

Attachment 2 to Staff Report

Proposed Amended and Restated City Public Contracting Code

2.308. Short Title

WC 2.308 through 2.312 may be cited as the City of Wilsonville's "City Public Contracting Code."

2.309. Definitions

- (1) "City" or "Wilsonville" means the City of Wilsonville, Oregon.
- ~~(1)(2)~~ "City Council" means the Council of the City of Wilsonville, Oregon.
- ~~(2)(3)~~ "City Manager" means the City of Wilsonville City Manager or designee.
- ~~(3)(4)~~ "Oregon Public Contracting Code" means Oregon Revised Statutes chapters 279A, 279B, and 279C. Unless specifically defined below, terms used in the City Public Contracting Code shall have the meaning set forth in the Oregon Public Contracting Code.
- (5) "Model Rules" means the rules of procedure prepared and maintained by the Oregon Attorney General pursuant to ORS 279A.065, which are currently numbered Divisions 47 through 49 of Chapter 137 of the Oregon Administrative Rules, as may be amended or renumbered from time to time.

Commented [SD1]: New language

2.310. Local Contract Review Board; ~~Delegation of Authority.~~

- (1) Designation. The Wilsonville City Council is designated as the Local Contract Review Board under the ~~State of~~ Oregon Public Contracting Code. ~~The~~
- (2) Authority.
 - a. In its capacity as the Local Contract Review Board, ~~the Wilsonville City Council~~ shall have all the powers ~~of the State and Local~~ authority granted under the Oregon Public Contracting Code, including, but not limited to the power to:
 - i. ~~Require any notice publication beyond what is required under the Oregon Public Procurement Code or Model Rules;~~
 - ii. ~~Require pre-qualification for persons desiring to bid for public improvement contracts;~~
 - iii. ~~Grant exemptions from the bid security and performance bond required on contracts for public improvements; or~~
 - iv. ~~Make alternate arrangements for retainage pursuant to the Oregon Public Contracting Code.~~
 - ~~a.b. In its capacity as the Local Contract Review Board relative to the contract concerns of the City or, if delegated, the Urban Renewal Agency of the, the Wilsonville City of Wilsonville. The Board may Council, from time to time, may delegate its powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Wilsonville Public Contracting Code. The City Manager, or his/her designated agent, is designated as the City's "Contracting Agency" for purposes of contracting powers and duties assigned to the City of Wilsonville as a "Contracting Agency" under the State of Oregon Public Contracting Code or the Model Rules.~~
 - ~~— In its capacity as the Local Contract Review Board, the Wilsonville City Council is authorized to adopt rules necessary to carry out the City of Wilsonville's Public Contracting Code.~~
- (3) Rules of Procedure

Commented [SD2]: Moved and slightly reworded. Currently in WC 2.318(3).

Commented [SD3]: New language inspired by what other similar jurisdictions have in their code.

- a. WC 2.003 will govern proceedings of the Local Contract Review Board, except that: (i) the Mayor will serve as the chair of the Local Contract Review Board, and (ii) the chair of the Local Contract Review Board will preside over meetings of the Local Contract Review Board, and in the absence of the chair, the line of succession will be the same as the line of succession that applies to City Council.
- b. A violation of the rules of procedure in WC 2.003 may not be considered a basis for challenging the validity of any decision by the Local Contract Review Board.
- c. Routine business of the Local Contract Review Board may be conducted on the consent agenda of a regularly schedule City Council Meeting.

2.311. Application of State Law.

- (1) The City’s Procurement Activities must be conducted in accordance with the rules of procedure set forth in the Oregon Public Contracting Code, Model Rules, the City Public Contracting Code, and all City policies and rules. Except as specifically provided herein, public contracts shall be let by the City of Wilsonville according to the State of Oregon Public Contracting Code, including the Model Rules adopted by the Oregon Attorney General as they now exist and as they may be amended in the future, and the Wilsonville Code. Definitions provided by the State of Oregon Public Contracting Code or the Model Rules shall apply to City of Wilsonville procurements, except as may be specifically provided herein.
- (2) In the event of a conflict between any provision of the Model Rules and the City Public Contracting Code, the provisions of the City Public Contracting Code shall control.

2.312. Exemptions from Competitive Procurement Administrative Authority.

The following classes of public contracts are hereby exempted from competitive procurement:

- (1) Any contract the exemption of which is provided by the State of Oregon Public Contracting Code or Model Rules.
- (1) (2) Change orders or contract amendments City Manager. The City Manager is authorized to engage in the following Procurement activity without City Council’s prior approval:
 - a. Approve any Public Contracting activity so long as: (i) the aggregate contract price does not exceed [\$250,000]; and, (ii) the expenditure is within an approved budget;
 - b. Approve any Procurement activity that is not a Public Contract so long as: (1) the aggregate consideration to be paid by any party under the contract or agreement does not exceed [\$100,000]; and (ii) any expenditure to be incurred by the City is within an approved budget;
 - c. Execute one or more change orders or contract amendments that: (i) are reasonably related to the scope of work under the original contract, up to 15 (ii) together have an aggregate value not exceeding [25] percent of the original contract value; contract price may be approved by the Contracting Agency. Additional goods or services may be purchased through the amendment even though the did not provide unit prices or allow for additional purchases. Change orders or other amendments that increase the initial price of, and (iii) is within the approved project budget;
 - d. Extend or renew a contract by more than so long as the above mentioned amount must be separately approved by total contract value, after the Contract Review Board and Contracting Agency, renewal term, does not exceed the amount stated in Sections 2.312(1)(a) or 2.312(1)(b), or, if amended, the amount stated in Section 2.312(1)(c);
- (3) Contracts for the purchase of computer equipment and software, which may be by requests for quotations, the solicitation of which may be by advertisement or oral requests for offers.

Commented [SD4]: Currently WC 2.319. Provision has been adjusted. Current language references the Oregon Public Contracting Code and says that in the event of conflict, our code will control; we cannot supersede the Oregon Public Contracting Code.

Commented [SD5]: Content currently in WC 2.312(2), and 2.313(1).

Commented [SD6]: Proposed number for City Council to confirm.

Commented [SD7]: New provision for City Council to consider.

Commented [SD8]: Proposed number for City Council to confirm.

Commented [SD9]: Important clarification to term “contract price” – this term is ambiguous and could mean the aggregate price, including all amendments, or original contract value.

- ~~(4) Personal Service Contracts up to the limits defined in Wilsonville Code Section 2.315.~~
- ~~(5) A Public Facility Improvement Agreement entered into between the City of Wilsonville and a person responsible for carrying out conditions of approval of a land use decision of the City of Wilsonville. The term "Land Use Decision" has the meaning provided by ORS 197.015.~~
- ~~(6) Price Regulated Items, Library lending materials, used items, and periodicals, advertising contracts, equipment maintenance repair and overhaul, purchases under established price agreements, gasoline, diesel fuel, heating oil, lubricants and asphalt, investment contracts, insurance contracts, office copier purchases, sole source contracts, and oil or hazardous material removal.~~
 - e. ~~(7) Adopt forms, procedures, and administrative policies applicable to City Procurement or Public Contracting activities; or,~~
 - f. ~~The City Manager may delegate the City Manager's powers and responsibilities consistent with the Oregon Public Contracting Code, the Model Rules, or the Wilsonville Public Contracting Code.~~
- (2) Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, and Land Surveying Services. Procurement of architectural, engineering, photogrammetric mapping, transportation planning, and land surveying services, and related services less than or equal to \$50,000.00 subject to approval by the Community Development Director, and up to \$100,000.00 subject to approval of the requires the following approval: City Manager.
 - a. A contract with a value of less than or equal to [\$150,000] requires the prior approval of the Community Development Director, and
 - b. A contract with a value of between [\$150,000.01 and \$250,000] requires the prior approval of the City Manager.

2.313. Administrative Authority.

Administrative staff and departments have contracting authority and responsibilities as follows:

- (1) In addition to all other acts authorized by state law, the Contracting Agency is authorized to:
 - ~~(a) Enter into City contracts not to exceed \$100,000.00 without additional authorization of the Contract Review Board or as otherwise may be allowed by these Code provisions.~~
 - ~~(b) Consistent with the Wilsonville Code, adopt forms, computer software, procedures, and administrative policies and rules for all City purchases.~~
 - ~~(c) Allow a contract to be extended or renewed for a single term not to exceed the length of the initial term.~~
- ~~(2) Purchases of goods from City employees shall require authorization of the Contracting Agency. Provision of services by City personnel shall be in accordance with the City Personnel Policies and other applicable law.~~
- ~~(3) All contracting by departments shall be according to approved City purchasing procedures adopted by the Contracting Agency or the Contract Review Board.~~
- ~~(4) Each department shall operate within its budget or seek supplemental budgetary authority from City Council with respect to any contract.~~
- ~~(5) Department shall plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities.~~
- ~~(6) Department shall process requisition forms and negotiate purchases on the most favorable terms in accordance with adopted ordinances, state laws, policies, and procedures.~~

Commented [SD10]: Proposed number for City Council to confirm. Corresponds to signing authority revisions being considered by the City Manager.

Commented [SD11]: Proposed number for City Council to confirm. Corresponds to signing authority revisions being considered by the City Manager.

Commented [SD12]: Currently in WC 2.312(7).

- ~~(7) — Departments may give notice of public improvement contracts by electronic publication where the Contracting Agency finds that such publication is likely to be cost effective, as provided in ORS 279C.360.~~

2.314. Public Improvement Contracts.

Public improvement contracts estimated by the Contracting Agency to be greater than \$5,000 and not to exceed \$100,000 may be let by competitive quote under the following procedures:

- ~~(1) — The Contracting Agency shall informally solicit at least three price quotes from prospective contractors. If three prospective contractors are not available, then fewer quotes may be solicited, and the Contracting Agency shall maintain records of the attempts to obtain quotes.~~
- ~~(2) — The Contracting Agency shall award the contract to the prospective contractor whose quote will best serve the interests of the City of Wilsonville, taking into account price and other applicable factors, such as experience, specific expertise, availability, project understanding, contractor capacity, and contractor responsibility. If the contract is not awarded on the basis of the lowest price, the Contracting Agency shall make a written record of the basis for the award.~~
- ~~(3) — A procurement may not be artificially divided or fragmented to qualify for the informal contract award procedures provided by this section.~~
- ~~(4) — A public improvement contract let under this section may be amended by change order as provided in Wilsonville Code Section 2.312(2).~~
- ~~(5) — Public improvement contracts in excess of \$100,000 shall be let in accordance with the provisions of ORS 279C.~~
- ~~(6) — Nothing in this section shall be deemed as restricting the Contracting Agency's ability to competitively solicit and award a contract for an undefined scope of work through the use of Price Agreements allowed pursuant to ORS 279B.140.~~

2.315. Personal Service Contracts.

A personal service contract is a contract primarily for the provision of services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, surveyors and related services, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants, and property Managers. Special rules apply to the selection of service providers for Engineering, Architectural, and Related professional services. See Sections 2.212 and 2.315(7).

The Contracting Agency shall have discretion to determine whether a particular type of contract or service falls within the foregoing definition. Nothing in this section shall apply to the employment of regular City employees.

Personal services contracts are subject to the rules established by this section:

- ~~(1) — Unless otherwise approved by the Contracting Agency, all personal service contracts shall require the contractor to defend, indemnify, and hold harmless the City, its officers, agents, and employees against and from any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to ORS 30.285 and ORS 30.287 indemnification and defense.~~
- ~~(2) — Unless otherwise approved by the Contracting Agency, City personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least the amount of the City's tort liability limits, naming the City as an additional named insured, during the life of the contract.~~

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- ~~(3) All City personal services contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. The City Attorney's Office will prepare model contract provisions for use in City personal service contracts.~~
- ~~(4) The following procedure shall be observed in the selection of personal service contractors:~~
- ~~(a) For personal service contracts involving an anticipated fee of \$10,000.00 or less per annum, the Contracting Agency may negotiate a contract for such services with any qualified contractor of his or her selection.~~
 - ~~(b) Except as allowed under Section 2.312, for personal service contracts involving an anticipated fee of more than \$10,000.00 but less than \$150,000.00 per annum, the Contracting Agency shall solicit at least three prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.~~
 - ~~(c) The Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate City employee or by an interview committee.~~
 - ~~(d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, the Contracting Agency shall select the prospective contractor, and shall prepare a personal service contract.~~
- ~~(5) The above provisions regarding selection procedures do not apply to amendments, modifications, or supplements to executed personal service contracts.~~
- ~~(6) The following criteria may be considered in the evaluation and selection of a personal service contractor:~~
- ~~(a) Specialized experience in the type of work to be performed.~~
 - ~~(b) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.~~
 - ~~(c) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, the exercise of discretion, ability to meet schedules, and contract administration, where applicable.~~
 - ~~(d) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.~~
 - ~~(e) Any other factors relevant to the particular contract. The procedures and criteria for the screening and selection of a personal services contractor is within the sole discretion of the Contracting Agency and may be adjusted to accommodate the Contracting Agency's scope, schedule, and budget objectives for a particular project.~~
- ~~(7) The competitive selection process for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, greater than \$100,000.00, shall follow Qualification Based Selection (QBS) criteria pursuant to ORS 279C.005 — 125 (OAR 137-048-210 through 270), except as allowed under Section 2.312 of this Code.~~
- ~~(8) The selection procedures described in this section may be waived by the Contracting Agency where 1) an emergency exists that could not have been reasonably foreseen and requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of the selection procedures, 2) selection is from a list of providers with similar qualifications in which selection is determined based upon a regularly scheduled pre-qualification process, not to exceed three years, or 3) a change in contractor to do follow up work would clearly result in increased costs or increased time.~~

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- ~~(9) The Contracting Agency is delegated the authority to sign all personal service contracts.~~
 - ~~(10) Unless otherwise provided herein, all personal service contracts shall be awarded on a competitive selection process. Nothing contained in this section shall preclude the City from complying with provisions of Federal or State law that require or allow the City to utilize a different selection or contracting procedure.~~

2.316. Surplus Personal Property Disposition.

Disposition of surplus personal property may be made, at the discretion of the Contracting Agency, under provisions of the State of Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section:

- ~~(1) From time to time and after personal property owned by the City of Wilsonville is determined by the Contracting Agency to be surplus to the needs of the City, the City may sell the property at public auction. The City may utilize a contracting firm, approved by the Contract Review Board, for disposition of the property on terms and conditions contained in a contract approved by the Contract Review Board. The City shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the City of Wilsonville Internet Website, or by advertisement in a newspaper of general circulation.~~
- ~~(2) Auction sales may be conducted entirely on the internet. Sale shall be for cash to the highest bidder. All proceeds of the sale shall be paid to the City's general fund, subject to the terms and conditions of the contract (if any) approved by the Contract Review Board between the City of Wilsonville and a firm selected to conduct the auction.~~
- ~~(3) All personal property sold pursuant to this section shall be sold as is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale, which shall recite that the sale is without warranty, as provided in this sub-section.~~
- ~~(4) The Contracting Agency may sell surplus personal property by a negotiated sale if the value of the property is estimated to be less than the cost of the auction sale and expected proceeds. Surplus property which has a value of less than \$500.00, or for which the costs of a negotiated sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost effective, including by disposal as waste. Alternatively the Contracting Agency may transfer personal property without remuneration or only nominal remuneration to another public agency or any recognized non-profit organization.~~

2.317. Bids Exceeding Budget.

If bids are solicited for a public improvement contract, and all bids exceed the budget for the project, the Contracting Agency may, prior to contract award, negotiate for a lower price under the following procedures:

- ~~(1) Negotiations will begin with the lowest, responsive and responsible bidder. If negotiations are not successful, then the Contracting Agency may begin negotiations with the second lowest responsive, responsible bidder, and so on.~~
- ~~(2) Negotiations may include the inclusion of value engineering and other options to attempt to bring the project cost within the budgeted amount.~~
- ~~(3) A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original bid documents.~~
- ~~(4) The Contracting Agency will adhere to the provisions of ORS 279C.340 in applying this section.~~

2.318. Bid Rejection, Disqualification, Appeal.

- ~~(1) The Contracting Agency may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject all bids if it is in the public interest to do so:
 - ~~(a) The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;~~
 - ~~(b) The person does not have equipment available to perform the contract;~~
 - ~~(c) The person does not have personnel or sufficient experience to perform the contract; or~~
 - ~~(d) The person has breached contractual obligations to public and/or private contracting agencies.~~~~
- ~~(2) A person who has been disqualified as a bidder may appeal such disqualification to the Board as follows:
 - ~~(a) The person shall, within three business days after receipt of notice of disqualification, in writing, notify the City Recorder that the person wishes to appeal the disqualification;~~
 - ~~(b) Immediately upon receipt of such written notice of appeal, the Recorder shall inform the Board;~~
 - ~~(c) Upon receipt of notice of appeal, the Board shall notify the person appealing the time and place of the public hearing;~~
 - ~~(d) The Board shall consider de novo the notice of disqualification, the record of the investigation made by the City Manager and/or the Community Development Director or City Engineer, and any evidence provided by the parties. The Board's decision and reasons therefore shall be in writing.~~~~
- ~~(3) In addition to the powers and duties established by this Code, the Board and Contracting Agency shall have such additional powers as authorized by State law and may also:
 - ~~(a) Require notice publication in addition to that required by State law;~~
 - ~~(b) Require pre-qualification for persons desiring to bid for public improvement contracts;~~
 - ~~(c) Grant exemptions from the bid security and performance bond required on contracts for public improvements;~~
 - ~~(d) Make alternate arrangements for retainage pursuant to the Oregon Contracting Code.~~~~

2.319. Conflict of Law.

~~In the event of a conflict between any provision of the State of Oregon Public Contracting Code or the Model Rules and this chapter of the Wilsonville Code, the provisions of this chapter shall control.~~

~~(Ord. No. 578, 2-22-2005; Ord. No. 733, 2-20-2014)~~