



**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date:</b> November 21, 2022		<b>Subject: Local Public Contracting Code Update</b>	
		<b>Staff Member:</b> Amanda Guile-Hinman, City Attorney	
		<b>Department:</b> Legal	
<b>Action Required</b>		<b>Advisory Board/Commission Recommendation</b>	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b> Informational overview of the City’s current public contracting code and potential future policy considerations.	
<b>Staff Recommendation:</b> N/A			
<b>Recommended Language for Motion:</b> N/A			
<b>Project / Issue Relates To:</b>			
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:**

An informational session to discuss potential updates to the City of Wilsonville’s Public Contracting Code provisions.

## **EXECUTIVE SUMMARY:**

Over the past several years, City staff members have identified issues and expressed confusion regarding the State of Oregon Public Contracting Laws and the City of Wilsonville's Public Contracting Code provisions. Some of these issues have led to piecemeal action by the City Council to clarify the City's public contracting requirements. Moreover, financial reviewers (auditors, state and federal grant providers, etc.) often request more robust public contracting regulations and guidance than what is currently reflected in the Wilsonville Code. For these reasons, the Legal Department has identified the need to update the Wilsonville Code provisions regulating public contracting and to create an adopted administrative policy manual to aid staff members through public procurement processes.

### **I. Background**

#### **A. State Public Contracting Laws and Regulations**

In 2004 (effective 2005), the Oregon legislature overhauled the state public contracting statutes, generally taking them out of Oregon Revised Statutes (ORS) Chapter 279 and dividing the statutes by type of procurement. The Oregon Public Contracting Laws now consist of the following:

- ORS Chapter 279A – general provisions related to public contracting
- ORS Chapter 279B – generally governing the procurement of goods and services
- ORS Chapter 279C – governing the procurement of architectural, engineering, and other related services, as well as procurement of construction services (referred to as public improvement procurement)
- The provisions of ORS Chapter 279 have mostly been repealed or renumbered in the other listed Chapters, except for statutes related to the procurement of goods or services from qualified non-profit agencies that employ individuals with disabilities.

The ORS requirements are further clarified and refined in the Oregon Administrative Rules (OAR) as follows:

- OAR Chapter 137-046 contains general public contracting provisions
- OAR Chapter 137-047 governs goods and services procurements
- OAR Chapter 137-048 states the architectural, engineering, and related services procurement requirements
- OAR Chapter 137-049 contains the requirements for procuring construction (public improvement) services

Generally, the state public contracting statutes and regulations are a model code that local jurisdictions may adopt. Many local jurisdictions, including Wilsonville, have largely adopted the state regulations and then expressly exempt or modify specific contracting regulations.

## **B. Wilsonville Public Contracting Code**

Wilsonville's Public Contracting Code is WC 2.310-2.319 (see **Attachment 1**). Wilsonville does not currently have an adopted public contracting administrative guide or manual. Other than a narrow revision to the Wilsonville Code provisions in 2014, WC 2.310-2.319 have not been revised since being adopted in 2005 after the State revised its public contracting laws.

## **II. Identified Future Policy Considerations**

To undertake this project, an inter-departmental team, with representatives from each department, was created to review and provide feedback of the City's current public contracting policies. While still in the early stages, staff has identified particular areas that could be revised or clarified.

### **A. Local Administrative Rules/Manual**

Many jurisdictions have a local public contracting manual or administrative rules to further clarify the local public contracting code. Such documents are typically adopted by resolution so they can be amended as state regulations or other developments in public contracting arise. Not only do such rules or manual provide clarity and flexibility for local jurisdictions, they are often requested by auditors or other financial reviewers, who expect such documents.

### **B. Exemptions to Competitive Procurement**

The state public contracting regulations allow local public contracting codes to exempt specific types of goods/services from competitive procurement. The City's Code currently documents such exemptions in WC 2.312 and 2.313. These exemptions have not been updated since 2005 and should be reviewed. For example, "computer equipment and software" is exempted from competitive procurement, but the technology the City uses today, that often must be derived from a single source, may be beyond the meaning of "computer equipment and software." An update to reflect current standards, meanings, and practices may be warranted.

### **C. Inclusivity**

Studies in other communities in the state and in the United States have found that public contracting regulations and requirements are often a barrier to small businesses and women and minority owned businesses. Currently, the state, through Business Oregon's Certification Office for Business Inclusion and Diversity (COBID), offers a certification program for emerging small businesses, minority-owned businesses, women-owned businesses, and service-disabled veteran-owned businesses. The Council may want to consider policies that create opportunities for businesses, such as trainings for local businesses on how to become state-certified or creating a list of certified businesses to which staff advertise contract requests for goods or services.

Staff has identified that the Diversity, Equity and Inclusion (DEI) Committee should play a role in this process to recommend policies to promote inclusion of small businesses, women and minority owned businesses, and other businesses that have historically struggled to contract with government. The DEI Committee can aid staff to review how the City's local code could be a barrier, and could create opportunities, for businesses. The City's risk management and insurance broker will also need to be involved in these discussions.

#### **D. Amendments/Approval Authority**

Currently, the City Manager has approval authority of up to \$100,000 and may approve contract amendments up to 15% of the original contract amount. These figures, particularly given the escalating costs of goods and services, mean that a large number of contracts and contract amendments must be brought to the City Council for approval. A policy question for Council in this project will be: At what cost threshold is the Council comfortable with administrative approval versus Council approval?

#### **E. Professional Services**

The state public contracting regulations treat different types of professional services in distinctly different ways, which impacts staff's ability to efficiently secure certain professional services. Under the state rules, architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and related services may be directly procured if the estimated cost is \$100,000 or less. All other professional services are subject to the procurement procedure thresholds for standard goods and services, meaning that the cap for all other professional services that can be directly procured is \$10,000. Many jurisdictions have adopted local regulations that treat all professional services the same, and are subject to the procurement regulations that apply to architectural and engineering services. Whether to adopt a similar local regulation will be a future policy question for the Council.

### **III. Next Steps**

The City inter-departmental team is currently reviewing the City Code, and Legal staff are doing a comparative analysis with other jurisdictions' codes. Staff plans to bring specific policy questions to Council in a work session in the early part of 2023. Staff seeks to have Council consider and potentially adopt any code amendments and/or administrative rules prior to the start of the new fiscal year so any new procedures may be implemented with the new fiscal year.

#### **EXPECTED RESULTS:**

After an initial discussion of the current state statutes and regulations related to public contracting, the project team will begin the process of reviewing current city code and locating code sections to be revised, with the city potentially approving a final revised code by June 2023.

**TIMELINE:**

Initial policy discussions with Council are anticipated to occur in early 2023 and consideration of code amendments and administrative rules by June 2023.

**CURRENT YEAR BUDGET IMPACTS:**

N/A

**COMMUNITY INVOLVEMENT PROCESS:**

Staff has identified that the DEI Committee should play a role in this process. Studies in other communities in the United States have found that public contracting regulations and requirements are often a barrier to small businesses and women and minority owned businesses. The DEI Committee can aid staff to review how the City's local code could be a barrier, or could create opportunities, for businesses. The City's risk management and insurer will also need to be involved in these discussions.

**POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

Based on future analysis of the potential opportunities to create a more inclusive local public contracting code, revisions to the code may increase prospects for certain businesses that have historically been unable to contract with the City.

**ALTERNATIVES:**

Retain existing code language.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Wilsonville Code 2.310-2.319