

Title 3

REVENUE AND FINANCE

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Chapter 3.04

CONTRACTS AND COMPETITIVE BIDDING

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3.04.010 Contract review board.

The Aurora city council is designated as the local contract review board and relative to contract concerns of this city shall have all the powers granted to the State Public Contract Review Board. (Ord. 240 § 1, 1976)

3.04.020 Administrative rules adopted by reference.

A. The Model Public Contract Rules prepared by the state Attorney General are rejected.

B. The administrative rules for the local contract review board, attached to the ordinance codified in this section as Exhibit B, are adopted by the city council acting as the official governing body of the city and in its

capacity as the local contract review board and will be available for public inspection at the office of the city recorder. (Ord. 426 § 4, 2003; Ord. 400 §§ 1, 2, 2000)

3.04.030 Definitions.

The following words and phrases shall mean:

"Board" means the local contract review board as established in Section 3.04.010.

"Public contract" means any purchase, lease or sale by the Aurora city council of personal property, public improvements or services other than agreements which are exclusively for personal service.

"Public improvement" means any construction of improvements on real property by or for the city. (Ord. 240 § 2, 1976)

3.04.040 Competitive bids-- Exemptions.

A. All contracts shall be based upon competitive bids except:

1. Contracts made with, or the cost of which is provided by, other public agencies or the federal government;

2. Contracts for any purchase the amount of which are two thousand dollars (\$2,000.00) or less;

3. Contracts for any item which is available only through one company, firm or individual;

4. 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;

5. And including the other exemptions listed in ORS 279.015(1).

B. The contract review board may by resolution exempt other contracts from competitive bidding if it finds:

1. The lack of bids will not result in favoritism or substantially diminish competition in awarding the contract; and

2. The exemption will result in substantial cost savings. In making such finding, 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. (Ord. 426 § 3(A) and (B), 2003; Ord. 240 § 3, 1976)

3.04.050 Emergency contracts.

A contract may also be exempted from competitive bidding if the board, by unanimous vote, determines that emergency conditions require prompt execution of the contract. A determination of such an emergency shall be entered into the record of the meeting at which the determination was made. (Ord. 240 § 4, 1976)

3.04.060 Brand name specification in contracts.

A. 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 under this section. 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.

B. The board may by resolution exempt certain products or classes of products upon any of the following findings:

1. It is unlikely that such exemption will encourage favoritism in the awarding of the contract or substantially diminish competition.

2. 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.

3. There is only one manufacturer or seller of the product of the quality required.

4. Efficient utilization of existing equipment or supplies require the acquisition of compatible equipment or supplies. (Ord. 240 § 5, 1976)

3.04.070 Bid rejection.

The Aurora city council or an official designated by the Aurora city 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. (Ord. 240 § 6, 1976)

3.04.080 Bidder disqualification.

The Aurora city council or an official designated by the Aurora city 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 of sufficient experience to perform the contract; or

D. The person has repeatedly breached contractual obligations to public and private contracting agencies. (Ord. 240 § 7, 1976)

3.04.090 Appeal of disqualification.

A person who has been disqualified as a bidder may appeal such disqualification to the board as provided in this section:

A. The person shall, within three business days after receipt of notice of disqualification, in writing notify the Aurora city recorder that he or she wishes to appeal his or her disqualification.

B. Immediately upon receipt of such written notice of appeal, the Aurora city recorder shall inform the board.

C. Upon receipt of notice of appeal, the board shall notify the person appealing of 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 administrator and/or the city's superintendent of public works or city engineer, and any evidence provided by the parties. The hearing shall be public and the appeal decided within thirty (30) days after receiving the notification. The board's decision and reasons therefor shall be in writing. (Ord. 426 § 3(C), 2003; Ord. 240 § 8, 1976)

3.04.100 Additional authority of the board.

In addition to the powers and duties established by this chapter, 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 prequalification 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 279.435. (Ord. 426 § 3(D), 2003; Ord. 240 § 9, 1976)

Chapter 3.08

SPECIAL ASSESSMENTS FOR LOCAL IMPROVEMENTS

Sections:

- 3.08.010 Definitions.**
- 3.08.020 Initiating improvements.**
- 3.08.030 Petitioner bond.**
- 3.08.040 Engineer's report.**
- 3.08.050 Action on engineer's report.**
- 3.08.060 Resolution and notice of hearing.**
- 3.08.070 Public hearing.**
- 3.08.080 Manner of doing work.**
- 3.08.090 Special hearing when low bid substantially exceeds engineer's estimate.**
- 3.08.100 Assessment ordinance.**
- 3.08.110 Notice of assessment.**
- 3.08.120 Method of assessment-- Alternative methods of financing.**
- 3.08.130 Lien recording-- Foreclosure.**
- 3.08.140 Errors in assessment calculations.**
- 3.08.150 Deficit assessment.**
- 3.08.160 Rebates.**
- 3.08.170 Abandonment of proceedings.**
- 3.08.180 Curative provisions.**
- 3.08.190 Reassessment.**

3.08.010 Definitions.

As used in this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the text, words in the present tense shall include the future, words in the plural number shall include the singular number, and the masculine includes the

feminine. The word "shall" is always mandatory and not merely directory.

"City" means the city of Aurora, Marion County, Oregon.

"Council" means the city council for the city of Aurora, Oregon.

"Liens" means liens, assessments or installments of assessments, and includes any of those terms.

"Local improvement" means:

1. The grading, graveling, paving or other surfacing of any street, or opening, laying out, widening, extending, altering, changing the grade of or constructing any street;
2. The construction or reconstruction of sidewalks;
3. The installation of ornamental street lights;
4. The installation of underground wiring or related equipment;
5. The reconstruction or repair of any street improvement mentioned in this subsection;
6. The construction, reconstruction or repair of any sanitary or storm sewer or water main;
7. The acquisition, establishment, construction or reconstruction of any off-street motor vehicle parking facility;
8. The construction, reconstruction or repair of any flood control dike or dam;
9. The construction, reconstruction, installation and equipping of a park, playground or neighborhood recreation facility;
10. Any other local improvement for which an assessment may be made on the property specially benefited.

"Lot" means lot, block or parcel of land.

"Owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last

available complete assessment roll in the office of the Marion County assessor.

"Property benefited" means all property specifically benefited by the improvement, the relative extent of such benefit to be determined by any just and reasonable method of apportionment of the total cost of the improvement among the properties determined to be specially benefited therefrom.

"Real property" may be described by giving the subdivision according to the U.S. Survey when coincident with the boundaries thereof, or by lots, blocks and addition names, or by giving the boundaries thereof by metes and bounds, or by reference to the book and page of any public record of the Marion County assessor, or by designation of Marion County assessor's tax account number. If the owner of any land is unknown such land may be assessed to "unknown owner" or "unknown owners." If the property is correctly described, no assessments shall be invalidated by a mistake in the name of the owner of the real property assessed, by the omission of the name of the owner or the entry of the name of the true owner.

"Recorder" means the auditor, recorder, clerk or other person or officer of a city serving as clerk of the city or performing the clerical work of the city. (Ord. 343 § 1, 1991)

3.08.020 Initiating improvements.

A. When the council considers it necessary to require that a local improvement be paid for in whole or in part by special assessment according to benefits conferred, the council may, by resolution, declare its intent to make the improvement and direct the city engineer to make a survey of the

improvement and file a written report with the city recorder.

B. When the owners of two-thirds of the property that will benefit by a local improvement request by written petition that the council initiate an improvement, the council may by resolution declare its intent to make the requested improvement, and direct the city engineer to make a survey of the improvement and file a written report with the city recorder. (Ord. 343 § 2, 1991)

3.08.030 Petitioner bond.

If an improvement is initiated by petition of the property owners, the council may require the petitioners to post a bond in the amount of five hundred dollars (\$500.00), plus an additional amount sufficient to cover the cost of the city engineer's report. (Ord. 343 § 3, 1991)

3.08.040 Engineer's report.

Unless the council directs otherwise, the city engineer's report, or the report of a private engineer, hired by the property owners, which private engineer's report has been approved by the city engineer, shall contain the following:

A. A map or plat showing the general nature, location and extent of the proposed improvement, and the land to be assessed for any part of the cost;

B. Plans, specifications and estimates of the work to be done. When the proposed project is to be carried out in cooperation with another governmental agency, the plans, specifications and estimates of that agency may be adopted;

C. An estimate of the cost of the improvement, including legal, administrative, engineering and other overhead costs, and

an estimate of the cost to the city which is not assessable to properties;

D. An estimate of the unit cost of the improvement to each property benefited, as per method to be used, (i.e., per square foot, per front foot, etc.) ;

E. A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to benefited properties;

F. A description of each lot, parcel or portion of a lot or parcel to be benefited, with the names of the record owners and, when readily available, names of any contract purchasers, as shown on the books and records of the Marion County tax assessor. It shall be sufficient to use the tax account number assigned to the property by the Marion County tax assessor, or the book and page designations as shown on the books and records of the Marion County clerk;

G. If the improvement is initiated by petition, the percentage of benefited properties that are represented on petitions by owners who favor the improvement;

H. A recommendation regarding the rate of interest, not to exceed ten (10) percent per annum, to be paid on assessments payable in installments;

I. Such further information as requested by council. (Ord. 343 § 4, 1991)

3.08.050 Action on engineer's report.

Upon review of the city engineer's report, the council may, by motion, approve the report with or without modifications, require additional information about the improvement, or abandon the improvement. (Ord. 343 § 5, 1991)

3.08.060 Resolution and notice of hearing.

After council has approved the city engineer's report as submitted or modified, the council shall, by resolution, declare its intent to make the improvement, and direct the city recorder to publish notice of the council's intention once a week for two consecutive weeks in a newspaper of general circulation within the city. Each owner of property benefited by the improvement shall also be notified by first-class mail. If an address of an owner or owners agent is unknown to the city recorder, the notice shall be mailed to the owner at the address of the property located within the city. Any mistake, error, omission or failure with respect to such mailing shall not be jurisdictional, and shall not invalidate the assessment proceedings. No foreclosure proceedings or legal action to collect the assessment to property where the owner is unknown may be initiated until such notice is personally served upon the owner, or by publication of foreclosure for two successive weeks in a newspaper of general circulation within the city. The notice of hearing shall contain the following:

A. That the report of the city engineer is on file in the office of the city recorder and is subject to public examination;

B. That the council will hold a public hearing on the proposed improvement on a specified date, which shall be not less than ten (10) days after the first publication of the notice, at which objections and remonstrance's to the improvement will be heard; and that if prior to or at the hearing there are written remonstrance's from the owners of sixty-seven (67) percent of the property to be benefited by the improvement, the improvement will be abandoned for not less than six months, except for a sidewalk im-

provement or except for an improvement unanimously declared by the city council to be needed at once because of an emergency;

C. A description of the property to be benefited by the improvement, and owners of the property as shown on the books and records of the Marion County tax assessor. For the purposes of this subsection, it shall be sufficient to describe the property to be benefited by the tax account number(s) assigned to the property and used by the Marion County tax assessor, or the book and page designations shown on the books and records of the Marion County clerk;

D. The estimate of the unit cost of the improvement to the property benefited;

E. The estimate of the total cost of the improvement to be paid for by special assessments of benefited property;

F. That upon completion of the improvement, if the actual cost is found to be greater than the estimated cost, the council may make a deficit assessment for the additional cost. Notice of a public hearing to provide the opportunity for objections to the proportionate deficit assessments shall be mailed to the owners, and such objections shall be considered, and determination of the assessment against each particular lot, block or parcel of land shall be made as provided herein for the initial assessments, and the deficit assessments spread by ordinance. (Ord. 426 § 5, 2003; Ord. 343 § 6, 1991)

3.08.070 Public hearing.

After hearing the written remonstrances and oral objections of the owners of property to be benefited by the improvement, the council may, by resolution, at the time of the hearing or within sixty (60) days thereafter, order construction or abandonment of the improvement. If the improvement resolution

is not acted upon within sixty (60) days of the hearing, it shall be deemed abandoned. (Ord. 343 § 7, 1991)

3.08.080 Manner of doing work.

The council may provide in the improvement resolution that the construction work may be done in whole or in part by the city, by contract, by another governmental agency, or by a combination thereof. To the extent required, contracts to perform improvements shall proceed in accordance with applicable public contract law. (Ord. 343 § 8, 1991)

3.08.090 Special hearing when low bid substantially exceeds engineer's estimate.

If the council finds, upon opening bids for the work of such improvement, that the lowest responsible bidder is fifteen (15) percent or more in excess of the engineer's estimate, it shall provide for holding a special meeting for the hearing of objections to the intent to proceed with the improvement on the basis of such bid, and shall direct the city recorder to publish one notice thereof in a newspaper of general circulation in the city. Notice shall state the purpose, date, time and place of the hearing. After the hearing, the council shall determine whether the bid shall be accepted or rejected. (Ord. 343 § 9, 1991)

3.08.100 Assessment ordinance.

When the council, after the aforesaid hearing or hearings, shall determine to proceed with the improvement, it shall pass an ordinance assessing the various lots, parcels, tracts of properties specially benefited thereby with their apportioned share of the cost of the improvement; provided, howev-

er, that the passage of such assessment ordinance may be delayed until the contract for the work is let, or the improvement is completed, and the total cost therefor is determined. (Ord. 343 § 10, 1991)

3.08.110 Notice of assessment.

A. Within ten (10) days after the adoption of the assessment ordinance, the city recorder shall send a notice of assessment to the owner of each assessed property by first-class mail, and shall publish the notice of assessment once a week for two consecutive weeks in a newspaper of general circulation within the city. The first publication of notice shall not be later than twenty (20) days after the date of the assessment ordinance.

B. The mailed and published notice of assessment shall include the names of the property owners, a description of the assessed property (by tax account number), the amount of the assessment, the date of the assessment ordinance, and the rate of interest to be charged on assessments paid in installments. The notice shall also state that the assessment may be paid in full, without interest, within ten (10) days after the first publication of notice, and that if the assessment is not paid in full within that time, interest will accrue from the eleventh day after the date of the first publication of notice, until paid. The notice shall also state that the property will be subject to foreclosure unless the owner either pays the assessment in full, or makes application to pay the assessment in installments, within ten (10) days from the date of the first publication of notice. The notice mailed to owners of assessed property shall include an application for paying the assessment in installments. (Ord. 343 § 11, 1991)

**3.08.120 Method of assessment--
Alternative methods of
financing.**

When adopting a method of assessment of the costs of the improvement, the council may:

A. Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived;

B. Use any method of apportioning the sum to be assessed that is just and reasonable between the properties to be specially benefited;

C. Authorize payment by the city of all, or any part of the cost of any such improvement, when in the opinion of the council, on account of topographical or physical conditions, unusual or excessive public travel or other character of the work involved, or when the council otherwise believes the situation warrants it; provided the method selected created a reasonable relation between the benefits derived by the properties specially assessed and the benefits derived by the city as a whole.

Nothing herein contained shall preclude the council from using other available means of financing improvements, including federal, state or county grants-in-aid, general obligation bonds, or other legal means of finance. In the event any of such other means of finance are used, the council may, in its discretion, levy special assessments hereunder according to benefits derived to cover any part of the costs of the improvement not covered by such means. (Ord. 343 § 12, 1991)

3.08.130 Lien recording--foreclosure.

Upon the passage of the assessment ordinance, all assessments shall be a lien upon each real property assessed, and the assessment shall be entered in the city lien docket. Assessment liens shall be in favor of the city, and have priority over all other liens and encumbrances whatsoever.

A. Lien Docket. The city recorder shall enter in the lien docket a statement of the amounts assessed upon each particular lot, parcel of land, or portion thereof, a description of the improvement, the names of the owners and the date of the assessment ordinance.

B. Lien Payment. The lien shall be considered delinquent if not paid in full, or placed on an installment basis, within thirty (30) days after the date of the assessment ordinance. If the owner neglects or refuses to pay an installment when it becomes due or payable, the council may declare, by motion, the owner to be in default, and may declare the whole sum, both principal and interest, due and payable.

C. Foreclosure. If the sum assessed upon any land is not wholly paid within thirty (30) days of the date of the assessment ordinance, or application for installment payments granted, or a property declared to be in default, the city may foreclose or enforce collection of assessment liens in the manner provided by ORS 223.505 et seq. If no bid is received for the sale of the property, the city may purchase the property by bidding therefore the amount of the lien(s) and the cost of advertising and sale, as provided in ORS 223.545. (Ord. 343 § 13, 1991)

3.08.140 Errors in assessment calculations.

Claimed errors in the calculation of assessments shall be called to the attention of the city recorder, who shall determine whether there has been an error in fact. If the city recorder finds that there has been an error in fact, he or she shall recommend to the council an amendment to the assessment ordinance to correct the error. Upon enactment of the amendment, the recorder shall make the necessary correction in the lien docket and send a corrected notice of assessment to affected owners by certified mail. (Ord. 343 § 14, 1991)

3.08.150 Deficit assessment.

If an assessment is made before the total cost of the improvement is ascertained, or on the basis of erroneous information, and if the amount of the assessment is insufficient to defray the expenses of the improvement, the council may, by motion, declare the deficit and prepare a proposed supplemental assessment by ordinance. The procedure for the adoption of a supplemental assessment shall be identical to that for an original assessment, as provided herein. (Ord. 343 § 15, 1991)

3.08.160 Rebates.

If, upon completion of the improvement project, the assessment previously levied is found to be more than sufficient to pay the cost of the improvement, the council shall ascertain and declare the excess by ordinance. When declared, the excess amounts must be entered on the lien docket as a credit on the appropriate assessment. If the assessment has been paid, the person who paid it, or his or her legal representative, shall be entitled to payment of the rebate credit. (Ord. 343 § 16, 1991)

3.08.170 Abandonment of proceedings.

The council shall have full power and authority to abandon and rescind proceedings for improvements hereunder at any time prior to the final consummation of such proceedings, and if liens have been assessed upon any property under this chapter or pursuant to the provisions hereof, they shall be cancelled, and any payments made thereon shall be refunded to the payor, his or her assigns or legal representatives. (Ord. 343 § 17, 1991)

3.08.180 Curative provisions.

No improvement assessment shall be invalid by reason of a failure to give in any report pertaining to the proposed public improvement or the proposed assessment or by reason of a failure to insert in the assessment ordinance or ordinance or in the lien docket or elsewhere in the proceedings the name of the owner of any lot, tract or parcel of land or part thereof, or the name of any person having a lien upon or interest in such property or by reason of any error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, in any of the proceedings or steps herein above specified, unless it appears that the assessment as made insofar as it affects the person complaining, is unfair and unjust, and in such event the council shall have the power and authority to remedy and correct all such matters by suitable actions and proceedings. (Ord. 343 § 18, 1991)

3.08.190 Reassessment.

Whenever an assessment, deficit assessment or reassessment for any improvement which has been or may be hereafter made by the city, has been or shall be hereafter set aside, annulled, declared or rendered void or its enforcement refuted by any court of this state or any federal court having jurisdiction thereof whether directly or by virtue of any decision of such court or when the council shall be in doubt as to the validity of such assessment, deficit assessment or reassessment or any part thereof, the council may make a new assessment or reassessment in accordance with the provisions of ORS 223.405 et seq. (Ord. 343 § 19, 1991)