



March 13, 1980

DEPARTMENT OF  
PUBLIC WORKSMIKE LINDBERG  
COMMISSIONEROFFICE OF  
PUBLIC WORKS  
ADMINISTRATOR621 S.W. ALDER  
PORTLAND, OR 97205

TO: Commissioner Mike Lindberg

SUBJECT: Engineer's report on the proposed ordinance amending Chapter 17.20 Bidding Prerequisites by repealing said chapter and substituting a new chapter to comply with standards established in ORS Chapter 279 and establishing an anniversary system for renewal of prequalification rather than a fixed date as presently used and raising the monetary limit at which prequalification is required.

This office and the Contracts Compliance Office met to discuss ways which we could cooperate which would help those applying for prequalification and EEO certification and which would also reduce our respective work loads. It was concluded that if contractor prequalification renewals were done on an anniversary basis, they and the required EEO certification (which is on an anniversary date system) could be made renewable on the same date. By adopting this system only one mailing by the City would be required instead of two as at present to remind the contractors of the need to prequalify and to recertify as an EEO employer. An anniversary system would also allow the selection of dates which would spread the renewal of prequalification of contractors throughout the year. By working together the two offices would be able to spread some 200 plus actions across 12 months instead of trying to do them in about 3 months. It has been necessary to have City Engineer personnel work overtime in order to meet the present date of April 30th as now required by the Code. This also works a hardship for the Contracts Compliance Office.

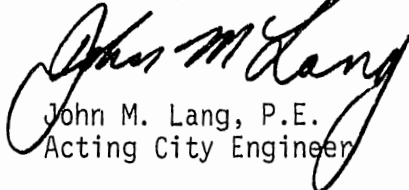
This office also feels that a number of applications could be eliminated if the limit at which prequalification of contractors is required was raised from its present limit of \$10,000 to \$50,000. With the help of the City Auditor's Office, it has been determined that the present requirement has been in effect since April of 1942. It is believed, but not verified, that this \$10,000 figure is what the State of Oregon specified at that time as being the maximum project cost a government entity of the state could do itself before being required to put the project out to bid or proving that it could do the job at less cost than any prospective bidder. This figure is now \$50,000 (ORS 279.023). This monetary amount has also been used by the City to allow small contracting businesses, which appear qualified, to bid on these smaller jobs

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without the necessity of formally prequalifying. This has three benefits: (1) it allows the contractor to gain experience and become acquainted with City requirements; (2) it allows the City to assess the ability of contractors that would not normally be seen; and (3) will slowly broaden the base of qualified contractors on the City's bidders lists.

The City Attorney's Office in the person of Stan Torgrimson was then approached as to the legality of these changes. At the meeting with Mr. Torgrimson, we were informed that there was no conflict with the Oregon Revised Statutes and that he had prepared a draft revision of Chapter 17.20 to bring it up to date with current state requirements for prequalification of contractors. Mr. Torgrimson added that rather than submit the amendments as we discussed, that they should be included in his draft and submitted as a totally new chapter. With his aid and final approval of the ordinance which has been submitted with this report, that is what was done.

It is recommended that this ordinance be passed by the Council.

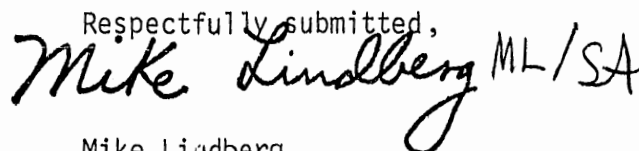
  
John M. Lang, P.E.  
Acting City Engineer

To the Council:

Your Commissioner of Public Works concurs with the above City Engineer's Report, and

RECOMMENDS,

that this ordinance be passed by the Council as submitted by the City Engineer.

Respectfully submitted,  


Mike Lindberg  
Commissioner of Public Works

HGS:jmh

Enclosure

## ORDINANCE NO. 149427

An Ordinance amending Chapter 17.20 Bidding Prerequisites of the Code of the City of Portland by repealing said chapter and substituting therefore a new chapter to comply with standards established in ORS Chapter 279 establishing the rules for prequalification (bidding prerequisites), and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. Chapter 279 (Public Contracts and Purchasing) of the Oregon Revised Statutes establishes the standards for prequalification of bidders, including the rules, application for prequalification, notification, investigation, revocation or revision, appeal of disqualification, and appeal procedure, hearing, judicial review in case of disqualification, and that the City process should conform to these requirements.
2. Chapter 17.20 of the code conflicts with the requirements of ORS Chapter 279 and should be repealed and a new chapter substituted to comply with ORS Chapter 279.
3. This action has been recommended by the City Engineer and approved by the Commissioner in charge and the City Attorney.

NOW, THEREFORE, the Council directs:

- a. Chapter 17.20 Bidding Prerequisites of the Code of the City hereby is repealed and the following Chapter CONTRACTOR PREQUALIFICATION RULE is substituted, to be entitled, numbered and to read as follows:

Chapter 17.20

CONTRACTOR PREQUALIFICATION RULE

17.20.010 Mandatory Prequalification Rule. Pursuant to ORS 279.037 through 279.047, the following sections shall comprise the rule for mandatory prequalification for all persons desiring to bid and for furnishing materials, supplies or services to the City of Portland. (a) Any person proposing to bid: (1) For an improvement upon any real estate belonging to or to be used by the City which is estimated by the City to cost fifty thousand dollars or more; (2) In any other instance where the City Council has specifically required prequalification, such person shall not submit a bid until he has first been prequalified as provided in this chapter.

17.20.020 - Prerequisite for Prequalification. Pursuant to Chapter 3.100 Code of the City of Portland, unless exempted thereunder, as a prerequisite of prequalification, an applicant must have received Equal Employment Certification from the City's Contract Compliance Division.

17.20.030 - Prequalification Applications. Pursuant to ORS 279.041, prequalification applications shall be in writing on a standard form questionnaire as provided by the City of Portland or the Public Contract Review Board for the State of Oregon. Such forms may be obtained from the City Engineer or from the City's Purchasing Agent. Information required on the form shall be supplied fully and completely, unless patently inapplicable, and the person in whose name the information is submitted or the appropriate officer of the corporation or association as a prospective bidder shall verify the same before a notary. Any prospective bidder shall supply further information or detail as the City Engineer may require to amplify a prequalification application. All such prequalification applications shall be filed with or sent to the City Engineer unless the advertisement for bids designates otherwise.

17.20.040 - Special Prequalification. A separate prequalification can be required for a specific project when the City deems that the project is such that its size, scope or complexity so warrants.

17.20.050 - Exemption to Prequalification Statement. If a person has been prequalified pursuant to ORS 279.047 by the Department of Transportation to perform contracts or by the Department of General Services to perform contracts for public improvements, he may submit proof of such prequalification in lieu of prequalification application as required by Section 17.20.030. If a person submits such proof of such prequalification, then he is rebuttably presumed qualified under Section 17.20.030. Nothing contained herein shall be deemed any waiver by the City of the requirements for prequalification set forth in this chapter nor of the City Engineer's authority to require additional information or detail as set forth in Section 17.20.030 or prior approval as set forth in Section 17.20.080.

17.20.060 - Time for Filing Prequalification and Time for Notice of Disqualification. Prequalification applications must be received by the City Engineer at least nine (9) business days prior to the date of bid opening unless specifically stated otherwise in the advertisement. Disqualification notice, if any, will be given by the City at least three (3) business days prior to the bid opening date. If prequalification application received less than nine (9) business days prior to the bid opening may, at the City's option, be processed, but the applicant in so doing waives all right of appeal for possible disqualification. Prequalification applications submitted without being designated for a project advertised for bid by the City will be considered as a general prequalification application and processed pursuant to ORS 279.039 and notice of prequalification status will be given within thirty (30) days of the receipt of the application. A notice of disqualification can be given verbally in order to comply with the bid opening date requirements. A verbal disqualification notice will be followed by written notice and bear the date of the verbal notice.

17.20.070 - Basis for Disqualification. Pursuant to ORS 279.037 the City may disqualify any person as a bidder if it is found: (a) the person does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a 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 key personnel available of sufficient experience to perform the contract; (d) the person has repeatedly breached contractual obligations to public and private contracting agencies; or (e) the person fails to promptly supply information as requested by the City Engineer pursuant to a prequalification investigation.

17.20.080 - Scope of Prequalification. The City Engineer shall determine whether or not the applicant for prequalification shall be considered prequalified for City bids, and the extent of prequalification if approved, and shall notify the applicant by certified mail. The City Engineer may limit the types of work, materials or services on which bids will be accepted from the applicant, may restrict the size or cost of project bids to be received by the City from the applicant, or may impose any other restrictions which he finds appropriate under the circumstances. Thereafter, if the prospective bidder has prequalified, bids may be received from the bidder within the limitations and restrictions imposed upon the prequalification. Unless otherwise specified by the City Engineer, any prospective bidder whose application for prequalification has been rejected, or who seeks a broadening of his prequalification or elimination of any restriction, may resubmit an application for a prequalification showing such additional facts and circumstances as he may desire, at least three (3) months after the City Engineer's determination. With or without a request from the prequalified bidder, the prequalification standing and any limitation on class of work or size of project may be reviewed further by the City Engineer and increased or decreased as found appropriate. In any event the City Engineer shall notify the prequalified prospective bidder in writing of any such revision.

17.20.090 - Appeal of Disqualification Procedure. Pursuant to ORS 279.043 any person intending to appeal his disqualification as a bidder shall, within three (3) business days notify in writing the City Engineer that he appeals the disqualification. Immediately upon receipt of such notice of appeal, the City Engineer shall notify the Council, the City of Portland's Public Contract Review Board and a hearing will be scheduled pursuant to ORS 279.045 and which may be reviewed pursuant to ORS 279.045.

17.20.100 - Period of Qualification - Termination or Suspension. Subject to the restrictions or limitations imposed thereon by the City Engineer, approval of the application for prequalification shall permit receipt of all bids submitted by the prequalified bidder on proposals fixed on or before the annual anniversary date assigned the prequalified bidder by the City Engineer. Prequalification applications submitted for renewal may not be submitted more than one hundred twenty (120) days prior to the anniversary date assigned. Notwithstanding any such approval, the City Engineer may at any time terminate prequalification approval or may suspend the prequalification pending presentation as required by him of such additional information or standards either in person, by authorized

## ORDINANCE No.

representative or in writing under oath, concerning financial ability, equipment, experience or other matters which he shall deem appropriate. Receipt of a bid shall not, however, prevent determination that some other bidder is better qualified for a particular project, supply or service, nor constitute acceptance or award.

17.20.110 - Changes not Requiring New Prequalification. If notice thereof is filed with or sent to the City Auditor, new prequalification shall not be required for changes in corporation or business name or for changes in corporate officers, not involving changes in assets, financial standing or corporate reorganization, where no other change is involved.

17.20.120 - Statements Confidential. Any information voluntarily submitted by an applicant pursuant to an investigation or in conjunction with a prequalification statement as required by this chapter shall be deemed a trade secret pursuant to paragraphs (b) and (e) or subsection (1) of ORS 192.500, if requested by the person submitting the information.

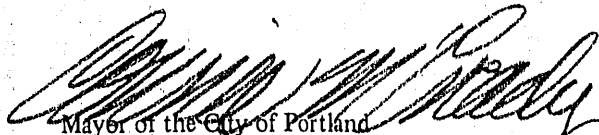
(a) The prequalification application and any statement or information supplied in connection therewith, are deemed confidential. The City Engineer shall maintain custody of all information submitted to him for prequalification purposes and none of said information shall be disclosed to any other person except upon written order of the person furnishing the same or by an appropriate order of a court of competent jurisdiction.

(b) Nothing contained in subsection (a) of this section shall be construed to prevent the disclosure of prequalification information to any officer, employee, or agent of the City when it becomes necessary to examine or reexamine said information as part of an official duty.

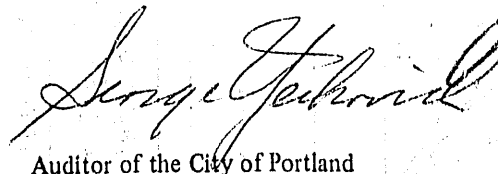
Section 2. Inasmuch as this Ordinance is necessary for the immediate preservation for the public, health, peace and safety of the City of Portland in this: In order that the rules relating to Contractor Prequalification with the City of Portland comply with ORS Chapter 279; therefore an emergency is hereby declared to exist and this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, APR 10 1980

Commissioner Mike Lindberg  
Harlan Scott:mmc  
3-13-80

  
Mayor of the City of Portland

Attest:

  
Auditor of the City of Portland

Calendar No. <sup>1270</sup>~~1135~~

# ORDINANCE No. 149427

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An Ordinance amending Chapter 17.20 Bidding Prerequisites of the Code of the City of Portland by repealing said chapter and substituting therefore a new chapter to comply with standards established in ORS Chapter 279 establishing the rules for prequalification (bidding prerequisites), and declaring an emergency.

THURSDAY

APR 3 1980

CONTINUED TO APR 10 1980

Filed \_\_\_\_\_

GEORGE YERKOVICH

Auditor of the CITY OF PORTLAND

By \_\_\_\_\_

Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	/	
Jordan	/	
Lindberg	/	
Schwab	/	
McCready	/	

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

INTRODUCED BY

Commissioner Mike Lindberg

NOTED BY THE COMMISSIONER

Affairs

Finance and  
Administration

Safety

Utilities

Works *ML/S4*

BUREAU APPROVAL

Bureau:

Street & Structural Engineering

Prepared By:

Date:

Harlan Scott:mmc

3-13-80

Budget Impact Review:

☐ Completed

☐ Not required

Bureau Head:

*David Vargas*  
David Vargas, Acting Chief

NOTED BY

City Attorney

City Auditor

City Engineer Approved:

John M. Lang, Acting City Engr.

By *John M. Lang*