

**ORDINANCE NO. 378**

**AN ORDINANCE PERTAINING TO PUBLIC CONTRACTS AND PURCHASING INVOLVING SECURING BIDS OR QUOTES FOR SERVICES OR MATERIALS; AND REPEALING ORDINANCE NO. 184.**



**THE CITY OF DUNDEE ORDAINS AS FOLLOWS:**

**Section 1. Purpose.** This ordinance establishes uniform, efficient and economical contracting and purchasing policies, procedures, rules and regulation for the City. This ordinance brings Dundee Public Contracting and Purchasing regulations into agreement with amendments made by the 1999 Legislature to the Oregon Public Contracting and Purchasing Laws.

**Section 2. Definitions.** As needed in this ordinance, the following definitions apply unless the context requires otherwise.

- A. Bid: a competitive offer in which price, delivery (or project completion) and conformance to specifications will be the predominant award criteria; or a competitive proposal in which other criteria in addition to price, delivery and conformance to specifications are the dominate award criteria.
- B. Bid Opening: The date, time and place set for opening of competitive bids and, unless otherwise specified in the bid documents, the deadline for the receipt of bids.
- C. Board. The City Council acting as the Local Public Contract Review Board.
- D. Competitive Bidding: The formal process of advertising, bid and bid opening required by Oregon Revised Statutes Chapter 279 for all public contracts which are not exempt, or declared exempt by the Board.
- E. Competitive Quotes: The solicitation of offers from competing vendors. The solicitation and the offer my be in writing or oral.
- F. Public Contract. Any purchase, lease, or sale by the City for personal property, public improvement or service other than agreements which are for personal services.
- G. Personal Services Contract: A contract (in a form approved by the City Attorney) with an independent contractor predominantly for services requiring special training or certification, independent judgment, skill and experience.
- H. Public Improvement: A project for construction, reconstruction or major renovation on real property by or for the City. It does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.
- L. Purchasing Agent. The City Administrator or designee, in accordance with city ordinances is appointed the City's Purchasing Agent.

**Section 3. Public Contract Review Board.** The City Council is designated the Local Public Contract Review Board and shall exercise all powers and duties granted to a local public contract review board by City Charter and state law.

**Section 4. City Rules of Procurement.** The following rules shall apply for:

- A. All City purchases and contracts over \$25,000 unless exempt under **subsection 7** . For purchases and contracts over \$25,000, the City shall follow the Model Rules adopted by the State of Oregon Attorney General, including all modifications to the model rules that the Attorney General may adopt. The City shall review its rules each time the Attorney General modifies the model rules to determine whether any modifications need to be adopted by the City to insure compliance with statutory changes.
- B. All City purchases and contracts under \$25,000 unless exempt under **subsection 7** . The City shall apply the rules found in this ordinance to all purchases and contracts under \$25,000; except as found in subsection C (below)
- C. All City purchases and contracts under \$2,500.

**Section 5. Authority of the City Administrator.** Except as otherwise provided by this ordinance, the City Administrator shall act as the purchasing agent for the City and shall:

- (A) Insure that all public contracts comply with this ordinance and state law;
- (B) Review and approve all purchases and sales by the City;

## ORDINANCE NO. 378

- (C) Establish and amend procedures for efficient and economical management of public contracts, purchases and sales. These procedures shall be in writing and on file in the Office of the City Administrator;
- (D) Maintain accurate and sufficient records concerning all city public contracts;
- (E) Contracts over \$2,500 shall be approved by the City Council unless otherwise directed by a resolution of the City Council. The City's Purchasing Agent shall sign all contracts.
- (F) Recommend to the City Council concerning amendments to this ordinance.

### Section 6. General Procurement Policy.

- (A) All city purchases and contracts for goods and services are subject to this ordinance.
- (B) No contractor, vendor or supplier may be awarded purchases or contracts in excess of \$25,000 annually without competitive quotations or bidding, unless the City Council exempts such purchases or contracts from these rules. Exemptions shall be granted based upon criteria found in the Attorney General's Model Public Contract Rules Manuel.
- (C) Reasonable attempts shall be made to obtain competitive quotations even though they may not be specifically required.
- (D) No contract or purchase may be arranged, fragmented or divided with the purpose or intent to circumvent this ordinance.
- (E) Reasonable attempts shall be made to publicize general and major anticipated purchases or contracts to know vendors, contractors and suppliers.
- (F) No purchase may be made for which there are insufficient budgeted funds in the fiscal year, unless the City Council approves the unanticipated purchase or contract and authorizes a transfer of funds under local budget law. Identification of general and major purchases must be identified during the annual budget process.
- (G) When advantageous to the City, annual contracts for services and supplies regularly purchased shall be initiated and may be subject to annual renewal.
- (H) All purchases and contracts must be approved by the purchasing agent unless otherwise specified by this ordinance.
- (I) No payment or partial payment for goods or services may be made without approval of the purchasing agent.
- (J) All major contracts over \$25,000 and all major personal services contracts shall be approved as to form by the City Attorney.
- (K) The City may jointly bid with other governmental agencies, provided procedures used substantially comply with the purpose of this ordinance and the intent of the Oregon public contracting law. The purchasing agent shall determine compliance with these laws.

### Section 7. Exemptions. The following contracts for goods and services are exempt from this ordinance.

- (1) The City Council by resolution shall determine whether or not a particular contract or purchase is exempt.
  - (A) Contracts made with other public agencies or the federal government. This shall include contracts for materials and services as well as performance contracts. The City Council may establish by resolution, separate and/or additional rules and policies pertaining to contracts involving federal funds. The rules pertaining to the applicable federal law shall govern in any case where the federal law conflicts with the provisions of this ordinance.
  - (B) Personal services contracts for legal services, persons designated to represent the City in administrative proceedings, arbitration or labor negotiations, or physicians.
  - (C) Contracts for items and services where the price is regulated by federal, state or local regulatory agencies.
  - (D) Contracts for purchases for which there is only one seller or price of a product of the quality required is available within a reasonable purchase area.
  - (E) Contracts for items that must be compatible with existing equipment if required for the efficient use of the equipment. This includes contracts for maintenance, repair or conversion of existing equipment.

## ORDINANCE NO. 378

- (2) The City Administrator by written documentation shall determine whether or not a particular contract or purchase is exempt.
  - (A) Contracts for allocated petroleum products, copyrighted materials, advertising, insurance, investments, and franchise agreements.
  - (B) Contracts for items that must be compatible with existing equipment if required for the efficient use of the equipment. This includes contracts for maintenance, repair or conversion of existing equipment.
  - (C) Emergency contracts for the prompt remedy of conditions if circumstances that could not be reasonably foreseen create a substantial risk of loss, damage, interruptions of services, or threat to public health or safety.
  - (D) Contracts for the sale of surplus property if it is probable that the cost of conducting the sale by competitive bid will be greater than the revenue generated by the sale.
  - (E) Contracts designed to test equipment or for a pilot project of an experimental nature.
  - (F) Classes of contracts specifically exempt upon review by the City Council.

**Section 8. General Purchasing Policies for Consumables.** Materials, supplies, services and assets are those items regularly purchased and consumed by the City. These items are normally budgeted as materials and services and capital outlay in the annual city budget. The price of an item shall be inclusive of all necessary components to make the item functional.

- (A) Minor Purchases ( up to \$500): Purchases in amounts of less than \$500 may be made without competitive quotations or bids. Competitive quotations and bids shall be obtained when practical and cost effective. The purchasing agent shall promulgate rules for minor purchases.
- (B) General Purchases (\$501 to \$2500): When an order for goods or services exceeds \$500 but is less than \$2,500, at least three written or oral competitive quotations shall be obtained. In all cases the purchasing agent or designee shall attempt to receive written quotations which may be accepted through facsimile or electronic mail. A lesser number of quotations may be acceptable if there is an insufficient number of competitive vendors. A written record of the source and amount from each vendor must be kept by the purchasing agent. The City Administrator may authorize a purchase of up to \$2500.
- (C) Major Purchases (over \$2501): Unless otherwise exempted, purchases of \$2501 or more are subject to competitive bidding requirements as contained in state law. Bid specifications must be prepared, and the purchasing agent must place all required advertisements and notices. The City Council shall approve all expenditures requests for consumables authorized by the City Administrator after confirmation of adherence to the rules contained in this ordinance.

**Section 9. Contracts for Personal Services.** Personal services contracts are for services performed by an independent contractor in a professional capacity which produces a service predominately of an intangible manner. These services include, but are not limited to, the services of an engineer, planning consultant, accountant/auditor, architect and appraiser. Contracts for legal services, or for a person designated to represent the City in administrative proceedings, arbitration or labor negotiations, management services, or for physician services are exempt for these regulations.

- (A) General Guidelines. The selection of personal services contracts shall be based upon an evaluation of the services needed, the uniqueness of the services, and the general performance of the contractor. The lowest quote need not be the successful contractor, but the purchasing agent must document in writing the reasons for selection of a higher priced contractor.
- (B) Minor Purchases (less than \$2500): Minor personal services contracts of less than \$2500 may be executed by the City Administrator after obtaining competitive quotes. However, reasonable attempts shall be made to solicit quotes.
- (C) Major Purchases: All contracts for major purposes must be approved by the City Attorney and City Purchasing Agent before submittal to the City Council. Contracts for personal services for more than \$2,500 must be approved by the City Council. There shall be no commitment to a personal services contract until such review and approval is given by the City Council.
  1. \$2,501 to \$25,000: Personal services contracts of more than \$2500 require competitive quotes, either written or oral. In all cases, the purchasing agent will attempt to receive at least three (3) written quotations which may be accepted through facsimile or electronic mail in accordance with model rule procedures.

## ORDINANCE NO. 378

A lesser number of quotations or bids may be obtained if there is an insufficient number of competitive vendors. A written record of the sources and amounts must be kept by the purchasing agent or their designee. The City shall use a Request for Proposal format for any personal service contract over \$5,000.

2. Over \$25,000. Personal services contracts for more than \$25,000 require the use of a Request for Proposal format which has been approved by the City Council. The request for proposal (at a minimum) shall specify the nature of the service to be performed and the minimum qualifications of the contractor. All proposals must be submitted in writing and on a 3.5 inch computer floppy disk in a computer language compatible with Read Only Mode (ROM) on the city's computer workstations. The lowest quote need not be the successful contractor, but the purchasing agent must document in writing the reasons for selection of a higher priced contractor.

If possible, at least three competitive proposals shall be obtained. All personal services contracts shall clearly delineate the costs (per contract, hourly, or other method of computing charges for service) and length of service.

**Section 10. Contracts for Public Improvements.** Contracts for public improvements are for such projects as street reconstruction, water reservoir construction; wastewater, water and storm system improvements, and other similar projects. Bidding procedures shall follow the Model Rules of the Attorney General for contracting procedures, except as follows:

- A. Minor Contracts (up to \$5000): When a contract for a public improvement is less than \$5,000, at least three written competitive quotations must be obtained. A written record of the source and amount of the quotations must be kept by the purchasing agent. The City Administrator may request formal competitive bids under the Attorney General Model Rules public improvement contracting procedures. These contracts must be approved by the City Administrator as the Purchasing Agent.
- B. Major Contracts (over \$5,001):
  1. When a contract for a public improvement is over \$5,000, competitive bids are required by the City. The City shall follow the Attorney General Model Rules for Public Improvement Contracts. The City Council reserves the authority to award such contracts.
  2. Construction Manager-General Contractor (CM-GC): When the CM-GC form of contract is used, the City must prepare written findings justifying the use of the CM-GC process for a particular project under the standards of ORS 279.015 (2). The City is responsible for preparing said findings which shall be submitted to the City Attorney's Office for review and approval. The recommendation with written findings shall be submitted to the City Council, sitting as the Public Contract Review Board for their approval. The City Council shall award such contracts.

**Section 11. Bid Provisions.** Those purchases which require formal bidding must conform to procedures set forth in state law and a city Purchasing Manual. The Purchasing Manual shall be reviewed periodically to insure continued conformance with state law.

- A. Bid Documents: Bid documents shall include the following:
  1. Instructions and information to bidders concerning the submission requirements, time and date of bid openings, the address of City Hall, the name of the city employee bids are to be addressed to, and any other special information.
  2. Where applicable, the purchase description, specifications, delivery or other performance schedule, inspection and acceptance requirements and special evaluation factors.
  3. The contract terms and conditions, including warranty, bonding and bid security requirements, as applicable
- B. Bidder Prequalification.
  1. The City shall not consider the bids of any prospective bidder who is not prequalified in accordance with state law or city rules and regulations.
  2. Upon establishing the applicant's qualifications, the City shall issue a qualification statement. The statement shall inform the applicant of the nature and type of contract and the time period for which the qualification is valid as well as any conditions that may be imposed on the qualification.

## ORDINANCE NO. 378

- It shall include that the applicant shall inform the City promptly of any substantial change of conditions or circumstances that would make any statement contained in the prequalification application to no longer be applicable or true.
3. If the City does not qualify an applicant, written notice shall be given to the applicant, stating the reasons the prequalification was denied and informing the applicant of the right to appeal the decision within five (5) business days after receipt of the notice. Appeals may be made to the City Council, acting in its capacity as the Public Contract Review Board.
  4. The Dundee Public Contract Review Board will hear all appeals no sooner than 15 working days after receipt of the written appeal.
- C. Bidder Disqualification. The following are grounds for disqualification of a bidder:
1. The bidder does not have sufficient financial ability to perform the contract.
  2. The bidder does not have equipment available to perform the contract.
  3. The bidder does not have key personnel available or sufficient experience to perform the contract.
  4. The person has repeatedly breached contractual or obligations to public and private agencies; or
  5. The bidder fails to comply with the requests of an investigation by the City Purchasing Agent.
  6. Disqualified bidders shall be notified by registered or certified mail, return receipt requested that the City intends to disqualify the bidder. This notice shall also set forth that the bidder has the right to appeal to the City Council setting as the Public Contract Review Board.
  7. If the bidder wishes to appeal the City's decision to disqualify, the contractor shall notify the City Administrator in writing within three (3) days after receipt of the notice of disqualification. The City Council setting as the Public Contract Review Board shall hear the appeal.
- D. Rejection of Individual Bids or Proposals:
1. The City may reject in whole or in part any bid not in compliance with the bidding procedures and requirements of this ordinance or state laws. The City may reject for good cause any bid or proposal upon a written finding of the City Administrator to award the contract that it is in the public interest to do so. No bid shall be considered unless the bid security, properly executed, has been submitted with the bid as required by the bid documents.
  2. Reasons for rejecting bids or proposals includes but are not limited to:
    - a. The bidder has not pre-qualified (when required) under ORS 279.039 or has been disqualified under ORS 279.037; or
    - b. The bidder is declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279.361; or
    - c. The bid is not responsive by not conforming to all materials respects to bid documents, or request for proposals, including all prescribed public bidding procedures and requirements; or
    - d. The supply, service, or construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the bid documents or permissible alternatives or other acceptability criteria set forth in the bid documents; or
    - e. The bidder is not capable of satisfying the terms and conditions of the public contract in a timely manner due to financial incapacity, inability to obtain bonding, loss of license or other objective cause; or
    - f. Other circumstances of the particular bid, proposal, or bidder indicate that acceptance of the bid would impair the integrity of the selection process or result in an imprudent contract by the City.
  3. Form of Business Entity: The corporate or business form of bidders shall be subject to scrutiny, so that previously disqualified bidders, or their officers and directors, may not by subterfuge, change of apparent ownership, or other adjustments in formal appearance, avoid application of any disqualification provisions of this ordinance or state law.
  4. Rejected bidders shall be notified by registered or certified mail, return receipt requested. This notice shall state that the City intends to disqualify the bid and set forth the findings with a statement of the bidder's right to appeal to the Dundee Public Contract Review Board. The bidder must appeal in writing, stating their reason for appeal within 10 days of receipt of the notice of bid rejection. The City Council setting as the Public Contract Review Board shall hear the appeal.

**ORDINANCE NO. 378**

- E. Rejection of All Bids or Proposals: All bids or proposals for a specific project may be rejected for good cause upon a written finding by the City Administrator acting as the City's Purchasing Agent, or by the City Council or Public Contract Review Board that it is in the public interest to do so. Notification of this action shall be sent to all bidders within 10 days of the decision. The Public Contract Review Board will hear any appeal of any such action other than its own.
- F. Negotiations with Bidders Prohibited: Unless a request for proposal is used, the City shall not negotiate with any bidder prior to awarding the contract. After awarding the contract, modifications to the contract shall be made with change orders or addenda to the contract and in accordance with the exemption provisions of this ordinance and state laws.

**Section 12. Emergency Conditions.** If emergency conditions require prompt execution of the contract, competitive bidding may be dispensed with, in which case the same may be declared by a majority vote of the Public Contract Review Board, together with written findings for such declaration of an emergency.

**Section 13. Repealing Clause.** Ordinance No. 184, and any other ordinances referencing the Attorney General's Model Public Contract Rules, or setting forth bidding procedures on public contracts are hereby repealed.

**Section 14. Severability.** The invalidation of any section, subsection, sentence, clause, phrase, or portion of this ordinance shall not affect the remaining sections or parts of the sections.

**Section 15. Effective Date.** This ordinance shall take effect 30 days from the date of its adoption by the City Council, and approval by the Mayor.

First Reading on October 2, 2000 by title only.

Adopted by the City Council this 4th day of December, 2000.

Approved by the Mayor this 4th day of December, 2000.

Ayes	Nayes	Absent
Miller	None	Payne
Stupor		
Bussanich		
Worrall		
Heimbach		



\_\_\_\_\_  
Mayor Koch

ATTEST:



\_\_\_\_\_  
City Administrator/Recorder