



# **Purchasing and Procurement Policy**

## **Purpose**

The purpose of this document is to implement the requirements of state law with regard to procurement and bidding on public contracts for public works, goods, services, supplies and materials. It is the City's policy to follow state requirements with regard to the expenditure of public funds, to provide a fair forum for those interested in bidding on public contracts and to help ensure that public contracts are performed satisfactorily and efficiently at least cost to the public, while avoiding fraud and favoritism in their award.

## **Purchasing Code of Ethics**

To instill public confidence in the award of public contracts and the expenditure of public funds, the City adopts the following code of ethics with regard to public contracting:

- Actions of City employees shall be impartial and fair.
- Government decisions and policies shall be made in compliance with required procedures and within the proper channels of government structure.
- Public employment shall not to be used for personal gain, and City employees shall not solicit, accept, or agree to accept any gratuity for themselves, their families or others that would or could result in personal gain. Purchasing decisions shall be made impartially, based upon the City's specifications for the contract and the responses of those bidding on the contract.

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. This conflict of interest extends beyond the individual employee, officer, or agent to include that individual's immediate family members, partner, and other employers.

## **Controlling Laws**

The expenditure of public funds for the purchase of and contracting for, goods, services, supplies and materials shall comply with all applicable state law requirements as set forth in the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC), in addition to any applicable federal laws and regulations.

## **Monitoring and Compliance**

The department heads shall implement, monitor and enforce these policies. In the event of any conflict in procurement requirements or questions about proper procedure or other requirements, the matter shall be referred to the Finance Director for further action. Willful or intentional violations of public procurement requirements may result in personal penalties, financial liabilities, and/or discipline. *See RCW 39.30.020.*

## **Proper Authorization**

Only authorized employees acting within the scope of their authority may obligate the City in the acquisition of goods or services. Any employee purchasing goods on behalf of the City without proper authorization may be personally liable to the vendor and the City, and subject to disciplinary action.

The following chart describes the most common types of public contracts, summarizes the procedural requirements and the entity authorized to execute the contract:

| Type of Purchase   | Process   | Other Requirements   | Contract Authorization  |
|--|---|--|---|
| <b>Public Works Projects</b> <i>(Must choose one of the four)</i>                                |   |  |   |
| Projects costing under \$300K  | Small Works Roster <i>(the City uses the MRSC Rosters RCW 39.04.155)</i>                              | <ul style="list-style-type: none"> <li>• Prevailing wage</li> <li>• Insurance</li> <li>• Performance Bond</li> <li>• Bid Bond/Deposit</li> </ul>   | If budgeted or otherwise approved by Council, Mayor to execute contract.                    |
| Projects costing \$300K or more  | Must call for bids <i>RCW 35.23.352(1)</i>  | <ul style="list-style-type: none"> <li>• Prevailing wage</li> <li>• Insurance</li> <li>• Performance Bond</li> <li>• Bid Bond/Deposit</li> </ul>   | If budgeted or otherwise approved by Council, Mayor to execute contract.                    |
| Projects with costs that exceed \$40K single trade or \$65K multiple trades and less than \$300K | Must call for bids <i>RCW 35.23.352(1)</i> or use <i>Small Works Roster process to solicit quotes</i> | <ul style="list-style-type: none"> <li>• Prevailing wage</li> <li>• Insurance</li> <li>• Performance Bond</li> <li>• Bid Bond/Deposit</li> </ul>   | If budgeted or otherwise approved by Council, Mayor to execute contract.                    |
| Projects costing under \$40,000 <i>(Alternative to the Small Works Roster Procedures)</i>        | Solicited quotes  | <ul style="list-style-type: none"> <li>• Prevailing wage</li> <li>• Solicited electronic or written quotes from a minimum of 3 contractors from the Small Works Roster</li> <li>• Award to low bidder</li> <li>• Performance Bond</li> </ul> | If budgeted or otherwise approved by Council, Mayor to execute contract.                    |
| Projects less than \$2,500   | One quote needed, two recommended.  | <ul style="list-style-type: none"> <li>• Combined L&amp;A form for prevailing wages</li> <li>• No bond</li> <li>• No retainage</li> </ul>  | If budgeted or otherwise approved by Council, Mayor to execute contract.                    |
| <b>Materials, Goods and Equipment</b> <i>(Not associated with Public Works Projects)</i>         |   |  |   |
| Items costing more than \$7,500  | Must call for bids or use State Bid <i>RCW 35.23.352(6)</i> or <i>RCW 39.04.270</i>                   | <ul style="list-style-type: none"> <li>• Publication of RFP if bidding</li> </ul>  | If budgeted or otherwise approved by Council, Mayor to execute contract.                    |
| Items costing less than \$7,500  | No state law required process   |  | If budgeted or otherwise approved by Council, Mayor or department head to execute contract. |
| <b>Personal Services</b>   |   |  |   |
| Architectural and Engineering Services   | Request for Qualifications <i>RCW 39.80</i>   | <ul style="list-style-type: none"> <li>• Publish RFQ</li> <li>• Must evaluate on performance and qualifications</li> <li>• Negotiate contract</li> </ul>   | If budgeted or otherwise approved by Council, Mayor to execute contract.                    |
| All other personal services  | No state law required process   |  | If budgeted or otherwise approved by Council, Mayor to execute contract.                    |



### **Local Business Open Accounts**

The City may establish open accounts at local businesses, and purchases on these accounts may be made only by authorized City employees.

### **Projects – under \$300,000 (Small Works Roster)**

In addition to full competitive bid requirements, the City may use any of following procedures when circumstances warrant:

- 1) When the contract amount for a public works project is between \$2,500 and \$300,000, the City may follow the small works roster process instead of competitive bidding requirements. The City has contracted with the Municipal Research and Services Center of Washington to provide a small works roster for the City. If the amount of the contract has been budgeted, the Mayor may execute all documents relating to the contract. Consistent with RCW 39.08.010 the City will require a performance bond as a precondition of entering into a public works contract.
- 2) The City has an agreement with Clark County for the repair and construction of city streets, bridges and other components of the City's transportation system. No bidding requirements apply to work performed by Clark County pursuant to this agreement.
- 3) The City may from time to time acquire surplus property from another governmental entity without regard to bid laws.
- 4) The City may also exercise its authority to contract with another public agency through an interlocal agreement to perform any function that either agency is authorized by law to perform. Pursuant to this authority, another public entity could act as the City's agent or contractor.
- 5) The City may also enter into a cooperative interlocal agreement with another governmental entity for joint or "piggy-back" purchases. In any such cooperative action, the City will ensure that any competitive bidding requirements, including publication and notice, that otherwise apply to the contract are fulfilled to the extent required by RCW 39.34.030.

### **Alternative to the "Small Works Roster" Procedures**

For limited public works projects, including the construction, alteration, repair, or improvement of real property costing less than \$40,000, the City may contract without use of a small works roster or the advertisement for bids, so long as the City solicits either electronic or written quotations from a minimum of three contractors listed on an appropriate small works roster and awards the contract to the lowest responsible bidder. After such an award, the City will make available all quotations for public inspection.

### **Projects exceeding \$40,000 for a single trade or \$65,000 for multi-trades:**

The City will call for bids for public works projects, including the cost of materials, supplies, and equipment that exceed \$65,000 if more than one craft or trade is involved if the City does not use the "Small Works Roster. If only a single craft or trade is involved, or if the project is one of street signalization or street lighting, the City will call for bids if the cost is greater than \$40,000. The City reserves the right to have its own workers or day laborers do every project, so long as each project meets the applicable bidding limits, and the City will provide a report to the state

auditor of the costs of all public works in excess of \$5,000 that are not let by contract. For any project using city workers that costs more than \$25,000, the City will publish a description of the project and the estimated cost in the City's official newspaper at least fifteen days before beginning work.

### **Projects Less Than \$2,500**

For projects less than \$2,500, two quotes are recommended, but with approval of the department head, one quote is acceptable. The combined form for Intents and Affidavits will be used. No bond and retainage will be required, but the contractor must submit paid invoices for supplies, equipment rental and materials used in the project.

### **Materials, Goods and Equipment** *(Not associated with Public Works Projects)*

For the purchase of supplies, materials, or equipment costing more than \$7,500 which is not to be used in connection with any public work or improvement, the City will call for bids or may opt to use a state bid which does not require the City to obtain its own bids. When purchasing telecommunications and data processing (computer) equipment or software costing more than \$7,500, the City may follow a competitive negotiation process as an alternative to the bid process. Pursuant to RCW 30.04.270, any such an alternative competitive negotiation process will include at least the following steps:

- A request for proposals (RFP) must be published in a newspaper of general circulation at least 13 days before the last date on which the proposals will be received.
- The RFP must identify significant evaluation factors, including price, and their relative importance.
- The City must provide reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and selection for awarding the contract.
- The award must be made to the qualified bidder whose proposal is "most advantageous" to the City. The City may reject all proposals for good cause and request new proposals.

### **Architectural and Engineering Services**

State law does not impose any particular competitive bid requirements for services, except for notice in the official newspaper, and that the requirements of RCW chapter 30.80 shall apply whenever the City contracts for architectural and engineering services. In particular, the City will publish its need for architectural or engineering services in advance, concisely stating the general scope and nature of the project or work for which services are required. The notice will provide the address of a representative of the City who can provide additional details. The City will either publish an announcement each time the service is needed, or will announce generally to the public the City's projected requirements for any category or type of engineering or architectural service.

Cities may also advertise for architectural or engineering services annually. The City will then evaluate the qualifications and performance data it has on file along with any information submitted regarding a proposed project. Following the evaluation, the City will invite one or more firms to meet with City officials to discuss the project and the relative benefits of various methods of providing the desired services. The City will select the most highly qualified firm to

provide the required services. The price or cost of the service may not be considered by the City when determining which firm is the most highly qualified. After the most qualified firm has been chosen, the City will negotiate a contract with that firm for the services at a price that it determines to be fair and reasonable, considering the estimated value of the services to be rendered, as well as the scope and complexity of the project. The City need not change engineers every year, but may continue to hire the same engineer if that person or firm is the most qualified. This process may be dispensed with for certain projects upon finding by the City Council that an emergency requires the immediate execution of the work involved.

### **Professional and Personal Services other than Engineering or Architecture**

Professional or personal services are those services involving specialized skill, education, and special knowledge, including accounting, art, bond brokerage, insurance brokerage, legal, real estate appraisal, relocation assistance, title abstracts, surveying, soils analysis, and core testing. A competitive process is not required for professional or personal services, other than professional engineering or architectural services and the official newspaper.

Procurement, administration and termination of such professional or personal services contracts shall be the responsibility of the Mayor, unless the Mayor delegates that responsibility or authority to the appropriate department head. The Mayor is authorized to negotiate all professional and personal services contracts for which funds have been budgeted or otherwise approved by Council.

## **The Bidding Process**

### **Emergencies**

Competitive bidding is not required when an emergency exists; however, in making emergency purchases, the City shall endeavor to include the level of competition that is practical under the circumstances. The department head or designee is authorized to make emergency purchases upon a finding, duly entered of record, of the existence of an emergency, including but not limited to:

- Any breakage or loss of equipment or in other circumstances in that necessary service is interrupted or is about to be interrupted; or
- Situations where the city may suffer a substantial loss by reason of the time required for following the regular purchasing procedures that shall be reported to the city council at the next meeting.

If an emergency exists, the Mayor or the appropriate department head is authorized to act and will seek a resolution from Council within 2 weeks that will:

- Declare or confirm that an emergency situation exists;
- Waive competitive bidding requirements for purposes of responding to the emergency situation; and
- Authorize, on behalf of the City, the execution of any contract necessary to address the emergency situation, including, but not limited to, architectural and engineering services.

## **Advertising for Bids**

For all contracts that require competitive bids, the City shall publish notice of the call for bids in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least 13 days prior to the last date upon which bids will be received. The City's advertisement for bids will contain definite specifications and procedures for bidders to use in estimating their bids, in addition to the following information:

- Time and place where bids will be opened;
- The time after which bids will not be received;
- The character of the work to be performed;
- The materials and equipment to be furnished;
- Where the specifications for the project may be seen;
- A statement that a bid bond must accompany the bid; and
- Statements that the city retains the right to reject any and all bids and to waive minor irregularities in the bidding process.

Since prevailing wages must be paid on all public works performed by public contract, the City will state in either the advertisement for bids or the specifications for the project that the successful bidder will be required to pay prevailing wages for the work to be performed. Bid notices for the purchase of materials, equipment, and supplies not used in connection with a public work do not require a bid bond.

## **Bid Bonds**

Bid bonds are required for all public works projects exceeding \$100,000 to ensure that a bid has been made in good faith and that the bidder will enter into a contract if the bid is accepted. An acceptable bid bond includes a cashier's check, postal money order, letter of credit, surety bond or similar financial guarantee in a form acceptable to the City Attorney in an amount of not less than 5% of the bid amount, including sales tax. The City will not consider any bid, for which a bid bond is required, unless it is accompanied by a suitable financial guarantee. Bid bonds are not required when small works roster procedures are used.

After bids are opened, the City shall award the contract to the lowest responsible bidder. The City shall return bid proposal deposits and/or bid bonds to all unsuccessful bidders. The City will retain successful bidder's bid bond until the bidder executes a contract for the work and furnishes a performance bond in the full amount of the contract price. If the successful bidder fails to execute a contract with the City or does not provide a performance bond within 10 days of being notified of the bid's acceptance, the City reserves the right to retain the bid bond, reject the bidder and either award the contract to the second lowest responsible bidder or readvertise the project.

## **Performance Bonds**

The City shall require a performance bond when entering into all public works contracts, to ensure that the job will be completed and that all workers, subcontractors and suppliers will be paid. Performance bonds are not required if the small works roster is used for a public works contract that does not exceed \$35,000. The successful bidder shall provide the performance bond in a form and amount acceptable to the City Attorney within 10 days of the City's selection of the bidder. In lieu of a performance bond for contracts of \$35,000 or less, the



successful bidder may elect to satisfy the bid bond requirement by having the City retain 50% of the contract payment(s) for a period of 30 days after the date of final acceptance.

### **Bid Opening and Award**

The City shall open bids at the place, date, and time stated in the bid package. If the bid is complicated and city council action is required to award the contract, city staff may summarize the bids before presenting them to council. Where council action is required, staff will assist the Council in determining the lowest responsible bidder. The City must award the bid to the lowest responsible bidder or reject all bids. The city may not negotiate with any of the bidders.

### **Bid Rejection**

The City reserves the right to reject any bid not in substantial compliance with the bid documents, specifications, or any prescribed public bidding procedure or requirement and may reject for good cause any or all bids upon a finding that it is in the public interest to do so.

### **Solicitation or Bid Appeals or Protests**

Bidders may appeal or protest a proposal solicitation or award of contract issued by the City, provided that the bidder strictly follows the procedures described below. Prior to the deadline for submitting bids or proposals, bidders may appeal or protest specifications, terms, or requirements. After the deadline for submission of bids or proposals, bidders may appeal or protest the award or pending award to the apparent low bidder or the selection of the apparently most advantageous proposal. The appeal or protest shall:

- Be in writing; and
- Explicitly identify itself as an appeal or protest; and
- Explicitly identify the bid/project/request being appealed or protested; and
- Explicitly state all reasons and bases in law and fact supporting the appeal or protest, including, but not limited to, identification of any and all specifications, terms, requirements, or conditions to which the vendor objects; and
- Include any and all supporting documents; and
- Be filed with the City Clerk.

All appeals or protests of a purchase specification, term, condition, or requirement shall be received by the City Clerk no later than 7 calendar days prior to the deadline for submission of bids or proposals. All appeals or protests of an award or pending award shall be received by the City Clerk no later than 5 business days after the City awards the contract or selects the most advantageous proposal. In no event will appeals or protests be heard or considered if these deadlines are not met. The City reserves the right to proceed with the execution of a contract and any actions allowed pursuant thereto without notice to the appellant/protestor, notwithstanding the pendency of any appeal/protest.

A bidder's initial appeal/protest will be reviewed by the Mayor, the City Attorney, the department head of the procuring department, and the City Clerk. The initial appeal/protest will be decided based upon the written appeal or protest, supporting documents, and other information obtained by those reviewing the appeal/protest. A meeting or conference with the appellant/protestor will occur only if the Mayor determines that a meeting or conference with the appellant/protestor would materially assist the City in resolving the appeal/protest. Only those issues raised by the appellant/protestor in the initial written appeal/protest filed with the City Clerk will be considered. The City will issue a written decision no later than 10 business

days after the initial appeal/protest is filed with the City Clerk. The City may exercise discretion to extend the time for decision if more time is needed.

An appellant/protestor may appeal the City's decision on an appeal/protest to the City Council by following the procedures described in this section. Any appeal of a City decision on an appeal/protest shall be in writing and received by the City Clerk no later than 7 calendar days after the date of the City's written decision. The appeal shall state the legal and factual bases for the appeal, include a copy of the initial appeal/protest, and the resulting City decision appealed. The appeal shall state whether the appellant requests the opportunity to present oral argument to the City Council. The Council will not consider any issues not set forth in the initial appeal/protest. At its sole discretion, Council allow the appellant to present oral argument in support of the appellant's written submission if Council finds that such presentation would materially aid its resolution of the appeal. The Council may form a committee of less than the entire Council to consider the appeal and recommend a decision to the entire Council. The Council's decision shall be in writing and shall be final and binding.