



**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: March 18, 2024		Subject: Public Contracting Code Update	
		Staff Member: Stephanie Davidson, Assistant City Attorney	
		Department: Legal	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input 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 checked="" type="checkbox"/> Not Applicable Comments: Review of proposed changes to Wilsonville’s Public Contracting Code and related administrative rules	
Staff Recommendation: N/A			
Recommended Language for Motion: N/A			
Project / Issue Relates To:			
<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 review and discuss proposed amended and restated version of the City’s Public Contracting Code (WC 2.310 through 2.319), and related administrative rules.

EXECUTIVE SUMMARY:

Public contracting (also referred to as “public procurement”) refers to the City’s efforts to procure goods or services. The Legal Department is currently taking a holistic look at the City’s public contracting program and seeks guidance from City Council.

This project is important because financial reviewers (e.g., 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 (WC). City staff have also periodically expressed that some parts of our public contracting program are frustrating or confusing. The Legal Department’s goal is to facilitate City Council’s adoption of updates to the City’s Public Contracting Code effective as of July 1, 2023. The Legal Department is also developing a manual to assist City staff who engage in contracting activities.

I. Follow Up on February 22, 2024 Work Session

A. Summary of Feedback received from City Council

During the first work session held on this subject, City Council provided feedback to specific questions asked by the Legal Department, which is summarized below. City Council is comfortable:

- Continuing to follow the “Model Rules” (i.e., the Oregon Administrative Rules regarding public procurement), and supplementing them as necessary with the City’s Public Contracting Code (i.e., City Council does not want to explore opting out of the Model Rules and having the City develop its own stand-alone Public Contracting Code);
- Expanding the existing computer hardware and software exemption;
- Adding new exemptions for the National Citizen Survey, environmental stewardship programs, and public art;
- Allowing City staff to engage in direct selection or award for “Professional Services” with a contract value of \$100,000 or less; and,
- Reducing barriers for businesses to contract with the City to provide goods and services.

B. Open Questions

With respect to the following two questions, City Council requested a clear recommendation, and data to support the Legal Department’s recommendation:

- Does City Council still want to see and approve all contracts with a value of more than \$100,000? Or, is City Council interested in increasing this approval threshold?
- Does City Council still want to approve change orders or contract amendments of up to 15% of the “contract price?” At what point and under what circumstances does City Council want to approve contract amendments and change orders?

C. Recommendations and Supporting Data

i. Does City Council still want to see and approve all contracts with a value of more than \$100,000? Or, is City Council interested in increasing this approval threshold?

The Legal Department recommends that the City Code be revised to require that any Public Contract that exceeds \$250,000 must be reviewed and approved by City Council.

This number aligns with a new requirement under the Oregon Public Contracting Code: In procurements of goods or services (i.e., under ORS chapter 279B), a formal competitive procurement process (i.e., a Request for Proposals or Invitation to Bid process) is required for contracts with a value exceeding \$250,000. Contracts with a value equal to or less than this amount may be obtained via direct selection or award (\$25,000 or less), or by obtaining three quotes (over \$25,000 and up to and including \$250,000). The Legal Department recommends that the administrative authority to sign contracts aligns with the goods and services contract threshold that does not require a formal competitive procurement process, which is contracts valued at \$250,000 or less.

Of 25 public contracts that went to City Council for approval in 2023, 10 had a value between \$100,000 and \$250,000. In other words, 40% of all contracts reviewed by City Council were within this range. If City Council increases the current approval threshold from \$100,000 to \$250,000, using 2023 data as an indicator, 60% of all contracts with a value of more than \$100,000 would still be subject to City Council approval.

See WC 2.312(1)(a) in **Attachment 1** or **Attachment 2** to review the Legal Department's proposed language.

ii. At what point and under what circumstances does City Council want to approve contract amendments and change orders?

The Legal Department recommends that the City Code be revised to require that any change order or contract amendment that results in a total contract value that exceeds 25% of the original contract value must be approved by City Council.

In 2023, there were five (5) contract amendments reviewed by City Council for approval. Three of them were tied to the Boeckman Road Corridor Project and were substantial. These amendments are also rare in that they are contemplated to occur as part of the alternative contracting method utilized – a progressive design-build contract. Another one was for the Wastewater Treatment Plant and was also pretty sizable (over \$500,000). Only one of these was relatively small (\$51,000), though there was a prior amendment of approximately \$48,000, which, between the two (2) amendments, required City Council approval for being beyond the 15% approval requirement. However, these two amendments would still be subject to City Council approval if this number is increased to 25%.

The Legal Department recommends increasing the administrative authority for amendments to 25% because the 25% threshold aligns with the State Model Rules. Under the Model Rules for goods and services, a “contracting agency” can amend a contract up to 25% (in Wilsonville, the contracting agency is the City, typically by and through the City Manager).

See WC 2.312(1)(c) in **Attachment 1** or **Attachment 2** to review the Legal Department’s proposed language.

II. Proposed Action

The Legal Department proposes that City Council: (1) repeal and replace the City’s current Public Contracting Code (WC 2.310 through 2.319) with a version of the document attached as **Attachment 1**, and (2) adopt a new set of administrative rules to supplement the City’s Public Contracting Code.

A. Division of Content Between Code and Administrative Rules

The Legal Department has prepared the attached documents using the following approach. Portions of the current City Code that relate to City Council, in its capacity as the “Local Contract Review Board” (a term that is meaningful under the Oregon Public Contracting Code); application of state law; and, the delegation of limited authority to the City Manager and Community Development Director remain in the proposed City Public Contracting Code. Everything else is codified in the proposed administrative rules. The document attached as **Attachment 2** is a redline that shows the proposed revisions that are reflected in the document attached as **Attachment 1**.

The proposed administrative rules attached as **Attachment 3** contains administrative rules that are intended to supplement the content in the proposed City Public Contracting Code. The Legal Department recommends moving this language from City Code into administrative rules to provide the City with greater flexibility in the future; if any of this content must be amended or updated, City Council can take this action by resolution, rather than the relatively more laborious code amendment process.

B. Summary of Major Changes to Existing Code

The attachments to this Staff Report contain comment bubbles that are intended to highlight and explain the proposed changes to the City’s current Public Contracting Code. In addition, here is a high-level summary of the more significant proposed changes:

- To avoid having language in City Code that potentially conflicts with a similar rule in state law, which could potentially be updated in the future, the Legal Department recommends deleting language in the City Code that already exists in state law.
- Text has been moved and reorganized for greater coherence. For example, language that is currently scattered across a few Code sections that all relate to signing authority has been compiled in the revised WC 2.312, regarding “Administrative Authority” (see **Attachment 1** for clean version, and **Attachment 2** for redline version).
- For greater clarity, some terminology has been changed:

- Rather than referring to the “Contracting Agency” (a term that is meaningful under the Oregon Public Contracting Code), which could either be the City or the City Manager, depending upon context, the Legal Department recommends referring to either the City or the City Manager. Making this change will make it clear which party is authorized to take certain actions.
- Rather than referring to “Personal Services,” the proposed administrative rules now refer to “Professional Services.” This is how City staff refer to this type of contracting activity, so this change is intended to make these rules more easily understood.

The Legal Department has also added language to address other types of agreements that are not public contracts (e.g., grants and intergovernmental agreements), and recommends granting the City Manager the authority to sign such agreements when the dollar threshold is \$100,000 or less and is contemplated within the City budget. For example, the City often receives grant funding from the State or Metro that has a dollar amount of \$100,000 or less and is already accounted for in the City budget. Since the City Manager currently has signing authority to procure goods and services valued at \$100,000 or less, the Legal Department recommends including a Code provision that explicitly states the City Manager also has the authority to sign other agreements that have a dollar value of \$100,000 or less.

The Legal Department recommends \$100,000 as the threshold because often grants and other types of agreements are tied to a larger project, and so the Council may want to review agreements that are over \$100,000 to understand the larger project.

See WC 2.312(1)(b) in **Attachment 1** or **Attachment 2** to review the Legal Department’s proposed language.

C. Requests for Additional Feedback

The Legal Department requests City Council’s confirmation of the following points:

- City Council supports the proposed approach (i.e., repealing and replacing the City’s Public Contracting Code, and shifting some of these rules into a new set of administrative rules).
- **Attachments 1 and 2**
 - WC 2.312(1)(a) – Confirm proposed amount.
 - WC 2.312(1)(b) – Discuss and confirm language and proposed amount. This is new language that does not currently exist in City code.
 - WC 2.312(1)(c) – Confirm proposed amount.
 - WC 2.312(2)(a) – Confirm proposed amount.
 - WC 2.312(2)(b) – Confirm proposed amount.
- **Attachment 3**
 - Section 3 – Discuss and confirm language. This is new language that does not currently exist in City code.
 - Section 4.3.11 – Confirm agreement with scope of exemption.
 - Section 4.3.12 – Confirm agreement with scope of exemption.

- Section 4.4 – Confirm agreement with scope of exemption.
- Section 4.5 – Confirm agreement with scope of exemption.
- Section 4.6 – Confirm agreement with scope of exemption.

EXPECTED RESULTS:

The end result of this project is City Council’s adoption of an amended and restated version of the City’s Public Contracting Code (WC 2.310 through 2.319), and related administrative rules

TIMELINE:

These are the deadlines applicable to this project:

- March 18, 2024: Second work session (the Legal Department will present proposed revisions to the City’s Public Contracting Code to City Council)
- May 6, 2024: Public hearing and first reading of an updated Public Contracting Code.
- May 20, 2024: Second reading of an updated Public Contracting Code.

CURRENT YEAR BUDGET IMPACTS:

N/A

COMMUNITY INVOLVEMENT PROCESS:

The Legal Department has sought feedback regarding the City’s public contracting program from all City departments that engage in contracting activities. Most recently, a meeting was convened to gather feedback in fall of 2023.

The Legal Department has also sought feedback on specific portions of this project from the Diversity, Equity, and Inclusion (“DEI”) Committee, and the Arts, Culture, and Heritage Committee (“ACHC”). The DEI Committee is supportive of the Legal Department’s recommendation with respect to equity and inclusion provisions in the manual that the Legal Department is developing. ACHC is supportive of exempting public art from competitive procurement rules under applicable state law.

The Legal Department also plans to seek feedback from the City’s risk management and insurer regarding any updates to insurance and risk management provisions.

POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:

Repealing and replacing the City’s Public Contracting Code (WC 2.310 through 2.319), adopting new administrative rules, and adopting a manual to assist staff who engage in public contracting activities, will give staff and members of the public greater clarity, promote the City’s compliance with all applicable public contracting laws and rules.

ALTERNATIVES:

Retain existing code language.

CITY MANAGER COMMENT:

N/A

ATTACHMENTS:

1. Proposed Amended and Restated City Public Contracting Code (clean)
2. Proposed Amended and Restated City Public Contracting Code (redline)
3. Proposed Administrative Rules