

**CITY OF LA PINE ORDINANCE
ORDINANCE NO. 2008-01**

AN ORDINANCE ADOPTING RULES OF PROCEDURE RELATING TO PUBLIC CONTRACTING; AND DECLARING AN EMERGENCY.

THE CITY OF LA PINE, OREGON, DOES ORDAIN AS FOLLOWS:

Recitals:

A. City of La Pine ("City") is an Oregon municipality which is subject to Oregon's public contracting laws.

B. La Pine's City Council is authorized to act as the City's Local Contract Review Board under ORS 279A.060 ("LCRB").

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

1. Specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency; and
2. 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.

D. The LCRB now desires to adopt the City's public contracting rules, consistent with the Oregon Public Contracting Code; now therefore

THE CITY OF LA PINE, OREGON, DOES ORDAIN AS FOLLOWS:

Section 1. SHORT TITLE. This ordinance shall be known as the "Public Contracting Ordinance" and may be so cited and pleaded and shall be cited herein as the "ordinance."

Section 2. ADOPTION. That, except as otherwise provided herein, the City hereby adopts the Oregon Attorney General's Model Public Contract Rules ("Model Rules"), Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48, and 49, as the public contracting rules for the City, as such Model Rules now exist or are later modified.

Section 3. ADOPTION. That the City's Public Contracting Rules ("Rules") are adopted as shown in Exhibit A, which is attached to this ordinance and incorporated herein by reference. The Rules described in Exhibit A shall be

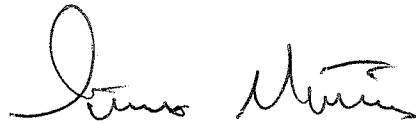
in addition to, and shall supersede any conflicting provisions in, the Model Rules.

Section 4. COMPLIANCE WITH OREGON LAW. That the City shall regularly review changes in the Oregon Public Contracting Code and Model Rules to ensure that the City's Rules are consistent with current law.

Section 5. SEVERABILITY. That if any portion of this ordinance is deemed invalid by a court of competent jurisdiction, the invalid portion shall be severed from the ordinance and the rest shall remain in full force and effect.

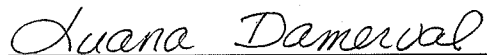
Section 6. DECLARATION OF EMERGENCY. The LCRB, finding that it is necessary for the general welfare of the City, that the City's Rules become effective June 25, 2008, requires that this ordinance take effect immediately upon its passage by the LCRB and approval by the Mayor.

IN WITNESS WHEREOF, this ordinance was PASSED by the Council by a vote of 7 for and 0 against and APPROVED by the Mayor this 25th day of June, 2008.



Mayor

ATTEST:



City Recorder

EXHIBIT A

PUBLIC CONTRACTING RULES AND PROCEDURES

A. Personal Services.

(1) **Definition.** "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; planners; attorneys, accountants, auditors and other licensed professionals; computer programmers; artists; designers; performers; and consultants. The City Council shall have the authority to determine whether any additional service not specifically mentioned in this paragraph is a "personal service" under this definition.

(2) **Contracts for Personal Services between \$5,000 and \$150,000.** Except as provided in Paragraph (4), below, non-exempt personal services contracts, including contracts for Architectural, Engineering and Surveying Services, and Related Services, for a contract amount of less than \$150,000 may be awarded from proposals that are solicited informally, either orally or in writing. If it is practicable, proposals shall be solicited from a sufficient number of qualified prospective proposers to ensure that no fewer than two qualified proposers submit proposals. If fewer than two qualified proposers submit proposals, the efforts made to solicit proposals shall be documented in the City's files. The selection may be based on criteria including, but not limited to, each proposer's:

- Particular capability to perform the services required;
- Experienced staff available to perform the services required, including each proposer's recent, current and projected workloads;
- Performance history;
- Approach and philosophy used in providing services;
- Fees or costs;
- Geographic proximity to the project or the area where the services are to be performed;
- Value of the work proposed in relation to the City's expenditure; and
- Understanding of and experience with assisting small rural communities in defining and developing their vision of the community's future.

Price may be considered, but need not be the determining factor. Proposals may also be solicited in using a written request for proposal, at the City's discretion.

- (3) **Contracts for Personal Services of \$150,000 and over.** Except as provided in Paragraph (4), below, non-exempt personal services contracts, including contracts for Architectural, Engineering and Surveying Services, and Related Services, for a contract amount of \$150,000 or greater shall be awarded by request for proposal in accordance with ORS 279B.060 and OAR 137-047-0260.
- (4) **Certain Contracts for Architectural, Engineering and Surveying Services, and Related Services.** Contracts for Architectural, Engineering and Surveying Services, and Related Services, as well as those defined in ORS 279C.110(2), shall be awarded by request for qualifications in accordance with ORS 279C.110.
- (5) **Exempt Personal Services Contracts.** Personal services contracts existing on the effective date of these Rules are exempt and may be extended by direct appointment. Contracts under \$5,000 are also exempt.

B. Delegation.

- (1) Except as otherwise provided in these rules, the powers and duties of the Local Contract Review Board ("LCRB") under the Public Contracting Code must be exercised and performed by the City Council.
- (2) Unless expressly limited by the LCRB or these Rules, all powers and duties given or assigned to contracting agencies by the Public Contracting Code may be exercised or performed by the City Manager, as "Chief Procurement Officer," or the City Manager's designee, including the authority to enter into emergency contracts pursuant to ORS 279B.080. Notwithstanding the foregoing, all contracts in excess of \$5,000 shall be approved by the LCRB.

C. Special Procurements and Exemptions.

- (1) The LCRB may exempt from competitive bidding certain contracts or classes of contracts for the procurement of goods and services according to the procedures described in ORS 279B.085. In accordance with OAR 137-047-0285(2), the City shall give public notice of the City's approval of a special procurement for goods and services in the same manner as public notice of competitive sealed bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the goods or services or class of goods or services to be acquired through the special procurement the City shall give affected persons at least seven (7) days from the date of the notice of approval of the special procurement to protest the special procurement.

- (2) The LCRB 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 LCRB 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 Chief Procurement Officer 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 one hundred twenty-five percent (125%) 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, or a contract for a public improvement that is estimated to cost between \$5,000 and \$100,000, 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 one-hundred twenty-five percent (125%) 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). 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 Chief Procurement Officer, or a designee of the Chief Procurement Officer or the Mayor 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 B, “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, pursuant to ORS 279B.080.

H. 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 Chief Procurement Officer. 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.

I. Purchases from Federal Catalogs.

Subject to applicable LCRB 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 LCRB that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

J. Electronic Advertising.

Pursuant to ORS 279B.055 and 279C.360, electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is likely to be cost-effective to do so. The Chief Procurement Officer or designee shall have the authority to determine when electronic publication is appropriate, and consistent with the City's public contracting policies.

K. Intergovernmental Contracting.

Pursuant to ORS 279A.025(2), the Public Contracting Code does not apply to contracts between a contracting agency and another contracting agency, or contracts between a contracting agency and an intergovernmental entity formed between or among governmental bodies of Oregon or another state.