#### **ORDINANCE NO. 745**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING SECTION 2.10.020 OF THE UNIVERSITY PLACE MUNCIPAL CODE, REPEALING CHAPTER 4.50 UPMC AND ADOPTING A PURCHASING POLICY; RELATING TO PURCHASING AND PROCUREMENT

WHEREAS, the City has deemed it appropriate to update its purchasing policies and it is also necessary to update related legislation; and

WHEREAS, by statute, the City Council has the authority to contract (see RCW 35A.11.010, RCW 35A. 11.020), and through long-standing practice, some of this authority has been delegated to department heads, the city manager, or the City Council; and

WHEREAS, there have been a number of recent statutory changes that warrant updating the City's procurement policies;

# NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Section 2.10.020 "Duties," of the University Place Municipal Code is amended to read as follows:

The city manager shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the city. The city manager shall be eligible to attend all meetings of the city council, regular and executive. The city manager shall be the chief purchasing agent of the city and shall have such purchasing and contracting authority as provided by ordinance or resolution. The city manager shall have all the powers and shall perform each and all of the duties specified by Chapter 35A.13 RCW, together with any other duties or authority which may be conferred upon such office by the city council or by the laws of the state of Washington pertaining to city managers, or the ordinances of the city, as they now exist or may hereafter be amended.

- Section 2. Chapter 4.50 of the University Place Municipal Code is repealed in its entirety.
- Section 3. The policy attached hereto as Exhibit A is adopted as the City's purchasing policy. The provisions of this purchasing policy supersede all resolutions and policies which may be in express conflict therewith. Subsequent amendments to the purchasing policy may be made by ordinance, resolution, or other appropriate legislation.
- Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.
- Section 5. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 6. Effective Date and Publication. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall be effective five (5) days after passage and publication of an approved summary of this ordinance.

## PASSED BY THE CITY COUNCIL ON FEBRUARY 16, 2020.

Caroline Belleci, Mayor

ATTEST:

melya J. Genetia, City/Clerk

APPROVED AS TO FORM:

Matthew S. Kaser, City Attorney

Publication Date: 02/18/21 Effective Date: 02/23/21

TITLE:	POLICY MANUAL SECTION & NO.		
Purchasing Policies and Procedures		03.05.001	
APPROVED BY CITY MANAGER	REVISES OR SUPERSEDES		EFFECTIVE DATE:
	10/6/	2017	

# CITY OF UNIVERSITY PLACE PURCHASING POLICIES & PROCEDURES



## Sources

- City of University Place Municipal Code
- Washington State RCW's
- Municipal Research and Services Center
- The Bidding Book

# 1.0 Introduction

## 1.1 Purpose of the Policy

The Purchasing Policies and Procedures are provided to guide and assist City staff on basic procurement and contracting requirements as set forth in the <u>University Place Municipal Code</u> and Washington State statutes.

This Policy establishes guidelines and clarifies the procedures for purchasing supplies and materials, public works construction, and contracting for services by the City of University Place. The procedures set forth in subsequent sections of this document are designed to assure the citizens, the City Council and City administrative staff that the City of University Place is receiving maximum value for each dollar expended and assure fiscal responsibility in the procurement process.

This edition of the Purchasing Policies and Procedures is dated February, 2021 and supersedes all purchasing directives. All references to the Revised Code of Washington (RCW) and/or City Ordinances and Resolutions shall be incorporated as part of this policy including all future amendments.

This policy does not apply to the reimbursement of business expenses incurred by employees as governed by <u>Resolution 171</u> as now or hereafter amended.

To accomplish these goals, City departments, in conjunction with Finance are authorized by the City Manager to buy or make commitments on the City's behalf. It is the Department Director's responsibility to ensure that these procedures are being followed for their respective department's purchasing requirements.

In cases where these policies conflict with any City Ordinance, State or Federal law or regulations, the terms of that law or regulation prevails. In all other cases, these policies apply.

## 1.2 Contact Information

Finance Director/Risk Manager Fiscal Control

Budget

Risk Management

Finance Operations Manager Grants

Finance Specialist Vendors & Requisitions

Finance Analyst Accounts Payable

City Clerk and City Attorney Agreements & Other Contracts

## Speaking the Same Language

The following terms are often used interchangeably.

Purchasing, Procurement
Purchasing is the act, function,
and responsibility for the
acquisition of equipment,
materials, supplies and services.
The term describes the process of
buying

Procurement includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

## Vendor, Contractor, and Consultant

Vendor is typically used when referring to a supplier, one who sells goods, materials, or supplies.

Contractor is typically used when referring to a construction or maintenance company. Can also apply to an individual or business having a contract with the City.

Consultant is typically used when working on a Professional Service Contract. The term means a person with education and/or experience which uniquely qualifies them to perform some specialized services.

#### Bid, Quote, Proposal

Bid is an offer submitted by a contractor in response to an invitation to bid (ITB) or advertisement. Typically, bids result in contracts awarded to the lowest responsive, responsible bidder.

Quote is a statement of prices, terms of sale, and description of goods or services offered by a vendor to the City. Commonly used in more informal solicitations.

Proposal is the document submitted by the offeror in response to an RFP/Q. Proposals allow contract award based on factors other than cost and may result in negotiations.

No employee, officer, or agent may participate in the selection, award or administration of a contract supported by a federal award if they have a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, and members of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a business considered for a contract. Employees, officers, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

## 1.5 Unauthorized Purchases

PURCHASES FOR PERSONAL USE ARE NOT ALLOWED. The person ordering the unauthorized and unjustified purchase is personally liable for the costs of the purchase or contract and may be subject to disciplinary action, up to and including termination. If the purchase was made without proper authorization but is in fact a justified purchase, then the Department Head has the option to approve the purchase after the fact.

## 1.6 Personal Gifts to be Declined

Personal gifts or gratuities that might influence or give the appearance of influencing the requisition or purchase of materials or services must be declined.

## 1.7 Sustainable Purchasing

The City shall acquire its goods and services in a manner that complies with all federal, state, city laws, and other requirements (e.g., City resolutions). The City shall purchase and use materials, products and services which are fiscally responsible, reduce resource consumption and waste, perform adequately, promote opportunities to lesser-advantaged segments of our community and promote human health and well-being when possible.

# Environmental factors to consider in selecting products include, but are not limited to:

- Pollutant releases, especially persistent bio-accumulative toxins (PBTs).
- Waste generation.
- Greenhouse gas emissions.
- Recycled content.
- Energy consumption.
- Depletion of natural resources.
- Potential impact on human health and the environment.

# Social equity factors that should be considered include, but are not limited to:

- Use of local businesses.
- Use of small, minority and women-owned businesses.
- Ergonomic and human health impacts.

#### Fiscal factors to be considered include, but are not limited to:

Lowest total cost.

## Acronyms

**RFQual** – Request for Qualifications

RFQ - Request for Quote

RFP - Request for Proposal

**RFB** – Request for Bids (Formal Bid)

**MWDBE** – Minority, Women, and Disadvantaged Business Enterprise

**CIP** – Capital Improvement Plan

The City Manager or designee is authorized to sign such contracts on behalf of the City if the contract meets the following requirements:

- A. Fifty thousand dollars (\$50,000) or less including addenda.
- B. On contracts for which prior City Council approval is required and received, the City Manager shall have authority to execute any amendments or change orders which, when aggregated, are less than 10 percent of the original contract amount, or up to \$50,000, whichever is less; provided, however, that the amendment or change order remains within the budget.
- C. The City Manager shall have the authority to execute any change orders which when aggregated do not exceed the total authorized project budget on any public works construction project. The City Manager shall then report said change orders no later than the later of the following: i.) the next regular council meeting or ii.) upon physical completion of the project.
- D. Emergency purchases (See Section 1.15) which will promptly be reported to the City Council for ratification and approval.

Nothing in this policy is intended to preclude the City Manager from referring to the City Council for its approval, matters which, in the Manager's discretion, are appropriately approved by the Council. The Council may likewise, with reasonable advance notice and prior to approval by the Manager, identify certain matters which are otherwise within the Manager's authority, to approve itself.

## 1.11 Define the Need - Type of Purchase

The first question that should be answered is what type of purchase is this? The major categories of purchases include:

#### **Public Works (RCW 39.04.010)**

Includes all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the City.

- Examples: road construction, utilities construction, demolishing, remodeling, renovating, and building construction.
- Ordinary maintenance is not specifically defined in this statute but is generally considered to include work not performed by contract and performed on a regular basis to service, check or replace items that are not broken.
- For purposes of prevailing wage requirements, public works includes ordinary maintenance when performed by contract. See Section 3.2.

## Materials, Supplies and Equipment

Materials, supplies, and equipment are considered tangible items which are manufactured and are moveable at the time of purchase. It is important to distinguish between materials, supplies and equipment used in public works contracts as opposed to non-public works contracts as different bidding requirements apply to each.

 Examples: office supplies, off the shelf software, hardware, trucks, copy machines, auto parts, gravel, and janitorial supplies.

RCW 39.04.280 - Competitive bidding exemptions.

#### **Sole Source:**

Approval must be noted on the Requisition and a copy of the approval sent to the Finance Specialist.

- Example #2: A contract originally approved as a one year \$40,000 contract. If a renewal is negotiated for an additional year for another \$40,000, the aggregate value of the contract becomes \$80,000. The renewal will require City Council authorization.
- Exception: Hardware/software maintenance agreements are treated as stand-alone agreements and do not need to be aggregated to the original hardware/software purchase agreement.

#### **Routine Work**

Departments may enter a series of stand-alone contracts for routine or recurring work. If this is done, the original contract should not contain any language pertaining to renewal periods. Best practice dictates that a competitive process be followed every contract period.

<u>All</u> purchases of <u>services</u> require a contract. The purchases of goods and materials does not.

If this is not feasible, the following alternative process outlined below should be followed:

- 1. A competitive process must be performed at a minimum of every three years.
- Each stand-alone contract may be based upon the original competitive process provided that the scope has not changed significantly. If the scope changes result in a cost differential of more than ten percent, a new competitive process will be required.
- 3. Typically, only the original successful vendor may be used for each contract period. Changing vendors to the "second place proposer" should not be done unless the original competitive process clearly established the duration of the proposal validity period. All proposers would have had to agree to these terms.
- 4. The duration, terms, conditions, and requirements of the contract shall be clearly identified in the original competitive process to all proposers.
- 5. All signature authority levels apply to each stand-alone contract.
- 6. Executing a series of stand-alone contracts should not be done for the purposes of avoiding council approval.

#### Short-Term, Stand-Alone Contracts - Bridge Contracts

A short-term, stand-alone contract may be used in instances where it is not feasible to complete a competitive process prior to contract award. The purpose of these short-term, stand-alone contracts is to "bridge" the gap between contracts until such time that a full competitive process may be completed. The reason for utilizing a "bridge contract" must be fully explained and detailed when routing the contract.

Q: The garage door at Public Works is stuck closed. The door must be fixed immediately. What do we do?

A: This is defined as an "Urgent Need".

Q: The fuel tank at the Public Works shop is leaking and causing a fire hazard. Is this an emergency?

A: This is not a natural disaster but does "present a real and immediate threat" and makes competitive bidding impractical. This would be treated as a "Declared Emergency". Follow the Declared Emergency Process.

Note: Emergencies involving FEMA reimbursements or work in critical areas may have different or additional requirements. Please contact the City Attorney or Finance Department for assistance with either emergency.

- Explain what features, knowledge, and/or qualifications the vendor can provide that are not available from other sources.
- Outline steps taken to verify that this is the only vendor available to possibly include an:
  - Internet Search, Telephone Book/Yellow Pages;
  - Advertisement in paper with a "Notice of Intent to Contract"; and/or
  - Advice from an expert consultant in service area who is familiar with the market.

## 1.15 Urgent Need or Emergency

An "Urgent Need" is defined as "an immediate need for goods or services (non-emergency) that does not allow for the normal purchase processing time".

## **Urgent Need Process**

- Step 1 Determine action needed.
- Step 2 Obtain Department Director approval.
- Step 3 Evaluate budget capacity with the Finance Director.
- Step 4 Note "Urgent Need" on requisition.

## **Declared Emergencies**

For purposes of this section "emergency" means unforeseen circumstances beyond the control of the City that either:

- A. Present a real, immediate threat to the proper performance of essential functions; or
- B. Will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

Competitive bidding may be waived subject to the following process:

Notwithstanding any other provisions of these Policies, the City Manager or designee may, in accordance with RCW 35A.40.210, RCW 35.22.620(6), and RCW 39.04.280 including all future amendments, additions and deletions, make or authorize others to make emergency procurement of materials, supplies, equipment, or construct public works projects without complying with the competitive requirements of these Purchasing Policies when there exists a threat to public health, welfare, or safety or where the City may suffer a substantial monetary loss by reason of the time required to follow regular purchasing procedures; provided, that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the procurement file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, and a listing of the item(s) procured under the contract, which shall be reported to the City Council, and if the amount exceeds 50,000.00, for confirmation by the Council.

Q: How do I find what contracts the state has available to use?

A: For State contracts: http://www.des.wa.gov/services/ContractingPurchasing/CurrentContracts/Pages/default.aspx

For DIS contracts: http://www.des.wa.gov/ser vices/ContractingPurchasing //ITContracts/ITMasterCont ractPages/default.aspx

RCW 39.04.270(3) – Electronic data processing and telecommunications systems Request for Proposal.

The City Bidding Book.

Bid Splitting is prohibited. All phases and associated costs must be included.

#### TIP

Some vehicle and heavy equipment purchased through the state do require a State PO prior to purchase.

TIP

State contracts typically have good pricing.
However, keep in mind that they may not always be the lowest cost option. These contracts offer a good starting point in the quote process.

## 2.2 State Contracts

Both the Washington State Department of General Administration and the Department of Information Services (DIS) offer existing contracts for goods and services that the City may use.

When using a state contract, we are, in essence, "piggybacking" off their competitive process thus eliminating the need to perform our own. The City pays an annual fee to the state for the ability to piggyback on their contracts and encourages the use of these contracts whenever possible.

#	Task	Action	
1,	Review State contract website for piggyback requirements	Work with State buyer.	~
2.	Contact vendor to verify if vendor will honor state contract pricing	Obtain details regarding all aspects of purchasing including invoicing, availability, delivery, etc.	~
3.	Contact buyer to place order	Place order and process invoice for payment.	

## 2.3 Competitive Bidding Process

Competitive bidding is the process used for all purchases where an RFB (Request for Bid) is required. Generally, that includes all equipment over \$50,000 and for Public Works projects over the amount listed in Section 2.4.

Telecommunications and data processing or software may follow the competitive negotiation process using an RFP (Request for Proposal) as outlined in RCW 39.04.270(3).

A complete and detailed rendering of the process can be found in <u>The City</u> <u>Bidding Book</u>.

**Alternatives:** State Contracts, Interlocal Purchasing Agreements, and Cooperative Purchasing Agreements may be used for the purchase of materials, supplies, services, and equipment without further bidding required.

Listed on the following page is a basic check list of what is required in the Request for Bid and a basic outline of the bid process.

#### TIP

Access to the Small Works Roster is available at:

https://www.mrscrosters.org

#### TIP

When the City executes any public work exceeding \$5,000 by any means or method other than by contract or small works roster, it must keep a full, true and accurate account and record of the costs of executing such work as prescribed in RCW 39.04.070. The Public Works Record form to be used is prescribed by the BARS manual.

#### TIP

Prior to commencement of the public work project, the Finance Department, upon request, will build a project number and general ledger account numbers for use in coding all costs associated with the project.

## 2.4 Public Works

#### Definition

According to RCW 39.04.010(4) "Public Works shall include all work, construction, alteration, repair or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein."

#### **Bid Limit**

According to <u>RCW 35.22.620</u>, any first-class city, defined as a city with a population over 20,000, may complete Public Works projects themselves within the following parameters. Within any budget period, costs cannot exceed:

- 10% of the total Public Works construction budget.
- \$150,000 for multi craft projects or such other sum as the statute may provide.
- \$75,500 for single craft projects or such other sum as the statute may provide.
- Penalties apply when going over the allowed limit.

Included in the dollar limit is work performed by the county. Contract, day labor or city employees can be used for the projects.

Whenever the cost of the public work or improvement will exceed these figures, the project shall be done by contract, provided the city may be let contracts using the small works roster process provided in <u>RCW</u> 39.04.155.

#### **Determining the Cost of a Public Work**

The total construction cost of each project must be estimated to correctly apply bid limit dollar amounts to determine if a public works project must be competitively bid. This estimate may be prepared by an outside third party; however, the final cost estimate must be validated by the City. The total construction cost (estimated as if the project were to be bid) is used to make that determination. The estimate shall include materials, supplies, equipment, and labor on the construction of that project AND applicable sales and use taxes. However, the value of volunteer labor, material, or equipment need not be included in the cost estimate for a public works project, as these are not a cost to the agency. For any project completed by any means or method other than a contract, such as using City workers, and the estimated cost will exceed \$25,000, the City must publish a description of the project and its estimated cost in the official newspaper at least fifteen days before beginning work as required by RCW 39.04.020.

## **Bid Splitting**

RCW 35.22.620(5) prohibits the division of a project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

#### **Small Works Roster**

When the estimated cost of a public works project is \$350,000 or less (or such other sum as statute may permit), the City may follow the Small Works Roster (SWR) process for construction of a public work or improvement as an alternative to the general competitive bidding

Personal Service Contract means an employment contract, or any amendment or renewal thereto, with an independent contractor for the rendering of personal services to the City. (RCW 39.29)

- RCW 39.08.010 Require a performance bond.
- Contracts under \$25,000 at the option of the contractor, the city may retain 50% of the contract for 30 days after the final acceptance or until all necessary releases and settlement of liens.
- RCW 60.28.011 Retainage of 5% shall be held for protection of any person or supplier from money earned by the contractor. Monies shall be:
  - Deposited in an interest-bearing account or bonds and securities as chosen by the contractor, until final acceptance of the work completed. Interest shall go to the contractor.
  - Released to the Contractor 45 days after the project is completed and accepted and certifications received providing there are no outstanding liens

## 2.5 Purchase of Professional Services

Services provided by independent contractors that require specialized knowledge, advanced education, professional licensing, or certification and where the primary service provided is mental or intellectual, involving the consistent exercise of judgment and discretion.

#### The Competitive Process

<u>RCW 39.80.030</u> requires that the City shall publish in advance the City's requirement for professional services. The City may comply with this section by (1) Publishing an announcement on each occasion when professional services provided by a consultant are required by the City; or (2) Announcing generally to the public its projected requirements for any category of type of professional service.

Advertising for the Consultant Roster must be done at least once a year by MRSC on the City's behalf. The MRSC Consultant Roster will distinguish between professional architectural and engineering services as defined in RCW 39.80.020 and other consulting services. Firms or persons providing consulting services shall be added to the appropriate roster at any time they submit a written request and necessary records.

The City reserves the right to publish an announcement on each occasion when professional services or other consulting services are required.

**Professional Service Contract** means an agreement, or any amendment or renewal thereto, with an independent contractor for the rendering of professional services to the City. The City does not provide direction to the provider. The City states a goal and objective, and the provider under their own direction accomplishes the goal.

Departments may solicit qualifications using a Request for Qualifications form (Attachment F) or have the option of negotiating a fee for consulting services. The contracting department shall initiate Professional Service Contracts. Once the approved contract has been signed, the initiating department enters a requisition into Eden and Finance creates the contract purchase order. The initiating department will also forward a copy of the final contract to the City Clerk's Office and Finance for inclusion with vendor records to ensure compliance with contract and audit requirements. As work is performed, accepted, and invoiced, the contracting department's staff will approve each invoice for payment against the contract purchase order.

**Personal Service** means hiring an individual to perform a specific study, project, or task which requires professional or technical expertise, but does

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## Examples of General Services:

- Customized accounting software and ongoing support services
- Cemetery, landscaping, building and grounds maintenance contracts
- Contracts for snow and ice removal
- Garbage collection and disposal (Solid waste collection and disposal contracts do not have to be bid. An RFQual/RFP process as noted in RCW 35.21.156 can be used.
- Maintenance contracts for office equipment, including computers

## 2.6 Purchases of A&E Services

These services are to be acquired under the authority and procedures outlined in chapter RCW 39.80.

## **The Competitive Process**

Architectural and Engineering consultants are initially selected based upon their qualifications, rather than price (see RCW 39.80.050). The City will negotiate a contract with the most qualified firm at a price which the City determines is fair and reasonable. In making its determination, the City shall consider the estimated value of the services to be rendered as well as the scope, complexity, and professional nature. If the City is unable to negotiate a satisfactory contract with the firm selected at a price the City determines to be fair and reasonable, negotiations shall be terminated, and the City shall begin negotiations with the next highest qualified firm. There are two ways to select an A&E firm based upon their qualifications:

- Roster/RFQual Review It is the City's policy to select three or more consultants from the A&E roster maintained by MRSC in relevant service category and evaluate their qualifications. At least one consultant must have MWDBE classification when possible.
   Documentation of the three reviews is required.
- Project Specific RFQual Use the Consultant Roster to send out RFQual to consultants in relevant service category. At least one consultant must have a MWDBE classification when possible (see RFP's and RFQual's Section 2.9 for further information.)

## 2.7 Purchase of General Services

**General Services** are all other service-related work that is not considered a public work or professional service. Most often these are routine in nature (i.e.: yearly, monthly, weekly, etc.). State law does not require a competitive process for the selection of general services, except for the City newspaper.

To ensure a more competitive process, the City has adopted tighter standards for competitive selection of professional services providers. Unless the City Manager approves in writing an exception based on the best interests of the City to signing the agreement, the City shall follow the following competitive process for selection of these services:

- Up to \$4,999 Solicitation of quotes is recommended but not required. It is still incumbent on department to ensure that price is reasonable, and provider is qualified.
- \$5,000 to \$14,999 Solicit competition of at least three informal bids.
- \$15,000 to \$50,000 Solicit 3 written quotes (with one having a MWDBE classification when possible) using an RFQ or RFP.
- Above \$50000 Formal competitive process using an RFP.

**Informal Quotes –** Written or oral quotes, email, fax etc.

RFQ - Request for Quote

RFB - Request for Bid

**RFQual** – Request for Qualifications

RFP - Request for Proposal

**MWDBE** – Minority, Women, and Disadvantaged Business Enterprise

# Examples of A & E Services:

- Engineers
- Land Surveyors
- Architects
- Landscape Architects

#	Task	Who	Action	
1.	Identify need	Dept	Develop Scope of Services	
2.	Determine the Estimated Cost	Dept	Confirm Sufficient Budget Exists	
3.	Identify Grants or Federal Funds	Dept	Notify Finance Dept	
4.	Develop Draft RFP/RFQual	Dept	Considerations:	
5.	Finalize RFP/RFQual	Dept	Finalize and review	
6.	Identify appropriate roster category	Dept	Identify roster category and companies	
7,	Advertise, Publish and Notify	Dept	<ul> <li>Advertise</li> <li>Publish RFP on City's website</li> <li>Email notification to recommended roster participants.</li> </ul>	
8.	Evaluate RFPs/RFQuals	Dept	Dept to identify selection committee	
9.	Conduct Interviews	Dept	Dept to Schedule	
10.	Identify "Apparently Successful Proposer"	Dept	Seek mgmt. approval to negotiate w/ "Apparently Successful Proposer"	
11.	Negotiate Contract	Dept	Goal: Reach a mutual agreement	
12.	Award Contract	Dept	Prepare Council Agenda and route contract	

## 2.10 Contracting 101

A contract is basically an agreement between two or more people to do something. In a public purchasing context, a contract is an agreement by a vendor to provide goods or services to the City in return for receiving payment from the public agency. The following are the basics for entering into a contract:

#### **The Invitation**

- A solicitation (RFB, RFQ, and RFP) is an invitation to a contractor to make an offer.
- These are most often directed at multiple parties and outlines the needs of the City.



All bids received shall be kept in a secure and centralized location not accessible to other bidders. Bids should never be left unattended.

#### Withdrawal & Modification of Bids

- A request to withdraw or modify the bid in advance of the deadline may be received verbally or in writing. If unfamiliar with the bidder, ask for identification.
- Make a photocopy of the face of the bid envelope, ensuring the bid receipt time shows up on the copy.
- Have the bidder sign the photocopy with the following "Received by (signature, printed name, date, time.)

## 2.12 No Bids or Responsible/Non-Responsive Bids or Submittals

## No Bids or Submittals Received

In the event the City does not receive any bids or submittals on the first call, the City has three options: 1) Re-advertise and make a second call, 2) Enter into a contract with any qualified contractor, or 3) Purchase the supplies, materials or equipment and perform such work and improvement by day labor (City staff).

Before determining which option would best fit, the department shall conduct a survey of the registered bidders or proposers or any other known interested parties to determine: 1) Why didn't they submit, 2) Was the City's document too restrictive or too complex, 3) Was there ample time to submit, and 4) Were there too many open questions before the due date? The City Attorney's Office may be consulted for additional assistance on determining the best option.

#### **Determining Lowest Responsible Bidder**

The City Council shall award the contract for the public works project to the lowest responsible bidder, provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the City Council may call for new bids. A responsible bidder shall be a registered and/or licensed contractor who meets the mandatory bidder responsibility criteria established by RCW 39.04.350 and who meets any supplementary criteria established by the City.

#### Non-Responsive and/or Not Responsible

The City shall draft bidder responsibility criteria that are based upon clear business reasons and the criteria must not be overly restrictive of the bidding pool. Note that in Washington State, a bidder who objects to the supplemental bidder responsibility criteria may request the City to modify the criteria before the bid submittal deadline.

Bids may be rejected as non-responsive for a multiple of material factors including lack of subcontractor's list when required, (for contracts in excess of \$1M, see RCW 39.30.060), insufficient bid guarantees, bids submitted after the deadline, did the bidder qualify the bid and/or lack of acknowledgement of addenda. In general, a material irregularity is required before the bid may be deemed non-responsive which is defined as any variance which provides "a bidder substantial advantage or benefit not M:ORDI2021/745-Exhibit A



## 3.1 Rule 171 - Sales Tax Exemptions

Normally sales tax applies to every sale of tangible personal property (and some services) to all persons, including cities. Thus, for bid limit purposes, the tax must be included when determining the cost of a public work, or when calculating the cost of materials, supplies, and equipment purchases separately from a public work.

However, there are some sales and use tax exemptions for certain public work projects. The exemptions include:

- 1. Labor and services rendered for the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle owned by a city or town which is used primarily for pedestrian or vehicle traffic. *Materials used in constructing these projects are not exempt from the sales and use tax.*
- 2. Labor and services for the processing and handling of sand, gravel, and rock taken from city pits and quarries.

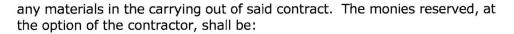
## 3.2 Prevailing Wage

**What are Prevailing Wages?** The Department of Labor and Industries (L&I) requires that workers be paid prevailing wages when employed on all public works, public building service maintenance and contracted maintenance, based upon the classification of labor performed.

Prevailing Wages are defined as the hourly wage, usual benefits, and overtime, paid in the largest city in each county, to the majority of workers, laborers, and mechanics. Prevailing wages are established, by L&I, for each trade and occupation employed in the performance of public work. They are established separately for each county and are reflective of local wage conditions.

What are the responsibilities of the City when contracting for public works? The City, in awarding a contract, must make the determination of whether that contract involves "public work" and communicate it to contractors in the bid specifications and contracts. Contractors are not responsible for making the legal determination of whether a contract does or does not meet the definition of a "public works" contract. The law does not allow cities to place this burden upon the vendor. For example, it is insufficient to state, "Contractors shall comply with the prevailing wage law, if applicable."

What provisions must be made for prevailing wage? Awarding agencies must stipulate in bid specifications and contracts for public work that workers shall receive the prevailing rate of wage. Those documents must also contain a list of the applicable prevailing wage rates. Compliance with the law is not met by referring contractors to the L&I or other sources to obtain wage rate information.



- Deposited in an interest-bearing account or bonds and securities as chosen by the contractor, until final acceptance of the work completed. Interest shall go to the contractor.
- Released to the Contractor 45 days after the project is completed and accepted and certifications received providing there are no outstanding liens.

## 3.4 Purchase Orders

According to the State Constitution cities are prohibited from paying for goods or services before receipt. Therefore, as a rule, the City cannot do business with vendors who will not accept a purchase order. There are exceptions to this policy to accommodate subscriptions, seminars or publications for which payment must accompany the order. In these cases, the completed purchase order is used as an invoice.

If an employee feels it is appropriate to use a vendor who will not accept a purchase order, the employee may make a purchase with personal funds and seek reimbursement by the City through the expense claim process. It is advisable to obtain prior approval to ensure the purchase can and will be reimbursed.

A Purchase Order is a legal contract with the vendor and must be issued at the time of commitment to purchase.

#### General Purchase Order guidelines are:

- Obtain appropriate approval <u>before</u> making a commitment to purchase.
- Required for all purchases over \$500.
- Not required for travel expenses. Resolution 171.
- Created by entering a requisition into financial accounting system.
- Must include correct account code, description of purchase and for purchases above \$5,000 either/or
  - Competitive bid information Vendor names and quotes or selection justification.
  - Sole Source justification: Section 1.14
  - Urgent or Emergency justification: Section 1.15
  - State contract purchasing agreement information. Section 2.2
  - Interlocal or joint purchasing agreement
- Should reflect the dollars committed on the contract.
- Blanket PO's can be issued for vendors used for repetitive expenses.
- Automatically expire on December 31 of the current year.

The financial accounting system will automatically route the requisition for the appropriate approvals, and the Finance department will complete the process and forward the final document to the person who originates the order.



## 4.1 The Contract and Beyond

#### **Duration of Contracts**

Public Works and A & E Service contracts typically cover the duration of a project and should include estimated timeframes and milestones.

Professional & General Service contracts may have variety of years in duration but shall not exceed three years without approval.

## Basis for exceptions of contract duration

The City may choose to issue a longer-term contract if it will achieve significant cost savings with a longer contract or the contractor is required to invest in major capital equipment and a longer time-frame to support the purchase. Exceptions to contract duration shall be approved by the City Manager in writing prior to contract execution.

## **Developing the Contract - Service Contracts**

The single most important element in the contract is the Scope of Work/Services. The scope documents all elements of the work, magnitude of the project and reflects the mutual understanding of the parties. The scope should be consistently applied in the solicitation and the contract.

Here are a few things to consider when developing the scope:

- Hold the contractor accountable.
- Be precise. Avoid ambiguity.
- Use active voice (i.e., "The Contractor will or shall").
- Due dates & deliverables.

Other considerations when developing the contract are:

- Term of contract or period of performance.
- Compensation and payment.
- Payment terms The City's Standard payment terms are as follows:
  - Contractors provide monthly invoices to the City.
  - All invoices shall be paid within 30 days of receipt and approval.

#### If the contractor does not agree to standard contract terms

- 1. Contractor identifies specific changes proposed to standard form language.
- 2. Department contacts City Attorney to review proposed changes and accepts/rejects.
- City Attorney makes any acceptable changes to standard form contract.
- 4. Department handles routing of final modified contract.



#### **Contract Execution**

The contract is fully executed when all authorized parties have signed it. Upon execution, signed copies of the contract should be provided to all interested parties including, at a minimum, the contractor, and City Clerk. The City Clerk will scan each fully executed contract including all appendices and make available for City staff to review electronically.

## **Contract Administration**

Contract administration means any activity related to contracting, including the decision to contract, contractor screening, contractor selection, contract preparation, contract monitoring, auditing and post contract follow up. Typical responsibilities of the contract manager include:

- Understanding the contract, including the specific contract obligations and performance indicators by which performance will be monitored.
- Assessing the risks related to the project before soliciting proposals and contracting to determine the extent of the monitoring required.
- Ensuring the contractor has a clear understanding of how the contract will be managed and monitored.
- Providing the contractor with guidance and technical assistance, as needed, to promote effective contract performance.
- Identifying the extent and source of funding for services provided.
- Monitoring the contractor's activities to ensure quality service delivery. Ensuring funding is used only for authorized purposes.
- Reviewing invoices and verifying that delivery of services is rendered.
- Resolving issues or problems that arise during the contract.
- Measuring and tracking satisfaction with contractor performance.
- Complying with State and City rules and regulations.
- Documenting the contract to validate that effective contract management has occurred.

## Contract initiator needs to be mindful of the following:

- Instructing the contractor to begin work before the contract is executed and approved.
- Changing the description, scope, period of performance, or cost of the contract without processing a written amendment.
- Directing the contractor to do work that is not specifically described in the contract.
- Signing a contractor's contract form (some exceptions apply must have City Attorney review)
- Authorizing payment to the contractor for any work not performed satisfactorily.
- Paying for the same or similar services more than once.

## 4.4 Contract Monitoring - Performance

#### Monitoring Contract Performance

Monitoring means any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract. The level of monitoring should be based on a risk assessment of the contractor's role in delivering the services and the contractor's ability to deliver under the terms of the contract.

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#### Renewals vs. Year to Year Contracts

Keep in mind that including additional periods and/or renewal language in your solicitation and/or contract document provides for greater continuity with terms and conditions such as pricing, scope, and availability. Contractors will often give discounts for longer term contracts.

To enter into a series of year-to-year (or stand-alone) contracts, opens up the terms and conditions for contractors to modify their price and availability. Stand-alone contracts require a competitive process at each contract period and therefore may result in higher costs to the city.

However, if a contract includes "options to renew" language, the contract must be routed to include all future renewals of the "potential value" of the contract.

## 4.6 Amendments & Change Orders

#### **Amendment**

An amendment is a change to a service contract. Changes to contracts may be processed as amendments, rather than new contracts, only if the changes are within the general scope of the original contract.

#### **Change Order**

A change order is the formal document that alters some condition of the contract documents. The change order may alter the contract price, schedule of payments, completion date, or the plans and specifications. Change Orders are changes to Public Works Agreements and reflect additional work that must be completed to meet the contract requirements and without which the work requested in the original contract could not be completed. If a change order issued is truly due to unforeseen conditions, with no change in the original scope, then a new competitive bid process is not required.

These situations should be distinguished from extra work which could stand on its own and is outside and independent of the contract. Appropriate uses of change orders include:

 Scope – This may include adding, modifying, or deleting tasks, services, or deliverables, or revising specifications. Changes to scope should be well documented and include any additional costs associated with these changes.

Changes that are outside the general scope of the contract are not appropriate to award through contract amendments. Such changes would have the effect of making the work performed substantially different from the work the parties bargained of at the time the original contract was awarded.

- **Cost** If the cost of the contract is increased or decreased, document reasons for change (e.g.: scope changes).
- Term of Contract/Period of Performance An extension to the contract end date is the most common change to the period of performance. Minor modifications that do not materially affect the scope or cost of the contract, such as address changes or staff changes do not require a formal amendment but should be documented in writing.
- Public Works and Equipment under \$15,000:

Department Director or their designee is authorized to approve public works contract change orders until the total contract value comes to \$15,000.

- Public Works and Equipment Purchases over \$15,000:
  - Accumulated change orders up to \$15,000 of the original contract award amount may be approved by the Department Director or designee, as long as there is budget capacity.
  - The City Manager shall have the authority to execute any change orders which when aggregated do not exceed the total authorized project budget on any public works construction project. The City Manager shall then report said change orders no later than the later of the following: i) the

