

DIVISION 2. PURCHASING PROCEDURE

Sec. 2-204. Competitive bidding required.

Except as otherwise provided herein, all purchases of supplies, contractual services, capital equipment and construction contracts shall be purchased by formal written contract based on competitive bids. (Ord. of 7-7-75; Ord. of 11-6-89, § 2)

Sec. 2-205. When competitive bidding is not required.

- (a) *Authority of the mayor.* The mayor may direct the solicitation of proposals under the open market procedure for purchases of less than five thousand dollars (\$5,000.00). (Ord. of 7-7-75; Ord. of 11-6-89, § 2)
- (b) *Waiver by the city council.* The city council may waive the formal bidding procedure and authorize the solicitation of proposals under the open market procedure for purchases of less than ten thousand dollars (\$10,000.00) and for purchases of goods on contractual

services where the council determines that there are a small number of qualified bidders. (Ord. of 11-6-89, § 2)

(c) *Bidding not required.*

(1) Bidding shall not be required for professional services contract which may be awarded based on requests for proposals, negotiated contracts and consideration of the profession's qualifications, experience and reputation of the contractor.

(2) Bidding shall not be required where the city council determined that the goods or services required are only available from a single source. (Ord. of 11-6-89, § 2)

(d) *Renewal of service contracts.* The city council without seeking competitive bids may authorize the renewal of contractual services contracts where the city council determines that such renewal is in the public interest and any increase in cost for such services is less than ten thousand dollars (\$10,000.00) per contract year. (Ord. of 11-6-89, § 2)

(e) *Payment of Substitute Vendors or Subcontractors of Existing City Vendors.* The following provisions shall govern in all instances in which the city has an existing contract with an outside vendor or service provider, who for some reason is unable or unwilling to perform some or all of the work under its existing contract.

1. Provided the contract does not prohibit subcontracting, and the pricing and other economic terms are the same, or less expensive, for a substitute vendor or subcontractor, then no additional approvals are required solely on the provider's basis as a substitute vendor or subcontractor. The Mayor, or his designee, will so inform the city council in writing as soon as he becomes aware of such an arrangement.

2. Alternatively, if the pricing or other economic terms are more expensive, then prior city council approval shall be required where the cost of such an arrangement is reasonably likely to exceed three thousand dollars (\$3,000.00); and

3. Where there is an emergency that requires immediate purchase of supplies, contractual services, or capital equipment, the requirements of section 2-208, Emergency purchases, shall be followed. (Ord. of 5-19-08)

Sec. 2-206. Formal bidding procedure.

Formal competitive bidding shall conform to the following:

(1) *Notice inviting bids.* Notice inviting bids shall be published once in a greater Portland newspaper and at least five (5) days preceding the last day set for the receipt of bids. (Ord. of 11-6-89, § 2)

(2) *Bid depositions.* When deemed necessary by the purchasing agent, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety where the purchasing agent has required such. A successful bidder shall forfeit any surety required by the purchasing agent upon failure on his part to enter into a contract within ten (10) days after the award. (Ord. of 11-6-89, § 2)

(3) *Bid opening procedure.*

- (a) *Sealed.* Bids shall be submitted sealed to the purchasing agent and shall be identified as bids on the envelope.
- (b) *Opening.* Bids shall be opened in public at the time and place stated in the public notices by the purchasing agent or his designated representative.
- (c) *Tabulation.* A tabulation of all bids received shall be available for public inspection.
- (d) *Integrity of opening procedure.* A member of the council, the city clerk, or the mayor and the applicable department head (or the city treasurer), shall be present at the bid opening to insure and attest to the integrity of the bid opening procedure. (Ord. of 11-6-89, § 2)

(4) *Rejection of bids.* The mayor shall have the authority to reject any or all bids, or parts of bids, when the public interest would be served thereby, if the lowest bid or part of a bid is under one thousand dollars (\$1,000.00). When the lowest bid or part of a bid to be rejected exceeds one thousand dollars (\$1,000.00), the city council shall have the authority of rejection. (Ord. of 11-6-89, § 2)

(5) *Award of contracts.*

- (a) *Authority of the mayor.* The mayor shall have the authority to award contracts under five thousand dollars (\$5,000.00) and when the amount totals or exceeds five thousand dollars (\$5,000.00), only with prior city council authorization of said contract.
- (b) *Lowest responsible bidder.* Contracts shall be awarded to the lowest responsible bidder. In determining “lowest responsible bidder”, in addition to price, the mayor (when the amount is under five thousand dollars (\$5,000.00)), or the council (when the amount totals or exceeds five thousand dollars (\$5,000.00)), shall consider:
 - 1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - 2. Whether the bidder can perform the contract to provide the service promptly, or within the time specified, without delay or interference;
 - 3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - 4. The quality of performance of previous contracts or services;
 - 5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
 - 6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

7. The quality, availability and adaptability of the supplies, or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
9. The number and scope of conditions attached to the bid.

(c) *Similar or tie bids.*

1. *Local vendor preference.* Notwithstanding the provisions of Subsection (5)(b), it is the policy of the city, when making purchases or entering contracts, to give some preference to local vendors and service providers, if the price differential between the local and other suppliers is small. This policy encourages a strong and diverse economy within the city; and it further supports local businesses and individuals, which not only pay taxes, but also spend their incomes locally, and support other community institutions. If the bid received from a Westbrook business establishment is in the same amount as, or is within two percent (2 %) of a low bid submitted by a business located outside the city, then the purchase/contract may be awarded to the Westbrook business, quality and service being equal.
2. *Drawing of lots.* Where subsection (5)(c)(2) is not applicable, or where two (2) local vendors have tied for lowest bid, the purchasing agent shall resolve the impasse by drawing lots in public.

(d) *Statement of reasons.* When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Mayor or the Council and filed with the other papers relating to the transaction.

(e) *Performance bonds.* The purchasing agent shall have the authority to require a performance bond, before entering a contract, in such amount as he shall find reasonably necessary to protect the best interest of the city. (Ord. of 11-6-89, § 2)

(6) *Prohibition against subdivision.* No contract or purchase shall be subdivided to avoid the requirements of this section.

(7) *Right to reject bids, negotiate terms.* Notwithstanding any other provision of this ordinance, or any term, or lack thereof, in any bid document or request for proposal, the city of Westbrook expressly reserves the right to reject any and all bids and proposals; to award a bid or contract to other than the lowest bidder; to readvertise for new bids; and to negotiate for more advantageous terms with any vendor or service provider, as deemed in the best interest of the city. (Ord. of 7/7/75; Ord. of 11-6-89, § 2; Ord. of 5-4-98)

Sec. 2-207. Open market procedure.

Purchases of supplies, contractual services, capital equipment and construction contracts authorized by this chapter to be purchases through the open market procedure shall be purchased in conformance with the following procedure:

- (1) *Minimum number of bids.* All open market purchases shall, wherever possible, be based on at least three (3) proposals, and shall be awarded to the lowest responsible bidder in accordance with the standards set forth in subsection (5)(b) of section 2-206 above.
- (2) *Notice inviting bids.* The purchasing agent shall solicit bids by direct mail request to prospective vendors, or by telephone. Every reasonable effort will be made to solicit bids from Westbrook business establishments.
- (3) *Award.* The mayor shall have the authority to award all open market purchases under one thousand dollars (\$1,000.00).
- (4) *Recording.* The purchasing agent shall keep a record of all open market orders and bids submitted in competition thereon, and such records shall be available for public inspection. (Ord. of 7-7-75; Ord. of 11-6-89, § 2; Ord. of 12-16-91)

Sec. 2-208. Emergency purchases.

(a) *By purchasing agent.* In case of an apparent emergency which requires immediate purchase of supplies, contractual service or capital equipment, the mayor shall be empowered to authorize the purchasing agent to secure by open market procedure as herein set forth, at the lowest obtainable price, any supplies, contractual services, or capital equipment regardless of the amount of the expenditure.

- (1) Recorded explanation. A full report of the circumstances of an emergency purchase shall be filed by the purchasing agent with the city council and shall be open to public inspection.
- (2) Council confirmation. The city council shall confirm the expenditure after the fact if such expenditure would normally have required prior council approval.

(b) *By head of departments.* In case of actual emergency, and with the approval of the mayor, the head of any department may purchase directly any supplies or contractual services whose immediate procurement is essential to prevent delays in the work of the department which may vitally affect the life, health or convenience of citizens.

- (1) Recorded explanation. The head of such department shall send to the purchasing agent a full written report of the circumstances of the emergency. The report shall be filed with the council as provided in subsections (a)(1) and (2) above. (Ord. of 7-7-75; Ord. of 11-6-89, § 2)

Sec. 2-209. Inspection and testing.

(a) The purchasing agent shall inspect, or supervise the inspection of, all deliveries of supplies, contractual services, and capital equipment to determine their conformance with the specifications set forth in the order or contract.

- (1) *Inspection by department.* The purchasing agent shall have the authority to authorize having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under the rules and regulations which the purchasing agent may prescribe.
- (2) *Tests.* The purchasing agent shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the purchasing agent shall have the authority to make use of laboratory facilities of any agency of the city government or of any outside laboratory.

(b) The purchasing agent may require that any contract awarded for any public improvement provided for the withholding of up to ten percent (10%) of the money due the contractor until the project under contract has been accepted by the city. When such retainage has been withheld by the city, it shall not be withdrawn until the purchasing agent has reported the results of any final inspection and testing to the city council, which shall have sole authority to release such sums. (Ord. of 7-7-75; Ord. of 11-6-89, § 2; Ord. of 2-2-93)

Sec. 2-210. Cooperative purchasing.

The purchasing agent shall have the authority to join with the other units of government in cooperative purchasing when the best interests of the city would be served thereby, subject to the intent and standards as set forth in sections 2-204 through 2-207. (Ord. of 7-7-75; Ord. of 11-6-89, § 2)

Secs. 2-211 - 2-213. Reserved

ARTICLE V. POLICE, FIRE/RESCUE & COMMUNICATIONS PERSONNEL

Sec. 2-214. Employees to comply with article.

It shall be the duty of all persons in the public safety service(s) of the city to comply with rules contained in this article and aid in their enforcement. (Ord. of 12-6-82; Ord. of 9-9-96)

Sec. 2-215. Public safety commission established.

A public safety commission of the city is hereby established. (Ord. of 12-6-82)

Sec. 2-216. Membership, appointment, compensation of commission.

(a) The public safety commission shall consist of one member from each ward, not to exceed five (5) members who shall be qualified voters from the city. In addition, the mayor may appoint one member, to serve as an alternate, who shall also be a qualified voter of the city, and who may attend and participate in all commission proceedings, except that he or she may only vote when one or more regular members are absent.

(b) The mayor shall appoint the original members of the commission using the following procedure; for the first terms, he shall appoint one to serve one (1) year, one to serve two (2) years, one to serve three (3) years, one to serve four (4) years and one to serve five (5) years. Thereafter all appointments shall be for a complete term of five (5) years, and the terms of office shall expire on the first day of January.