

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO CONTRACTS, AMENDING CHAPTER 3.16 OF THE OLYMPIA MUNICIPAL CODE UPDATING REFERENCES TO THE REVISED CODE OF WASHINGTON AND DETAILING THE CITY MANAGER'S AUTHORITY WITH RESPECT TO EMERGENCIES, CONTRACT AWARD AND REJECTION, AND CHANGE ORDERS.

WHEREAS, the City regularly constructs capital projects and, therefore, has an interest in the efficient administration of public works contracting; and

WHEREAS, periodically, City staff reviews processes and procedures to identify and evaluate opportunities for greater efficiency; and

WHEREAS, City staff has determined that revising certain public works contracting processes and procedures in Olympia Municipal Code Chapter 3.16 will simplify project management; and

WHEREAS, some sections of Chapter 3.16, such as change order level of authority, are complicated and time consuming to administer, and streamlining this process will decrease staff time spent on contract administration, saving project management costs; and

WHEREAS, providing the City Manager explicit authority to manage public works contracting issues, in alignment with the City Manager's contract authority promotes greater consistency and reduces project delays and costs; and

WHEREAS, the criteria governing emergencies and waiver of competitive bid requirements is set forth in state law, and the City is required to use that criteria in making determinations regarding such issues; and

WHEREAS, City staff reviews the municipal code from time to time to ensure the accuracy of the references contained within and, in doing so, found that RCW 43.19.1911 has been repealed by the legislature effective January 1, 2013, making it necessary for the City to update references to that statute;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC Chapter 3.16. Olympia Municipal Code Chapter 3.16 is hereby amended to read as follows:

Chapter 3.16
CONTRACTS

3.16.000 Chapter Contents

Sections:

- 3.16.010 Purpose
- 3.16.020 Council Approval
- 3.16.030 City Manager Approval
- 3.16.040 City Manager Authorized to Delegate Certain Execution Authority
- 3.16.050 City Manager Authority--Rules and Regulations for Contracting

- 3.16.055 Documents to be Filed with the City Clerk
- 3.16.060 Small Works Roster Established
- 3.16.070 Method of Establishment of Small Works Roster
- 3.16.080 Procedure for Utilization of Small Works Roster
- 3.16.090 Posting of Small Works Roster Awards
- 3.16.100 Public Works Construction Contracts - Change Order Level of Authority
- 3.16.110 Funds Required for Award of Projects

3.16.010 Purpose

The purpose of this chapter is to establish a uniform practice for approval and execution of City of Olympia contracts, ensure City Council review of important and legally required contracts and other legal instruments, provide for efficient, streamlined preparation and execution of other contracts not requiring Council review, while also ensuring accountability by limiting the number of individuals authorized to execute contracts on the City's behalf. In addition, the purpose is to delegate to the City Manager authority to establish rules for competitive bidding where required by law and the acquisition of goods, services, and materials so long as such rules are with sound management practices and designed to secure the best quality for a fair price. The final purpose is to provide procedures for the creation and operation of a small works roster.

3.16.020 Council Approval

The following documents and instruments shall be presented to the City Council for approval prior to their execution by the City Manager:

- A. Interlocal agreements: All contracts, agreements, memoranda of understanding, or other documents between the City of Olympia and any other governmental agency or agencies. An agreement in association with a grant application is not considered an interlocal agreement for purpose of this subsection but is subject to the monetary thresholds in Subsection C.
- B. Instruments pertaining to real property: any contract, agreement, lease, easement, bill of sale, or other instrument pertaining to the City's use, disposition, conveyance, or acquisition of real property.

Exceptions:

- (1) An acceptance by the City in its regulatory capacity of a dedication from a development is not subject to this subsection.
- (2) Temporary construction licenses are not subject to this subsection.

- C. Any contract, agreement, or other document with a cost ~~of over \$300,000 or more.~~

3.16.030 City Manager Approval

A. The City Manager or the City Manager's designee, is authorized to approve and execute on behalf of the City of Olympia any contract, agreement, or document not otherwise subject to OMC Section 3.16.020.

B. The City Manager or the City Manager's designee, is authorized to:

1. declare any public work an emergency, if it meets the criteria outlined under RCW 39.04.280. A written finding of the emergency must be filed with the City Clerk no later than two weeks following contractor award of such work.
2. make written policies governing the waiver of competitive bidding requirements, provided the purchase or project qualifies for waiver under RCW 39.04.280, or other state or local law. Immediately following contract award, the contract and the factual basis for the exemption from public bidding must be recorded and open for public inspection.
3. make a final decision to deem a contractor not-responsible and/or to reject bids for any public works project that falls within the City Manager's contract authority under this chapter.

3.16.040 City Manager Authorized to Delegate Certain Execution Authority

The City Manager is authorized, but not required, to delegate to a Department Director or the Director's designee the authority to approve and execute on behalf of the City of Olympia any contract, agreement or document not otherwise subject to OMC Section 3.16.020 and with an amount of less than \$150,000.

3.16.050 City Manager Authority--Rules and Regulations for Contracting

The City Manager is authorized to establish written rules and regulations for the construction/acquisition of public works, and the procurement of goods, services, and materials by the City. Such rules and regulations shall be governed by sound management practices designed to secure the best quality at a fair price. As such rules and regulations are established, copies shall be sent to the City Council. ~~P;~~ provided, however, that inadvertent failure to send such rules and regulations to the City Council shall not be grounds to invalidate any action by the City Manager or his or her designee which is otherwise lawful. The City Manager is authorized to revise the rules and regulations from time to time as circumstances change or as the City Manager may, in his or her discretion, deem appropriate.

3.16.055 Documents to be Filed with the City Clerk

One (1) original of any document governed by OMC Sections 3.16.020 through 3.16.040 shall be filed with the office of the City Clerk; provided, however, that failure to so file any such document shall not invalidate or excuse performance of any obligations contained therein.

3.16.060 Small Works Roster Established

The City Engineer or his or her designee (collectively hereafter Engineer) is authorized and directed to establish a city construction contractor's small works rosters comprised of all contractors who request to be on the rosters and who are, where required by law, properly licensed or registered and bonded to perform contracting work in the State of Washington.

3.16.070 Method of Establishment of Small Works Roster

The small works roster shall be established by either or both of the following:

A. The Engineer may advertise for consultants in a newspaper of general circulation in order to update the small works roster. The Engineer shall add to the rosters those contractors who respond to the

advertisement and request to be included on the rosters. In order to be included on the roster, contractors shall supply information as required by the Engineer.

B. The City of Olympia may establish the small works roster through contract with the Municipal Research and Services Center of Washington (MRSC) to adopt for City use those statewide electronic databases for small public works rosters developed and maintained by MRSC. At least once per year, on behalf of the City, MRSC 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 appropriate MRSC Roster(s) 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 award is made using a small works roster.

3:16.080 Procedure for Utilization of Small Works Roster

A. The small works roster may be utilized, in lieu of advertising or requesting formal bids, as follows:

1. Whenever the City seeks to construct any public work project, the estimated cost of which, including costs of material, supplies, labor and equipment is \$300,000 or less or such other amounts as may be authorized by the law.
2. When the small works roster is utilized, the City shall invite written or electronic proposals from all appropriate contractors on the appropriate small works roster. The City Engineer shall establish procedures for securing telephone, written, or electronic quotations.
3. The invitation to the contractor on the small works roster shall include an estimate of the scope and nature of the work to be performed, materials and equipment to be furnished, and time required for completion. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.
4. When awarding a contract for work under the small works roster, the City shall award the contract to the contractor submitting the lowest responsive, responsible proposal; provided, however, that the City reserves its right under applicable law to reject any or all proposals, and to waive procedural irregularities.

~~B. The City Engineer shall establish procedures for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations shall be invited from all appropriate contractors on the appropriate small works roster.~~

~~5.~~ 5. A contract awarded from a small works roster under this section need not be advertised.

~~6.~~ 6. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

~~EB.~~ In lieu of awarding contracts under Subsection (~~BA~~) of this section, the ~~Engineer~~ City may award a contract for work, construction, alteration, repair, or improvement project estimated to cost less than thirty-five thousand (\$35,000) dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (~~2A~~) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW ~~39.04.010~~.

For limited public works projects, the City ~~Engineer or his or her designee~~ shall solicit electronic or written quotations from a minimum of three (3) contractors from the appropriate small works roster and shall award the contract to the lowest ~~responsive, responsible bidder as defined under RCW 43.19.1911;~~ provided, however, that the City ~~Engineer or his or her designee~~ may reject a quotation or waive procedural irregularities in a quotation and proceed to award. After an award is made, the quotations shall be open to public inspection and available by electronic request. The City ~~Engineer or his or her designee~~ shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. The City ~~Engineer or his or her designee~~ shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. The City ~~Engineer or his or her designee~~ 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 City shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

~~FC.~~ 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 or limited public works process.

3.16.090 Posting of Small Works Roster Awards

When the City utilizes the small works roster procedure as established in Section 3.16.080 to award contract for public works projects, the City shall post a list of the contracts awarded under Section 3.16.080. The list shall contain the name of the contractor awarded the contract, the amount of the contract, a brief description of the type of work performed, and the date of the award, and shall be posted on the City's electronic web page.

3.16.100 Public Works Construction Contracts - Change Order Level of Authority

~~A.~~ ~~The Director of Public Works or Department Director of project department is authorized to approve:~~

~~1.~~ ~~Any of the following, provided the total construction costs do not exceed the contract bid amount by more than 5%. Total construction costs are the construction costs to date plus the anticipated construction costs (including deducts from savings or additions from quantity increases) plus the proposed changed order.~~

~~a.~~ ~~Contract change orders for:~~

~~i.~~ ~~Increase in unit bid item~~

- ii. ~~Design revision~~
- iii. ~~Extra Work~~
- iv. ~~Force account work~~

b. ~~Quantity overruns.~~

2. ~~Cumulative project costs up to 105% of the project budget for projects bid via the formal bidding process (construction in excess of \$300,000).~~

3. ~~Cumulative projects costs up to 110% of the project budget for projects bid via the Small Works roster bidding process (construction less than \$300,000).~~

B. ~~The City Manager is authorized to approve:~~

1. ~~Any item under Subsection A above, provided the total construction costs do not exceed:~~

a. ~~The contract bid amount by more than 10% for projects bid via the formal bidding process (construction in excess of \$300,000);~~

b. ~~Available project funds on projects bid via the Small Works roster.~~

2. ~~Cumulative project costs up to 110% of the project budget for projects bid via the formal bidding process (construction in excess of \$300,000).~~

3. ~~Cumulative project costs up to 115% of the project budget for projects bid via the Small Works roster bidding process (construction less than \$300,000).~~

4. ~~Any contract change order that the City Manager deems as urgent. An "urgent" change order is defined as one where delay in implementation could cause environmental or property damage or endanger public safety. An "urgent" determination may also be made when delays would cost the City of Olympia \$1,000 or more per day.~~

~~The City Manager may grant the Director of Public Works, or applicable Department Director, authority to approve changes for a particular project up to the amount the City Manager is authorized to approve.~~

~~The City Manager will inform the Council of changes that he/she has authorized via project status reports.~~

C. ~~Full Council authority is required when a change exceeds the amounts that the City Manager may approve and when the change is not deemed urgent by the City Manager.~~

D. ~~No Public Works contract award will be made on projects bid via the formal bidding process (construction in excess of \$300,000) unless funds in the amount of at least 110% of the bid are available. Similarly, no contract award will be made on projects bid via the Small Works roster bidding process (construction less than \$300,000) unless funds in the amount of at least 115% of the bid are available. The department responsible for a given project must submit a written declaration to the City Manager that funds in the required amount are in fact available.~~

The City Manager or the City Manager’s designee is authorized to approve change orders with a cumulative total of \$300,000 or less for any project. Council approval is required for cumulative change orders totaling over \$300,000 for a project, except when such approval is deemed “urgent” by the City Manager. An “urgent” change order is defined as one where delay in implementation could cause environmental or property damage or endanger public safety, as determined by the City Manager. An “urgent” determination may also be made when delays are estimated to cost the City of Olympia \$1,000 or more per day.

3.16.110 Level of Funding Required for Project Award

No Public Works contract award will be made on projects bid via the formal bidding process (construction in excess of \$300,000) unless funds in the amount of at least 110 percent of the bid are available. Similarly, no contract award will be made on projects bid via the Small Works roster bidding process (construction \$300,000 or less) unless funds in the amount of at least 115 percent of the bid are available.

Section 2. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 3. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 4. Effective Date. This ordinance shall take effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



ASSISTANT CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: