

CITY OF SULTAN
Council Agenda Cover Sheet

ITEM NO. Discussion D 1

DATE: November 8, 2007

SUBJECT: Purchase Policy and Procedures

CONTACT PERSON: Laura Koenig, City Clerk

ISSUE:

The issue before the Council for consideration is the adoption of Purchase Policies and Procedures. The purpose of the policy is to provide a consistent process for the purchase of supplies, equipment and services by all departments.

STAFF AND SUB-COMMITTEE RECOMENDATION

The Staff and Sub-Committee have reviewed the policy and have approved the criteria set for the Purchase Policy. The Purchase Procedure was reviewed by office staff members and their input has been incorporated into the draft document.

SUMMARY

Staff has drafted a Purchase Policy (Attachment A) and a Purchase Procedure (Attachment B) for the Council's consideration to provide a consistent process for the purchase of materials, supplies, equipment and services.

Municipalities must follow several state laws with regards to the purchase of supplies, materials or equipment. There are additional statutory requirements that apply to public works projects and architectural and engineering services. A copy of the Purchasing and Bidding Chart for Local Agencies in Washington State as been provided as Attachment C.

The Purchase Policy defines the responsibilities of the Finance Department and of each Department Head for the purchase of supplies, equipment and professional services. The Sub-Committee met in June to review the purchasing parameters and staff has met on several occasions to review the parameters and the process. The guidelines set will allow the city departments to operate in an efficient and consistent manner.

The City under Resolution 04-22 (Attachment D) entered into an Interlocal Agreement with the City of Lynnwood to "piggyback" on to their Small Works Roster, Architects and Engineer Roster and Cooperative Purchasing Agreement. Effective December 1, 2007, the Small Works Roster and Architects and Engineer Roster operations will be assumed by Municipal Research and Services Center of Washington. A revised Interlocal Agreement will be presented at the next meeting to participate under the MRSC contract. Using the joint rosters eliminates the need for the City to call for vendor lists and professional qualifications on an annual basis.

DISCUSSION:

The Policy is drafted based on a model from the State Auditor's office. The key features in the policy are:

Responsibilities: This section defines and describes who is responsible for each aspect of purchasing.

Purchasing Parameters: This section provides guidelines for employees and Department Heads on the necessary approval and bid process for purchases.

Quote Requirements: Defines when quotes are required and criteria for approval of a purchase.

Other Sections: Provide guidelines for public works projects, consultant services and professional services.

ANALYSIS

The City lacks written policies and procedures and this has become a cause for concern by the State Auditor. Lacking any written procedure, each Department operates under a different set of "rules". This has caused delay in the purchase of essential supplies and services as three bids must be obtained for all purchases.

ALTERNATIVES:

1. The Council could continue without adopted policies. This would require that each Department obtain at least three bids for every purchase.
2. The Council could adopt the recommended policies and procedures.
3. The Council could draft a new policy.

RECOMMENDATIONS

Staff recommends that the Council proceed with the adoption of the Purchase Policy and Procedures

- Attachments:
- A. Purchase Policy
 - B. Purchase Procedure
 - C. Matrix of Purchasing/Bidding for Local Agencies
 - D. Resolution 04-22

CITY OF SULTAN PURCHASE POLICY

PURPOSE:

This policy is established in order to reduce costs, increase efficiencies, ensure compliance with policies, laws and regulations, and establish/improve internal controls.

SCOPE:

This policy applies to all contracting, purchases and services provided to the City including, but not limited to materials, equipment, professional services, maintenance work, and public works.

RESPONSIBILITIES:

1. The Finance Department will develop procedures to be followed for all purchases.
2. Each Department Head has the responsibility for their department for the procurement of all goods and services; and to either provide the services for such procurement and processing or give functional directions to others delegated the authority to perform such services.
3. All purchase orders will be reviewed and approved by the Department Head.
4. The Department Head has the responsibility for making the final determination of a source of supply, quantities purchased, delivery schedule and price negotiations, except where others are so authorized. These decisions will be made in compliance with the budget and all applicable procedures, policies, laws, and regulations.
5. The Department Head or their designee is responsible for initiating and maintaining effective and professional relationships with suppliers, actual and potential.
6. The Department Head or their designee will seek to obtain and purchase all goods at the lowest possible total end-use cost from a responsible bidder, while considering the vendor's ability to meet the City's timeliness and costs associated with opportunity loss.
7. The Finance Department is to notify requisitioning departments whenever the quantity or specifications of materials ordered are inconsistent with sound purchasing practices and of alternative solutions and products.
8. The Finance department will coordinate the establishment of standard products which are used by multiple departments which will enable the City to combine purchases to take advantage of quantity discounts, etc.
9. The Finance Department will review all formal bids, and coordinate the Small Works Roster. It is the responsibility of the requisitioning department to prepare technical specifications. (Alternative, Public Works may coordinate Small Works Roster projects.)

10. The Department Head or their designee is responsible for verifying all shipments received for accuracy to the packing/shipping lists and ensuring that they are received in good condition. All shipments will be shipped to the appropriate department unless it is not feasible due to size, weight, hazardous materials, etc. If a shipment is received at a different location, the responsibility for verification of contents and condition falls on the employee who receives it.

It is the responsibility of the department who requisitioned the goods to verify that they are correct and to notify all discrepancies to the finance department immediately.

11. Purchasing personnel will coordinate and negotiate the return of rejected equipment or supplies to suppliers.

12. Compliance with the budget is the responsibility of the Department Head of the requisitioning department. All capital purchases not appropriated by the budget must be approved by the City Council.

Purchasing Parameters:

1. Purchases may be made the following limits and approval:

Office Supplies/Minor Equipment	\$500 or less - Department Head
Office Supplies/Minor Equipment	\$501 to \$4999 – Department Head and City Administrator
Operating Supplies	\$1000 or less – Department Head
Operating Supplies	\$1001 to \$4999 – Department Head and City Administrator
Water/Sewer Plant Supplies/Equipment	\$5000 or less – Department Head

2. Purchases costing more than \$5,000 and less than \$15,000 require at least written quotations from a minimum of two vendors, unless the item(s) are from a sole source vendor. Purchases in this price range require the requesting department head or designee pre-approval and completion of the vendor quote form.

3. Purchases costing more than \$15,000 and less than \$30,000 require written quotations from a minimum of three vendors, unless the item(s) are from a sole source vendor. In addition, the Mayor or City Administrator and requesting

Department Head must approve purchase orders in this range prior to the purchase transaction. At the time of solicitation, the City will not inform a vendor of other vendor's quotes.

4. Purchases in excess of \$30,000 and less than \$50,000 must satisfy the requirements of item 3 and must be approved by the City council.

5. A sole source vendor is characterized as the one and only source for the product or service in accordance with state law. Purchases in excess of \$5,000 from a sole source vendor require prior approval of the City Administrator. Certification must be provided that the vendor is a sole source provider.

6. Purchase in excess of \$50,000 must be bid competitively per RCW 35.23.352.

Quote Requirements and Processes:

Requirements and processes for securing quotes for purchases and services, other than professional and consultant services are as follows. Telephone quotes are not allowed.

1. Purchases less than \$5,000 will be approved by the Department Head. Criteria for approval include, but are not limited to:

- cost
- quantity
- type of item
- past purchasing history and length of time since the quotation process was performed
- purchasing intervals,
- availability
- previous vendor performance
- familiarity with available vendors
- requisitioning departments
- time line, etc.

2. Purchases between \$5,000 and \$15,000 will be processed as follows:

- At least once per year, the City will publish in a newspaper of general circulation within the City a notice of the existence of vendor lists and will solicit the names of vendors for the lists.
- Purchases between \$5,000 and \$15,000 will require three written quotes.
- Purchases between 15,001 and 49,999 will require three written quotes.

(Note: This is a city policy and is not a statutory requirement.)

The quotations will be used to ensure that a competitive price is established and the purchase contract will be awarded to the lowest responsible bidder as defined in this policy.

3. Purchases of \$50,000 or above - a formal competitive bidding process is required.

PUBLIC WORKS PROJECTS:

Public works projects are governed by RCW 35.23.352 and RCW 39.04.155, as well as Ordinance XXX for establishing a small works roster process. Projects for which the small works roster is not used will be handled as follows:

*Less than \$5,000	The Purchasing Agent will make the award, utilizing the same criteria as provided in "General" <input type="checkbox"/> for purchases of this amount.
*\$5,000 - 15,000	Three written quotes are required.
*\$10,000 - \$20,000 (one craft or trade)	Three written quotes are required.
*\$15,000 - \$30,000 (more than one craft or trade)	Three written quotes are required.
*Over upper limits	Formal bidding is required.

***Note that this is an example of a city policy. Actual statutory limits and requirements are different.**

CONSULTANT SERVICES:

Consultants, other than architects and engineers will be recommended by the department and approved by the Council. The documentation for a hiring decision for consultant contracts will include:

- Council project authorization (may be in budget)
- Type of services needed and method of solicitation (i.e., newspaper, direct contact, etc.)
- Approximate value of contract
- Term of contract
- Basis of selection and method of evaluation

PROFESSIONAL SERVICES:

Contracts for professional architectural, landscape architecture, surveying and engineering services require an advertising and negotiation process in accordance with RCW 39.80

PURCHASE ORDERS:

All purchases require a purchase order. Purchases made due to an emergency must be confirmed with a purchase order as soon as it is feasible. Purchases made without a purchase order may be determined as unauthorized and become the responsibility of the employee initiating the purchase.

SPECIFICATIONS:

All specifications must be written in a manner so as not to preclude products or services of an equal nature to participate and compete.

SOLE SOURCE SUPPLIER:

Sole source purchases as defined by state statute must be approved as follows:

\$5,000 to \$15,000	City Administrator
More than \$15,000	City Council resolution

INVENTORY:

The Finance Department will maintain an inventory of commonly used office and operating supplies to facilitate quantity buying and reduce stockpiling of supplies at a department level. ~~As an alternative a contract with a supply vendor can provide a "just-in-time" inventory of supply items. This contract should be subject to bid.~~

CONFLICT OF INTEREST:

No employee will participate directly or indirectly in a procurement when they know there is a conflict of interest. Any potential conflicts should be reported to the City Administrator for his/her decision as to whether a conflict does exist.

SOLICITATION OF DONATIONS:

The City will not accept donations of materials or services in return for a commitment to continue or initiate a purchasing relationship.

GIFTS AND GRATUITIES:

No employee will accept gifts or gratuities from existing or potential vendors.

DEFINITIONS:

Lowest Responsible Bidder:

In determining the "lowest responsible bidder", in addition to price, the following elements will be given consideration:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- b. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- c. Whether the bidder can perform the contract within the time specified;
- d. The quality of performance of previous contracts or services;
- e. The previous and existing compliance by the bidder with laws relating to the contract or service;
- f. Any preferences allowed by law; and
- g. Such other information as may be secured having a bearing on the decision to award the contract, including, but not limited to, life cycle cost, (i.e., the total cost of an item over its useful life) where warranted.

Consultant:

Any individual, organization, firm, group, association, corporation, partnership, joint venture or combination thereof that provides professional services including, but not limited to, architects, engineers, planners, appraisers, surveyors, attorneys and accountants.

Purchase Procedures:

The following procedures will apply to the purchase of materials, supplies, equipment and services.

1. Purchase Orders: All purchases of supplies and equipment require a purchase order.
2. Reoccurring Purchases: Do not require a purchase order. The following types of services are examples of reoccurring purchases:
 - Phone
 - PUD Power
 - PSE Gas service
 - SNOPAC monthly fees
 - Court fees – requires Department Head approval
 - Jail bills – requires Department Head approval
 - Lease payments on vehicles
 - Vehicle gas purchases – requires Department Head approval
 - Other monthly recurring services as determined by Department Head
3. Consultant/Contract Services. The following types of professional services performed under contract do not require a purchase order.
 - Public Defender – requires Department Head approval
 - Public Prosecutor – requires Department Head approval
 - Hearing Examiner – requires Department Head approval
 - Plat/Land Use Review – requires Department Head approval
 - Comp Plans/Rate Studies – requires Department Head approval
 - Capital Projects – requires Department Head approval. Requires a purchase order if connected to a grant or loan funded project.

Purchase Order Forms:

- The Finance Department will issue batches of pre-numbered purchase orders to each Department
- A list of the purchase order numbers will be provided with each batch of assigned purchase orders
- Departments will fill in the vendor information on the purchase order list as they issue purchase orders
- When all the purchase orders in a batch have been used, the Department Head will submit the list to the Finance Department. No additional purchase order batches will be assigned without the prior list being submitted.
- The Finance Department will audit the lists submitted to ensure that the purchase orders match up to the accounts payable.

Purchasing and Bidding Chart for Local Agencies in Washington State

Revised May 4, 2007 * Effective 7/22/07

What you need to know before using this chart:

My agency is Code City x
 If my agency is a city or county, the population is _____ 4450
 If my agency is a city, we are a: (First Class City), (Code City), (2nd Class City) (Town)?
 If my agency is a school district, we have _____ number of students district-wide?
 If my agency is a county, we (have) (do not have) a central purchasing department?

Our purchase/project is: [Note - "Tabs" are hyperlinked in the electronic version.]

Tab A	Purchase of equipment, supplies or materials unrelated to a public works project?
Tab B	Purchase of architectural, engineering, surveying or landscape architectural services?
Tab C	Purchase of other consulting services?
Tab D	Purchase of other services? Janitorial services? Official Newspaper?
Tab E	Purchase of solid waste collection and disposal services?
Tab F	Purchase of electronic data processing and telecommunications systems?
Tab G	Purchase or construction of pollution control equipment?
Tab H	Lease of equipment without option to purchase?
Tab I	Possible emergency, sole source purchase or special facility or market condition?
Tab J	Purchase at auction?
Tab K	Participation in or lease of a privately constructed project?
Tab L	Public works project
Tab L1	Project (including sales tax) is estimated to cost more than \$200,000?
Tab L2	Project (including sales tax) is estimated to cost less than \$200,000?
Tab L3	Project may be below bid limits? Single craft? Multiple crafts?
Tab M	Purchase under another agency's contract (piggybacking) under Ch. 39.34 RCW?
Tab N	Purchase of energy?

Tab A: Purchase of equipment, supplies or materials unrelated to a public works project?

	Quotes Allowed	Vendor List Allowed (Note A)	Competitive Bids Req'd
Cities and Towns			
First Class City Over 150,000	Purchasing policies are set by City Council.		
First Class City Under 150,000	Purchasing policies are set by City Council.		
Code City Over 20,000	Purchasing policies are set by City Council.		
Code City Under 20,000	< \$7,500	< \$15,000	> \$15,000
2nd Class City & Towns	< \$7,500	< \$15,000	> \$15,000
Counties			
Over 1 M w/ Purchasing Department	< \$5,000	< \$25,000	> \$25,000
Under 1 M w/ Purchasing Department	< \$5,000	< \$25,000	> \$25,000
Under 1 M w/o Purchasing Department	< \$5,000	< \$25,000	> \$25,000
Water & Sewer Districts (Title 57 RCW)			
Fire Districts (Title 52 RCW)	< \$10,000	< \$50,000	> \$50,000
Port Districts (Title 53 RCW)	< \$10,000	< \$50,000	> \$50,000
Public Utility Districts (Title 54 RCW)	No bid limits.		
Public Hospital Districts (Ch. 70.44 RCW)	See RCW 54.04.070 & 54.04.082		
Housing Authorities (Ch. 35.82 RCW)	N/A	< \$15,000	> \$15,000
School Districts (Title 28A.335.190 RCW)	??	??	??
	< \$40,000	< \$75,000	> \$75,000
	Except for book purchases.		
Metropolitan Park Districts [Ch. 35.61 RCW]	??	??	??

Note A: See RCW 39.04.190.

Tab B: Purchase of architectural, engineering, surveying or landscape architectural services?

Contracts for professional architectural, landscape architecture, surveying and engineering services require an advertising and negotiation process in accordance with Ch. 39.80 RCW. Look at: <http://www.mrsc.org/pubworks/construct/conman2.htm>

Tab C: Purchase of other consulting services?

Contracts for other professional services (defined as activities such as consulting that have a primarily intellectual final product) may or may not require an advertising and negotiation process, depending on individual agency policies and/or grant funding agency policies.

Tab D: Purchase of other services? Janitorial services? Official Newspaper?

Services are activities or projects for which an agency contracts and which are not considered a public work. Washington cities or towns are not required to seek competitive bids for services, except towns, second class cities and code cities with a population under 20,000 who must call annually for bids to select a city's official newspaper. Counties are not required to seek bids for any services, except annually for bids to select a county's official newspaper. Other agencies are generally not required to seek bids for services. However, the agency's attorney should be consulted if there is a question about bidding for specific services. Prevailing wages are required on public building service (janitorial) contracts (RCW 36.12.020). While RCWs generally do not require that services be put out for competitive bid, more restrictive policies may be/may have been adopted by an entity's governing body.

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Tab E: Purchase of solid waste collection and disposal services?

Solid waste collection and disposal contracts do not have to be bid. An RFQ/RFP process as noted in RCW 35.21.156 is allowed.

Tab F: Purchase of electronic data processing and telecommunications systems?

RCW 39.04.270 authorizes municipalities to use a "competitive negotiation" process as an alternative to the competitive bid process when purchasing telecommunications and data processing (computer) equipment or software. This alternative process requires publishing a request for proposals (RFP) that identifies significant evaluation factors, including price, and their relative importance and provides reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and the selection process for awarding the contract.

Tab G: Purchase or construction of pollution control equipment?

Note the following excerpt from the MRSC Bidding Book, pages 28 & 29:

Chapter 70.95A RCW, relating to pollution control facilities and enacted in 1973, may offer an important exception to bidding requirements. Although the primary emphasis of the chapter relates to financing pollution control facilities, one section may exempt certain projects from bidding requirements that might otherwise apply. RCW 70.95A.090 states in part: The [pollution control] facilities shall be constructed, reconstructed, and improved . . . in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for the award of contracts for such purpose . . . is not applicable to any action taken under authority of this chapter.

The term "facility" is defined to mean "any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof . . . which is used or to be used . . . in furtherance of the purpose of abating, controlling, or preventing pollution. "Pollution" is defined broadly to include water pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution.

Although there have not been any relevant appellate court decisions or attorney general opinions on the statute, it would appear that its terms could be used to forgo bidding whenever a city or town constructs or reconstructs a building or structure or acquires fixtures or equipment which will be used for pollution control. Given the broad scope of the statute, this exception to the bid laws could be far-reaching. Cities may be able to build a sewage lagoon, aerate a lake, or purchase a landfill scale, all without going out for bids.

However, in view of the lack of appellate or other authority regarding the chapter's use, cities should use caution in deciding to make use of its provisions. Asking the Department of Ecology to certify that the project is designed to abate, control, and/or prevent pollution would be a judicious step to take before ignoring the bid laws.

Almost all local government agencies can make use of this statute.



Tab H: Lease of equipment without option to purchase?

In cities, leases without an option to purchase are not subject to bid limits and do not need to be competitively bid. Debt limits may apply, however. In counties, all leases must be competitively bid.

Tab I: Possible emergency, sole source purchase or special facility or market condition?

Competitive bidding requirements may be waived by the governing body of the municipality as noted in RCW 39.04.280 for:

- (a) Purchases that are clearly and legitimately limited to a single source of supply;
- (b) Purchases involving special facilities or market conditions;
- (c) Purchases in the event of an emergency;
- (d) Purchases of insurance or bonds; and
- (e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality 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.

Tab J: Purchase at auction?

All agencies can purchase at auctions (RCW 39.30.045)

Tab K: Participation in - or lease of - a privately constructed project?

RCW 39.04.260 states that "Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW (prevailing wage laws).

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Tab L: Public works project:

See Tab L3 to see if the estimated project cost is below bid limits for your agency.

If the cost of a public works project exceeds applicable bid limits, a local government **must** use a competitive bid process, small works roster process or limited public works process for public works projects. RCW 39.04.010 defines the term "public work" as follows:

"The term public work 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. (Emphasis added.)" Note that this definition of public work includes construction and repair but excludes ordinary maintenance. But what is "ordinary maintenance"? The statutes provide no definition. However, WAC 296-127-010(7)(b)(iii), which defines "ordinary maintenance" in the context of prevailing wages, can be used to craft a definition that distinguishes ordinary maintenance from a public work for bidding purposes:

[Ordinary maintenance is] defined as work *not performed by contract* and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary. (Emphasis supplied.)

To correctly apply bid limit dollar amounts to determine if a public works project must be competitively bid, the total cost of each project or purchase must be estimated. The total construction cost - estimated as if the project were to be bid - is used to make that determination. To be included are 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.

Tab L1: Project (including sales tax) is estimated to cost more than \$200,000?

Projects over \$200,000 must be competitively bid except for agencies who are authorized to use the alternate public work contracting procedures of chapter 39.10 RCW or if the project is for pollution control project which may qualify under chapter 70.95A RCW.

Tab L2: Project (including sales tax) is estimated to cost less than \$200,000?

If the estimated project cost is less than \$200,000, the agency may use the small works roster process of RCW 39.04.155.

\$100,000 - \$200,000

If the estimated cost of the work is \$100,000 to \$200,000, a local government, other than a port district, that solicits bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors that quotations on the work are being sought. The local government has the sole option of determining whether this notice to the remaining contractors is made by publishing notice in a legal newspaper in general circulation in the area where the work is to be done; mailing a notice; or sending a notice by facsimile or other electronic means.

<100,000

Quotations may be invited from all appropriate contractors on the appropriate small works roster for all projects less than \$200,000. As an alternative, quotations may be invited from at least five 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 on the appropriate roster.

≤ \$35,000

RCW 39.04.155(3) allows authorized local governments to solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and to award the contract to the lowest responsible bidder as defined under RCW 43.19.1911 for contracts of less than \$35,000. For these 'limited public works projects,' a local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project. However the local government has the right of recovery against the contractor for any payments made on the contractor's behalf. SHB 1328 (Chapter 210, 2007 Laws) allows use of the combined intent and affidavit process of RCW 39.12.040(2) for projects using this limited public works process.

SHB 1328 (Chapter 210, 2007 Laws) Added RCW 39.04.155 (5):

(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

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< \$35,000

RCW 39.08.010 states that on contracts of thirty-five thousand dollars or less - at the option of the contractor - the agency may, in lieu of a performance and payment bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

< \$2,500

Intent to pay prevailing wages for any size project must be approved by Department of Labor and Industries before payment is made under contract. Affidavit that prevailing wages have been paid is always required following completion of contract. For contracts under \$2,500, the Intent and Affidavit may be combined and sent to Department of Labor and Industries after contract completion.

Small Works Roster Setup - The municipality must first pass a resolution or ordinance authorizing use of the SWR process and establishing procedures for the award of public works contracts using the SWR process for contracts up to 200,000 and limited public work process up to \$35,000. An agency may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. Small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and - where required by law - are properly licensed or registered to perform such work in this state. Contractors desiring to be placed on a roster or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the agency as a condition of being placed on a roster or rosters. At least once a year, the municipality 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 an appropriate roster or rosters at any time that they submit a written request and necessary records. The agency may require master contracts to be signed that become effective when a specific award is made using a small works roster. Several agencies may agree to use the same small works roster. However, an interlocal contract or agreement among local governments establishing a small works roster or rosters must clearly identify the lead entity that is responsible for implementing the small works roster provisions.

Tab.L3: Project may be below bid limits? Single craft? Multiple crafts?

	Bid Limits	
	Single Craft	Multiple Crafts
Cities and Towns		
First Class City Over 150,000	\$35,000 (1)	\$70,000 (1)
First Class City Under 150,000	\$30,000 (1)	\$50,000 (1)
Code City Over 20,000	\$30,000 (1)	\$50,000 (1)
Code City Under 20,000	\$30,000 (2)	\$45,000 (2)
2nd Class City & Towns	\$30,000 (2)	\$45,000 (2)
Counties		
Over 1 M w/ Purchasing Department	\$25,000 (3) (4)	\$70,000 (3) (4)
Under 1 M w/ Purchasing Department	\$10,000 (4)	\$10,000 (4)
Under 1 M w/o Purchasing Department	\$10,000 (4)	\$10,000 (4)
Water & Sewer Districts (Title 57 RCW)	\$10,000	\$10,000
Fire Districts (Title 52 RCW)	\$2,500	\$2,500
Port Districts (Title 53 RCW)	\$200,000, except note RCW 53.08.135	
Public Utility Districts (Title 54 RCW)	See RCW 54.04.070 & 54.04.082	
Public Hospital Districts (Ch. 70.44 RCW)	\$50,000	\$50,000
Housing Authorities (Ch. 35.82 RCW)	??	??
School Districts (RCW 28A.335.190)	\$40,000	\$40,000
Metropolitan Park Districts [Ch. 35.61 RCW]	\$5,000	\$5,000



Notes:

- 1) RCW 35.22.620(2) further limits the dollar value of public works performed by city employees or day labor to ten (10) percent of the total public works construction budget in a given budget period. Work performed within a city by county employees under an interlocal agreement is to be included in this limit.
- 2) Note 1 does not apply.
- 3) Also subject to annual limit of 10% of public works construction budget (RCW 36.32.235).
- 4) Also subject to day labor limitations for road funds under RCW 36.77.065

Purchasing and Bidding Chart for Local Agencies in Washington State

Revised May 4, 2007 * Effective 7/22/07

Tab M: Purchase under another agency's contract (piggybacking) under Ch. 39.34 RCW?

Chapter 39.34 RCW allows cooperative purchasing between public agencies (political subdivisions). For the purposes of this chapter, the term "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. Public agencies which have filed an Intergovernmental Cooperative Purchasing Agreement (ICPA) with the each other may make purchases from each others contract awards, if the Vendor has agreed to such participation. The awarding agency does not accept any responsibility for orders placed by other public agencies. A public agency purchasing under another agency's contract accepts responsibility for compliance with statutes (including bid limits) governing purchase by or on behalf of itself.

Each participating agency must have the power to do individually what it agrees to do jointly. Public agencies may purchase from contracts entered by other public agencies if

- The contract is determined to have been awarded in compliance with bidding requirements of the agency seeking to purchase, except note HB 2615 (2004).
- There is no statutory provision prohibiting such a purchase.

HB 2615 (2004) added this language to RCW 39.34.030:

- With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either
 - (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations,
 - or ii) provided an access link on the state's web portal to the notice.

Tab N: Purchase of energy?

RCW 39.35A states that a municipality may, after a competitive selection process, negotiate a performance-based energy contract with a firm that offers the best proposal. If a municipality chooses, by resolution or other appropriate mechanism, to negotiate a performance-based contract under RCW 39.35A, no otherwise applicable statutory procurement requirement applies. A performance based energy contract is defined as: "... one or more contracts for energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings attributable under the contract to the energy equipment and services; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy."

The Washington State Department of General Administration is to maintain a registry of energy service contractors and provide assistance to municipalities in identifying available performance-based contracting services.



CITY OF SULTAN
SULTAN WASHINGTON

RESOLUTION 04-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, REPEALING RESOLUTION 00-15 AND ESTABLISHING NEW PROCEDURES RELATING TO PURCHASING AND PUBLIC WORKS CONTRACTING; ESTABLISHING A VENDOR LIST PROCESS FOR THE PURCHASING OF SUPPLIES, MATERIALS, AND EQUIPMENT AND A SMALL WORKS ROSTER PROCESS TO AWARD PUBLIC WORKS CONTRACTS.

WHEREAS, RCW 39.04.190, regarding purchase of materials, supplies or equipment not connected to a public works project, allows certain purchasing contracts to be awarded by a vendor list process; and

WHEREAS, the Washington State legislature in Chapter 138, Laws of 2000, amended RCW 39.04.155 and other laws regarding contracting for public works by municipalities, allowing contracts to be awarded by a small works roster process; and

WHEREAS; in order to be able to implement the vendor list and small works roster processes, the City Council is required by law to adopt a resolution establishing the specific procedures,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Purchase of Materials, Supplies or Equipment Not Connected to a Public Works Project in a amount of \$7500 or Less.

The City is not required to use formal or informal sealed bidding procedures or the procedures set forth in this resolution, to purchase materials, supplies or equipment where the cost of same will be under Seven Thousand Five Hundred Dollars (\$7500.00). The City will attempt to obtain the lowest practical price for such goods and services.

Section 2. Purchase of Materials, Supplies or Equipment Not Connected to a Public Works Project in a amount between \$7500.00 and \$15000.00.

When the City desires the purchase materials, supplies or equipment estimated to cost from Seven Thousand Five Hundred Dollars (\$7500.00) to Fifteen Thousand Dollars (\$15,000.00), the following procedures shall used:

1. Publication of Notice. At least twice a year, the City by itself or in association with the City of Lynnwood, under an approved Cooperative Purchasing Agreement, shall publish, in the City's official newspaper, notice of the existence of the City's roster of vendors for materials, supplies, and equipment, and shall solicit names of vendors for the roster.

2. Telephone Quotations. The City shall follow the following process to obtain telephone quotes from vendors for the purchase of materials, supplies, or equipment:

a) A written description shall be drafted of the specific materials, equipment or supplies to be purchased, including the number, quantity, quality and type desired, the proposed delivery date, and any other significant terms of purchase;

b) A City representative shall make a good faith effort to contact at least three (3) of the vendors on the roster to obtain telephone quotes from the vendors on the required materials, equipment or supplies;

c) The City representative shall not share telephone quotation from one vendor with any other vendors solicited for the bid on the materials, supplies or equipment;

- d) A written record shall be made by the City representative of each vendor's bid on the materials, equipment and supplies, and of any conditions imposed on the bid by such vendor;
- e) The telephone bids or quotes shall be presented to the City Council for consideration with a recommendation for award of the contract to the lowest responsible bidder.

3. Determining Lowest Responsible Bidder. The City shall purchase the materials, equipment or supplies from 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 may call for new bids. The following factors, in addition to price, may be taken into account by the City in determining the lowest responsible bidder:

- a) Any preferences provided by law to Washington product and vendors;
- b) The quality of the materials, supplies and equipment to be purchased;
- c) The conformity of the materials, supplies and equipment to the City's specifications;
- d) The purposes for which the materials, supplies and equipment are required;
- e) The times for delivery of the materials, supplies and equipment;
- f) The character, integrity reputation, judgment, experience, and efficiency of the bidder; and
- g) Such information as may have a bearing on the decision to purchase the supplies, materials or equipment.

4. Award. The City Council shall review quotations and recommendation by city staff and award the contract to the lowest responsible bidder. A written record of each vendor's quotation shall be made open to public inspection or telephone inquiry after the award of the contract. Any contract awarded under this subsection need not be advertised.

5. Posting. A list of all contracts awarded under the above procedures shall be posted at City Hall once every two months. The list shall contain the name of the vendor awarded the contract, the amount of the contract, a brief description of the items purchased under the contract and the date it was awarded.

Section 3. Public Works Contracts. The following small works roster procedures are established for use by the City pursuant to RCW 35.22.620 and chapter 39.04 RCW.

1. Cost. The City need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real property where the estimated cost does not exceed Two Hundred Thousand Dollars (\$200,000.00), which included the cost of labor, material, equipment and sales and/or use taxes as applicable. Instead the City may use the small works roster procedures for public works projects as set forth herein. The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process.

2. Number of Rosters. The City by itself or by Cooperative Purchasing Agreement with the City of Lynnwood may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work.

3. Contractors on Small Works Roster(s). The small works roster(s) shall consist of all responsible contractors who have requested to be on the roster(s), and where required by law are properly licensed or registered in this state to perform the work. Contractors desiring to be placed on a roster

or rosters must keep current records of any applicable licenses, certifications, registrations, bonding, insurance or other appropriate matters on file with the City as a condition of being placed on a roster or rosters.

4. Publication. At least once a year, the City by itself or in association with the City of Lynnwood, under an approved Cooperative Purchasing Agreement, shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or roster(s) and solicit the names of contractors for such roster or roster(s). Responsible contractors shall be added to an appropriate 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 awarded is made using a small works roster.

5. Telephone or Written Quotations. The City shall obtain telephone, written or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive prices is established and to award contracts t the lowest responsible bidder, as defined in RWC 43.19.1911 as follows:

a) A contract awarded from the small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as material and equipment to be furnished. Detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

b) Quotations may be invited from all appropriate small works rosters. As an alternative, quotations may be invited from at least five 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 on the appropriate roster.

If the estimated cost of the work is from One Hundred Thousand Dollars (\$100,000.00) to Two Hundred Thousand Dollars (\$200,000.00), the City may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The City has the sole option of determining whether this notice to the remaining contractors is made by:

- i. Publishing notice in the City's legal newspaper;
- ii. Mailing a notice to these contractor's; or
- iii Sending a notice to these contractors by fax or other electronic means.

c) For purposes of this resolution, "equitably distribute" means that the City many not favor certain contractors on the appropriate small words roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the City representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

d) A written record shall be made by the City representative of each contractor's bid on the project, and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

e) At least once a year a list of the contracts awarded under that process is to be furnished to the City Council and made available to the general public. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.

6. 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. In addition to price, the City council shall take into account the following:

- a) the ability, capacity and skill of the bidder to perform the contract including the quality or materials and workmanship and the nature or warranties and other performance related conditions;
- b) whether the bidder can perform the contract within the time specified by the city;
- c) The quality of the bidder's performance of previous contracts or services;
- d) The previous and existing compliance by the bidder with laws relating to the contract or services.

7. Award. All of the telephone bids or quotations shall be collected and presented at the same time to the City Council for consideration, determination of the lowest responsible bidder, and award of the contract.

ADOPTED THIS 15th day of December, 2004.



Benjamin Tolson, Mayor

ATTEST:



Laura J. Koenig, Clerk Treasurer

Approved as to form:


Thom Graafstra, City Attorney