

Attachment 3 to Staff Report

Proposed Administrative Rules

1. Definitions

"Land Use Decision" has the meaning provided by ORS 197.015.

"City Manager" means the City of Wilsonville City Manager or designee.

A "Professional Service" is a service that requires 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 attorneys, auditors, and other licensed professionals, artists, designers, computer programmers, performers, consultants, and property managers. As used in these Administrative Rules, "Professional Services" do not include architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, or related services, as those terms are defined in ORS 279C.100. "Professional Services" are equivalent to the term "Personal Services" used in the Oregon Public Contracting Code.

"Oregon Public Contracting Code" means Oregon Revised Statutes chapters 279A, 279B, and 279C. Unless specifically defined below, terms used in the City of Wilsonville's Public Contracting Code shall have the meaning set forth in the Oregon Public Contracting Code.

"Public Art Policy" means the City's Public Art Policy and Guidelines, initially adopted via Resolution No. 3081, as it may be amended from time to time.

2. General

2.1. The purpose of these Administrative Rules is to: (1) refine, supplement, and provide specificity to the regulations in [WC 2.308 through 2.312]; and (2) provide City personnel direction on implementing [WC 2.308 through 2.312].

2.2. The City may give notice of Public Improvement Contracts by electronic publication where City Council finds that such publication is likely to be cost effective, as provided in ORS 279C.360.

2.3. When engaging in Procurement or Public Contracting activities, the City shall:

2.3.1. Abide by City purchasing procedures and administrative policies adopted by City Council or the City Manager;

Commented [SD1]: General Comment: Language that has been only reworded and minor changes are not marked.

Commented [SD2]: The term used under state law is "Personal Services," but City staff tend to speak in terms of "Professional Services," so that term is used here.

Commented [SD3]: New language.

Commented [SD4]: Currently WC 2.313(7).

Commented [SD5]: Currently WC 2.313(3) through (6).

- 2.3.2. Operate within its budget, or seek supplemental budgetary authority from City Council;
- 2.3.3. Plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities; and,
- 2.3.4. Negotiate purchases on the most favorable terms reasonably possible.

3. **Reporting to City Council.** The City Manager shall, no less than once per fiscal year, provide a report to City Council that lists each contract approved by the City Manager pursuant to WC 2.312(a) that has a value of between \$100,000 and \$250,000.

Commented [SD6]: New language. City Council to discuss and consider.

4. **Exemptions from Competitive Procurement Requirements.**

Commented [SD7]: • Currently WC 2.312.
• Exemptions that are already available under the Oregon Public Procurement Code have been deleted (e.g., insurance contracts, sole source contracts).

4.1. The City may use any exemption available under the Oregon Public Contracting Code or Model Rules.

4.2. When a contract is exempt from a competitive procurement requirement, the City shall use reasonable efforts to ensure it is obtaining goods or services on the best terms (e.g., price and quality).

Commented [SD8]: New language.

4.3. The following classes of public contracts are hereby exempted from competitive procurement requirements. The City may engage in these procurements in any manner deemed practical or convenient, including by direct selection or award:

Commented [SD9]: New language.

- 4.3.1. An 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;
- 4.3.2. Purchase of items for which prices or selection of suppliers are regulated by a governmental authority;
- 4.3.3. Purchase of library lending materials and periodicals;
- 4.3.4. Purchase of used items;
- 4.3.5. Advertising contracts;
- 4.3.6. Contracts for equipment maintenance, repair, and overhaul;
- 4.3.7. Purchases under established price agreements;
- 4.3.8. Purchases of gasoline, diesel fuel, heating oil, lubricants and asphalt;
- 4.3.9. Contracts for oil or hazardous material removal services;

4.3.10. Investment contracts;

4.3.11. Partnerships with non-profit organizations to promote environmental stewardship; and,

4.3.12. The National Citizen Survey.

Commented [SD10]: These exemptions are new.

4.4. Professional Services.

Commented [SD11]: • Currently a stand-alone section, WC 2.315. Proposed change approaches these contracts differently, and just increases the point at which you may not use direct appointment from \$25,000 to \$100,000.
• Definition changed from “personal services” to “professional services” and moved to definition section.
• Selection procedures deleted because Model Rules are more robust.
Language duplicative of what is in state laws/rules deleted.

4.4.1. The City may procure Professional Services with an aggregate contract price that does not exceed \$100,000 in any manner deemed practical or convenient, including by direct selection or award.

4.4.2. The following criteria may be considered in the evaluation and selection of a personal service contractor:

4.4.2.1. Specialized experience in the type of work to be performed;

4.4.2.2. Capacity and capability to perform the work, including any specialized services within the time limitations for the work;

4.4.2.3. 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;

4.4.2.4. 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; and,

4.4.2.5. Any other factors relevant to the particular contract.

4.5. Public Art. The City may award a contract for “public art,” as that term is defined in the Public Art Policy, in accordance with the procurement requirements specified in the Public Art Policy.

Commented [SD12]: This exemption is new.

4.6. Computer Equipment and Software.

Commented [SD13]: This exemption exists in WC 2.312(3), but has been expanded here.

4.6.1. The City may award a contract or renew existing contracts for the following information technology systems or system components in any manner deemed practical or convenient:

4.6.1.1. Contracts for the purchase or lease of computer software or hardware, including, but not limited to, software-as-a-service

software or subscriptions for cloud-based services, audio-visual systems or components, telecommunication systems or components, GIS/GPS systems or components, and office photocopiers;

4.6.1.2. Contracts for the purchase or lease of infrastructure, systems, or components of a system, that requires closed source software to operate or that the City deems to be vulnerable to corruption or harmful unauthorized access;

4.6.1.3. Contracts to upgrade any systems described in this Section 4.6; or

4.6.1.4. Contracts for maintenance or training related to any systems described in this Section 4.6.

4.6.2. If the City enters into a contract for a system or system component described in this Section 4.6 by direct selection or award, the City shall document the basis for the City's decision to use a specific vendor (e.g., it is beneficial for the City to work with the City's current vendor in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the City's computer system, or to keep the specifics of the City's computer systems confidential).

5. **Surplus Personal Property Disposition**

Disposition of surplus personal property may be made, at the discretion of the City Manager, under provisions of the Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section.

- 5.1. **Notice Requirement.** From time to time and after personal property owned by the City of Wilsonville is determined by the City Manager to be surplus to the needs of the City, the City may sell the property at public auction. 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's website, or by advertisement in a newspaper of general circulation.
- 5.2. **Auction Procedures.** Auction sales may be conducted entirely on the internet. The surplus property shall be sold 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) between the City of Wilsonville and the company selected to conduct the auction.
- 5.3. **Property Sold As-Is.** 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

Commented [SD14]: • Currently WC 2.316.
• References to "Contracting Agency" revised to refer to "City" or "City Manager" as appropriate.
• One sentence deleted because this action is probably more appropriately handled by City staff, rather than by City Council, which is the Local Contract Review Board.

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.

- 5.4. Sale without an Auction. The City may sell surplus personal property by a negotiated sale to a specific buyer 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 the expected sale proceeds, may be disposed of by any means determined to be cost effective, including by disposal as waste. Alternatively the City may transfer personal property without remuneration or only nominal remuneration to another public agency or any recognized non-profit organization.

6. **Bid Rejection; Appeal of Disqualification**

- 6.1. Bid Rejection. The City 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, including for, but not limited to, the following reasons:
- 6.1.1. 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;
 - 6.1.2. The person does not have equipment available to perform the contract;
 - 6.1.3. The person does not have personnel or sufficient experience to perform the contract; or
 - 6.1.4. The person has breached contractual obligations.
- 6.2. Appeal of Disqualification. A person who has been disqualified as a bidder may appeal such disqualification to City Council as follows:
- 6.2.1. 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;
 - 6.2.2. upon receipt of such written notice of appeal, the City Recorder shall inform City Council;
 - 6.2.3. As soon as is practicable upon receipt of notice of appeal, City Council shall notify the person appealing the time and place of the public hearing; or
 - 6.2.4. City Council shall consider *de novo* the notice of disqualification, the record of the investigation made by the City Manager, Community Development

Commented [SD15]: • Currently WC 2.318.
•References to “Contracting Agency” revised to refer to “City” and references to “the Board” revised to refer to “City Council.”
•Headings added.
•Third subsection moved to section on “Local Contract Review Board – Authority” in revised code.

Commented [SD16]: New language.

Director, or City Engineer, and any evidence provided by the parties. City Council must document its decision and reasons therefore in writing.