

**RESOLUTION NO. 974**

**A RESOLUTION ADOPTING AMENDMENT TO PURCHASING POLICIES**

WHEREAS, on February 16, 2021, the City Council passed Ordinance No. 745, which adopted Purchasing Policies; and

WHEREAS, it was the intent of Council in those Policies to allow the City Manager, when it is in the best interests of the City, to bypass certain competitive procurement procedures, but this intent was not articulated and located in the manner in which it is most clear; and

WHEREAS, the Council desires to update the Purchasing Policies to make this provision clear; and

WHEREAS, said Policies allow that subsequent amendments to the purchasing policy may be made by ordinance, resolution, or other appropriate legislation;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE AS FOLLOWS:**

Section 1. Purchasing Policies Amended. The Purchasing Policies are hereby amended to read as set forth in Exhibit A attached hereto.

Section 2. Prior actions ratified and approved. All actions taken by City staff in compliance with the intent of this Resolution before the date of adoption of this Resolution are hereby ratified and approved.

Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE CITY COUNCIL ON MARCH 21, 2022.**

\_\_\_\_\_  
Steve Worthington, Mayor

**ATTEST:**

\_\_\_\_\_  
Emelita J. Genetia, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Matthew S. Kaser, City Attorney

<b>TITLE:</b> <i>Purchasing Policies and Procedures</i>		<b>POLICY MANUAL SECTION &amp; NO.</b> 03.05.001
<b>APPROVED BY CITY MANAGER</b>	<b>REVISES OR SUPERSEDES</b> 10/6/2017	<b>EFFECTIVE DATE:</b> 02/16/2021

**CITY OF UNIVERSITY PLACE**  
**PURCHASING POLICIES & PROCEDURES**

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# 1.0 Introduction

## Sources

- [City of University Place Municipal Code](#)
- [Washington State RCW's](#)
- [Municipal Research and Services Center](#)
- [The Bidding Book](#)

## 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 [University Place Municipal Code](#) 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 16, 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 [Resolution 171](#) 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

## 1.3 Code of Ethics ([RCW 42.23](#))

### ***"Public employment is a public trust."***

The public must have confidence in the integrity of its government. The purpose of this Code of Ethics is to give guidance to all employees and elected officials so that they may conduct themselves in a manner which will be compatible with the best interest of themselves and the City of University Place. Employees who violate the City's purchasing and procurement policy are subject to disciplinary action pursuant to applicable City of University Place Personnel Policies.

### **Proper operation of City purchases requires the:**

1. Actions of employees be impartial and fair.
2. Government decisions and policies be made in the proper channels.
3. Public employment must not be used for personal gain.
4. Employees may neither solicit, accept, nor agree to accept any gratuity for themselves, their families or others that results in their personal gain which may affect their impartiality in making decisions on the job. Discounts or concessions realistically available to the general population, items received that do not result in personal gain, and samples to the City used for general City use are examples of items that are not gratuities. Personal judgment should be used and questions regarding problems and/or events should be referred to the employee's manager.

### **Goals:**

- To protect and enhance the reputation of the City of University Place and its employees.
- To treat all residents equally with courtesy and impartiality, and refrain from granting any special advantage to any resident beyond what is available to all residents.
- To give efficient, productive, and economic service to the public.
- To avoid real or potential conflicts between private and public duties, remembering that the public interest must be the principal concern.
- To keep confidential all information acquired by reason of one's positions, which may be used for personal or financial gain for the employee or other persons.
- To refrain from securing special privileges or exemptions for one's self or other persons that are not available to all citizens.
- To avoid receiving, soliciting, or otherwise obtaining anything of value that is greater than nominal intrinsic value from any other public official, employee or resident which is intended to influence the performance of official duties.
- To disclose to the appropriate authority the nature and extent of any financial or personal interest in a City contract, legislation, or in any type of transaction involving the City, when participating in the development of or giving an official opinion on the matter.

*"A fair system of public contracting is not just about efficiency and costs savings. It's about public trust."*

Judy Nadler,  
Senior Fellow, Gov. Ethics  
Santa Clara University

### *Tips & FAQ's*

**[RCW 42.56](#)** - All purchases and records are subject to Public Disclosure.

## 1.4 Conflict of Interest

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.

## 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.

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

- Lowest total cost.
- Leveraging our buying power.
- Impact on staff time and labor.
- Long-term financial/market changes.
- Technological advances in a rapidly changing market.

## **1.8 What This Guide Covers**

The process of selecting vendors and managing contracts shall embody the value of stewardship of public resources by providing the greatest levels of both quality and value.

The goals are to ensure that the purchase process:

- Creates open and fair competition.
- Includes terms and conditions required to protect the City.
- Meets ethical standards.

### **From Beginning to End...**

Before any purchase is made, the following questions should be answered:

- **Define the need** – What kind of purchase is this?
- **Determine the cost** – How much will this cost?
- **Process** – How do I procure it?
- **Protecting the City** – How do we properly protect the City from liability?
- **Authority** – Who must approve the purchase?
- **Contract Administration** – What are my responsibilities?

## **1.9 Scope of Policy**

These Policies apply to the award of contracts by the City for:

1. Purchases of materials, supplies, and equipment;
2. Public works and improvements;
3. Maintenance;
4. Professional Services; and
5. Other goods and services.

These Policies do not apply to:

1. The reimbursement of business expenses incurred by employees.
2. Purchase and/or lease of real estate.

## **1.10 City Council Approval**

City Council approval is required for every contract under these Policies which meets the following requirements:

- A. Where the annual cost to the City for such contracts is more than fifty-thousand dollars (\$50,000); or
- B. As otherwise set forth in this Policy.

## 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. 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.
- C. 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.

#### **Services**

Distinguishing between services and public work is also important, as services may also have different bidding requirements. Services include

## Tips & FAQ's

### Federal Funding and Grants – STOP!!



They may not be covered in this procedure. Contact Finance.

[RCW 35.22-620](#) - Bid Splitting is prohibited. All phases and associated costs must be included.

[RCW 35A.11.010](#) - City's Authority to Contract.

**City Council Approval** is required for all purchases and change orders over \$50,000.

the labor, time, or effort of a human being. The City has three classifications of services:

### 1. Professional Services

Services provided by independent consultants 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.

- Examples: Accountants, auditors, attorneys, consultants, graphic artists

### 2. Architectural and Engineering (A&E) Services

These services are to be acquired under the authority and procedures outlined in [RCW Chapter 39.80](#).

- Examples: Engineers, land surveyors, architects, and landscape architects.

### 3. General Services

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.)

- Examples: Building maintenance, elevator maintenance, automotive services, and instructors.

## 1.12 Determining the Cost

Once the need has been defined, the estimated cost of the goods or services will generally determine what competitive selection process you will need to follow. Estimated project costs for competitive bidding purposes must include:

- All construction related work (but not engineering/architectural design fees).
- All phases of the project.
- All applicable sales and use taxes.

It should not include donated materials, labor, supplies, etc. See Appendix A for a summary of bidding requirements by project types.

## 1.13 Determining Contract Value

Contract value refers to the total aggregate value of the contract including all base periods, plus potential renewal periods.

- Example #1: A three-year contract for \$40,000 per year is considered a \$120,000 contract.
- 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

## Tips & FAQ's

**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.

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.

All purchases of services 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.
2. 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.

## 1.14 Exceptions to the Competitive Process – Sole Source

### Request an exception to the competitive process

Exceptions to this policy must be approved in writing by the Finance Director. Exceptions should make good business sense and be in the best interest of the City. In all cases, it is the City’s responsibility to conduct a good faith review of all available providers and determine that the requested vendor is the only applicable provider of such services/items.

It is important to note that **ONLY** the requirement for competitive acquisition or advertising is waived. It does not waive any contractual requirements, approvals, or insurance requirements.

### Exemptions to the Competitive Bidding Requirements as Provided in [RCW 39.04.280\(1\)](#)

Type	Example
Purchases that are clearly and legitimately limited to a single source of supply	<ul style="list-style-type: none"> <li>Licensed or patented goods or services.</li> <li>Items that are compatible w/ existing equipment, inventory, systems, programs, or services.</li> <li>Meets City standards (i.e. meters).</li> <li>Factory-authorized warranty services.</li> <li>Meets the specialized need of the City.</li> </ul>
Purchases involving special facilities or market conditions	<ul style="list-style-type: none"> <li>Item is of special design, shape or manufacture that matches or fits w/ existing equipment, inventory, systems, programs, or services.</li> </ul>
Purchases of insurance or bonds	<ul style="list-style-type: none"> <li>Insurance or bonds.</li> </ul>
Purchases in an emergency	<ul style="list-style-type: none"> <li>See section 1.15.</li> </ul>
Certain government to government purchases	<ul style="list-style-type: none"> <li>If another City provides maintenance service to our City using their own forces, no competitive bidding requirements arise. However, if the other City contracts with a private company for this service, competitive bid limits would apply. (Example: City of Tacoma servicing fleet vehicles).</li> </ul>

### Exemption Process

Complete a written request to the Finance Director to include:

- Why this option is the only option, why this makes good business sense, and/or why this is in the best interest of the City.

## Tips & FAQ's

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.

# 2.0 New Procurement

## Tips & FAQ's

Advertising requirements are found in the following codes:

**RCW 39.80.030** – Professional Services

**RCW 39.04.155(2)(a)** – Public Works Small Works Roster

**RCW 35.22.620** – Public Works

**\*Cost of Materials & Supplies**– Includes installation & freight and excludes tax.

**Purchases Over \$500** – Requires a Requisition/PO.

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

**RFQual**– Request for Qualifications

**RFB** – Request for Bid

**RFQ** – Request for Quote

**RFP** – Request for Proposal

**All purchases are subject to Budget Capacity** - Contact your Director or the Finance Director for direction.

**RCW 39.04.270(3)** – Purchase of telecommunication or data processing may be purchased using Competitive Negotiation/RFP.

## 2.1 Initiate a New Procurement

The City makes many small and large purchases over the course of the year and must comply with State and local policy for each type of procurement based on type of work, dollar limits, and level of risk involved with each purchase.

The following table summarizes the types of new procurements typically performed at the City of University Place:

Options for New Procurements	Standard Process*	Approval
Materials & Supplies <\$500*	Order as needed No PO required	Department Designee
Material & Supplies <\$4,999*	Quotes recommended PO required	Department Designee
Materials, Supplies & Equipment \$5,000 - \$14,999*	3 Informal Quotes Record on PO	Director or Designee
Materials, Supplies & Equipment \$15,000-\$49,999*	3 Written Quotes using RFQ or RFP Record on PO	City Manager or Designee
Materials, Supplies & Equipment >\$50,000*	Competitive Bid using RFB Record on PO	City Council
Public Works <\$5,000*	PO Contract	Department Designee
Public Works	Process varies	See Section 2.4
A & E Services	RFQual Contract Requisition	<\$7,500 Department \$7,500-49,999 City Manager >\$50,000 City Council
General Services	RFQual or RFQ Contract Requisition	<\$7,500 Department \$7,500-49,999 City Manager >\$50,000 City Council
Professional Services	RFP or RFQ with CM Auth Contract Requisition	<\$7,500 Department \$7,500-49,999 City Manager >\$50,000 City Council

NOTE: Depending upon the nature of the project, it may be necessary to modify the standard process if other factors, such as risk, are involved. These may be looked at on a case-by-case basis.

## Tips & FAQ's

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/services/ContractingPurchasing/ITContracts/ITMasterContractPages/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 [The City Bidding Book](#).

**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.

## Tips & FAQ's

**Public Notice** shall include:

- ~Time & place of bid opening.
- ~Deadline for bids received.
- ~Character of work.
- ~Materials & equipment to be furnished.
- ~Where specifications may be seen.
- ~Bond requirements.
- ~Statement that the city retains the right to reject or waive minor irregularities in the bids or process.

**Waiver of bids** shall not allow any contractor to receive an unfair advantage over other contractors.

### Things to consider

- ~Price is primary
- ~Capability & skill
- ~Integrity & reputation
- ~Experience & efficiency
- ~Previous performance quality & compliance to laws
- ~Tax revenue to the City (see **RCW 39.30.040**)
- ~Ability to complete on time.

## Request for Bid:

#	Request for Bid Requirement Checklist	Action
1.	Complete Statement of work including drawings & specifications	
2.	Completion Schedule	
3.	Terms and Conditions of the contract	
4.	Date and time Bids are to be submitted	
5.	Method of bid, evaluation & contract award	
6.	Schedule of wages not less than prevailing wage	
7.	Statement of Responsibility or criteria used to exclude bidders	
8.	Solicitation required by Grant Agency	
9.	Bond requirement - not less than 5%	
10.	Date and time of public bid opening	
11.	The City reserves the right to reject any bids and to waive irregularities in a bid	
12.	Others deemed necessary by City, State or Federal laws or regulations	

## The Bid Process:

#	The Bid Process	Action
1.	<u>Public Notice</u> – Publish at least once a week for 2 weeks	
2.	<u>Bid Time</u> - At least 14 days from first publication to bid submission	
3.	<u>RFB Amendment</u> – Changes to the RFB must be forwarded to all bidders & posted on the City's website	
4.	Retain copy of all bids submitted and supporting documents	
5.	Return unopened any bids received after deadline	
6.	Publicly open and read aloud bids at the date, time and place listed in the RFB	
7.	Record bid information	
8.	Evaluate bids and record evaluation – keep all evaluation paperwork	
9.	Rejection of bid – inform in writing	
10.	Obtain City Council approval to award the contract	

## TIPS & FAQ's

### **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 [RCW 35.22.620](#), 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 [RCW 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

[MRSC Small Works Roster](#)

[RCW 39.04.155](#) - Small Works Roster.

[Resolution 275](#) - University Place Small Works Roster process.

Quotations may be invited from contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors.

\*Whenever possible the city must invite at least one proposal from a certified MWDDBE company who qualifies for the job.

requirements, in accordance with [RCW 39.04.155](#). The City of University Place has contracted with the Municipal Research and Services Center of Washington (MRSC) for the City use of a statewide electronic database for small public works roster and consulting services developed and maintained by MRSC.

**Publication**

At least once a year, on behalf of the City, MRSC shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to the appropriate MRSC roster or rosters at any time that they submit a written request and necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a small works roster (see Section 2.4).

Options for New Procurements	Standard Process*	Approval
Single or Multi Craft <\$5,000	Quotes Optional PO Contract	Department Designee
Single or Multi Craft \$5,000 - \$14,999	3 Informal Quotes	Department Director or Designee
Single or Multi Craft \$15,000 - \$49,999	3 Written Quotes using an RFQ	City Manager or Designee
Single or Multi Craft >\$50,000	Competitive Bid using an RFB	Subject to Council approval and budget capacity
MRSC Small Works Roster		
Single or Multi Craft <\$50,000	Requirements same as above.	Requirements same as above
Single or Multi Craft \$50,001 - \$249,999	Minimum 5 quotes requested Invitation to bid	Subject to Council approval and budget capacity
Single or Multi Craft \$250,000 - \$350,000	Solicit quotes from all qualified contractors	Subject to Council approval and budget capacity

**Additional things to consider**

- All Projects over \$350,000 are required to use the Competitive Bidding process as outlined in Section 2.3 and [The City Bidding Book](#).
- Projects with a cost of less than \$5,000 may be procured using a contract purchase order.
- [RCW 35.22.620\(5\)](#) Project cost must include all supplies, materials, equipment, and labor.
- [RCW 35.22.620\(7\)](#) If possible, the city shall invite at least one qualified minority or women owned business.
- [RCW 39.12](#) City contractors are required to pay prevailing wage.
- [RCW 35.22.620\(5\)](#) Projects cannot be broken into segments.
- All records pertaining to the request for bid, award or contract performance must be retained by the city in accordance with City, State and/or Federal Law.

## TIPS & FAQ's

All public works, **including maintenance when performed by contract**, shall comply with [RCW 39.12.020](#) as it pertains to prevailing wage requirements.

According to [RCW 39.04.010](#) (4) there are clearly two categories of work that must comply with prevailing wage requirements: (1) Public Works and (2) Maintenance when performed by contract.

### **Retainage and Performance Bond**

- [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**

~~RCW 39.80.030 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.

## TIPS & FAQ'S

~~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)~~

**Personal Service** means hiring an individual to perform a specific study, project, or task which requires professional or technical expertise, but does not mean personal service performed for the purpose of routine continuing and necessary services, including but not limited to routine maintenance, operation of the physical plant, security, data entry, key punch services, and graphic design.

The contracting department shall initiate Personal 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.

To determine whether an individual(s) is a contract employee, the following criteria should be considered. In general, if an answer to the following questions is "yes", a contract should be used.

- Separate business – does the person have a legitimate for-profit business, as evidenced by a business license or other documentation, whereby the person offers the same or like services for a fee to other businesses or municipalities?
- Place of business – does the person perform most or all his/her work at another location (on his/her own business premises)?
- Direction – after the general scope and time frame of work is defined, does the person work independently and provide the City with a final product?

The following provides further guidance in differentiating between contract services and payroll employees. In general, payroll employees exhibit the following characteristics:

- a. Other City employees perform the same or similar service
- b. Workspace is provided the person
- c. The City of University Place dictates hours of work
- d. The City of University Place provides the supplies necessary to perform the work
- e. The person is paid in a like manner as other employees
- f. The person does not have a separate tax identification number, and does not report and pay their own income, FICA industrial insurance, and unemployment taxes
- g. The City pays benefits (medical, dental, etc.) in a like manner as for employees
- h. The employee performs services that are controlled by the City (what will be done and how it will be done). This is true when the employee is granted freedom of action. What matters is that the City has the legal right to control the method and result of the services.

- Examples: Artistic Designs, Referees, Class Instructors

**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 service or general service providers. Unless the City Council or the City Manager approves 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.

UNOFFICIAL DOCUMENT

## TIPS & FAQ's

### 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.~~

## 2.8-7 Leases

The department may negotiate lease agreements for materials, supplies, and equipment when it determines that outright purchase is not the preferred alternative. All lease agreements shall comply with City financial policies and budget documents, and any applicable state law.

**Q:** What is the difference between an RFP and an RFQ?

**A:** An RFP will typically focus on a specific project and includes price as one of the submittal requirements and evaluation factors. An RFQ does not have price/cost considerations and is dependent on qualifications only. An RFQ is commonly issued for architects and engineers per RCW 39.80. An RFQ can be used for specific projects when hiring on A & E firm but will not include price/cost as one of the evaluation factors.

### Acronyms

**RFQual** – Request for Qualifications

**RFQ** – Request for Quote

**RFP** – Request for Proposal

**RFB** – Request for Bid

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

**Documentation:** The Finance Director will prepare documentation supporting the decision to lease rather than purchase and this decision shall be approved by the City Manager.

**Award:** All proposals for leases in excess of \$50,000 or for more than three (3) years in duration, regardless of dollar amount, will be presented to the City Council for consideration and/or approval.

## 2.9-8 RFP's and RFQual's

### Request for Proposal (RFP)

An RFP is a method of soliciting competitive proposals for a defined scope of work. The proposals would normally include factors to measure qualifications, delivery, and service reputation as well as price.

Stated another way, an RFP is a formal invitation from the City to a company to submit an offer. The offer is to provide a solution (or proposal) to a problem or need that the City has identified. An RFP is a solicitation process whereby the judgment of the supplier's experience, qualifications, and solution may take precedence over their cost proposal to the City.

Elements of an RFP –

1. Project Background and Scope of Services
2. Definitions
3. Minimum Qualifications
4. Technical Requirements (if any)
5. Schedule
6. Cost Proposal
7. Submittal Requirements
8. Evaluation Process and Criteria
9. Insurance Requirements
10. Funding Sources (if applicable)

### Request for Qualifications (RFQual)

An RFQual is a method of soliciting competitive proposals that considers and evaluates companies based on demonstrated competency and qualification rather than price. This process is typically used for A & E services and other services where price is not a consideration. An RFQual will generally result in negotiations and could result in an RFP process for selection. Depending upon the complexity of the project, a typical RFP/RFQual takes around 6-8 weeks to complete.

Elements of a RFQual –

1. Project Background and Scope of Services
2. Project Budget and Source of Funding
3. Schedule
4. Minimum Qualifications
5. Submittal Requirements
6. Selection Process/Evaluation Criteria

## Tips & FAQ's

### 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

## Request for Proposals/Qualifications

#	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: <ul style="list-style-type: none"> <li>• Schedule</li> <li>• Scope of Services</li> <li>• Qualifications</li> <li>• Selection process Evaluation Criteria</li> <li>• Submittal Requirements</li> <li>• Proposal Validity Period</li> <li>• Term of contract</li> </ul>
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 style="list-style-type: none"> <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

## 2.10-9 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.

### **The Offer**

- The contractor's returned quote/bid/proposal is their offer to the City to perform the work outlining what and how much.
- The offer shows that the contractor is willing to agree to specific terms.
- The offer is given to a particular party.
- The contractor has made an offer to do what the City requested for a specific price.

### **The Acceptance**

- The City must now accept one of the offers.
- The acceptance is a communication showing agreement to the exact terms of the offer or a contract.
- A contract requires an offer and acceptance.
- Contracts must show that the offer made by the contractor has been accepted.
- There are two ways to accomplish this. Include in your contract:
  1. City's Scope & Contractor's quote/bid.  
-or-
  2. If only using contractor's quote/bid, include the following:

"The terms of this [quote/proposal] are mutually acceptable to the City and Contractor and are hereby incorporated by reference into this Agreement as the Scope of [Work/Service]."

## **2.11-10 Bid Opening Process**

### **Bid Due Dates**

Time is of the essence. It is important to make the bid submittal time clear in the bid documents. For example, "The bid form will be received up to 3:00 p.m. on April 27, 2021". Bids received after the date and hour, based on the time on our atomic clock, will not receive consideration." For example, if a bid is due at 3:00 p.m., a bid received at:

- 2:59 p.m. is on time.
- 3:00 p.m. is on time.
- 3:01 Late.

If a bidder insists on submitting the bid and leaves it, do not open it. Make a photocopy of the bid envelope with the time stamp, and immediately return the bid by certified mail, return receipt requested.

### **Equal Treatment of Bidders**

Avoid giving bidders an advantage to include: not permitting bidders use of private offices and conference space for finalizing bid prices, providing envelope for bidder to use in sealing the bid, or permitting bidder to use the agency's telephone, computer, fax, or photocopier. Avoid disclosing the names and numbers of bidders who have submitted bids.

### **Receiving Bids Checklist**

- Is the bid in writing? (No fax, email, telephone, or oral bids). Note the Small Works Roster may have fewer formal requirements.
- Did the bidder attend the mandatory pre-bid meeting, if applicable?
- Is the Bid envelope sealed? Offer tape if not sealed.
- Is the correct information on the envelope?

- Is the time stamp clear?
- Is the time stamp prior to deadline?
- 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.)"

## **2.12-11 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 enjoyed by others." In the event the City receives a bid or submittal on the first call but it is deemed non-responsive or non-responsible, the department shall consult with the City Attorney to determine whether it is a material or immaterial irregularity. Each project will be evaluated on a case by case basis.

The Finance Director and City Clerk with the initiating department will ensure that documentation relevant to a recommendation to reject any or all bids is maintained in the record of procurement.

## **2.13-12 Local Business Preferences**

State law allows, as an option in competitive bidding, local governments to take into consideration tax revenue it would receive from purchasing the supplies, materials, or equipment from a supplier located within its boundaries. RCW 39.30.040. Under the statute, the unit of local government must award the purchase contract to the lowest bidder after such tax revenue has been considered. However, any local government may allow for preferential purchase of products made from recycled materials or products that may be recycled or reused. Any unit of local government which considers tax revenue it would receive from the imposition of taxes upon a supplier located within its boundaries must also consider tax revenue it would receive from taxes it imposes upon a supplier located outside its boundaries.

If this option is invoked, the City must provide notice of its intent to use this provision prior to the submission of bids. The City may award a contract to a bidder submitting the lowest bid before taxes are applied.

Before this option is considered, both the Finance Director and City Attorney must be consulted.

## **2.14-13 Contracts with Community Service Organizations for Public Improvements**

State law allows the City to contract with certain community service organizations for work which would otherwise be subject to competitive bidding. [RCW 35.21.287](#). The contracting association may use volunteers in the project and provide the volunteers with clothing or tools; meals or refreshments; accident/injury insurance coverage; and reimbursement of their expenses. The consideration to be received by the public entity through the value of the improvements, artworks, equipment, or maintenance shall have a value at least equal to three times that of the payment to the contracting association. All payments made by the City under the statute for all such contracts in any one year shall not exceed twenty-five thousand dollars or two dollars per resident within the boundaries of the public entity, whichever is greater.

## 3.0 Other Considerations

### 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.

## TIPS & FAQ's

[RCW 39.08.010](#) – Bond Requirements.

[RCW 60.28.011](#) – Retainage Requirements

**What are the public building service maintenance contract requirements?** Public building service maintenance (janitorial, landscaping, HVAC maintenance, etc.) contracts of more than one-year duration must include wage language recognizing the potential for future variance in applicable prevailing wages each year after the first year of the contract.

**What are awarding agency requirements when disbursing public funds?** Agencies may not make any payments where contractors have not submitted an Intent to Pay Prevailing Wage form that has been approved by L&I. Agencies may not release final payment until all contractors have submitted an Affidavit of Wages Paid form that has been certified by L&I. The requirement to submit these forms should also be stated in the contract.

**What are the contractor's filing requirements?** Public work contracts require that each and every contractor and sub-contractor on the project file the Statement of Intent to Pay Prevailing Wages and Affidavit of Wages Paid forms.

**Is there a minimum contract amount for a contractor to file?** There is no minimum dollar contract amount. That is, Intent and Affidavit forms are required for every public works contract regardless of the size of the contract.

**When does the contractor file the Intent?** The Intent form is filed immediately after the contract is awarded and before work begins if that is possible. The City may not make any payment until contractors have submitted an Intent form certified by L&I.

**When does the contractor file an Affidavit?** The Affidavit form is not filed until after all the work is complete. The City may not release final payment until all contractors have submitted an Affidavit form that has been certified by L&I.

## 3.3 Performance Bond & Retainage

### **Performance Bond**

All public works or improvements contracts requiring competitive bidding including small works will require a performance bond (RCW 39.08.010). The performance bond shall be a good and sufficient bond with a surety company as surety that the contractor shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, subcontractors, and suppliers.

On contracts of \$25,000 or less, at the option of the contractor, the City may retain 50% of the contract amount for a period of 30 days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue and Department of Labor and Industries and settlement of any liens.

### **Retained Percentage**

Contracts for public improvements or work shall provide that the City reserve, from monies earned by the contractor, a sum not to exceed five (5)%, to be retained in a trust fund for the protection and payment of any person or supplier who shall perform any labor upon said contract or supply

any materials in the carrying out of said contract. The monies reserved, at the option of the contractor, 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.

### 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 before 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.

## TIPS & FAQs

### Who is the City's Risk Manager?

Risk management functions are performed by the Finance Director/Risk Manager.

## 3.5 Risk Management Considerations

The City enters into numerous contracts throughout the year. These contracts involve risk. City property can be damaged. Employees of the City, contractors, sub-contractors, and suppliers can be injured. Members of the public can be harmed. These and other accidental losses can arise during and as a result of the activities during the contract fulfillment process. The City seeks to transfer responsibility to such events to those with whom it contracts

The City's approach to contracting is designed and managed so as to avoid undue exposure to risk with exceptions where it makes good business sense.

Insurance requirements are completely dependent upon the activity being performed under contract. Which requirements and how much are determined on a case-by-case basis.

Certificates of insurance may be required depending on the nature and scope of the work to be performed. For the contractor insurance requirements specific to any project, the department shall consult with the Risk Manager. Verification of appropriate insurance requirements shall be completed prior to the commencement of work. Any waiver of insurance requirements requires the approval of the Risk Manager. This may be appropriate in the following situations:

### Waiving a portion of the Standard Insurance Requirements:

- Where the contractor is a sole proprietor, the worker's compensation insurance requirements may be waived.
- Where the contractor or its employees will not be using automobiles in the performance of the contract, the business automobile requirement may be waived.

## 3.6 Appeals and Remedies

Contract Claims: Unless otherwise specifically referenced in a contract or other specified document, the following contract claims procedure is as follows:

- Must be submitted in writing to the Finance Director/Risk Manager.
- The contractor may request a conference with the Finance Director/Risk Manager.
- Based on breach of contract, misrepresentation, mistake, or desire for modification.

The contractor will be notified of the Finance Director/Risk Manager's decision in writing. The decision will list the reason for the decision and inform the contractor of their right to appeal.

The Finance Director/Risk Manager's decision shall be final and conclusive unless within seven (7) calendar days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the City Manager or commences an action in a court of competent jurisdiction.

# 4.0 The Contract & Beyond

## 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.
3. City Attorney makes any acceptable changes to standard form contract.
4. Department handles routing of final modified contract.

## 4.2 Payment Options

Prior to contract award, payment terms should be identified to determine the most effective compensation method. The most common include:

### **Hourly/Time and Materials**

The City pays a fixed hourly rate and pays for the cost of certain specific services and/or materials. For certain professions, such as consultants, this is the standard option. Time and materials contracts should have a ceiling amount or a not to exceed amount included. This type of payment term may be used if the City is unable to clearly define the level of effort required to accomplish the objectives. A time and materials contract places most of the risk on the City and little on the contractor and provides no positive profit incentive to the contractor for cost control or labor efficiency. Frequent contract monitoring is required to ensure that the number of hours is kept to a reasonable level.

### **Fixed or Lump Sum**

The contractor receives a fixed amount or lump sum payment based on terms established in the contract. Typically, payment is tied to a completion of agreed upon performance achievements. Other alternatives are possible, such as progress payments made to compensate for activities conducted over the specific period of the contract. This type of contract should generally establish a minimum allowable level of compensation. With this method of compensation, the City may not be required to pay if specific terms in the contract are not met and thus the risk is placed on the contractor.

### **Cost Reimbursement**

A Cost reimbursement method of compensation has a higher risk for the City because it reimburses the contractor for all costs incurred under the terms of the contract. To prevent overpayment, allowable cost provisions should be clearly identified. Contract managers should consider including a contract provision for a maximum allowable compensation level for the contract period and budget. Cost reimbursement contracts generally require more fiscal pre-planning and monitoring than other methods.

### **Performance Based**

These contracts are based on attainment of a specific outcome. The rate of compensation is generally negotiated based on cost information provided by the contractor. Generally, performance-based contracts identify the maximum allowable compensation. This allows the City to define the quality of services in terms of performance standard and pay accordingly. Performance based contracts differ from time and materials or fixed price contracts in that if the quantifiable quality of service is low, the payment may be reduced or withheld. This requires a higher level of reporting from the contractor to the City. The contractor primarily assumes the risk because the City does not pay if performance levels are not met.

## 4.3 Contract Execution & Administration

### **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.

The purpose of monitoring is to ensure the contractor is:

- Complying with the terms and conditions of the contract and applicable laws and regulations.
- In compliance with the contract through identifying and resolving potential problems and providing constructive, timely feedback.
- Adhering to the project schedule and making appropriate progress toward the expected results and outcomes.
- Providing the quality of service expected.

Monitoring Activities May Include:

- **Periodic contractor reporting** – Require the contractor to submit progress reports or other appropriate data or reports, based on pre-defined criteria, and review the contractor's reports for verification of services provided and adherence to the contract. Substandard performance should be identified and addressed timely and appropriately.
- **Invoice review** – Compare billings with the terms agreed upon in the contract. Ensure the costs being charged are within the contract parameters.
- **Other periodic contact with contractor** – On-site visits to maintain contact with the contractor to review progress on a regular basis. Good contract monitoring includes a continuous dialogue with the contractor.

## 4.5 Contract Monitoring - Payment

### Reviewing Invoices for Payment

Contract payment is the process by which the contractor submits invoices for reimbursement for services and receives payments. The department head or designee must carefully review the contractor's request for payment to verify the accuracy of all charges.

### Considerations

- Are the hours/costs commensurate with the services or deliverables received?
- Is the service period identified on the invoice and were the services rendered prior to contract expiration?
- Do the rates invoiced match the rates stated in the contract?
- Has the necessary documentation been included to verify charges accurately?
- Is there enough money remaining on the contract?
- Are reimbursable expenses allowed and documented? Below are the recommended reimbursable expenses:
  - Travel
  - Mileage
  - Food
  - Miscellaneous expenses

If charges are acceptable, the department head or designee submits a pay request form for payment. Payment terms are 30 days from date of invoice.

## TIPS & FAQ's

### **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

next regular council meeting or ii) upon physical completion of the project.

#### **Processing Contract Amendments:**

Oral change orders are risky. Even though the contract documents requirements require all change orders to be in writing, the actions of both the owner's representative and the contractor can constructively waive that requirement.

To protect the City's interests, all amendments or change orders shall be executed in writing prior to the contract period of performance ends and before the contractor begins work as authorized by the amendment.

## **4.7 Contract Close-Out & Termination**

### **Contract Termination**

Contracts may be terminated prior to the completion date of the contract either for convenience of the parties, or for cause. Contact the City Attorney's Office for guidance when considering a contract termination.

Contract termination should be done in writing and routed through the contract process (refer to the contract for process).

### **Contract Close-Out Process**

Invoices that are submitted after contract expiration may still be paid if the following conditions apply:

- Invoice or pay estimate must clearly show that services were performed prior to contract expiration.
- Sufficient funds existed prior to "close" out.

Note that every effort should be made to process invoices in a timely manner to eliminate delays and extra steps in payment processing.

### **Public Works Close-Out Process for Projects >\$35,000**

A "Notice of Completion of a Public Works Contract" form shall be filed with the State Department of Revenue for contracts \$35,000 and above.

Once the contract is complete it is critical that the initiating department complete the close-out process in a timely manner and stay on a schedule.

1. **Notice of Completion of Public Works Contract** (completed and submitted to Department of Revenue)
2. **Employment Security Release Letter** (received from Employment Security).
3. **Department of Revenue Release Letter** (received from Department of Revenue).
4. **Department of Labor & Industries Release Letter** (received from Department of Labor & Industries).

### **Final Steps – Releasing Retainage**

- **5% Retainage** – Once the above-mentioned letters are received the Department Director or designee will request the finance department to release retainage by memo along with a copy of the letters received.

- **Retainage Bond** – Once the above-mentioned letters are received the Department Director or designee will release the bond, if additional retainage above the bond amount was retained then the 5% Retainage release will apply also.
- **Escrow with bank** – Once the above-mentioned letters are received the Department Director or designee will request the bank to release the retainage held, if additional retainage above the deposited amount was retained then the 5% Retainage release will apply also.

Whenever any valid lien has been filed against the retainage, the City may only release that amount of the retainage which is in excess of the total amount of the valid lien claims and an amount sufficient to defray the costs and attorney's fees of the claimants in foreclosing the liens.

## APPENDIX A

### Summary of Competitive Requirements by Project Type

Project Type	Contract Value	Competitive Process Requirement
<b>In-House Public Works Projects</b> Single Trade or Craft Multiple Trade or Craft	< \$75,500	Total that may be constructed with City forces without calling for bids or quotes within a budget year. Costs covered by the County must be included in this limit.
	< \$150,000	
<b>Small Contracted Public Works Projects</b>	< \$4,999	Informal Quotes Recommended
	\$ 5,000 - \$14,999	3 Informal Quotes Required
	\$ 15,000 - \$49,999	3 Formal quotes required using RFQ or Small Works Roster. Contract, Retainage and Performance Bond are required.
<b>Small Public Works Roster Projects</b>	\$50,000 - \$249,999	Quotations shall be solicited from at least 5 contractors on the appropriate small works roster in a manner that will equitably distribute the opportunity among the contractors. Retainage and performance/payment bond are required.
<b>Small Public Works Roster Projects</b>	\$250,000 - \$300,000	Quotations shall be solicited from all contractors on the appropriate small works roster. Retainage and performance/payment bond are required.
<b>Small Public Works Roster Projects</b>	> \$300,000	Public notice and call for sealed bids. Formal award. Retainage and performance/payment bond are required.
<b>Purchases of Supplies, Materials and Equipment Unrelated to Public Works Project.</b> (A competitive negotiation process may be used as an alternative to bidding for computer and telecommunications equipment, software and related services.)	< \$4,999	No Quotes required, but 3 quotes desired
	\$5,000-\$14,999	Minimum of 3 Informal Quotes Required
	\$15,000-\$49,999	Minimum of 3 Written Quotes Required
	> \$50,000	Public Notice and Call for Sealed Bids Required.
<b>Purchase of A&amp;E, surveying or landscape Architecture Services</b>  Selection based on review of qualifications first, then negotiations to arrive at a price that is deemed fair and reasonable to the City.	< \$4,999	Review qualifications of firms on the consulting services roster and select most qualified.
	\$5,000-\$49,999	Review qualifications of firms on the consulting services roster and select 3-6 most qualified firms and invite proposals. Select most qualified firm using proposals.
	> \$50,000	Publish RFQ, select 3-6 firms to submit proposals. Review proposals, hold interviews, select most qualified firm.
<b>Purchase of All Other Services</b>	< \$4,999	Informal Quotes Recommended
	\$5,000-\$14,999	3 Informal Quotes Required
	\$15,000-\$49,999	3 Formal quotes required using RFP or RFQ with City Manner Authorization
	> \$50,000	Formal Competitive process using an RFB