circulation or any other reasonable methods that encourage competition.

“(b) A City Contracting Officer may evaluate every aspect of competition in the officer’s effort to purchase products or services, chose the appropriate solicitation process in accordance with the criteria described in WC 3.214 and arrive at offers that represent optimal value to the City.”

“(3) Definitions. The following words and phrases shall for the purposes of sections 2.310 to 2.314 mean:

“(a) Board. The Local Public Contract Review Board as established in Section 2.312 of the Code;

“(b) Contracting Officer. The City Manager, a person or persons designated by the City Manager with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes authorized

representatives of the Contracting Officer acting within the scope of their authority as delegated by the Contracting Officer and in accordance with the provisions of this ordinance;

“(c) Contract file. The record file in which the City or its department maintains the hard copy of its agreements, including but not limited to contracts and purchase orders, and the written findings for awarding, rejecting or exempting bids and proposals, addenda, change orders, and records of negotiations. Record files will be transferred to the city Recorder within 12 months of project acceptance;

“(d) Contract related to public improvements. Any agreement for the purchase of supplies, materials, equipment and personal services including, but not limited to, engineering, architectural, landscaping, geotechnical, traffic, surveying and designing for use in conjunction with a public improvement project. Contracts related to a public improvement project may also include operational and maintenance public contracts for public facilities and assets when the City Engineer determines City engineering oversight is prudent;

“(e) Emergency. An “Emergency” means circumstances that could not have been reasonably foreseen that creates a substantial risk of loss, damage, interruption of services or threat of harm to public health and safety that requires prompt execution of a contract to remedy the condition.

“(f) Personal Service. Contracts. A contract for “personal services” calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or

judgement. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services Contractor, with price being secondary. "Architect, Engineer, and Related Services" are a special class of personal services contracts, which are addressed below.

"(g) Public Contract. Any agreement for the purchase, lease or sale by the City of personal property, public improvements or services other than agreements which are for personal services;

"(h) Public Improvements. Any construction, reconstruction or major renovation on real property by or for the City. 'Public improvement' does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement;

"(i) Purchase contract. Any agreement to purchase supplies, materials and equipment in common use by City departments and purchased pursuant to the authority of the Finance Director or in particular use by a City department and purchased pursuant to budget authority by a City department."

3. WC 2.314 shall be amended as follows:

"(1) All public contracts shall be based on competitive bids or proposals except:

"(a) Contracts made with, or the cost of which is provided by, other public agencies or the Federal Government;

“(b) Contracts for any purchase, the amount of which is not in excess of \$5,000;

“(c) Contracts for any purchase, the amount of which is more than \$5,000 but less than \$75,000, shall, at minimum, obtain three informally solicited, competitive quotes unless an emergency has been declared as set forth in subsection (3) below;

“(d) Contracts for any item which is available only through one company, firm or individual;

“(e) In any case, where the interest or property of the City probably would suffer material injury by delay or would be materially benefited by immediate purchase or contract.

“(2) The City’s Contracting Officer may by written findings placed in the contract file or the board may by resolution exempt other contracts from competitive bidding or competitive proposal based on the following findings:

“(a) The lack of bids or proposals will not result in favoritism or substantially diminish competition in awarding the contract; and

“(b) The exemption will result in substantial cost savings. In making such finding, the contract officer or the board may consider the type, cost, amount of the contract, number of persons available to bid, and such other factors as the board may deem appropriate.

“(3) A contract may also be exempt from competitive bidding or competitive proposal if either the contracting officer or the board determines that emergency conditions require prompt execution of

the contract. The contracting officer shall provide written notification of such an emergency determination to the City Recorder and the contract file. The board shall enter a determination of such an emergency into the record of the meeting at which the determination was made.

“(4) 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 as follows. 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. By written documentation to the contract file by the contract officer or by resolution in the case of the board, certain products or classes of products may be exempted on 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.”

“(5) The Council or an official designated by the 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.

"(6) The Council or an official designated by the Council 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;

"(b) The person does not have equipment available to perform the contract;

"(c) The person does not have personnel or sufficient experience to perform the contract; or

"(d) The person has repeatedly breached contractual obligations to public and/or private contracting agencies.

"(7) A person who has been disqualified as a bidder may appeal such disqualification to the board as follows:

"(a) The person shall, within three business days after receipt of notice of disqualification, in writing notify the City Recorder that he wishes to appeal his disqualification;

"(b) Immediately upon receipt of such written notice of appeal, the Recorder shall inform the board;

"(c) Upon receipt of notice of appeal, the board shall notify the person appealing the time and place of the hearing;

"(d) The board shall consider de novo the notice of disqualification, the record of the investigation made by the City Manager and/or the Community Development Director or City Engineer, and any evidence provided by the parties. The hearing shall be public and the appeal decided within ten (10) days after receiving the notification. The board's decision and reasons therefor shall be in writing.

"(8) In addition to the powers and duties established by this Code, the board shall have such additional powers as authorized by state law and may also:

"(a) Require notice publication in addition to that required by state law;

"(b) Require pre-qualification for persons desiring to bid for public improvement contracts;

"(c) Grant exemptions from the bid security and performance bond required on contracts for public improvements;

"(d) Make alternate arrangements for retainage pursuant to ORS 279.575.

"(9) Contracting Officer — General Authority. The City Manager and such staff as the City Manager shall designate shall be the City's Contracting Officer for all contracts unless otherwise directed by the City Council. Where it is known to the City Manager that the City Manager shall be absent from the City for thirty (30) days or less, the City Manager may designate the acting City Manager, who shall have authority to act as the City's

Contracting Officer in the City Manager's absence. The adoption each year of the City's budget provides the general appropriate authority for the ensuing fiscal year for contracting public improvements and purchasing goods and services. The City contracting officer may enter into contracts up to and including \$75,000 without first obtaining City Council approval. In the case of an emergency, the City Contracting Officer may enter into any contract deemed reasonable and prudent under the emergency circumstances then existing without City Council approval but for those emergency contracts over \$75,000 shall notify the Council of the contract terms and conditions within 30 days of the termination of the emergency circumstances.

“(10) Designated Contracting Officer for Public Improvements.

“(a) The City Council recognizes that the City Manager has delegated authority to the City's Engineer to act as the City's Contracting Officer for public improvement contracts and purchase contracts relating to public improvements and to the Building Official as the Contracting Officer for purchase contracts relating to City buildings and structures;

“(b) The Contracting Officer for public improvements and the Contracting Officer for City buildings and structures shall exercise the officer's authority pursuant to the provisions of WC 2.310-2.314 and the most recently adopted Oregon Attorney General's Model Public Contract Rules (Division 30, Public Procurement Rules and Division 40, Public Improvement Contracts currently scheduled for adoption by the Department of Justice (DOJ) October 23, 1999), which the City Council shall adopt by resolution. The Model Rules are intended to be a supplement to WC 2.310 to 2.314 and to be read in para materia with the

provisions of WC 2.310 to 2.314, but in the event that any provision of the Model Rules is in conflict with any provision of WC 2.310-2.314, the provision of WC 2.310 – 2.314 shall prevail. The Contracting Officer for public improvements shall develop procedures for the screening and selection of persons other than architects and engineers to perform personal services relating to public improvement projects. The City Council shall adopt by resolution and the contracting officer shall follow the Oregon Attorney General's Model Public Contract Rules (Division 35, Consultant Selection: Architectural and Engineering Personal Services Contracting), for screening and selection of persons to perform architectural and engineering personal services contracts for public improvement projects. Provided, however, any provisions in WC 2.310 – 2.314 for exemptions will also apply and shall take precedent over the Division 35 Model Rules as the Board or Contracting Officer may determine.

“(11) Designating Contracting Officer for Purchase Contracts.

“(a) The City Council recognizes that the City Manager has delegated authority to the City's Finance Director to act as the City's Contracting Officer for all purchase contracts except public improvements and purchase contracts relating to public improvement projects and City buildings. The City's Contracting Officer for purchasing contracts and the Contracting Officer for City buildings and structures shall follow the provisions of WC 2.310-2.314 and the most recently adopted Oregon Attorney General's Model Public Contract Rules for purchase contracts (Division 30, Public Procurement Rules currently scheduled for adoption by the DOJ October 23, 1999), which the City Council shall adopt by resolution. The Model Rules are intended to be a

supplement to WC 2.310 – 2.314 and to be read in para materia with WC 2.310-2.314, but in the event any provision of the Model Rules is in conflict with any provision of WC 2.310 – 2.314 the provision of WC 2.310-2.314 shall prevail. Each respective Contracting Officer shall develop procedures for the screening and selection of persons related to personal service contracts.

“(b) The City Manager may further establish directives, rules or regulations by which the City’s Finance Director may delegate contracting authority to a contracting officer for each department.

“(12) Competitive bids or proposals may be secured formally or informally. Reasonable measures shall be taken to secure informal bids or proposals so that calls for bids or proposals are adequately advertised and reasonable opportunity to submit bids and proposals is provided. Provided, however, advertising may be exempted for informal bids or proposals where there is a finding by the Contracting Officer, that direct use of alternate contracting and purchasing practices is warranted in lieu of advertising in order to take into account market realities or innovative contracting and purchasing methods which are consistent with public policy of encouraging competition.

“(13) The board shall have appellate authority to hear a petition for review by an aggrieved party of any decision of a Contract Officer to award, reject or exempt any bid proposal or contract, provided said petition for review is filed with the City Recorder within ten (10) days of the date of the notice of Contract Officer’s decision. The Contract Officer’s decision shall bear the date the decision is made and shall be recorded in the contract file. Written notice of decision shall be provided to each bidder or proposer who submitted a bid or proposal.

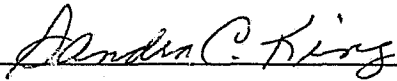
"(14) Unless otherwise provided in WC 2.310 – 2.314 all personal services contracts for which the fee is anticipated to exceed \$50,000 will be awarded based on a competitive selection process except for the following:

"(a) Emergency requirements precluding completion of a competitive selection process;

"(b) Selection from a list of consultants with similar qualifications in which selection is determined based on an annual qualification process; and

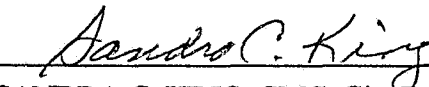
"(c) Follow on work where a change in consultants would clearly result in increased costs or increased time.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 4th day of October, 1999, and scheduled for the second reading at a regular meeting of the Council on the 18th day of October, 1999, commencing at the hour of 7 p.m. at the Community Development Hearings Room.



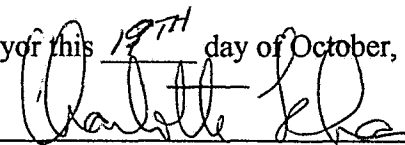
SANDRA C. KING, CMC, City Recorder

ENACTED by the City Council on the 18th day of October, 1999, by the following votes: YEAS: --5-- NAYS: --0--



SANDRA C. KING, CMC, City Recorder

DATED and signed by the Mayor this 19TH day of October, 1999.



CHARLOTTE LEHAN, Mayor

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Councilor Helser	<u>Yes</u>
Councilor Kirk	<u>Yes</u>
Councilor Barton	<u>Yes</u>
Councilor Holt	<u>Yes</u>