

RESOLUTION NO. 2019- 08

A RESOLUTION on the subject of city procurement, federal award rules, amending Resolution 2014-2, and repealing Resolutions Nos. 1960-6, 1969-31, 1990-16, 1991-41, 1996-08, and 2016-40.

WHEREAS, the City of Ellensburg wishes to provide for fair and equitable treatment of all vendors who are interested in and capable of providing goods or services to the City for its purchase and use; and

WHEREAS, the City of Ellensburg wishes to maximize the purchasing value of its public funds by establishing sensible procurement policies and procedures; and

WHEREAS, the city wishes to improve the effectiveness of the City's purchasing efforts, and avoid unnecessary delays in purchases necessary to provide public services by streamlining its procurement procedures; and

WHEREAS, the City desires to implement a procurement program which encourages recycling, reduces solid waste, conserves energy and natural resources, and protects environmental quality; and

WHEREAS, the City wishes to implement a procurement system of quality and integrity by establishing purchasing policies and procedures which contain internal controls and safeguards to ensure that proposed purchase contract awards to vendors comply with all federal, state and local legal requirements and verify that appropriations are budgeted and sufficient moneys remain before a commitment of public funds is made; and

WHEREAS, the Washington State Legislature from time to time amends the laws regarding public contracting and indebtedness by municipalities; and

WHEREAS, the City Council is required by the Revised Code of Washington 39.04.155(b) to adopt a resolution implementing the small works roster contract rules and procedures; and

WHEREAS, Ordinance 4804, adopted June 18, 2018, delegates certain contracting signature authorities to the City Manager and establishes restrictions for further delegation of the authorities, and therefore supersedes delegations established in Resolution No. 2014-2; and

WHEREAS, the Ellensburg City Council adopted Resolution 2014-2, which established a small works roster process to award public works contracts; and

WHEREAS, the Finance Director has been duly appointed by the City Manager in accordance with Sections 1.06.030 and 1.07.040 of the Ellensburg City Code, which

includes serving as the principal financial official for the city including the duties of treasurer and controller, and auditor of all claims, demands, or charges against the city government; and

WHEREAS, the Federal Government authorizes federal funding to the City for programs and projects; and

WHEREAS, the Code of Federal Regulations, 2 CFR 200.415(a) has been revised to ensure that federal reimbursement requests, final fiscal reports or vouchers requesting payment under Federal agreements must include a certification, signed by an official who is authorized to legally bind the non-federal agency; and

WHEREAS, the Public Works & Utilities Director is currently, and has been the signature authority on all federal grant reimbursement requests, including those from other departments, as delegated through Resolution No. 2016-40; and

WHEREAS, in order to seek timely reimbursement for proper expenditures related to the Federally funded programs and projects, the City Council of the City of Ellensburg delegates to the person appointed as the Finance Director the authority to legally bind the City solely for the purpose of requesting Federal award reimbursement, approving final fiscal reports, and vouchers requesting payment; and

WHEREAS, the Finance Department, together with employees from other City departments, has developed a set of comprehensive procurement policies which consolidate the procurement requirements established by the City Council in previous Resolutions, which requires their repeal;

NOW, THEREFORE, BE IT RESOLVED by City Council of the City of Ellensburg, Washington, as follows:

Section 1. City Council Resolution Nos. 1960-6, 1969-31, 1990-16, 1991-41, 1996-08, and 2016-40 are hereby repealed.

Section 2. Section 9, only, of Resolution No. 2014-2, which governs the City's Small Works Roster procurement process, is hereby repealed. The remainder of Resolution No. 2014-2, remains in full force and effect.

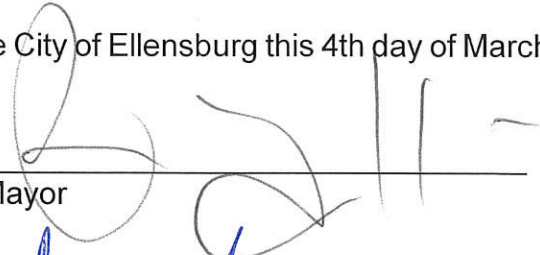
Section 3. The City Council hereby adopts the document attached to this Resolution entitled "City Procurement Policies."

Section 4. The Finance Director is hereby authorized to revise, amend and update the City Procurement Policies as needed to maintain compliance with state and federal requirements.

Section 5. For the purposes of requesting reimbursement for federally funded programs and projects, the Finance Director shall be delegated authority per 2 CFR

200.415(a) to legally bind the city in furtherance of the intent of this resolution. The person duly appointed as the Finance Director shall be authorized to sign all grant reimbursement, final fiscal reports, and vouchers for federal grant funded programs and projects on behalf of the City of Ellensburg.

ADOPTED by the City Council of the City of Ellensburg this 4th day of March, 2019.



Mayor

ATTEST:



City Clerk

City Procurement Policies

Policy Adopted: / /2019 Replaces Policy Dated: NA**Related Requirements**

35A.34.210 RCW – Liabilities incurred in excess of budget

Chapter 42.23 RCW – CODE OF ETHICS FOR MUNICIPAL OFFICERS—CONTRACT INTERESTSChapter 39.04 RCW – PUBLIC WORKS

Uniform Guidance - 2 CFR 200.321 (federal grant funded projects)

Ellensburg City Code 1.06.040 - Authority to execute agreements, contracts and leases

Resolution No. 2014-2 – Small Works Roster Procurement Process

I. General Purchasing Requirements

The City may only enter in to contracts or other obligation of resources if the purchase is necessary for the operation of the City and is reasonable in nature and amount.

An open, fair, documented, and competitive process is to be used whenever reasonable and possible.

All contracts or other obligation of resources must be within budget appropriations of the fund(s) benefiting from the product of the contract. Liabilities incurred by any officer or employee of the city in excess of any budget appropriations shall not be a liability of the city.

The responsible department must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

If the procurement authority, or City Manager for Council purchase authority, determines it is likely to result in economical purchases, consider consolidating or breaking out procurements, analysis of lease versus purchase alternatives, and any other analysis to determine the most economical approach.

The City must maintain records sufficient to detail the history of procurement. These records must include: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Every contract or other obligation of resources is subject to this policy except:

- 1) Acquisition, sale, or lease of real property
- 2) Employment agreements and collective bargaining agreements
- 3) Intergovernmental Contracts

Washington's Interlocal Cooperation Act, Ch. 39.34 RCW, authorizes the City to contract with other public agencies via interlocal agreements that enable cooperation among the agencies to perform governmental activities and deliver public services.

- 4) Official Grant Programs from the City (as they now exist or may hereafter be amended):
 - Council Grants
 - Stormwater
 - Historic Preservation
 - Parks Partnership
 - Lodging Tax
 - Arts Commission Grants
- 5) Art Purchases
- 6) Rewards as authorized by ECC 2.05.040
- 7) Claims against the City as discussed in ECC 2.52
- 8) Employee Suggestion Awards Authorized by ECC 1.40

If an additional lawful method of procurement not included in this policy is available and applicable to a necessary purchase, the alternative method may be used with written permission from the Finance Director.

II. Authorized Individuals Only

Only authorized individuals may make purchases or enter into other contracts on behalf of the City. The City Council retains all authorities not specifically delegated through official Council action or action of the state legislature.

The exercise of delegated authorities is subject to all applicable laws.

To promote efficient purchasing, certain contracting and procurement authorities granted to the City Manager are delegated to Department Heads, and subsequently may be delegated to other employees of the City consistent with Ellensburg City Code section 1.06.040.

Responsibility for authorities may be delegated, accountability for performance of the authorities is retained.

Any delegation of contracting or procurement authority is only valid if it is documented.

Any individual with delegated contracting authority must certify annually to the Finance Department that they have received a copy of the City's procurement policies and acknowledge they will conduct themselves in accordance with the policies.

Authorized travel status provides authority to incur reasonable expenditures, in compliance with City travel policies, while traveling on City business.

III. Total Purchase Cost – Goods, Equipment, Materials, Supplies, and Services

The anticipated annual need for a good or service when it can reasonably be projected, shall be used to determine the cost of that good or service, and thus which contract approval level, cost threshold, and other related purchasing requirements apply.

Requirements shall not be divided to come up with a lower total cost to avoid contract approval levels or competitive bid requirements, commonly referred to as “bid splitting”. If one item being purchased requires another item to make a whole, the total accumulated costs of the two items (when they can reasonably be projected) should be considered together to determine which approval level and cost threshold apply, unless the two items are not available from a single supplier.

Include costs such as taxes, freight, and installation charges when determining which cost threshold applies. Do not include the value of a trade-in. (Trade-in value should be considered, however, to determine the lowest bid when competitive bidding is used.)

Requirements for the total quantity of an item and the total annual estimated need when they can reasonably be projected should be considered when determining which cost threshold and related purchasing requirements apply.

Purchases in to city inventory shall be evaluated for estimated annual need in addition to each individual purchase.

IV. Total Purchase Cost – Public Works

State law prohibits the division of a project into units of work or classes of work to keep costs below the bidding threshold. If a project is to be completed in phases, the total accumulated costs for all phases should be considered when determining which cost threshold and related purchasing requirements apply.

RCW 39.04.050 requires specific procedures to develop estimates for public works projects.

V. Grants and Other Restricted Funds

Federal funds and grants often come with their own separate and more restrictive bidding requirements. Competitive bidding may be required by federal agencies, even below the state bid limits, and the required competitive process may be more demanding.

If your project uses any federal funding, you must follow both the state and federal competitive requirements, using the more stringent standard of the two. This procurement policy is intended to meet the standard procurement requirements. However, specific grants may have more stringent requirements.

For all grants, a written description of applicable procurement guidelines must be obtained from the granting agency and provided to the Finance Department.

All procurements subject to federal procurement standards must follow the City’s documented procurement policies and procedures, applicable state laws, and ensure that the procurements

conform to applicable Federal law and administrative rules. Specific situations where the City's documented procurement policies, and applicable state laws, do not meet the requirements of Federal law and administrative rules are identified at the end of this section.

The city must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. For purchases and projects using federal funds, consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. For non-federally funded purchases and programs, consideration is given to factors as specified in the procurement and allowable or prescribed by state law and city policy.

The City is responsible, even when completing a federally funded project or program, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. The City is responsible for contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

City purchasing thresholds for federal awards reflect the changes issued by the Office of Management and Budget in Memorandum M-18-18 dated June 20, 2018.

All procurements funded with federal awards over the Federal "Simplified Acquisition Threshold", currently \$250,000, must first make an independent estimate of procurement cost before receiving bids or proposals, and complete further cost or price analysis as appropriate to ensure the procurement provides adequate value to the city.

Before awarding contracts of \$25,000 or more, funded with federal awards, the city will ensure contractors are not suspended or debarred by either documenting the contractor is not listed in the Excluded Parties List System (EPLS) at www.sam.gov, collecting a certification from the contractor (as part of the procurement solicitation, contractor evaluation, or contract award process), or adding a clause or condition to the contract.

For competitive proposals funded with federal awards, such as Requests for Proposals (RFP) and Requests for Qualifications (RFQ) for Architecture & Engineering (A&E) services, the required procurement method is more detailed than the requirements of state law. These procurement solicitations must:

1. identify all evaluation factors and their relative importance;
2. be solicited from an adequate number of contractors to ensure competition;
3. have a written method for conducting technical evaluations and selecting recipients;
4. must be awarded to the most qualified bid responder with price as a factor (unless it is A&E services).

Public works project procurements funded with Federal awards above federal formal bid procurement threshold (\$250,000) may not use the Small Works roster procurement method.

Time and materials or force account contracts funded with federal awards must meet federal requirements for negotiated costs and profit, and may require approval from the grantor agency.

VI. Conflict of Interest Contracting Policy

All actions of City employees are subject to the provisions of section 9.1 of the City Personnel Manual regarding conflicts of interest. This includes, by reference, Chapter 42.23 RCW, the Washington Code of Ethics for Municipal Officers.

No employee, officer, or agent of the City may participate in the selection, award, or administration of a contract or other purchase if he or she has a real or apparent conflict of interest.

Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her state-registered domestic partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the City must not solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

However, officers, employees, and agents of the City may participate in the selection, award, or administration of a contract or other purchase:

1. If the real or apparent conflict of interest is disclosed to the City Attorney and City Manager in advance of their involvement in the selection, award, or administration of a contract or other purchase; and
2. The financial interest is:
 - a. An exception allowed by 42.23.030 RCW; or
 - b. A "remote interest" defined in 42.23.040 RCW

De minimis gifts, totaling less than \$50 of value from a single source annually, may be accepted from contractors or parties to subcontractors if returning or refusing the gift is impractical, such in the case of perishable items.

Violations of this Conflicts of Interest Policy are grounds for progressive disciplinary action, up to and including termination, in accordance with the Personnel Manual and any applicable collective bargaining agreement.

Any contract made in violation of the provisions of the Washington Code of Ethics for Municipal Officers is void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this chapter is liable to the municipality of which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office or other adverse employment action.

VII. Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

City procurements must use affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Disadvantaged business enterprises will be afforded full opportunity to do business with the City and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

Certain affirmative steps are required for programs or projects that use federal funds, and should be uniformly used for all City procurements.

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

VIII. Environmentally Preferable Procurement Practices

All city departments are responsible for:

1. Continuing to purchase recycled, persistent bioaccumulative toxin (PBT) free and other environmentally preferable products when such an alternative exists that is consistent with specifications and obtainable at a competitive price.
2. Continuing to specify energy efficient equipment and appliances whenever practicable.
3. Continuing to specify alternative fuel or hybrid vehicles when appropriate to the application.
4. Continuing to specify recycled materials requirements as identified in the Standard Specifications.

IX. Determining Procurement Type and Requirements

Depending on the type of goods or services being purchased, different purchasing methods are required. First determine the type of purchase you are making, then use the procurement requirement reference table to determine which procedures, and checklist, to follow.

1. Public Works

All work, construction, alteration, repairs, or improvements, other than ordinary maintenance, that are paid for by a municipality is considered "public works." "Ordinary maintenance" means work that is performed by agency personnel to provide regular or preventive maintenance. If the maintenance is done less frequently than once per year, it is likely considered a public work.

Examples: Road construction, roof repair, HVAC upgrades, building remodel, parking meter installation

Public Works Approval, Process, and Contract Mechanism Requirements

Estimated Cost	Signing Authority	Purchase/Bidding Processes	Contract Mechanism
\$0 - \$500	Delegated Signers	Informal Public Works process; Not Let by Contract and Small Works Roster processes available; Limited Public Works Process available up to \$35,000	Estimate/Invoice (with Prevailing Wage, Performance/Payment Bond, and Retainage requirements specified) Small Works Contract
\$501 - \$2,500			
\$2501 - \$10,000	Department Director		
\$10,001 - \$35,000	City Manager		
\$35,001 - \$40,000			
\$40,001 - \$65,000	City Council	If multiple trades, Informal Public Works process, or Not Let by Contract process available; if single trade, Small Works Roster process or Formal Bid process	
\$65,001 - \$300,000		Small Works Roster process or Formal Bid process	
\$300,001 - Greater		Formal Bid process	Formal Bid Contract

Comparison between Public Works Methods below bid limits (\$40,000 if single trade, \$65,000 if multiple trades)

Method	Minimum Competition	Bid Bond	Prevailing Wage Rules	Retainage (Retainage Bond OK)	Performance and Payment Bond
Informal Public Works	No set number of quotes	No	Required	Required	Required, or 10% retainage at contractor option
Limited Public Works	Three written quotes	No	Required	Required	Waivable by City
Small Works Roster	At least five (notice may be required)	No	Required	Required	Required, or 10% retainage at contractor option

Resolution No. 2014-02, including amendments, establishes the Small Works Roster method for award of public works contracts, including the Limited Public Works method.

2. Professional Services

Technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement, not including professional architecture, engineering, landscape architecture, or surveying services.

Examples: Meeting facilitation, strategic plan development, economic development study, rate setting study

Professional Services - Approval, Process, and Contract Mechanism Requirements

Estimated Cost	Signing Authority	Purchase/Bidding Processes	Contract Mechanism
\$0 - \$2,500	Delegated Signers	Informal Quote/Proposal process or Formal Bid process	Quote/Proposal or Professional Services Agreement
\$2501 - \$10,000	Department Director		
\$10,001 - \$40,000	City Manager		
\$40,001 - Greater	City Council		

3. Architecture, Engineering, and Surveying Services

Professional services provided by a consultant that fall under the general statutory definitions of architecture (chapter 18.08 RCW), engineering and land surveying (chapter 18.43 RCW), or landscape architecture (chapter 18.96 RCW).

Examples: Architectural blueprints, road design, sewer and water system design

Architecture, Engineering, and Surveying Services - Approval, Process, and Contract Mechanism Requirements

Estimated Cost	Signing Authority	Purchase/Bidding Processes	Contract Mechanism
\$0 - \$2,500	Delegated Signers	"Consultant Roster" qualifications-based selection (QBS) process, or Formal QBS process	Negotiated engagement scope, schedule, and budget/Professional Services Agreement
\$2501 - \$10,000	Department Director		
\$10,001 - \$40,000	City Manager		
\$40,001 - Greater	City Council		

4. Purchased Services

Services provided by vendors for the routine, necessary, and continuing functions of a local agency, mostly related to physical work. **Certain purchased services are subject to prevailing wage requirements.** Verify the services performed would not be better categorized as a public work.

Examples: Courier service, landscape maintenance, recycling pickup, vehicle maintenance, custom-made software

Purchased Services - Approval, Process, and Contract Mechanism Requirements

Estimated Cost	Signing Authority	Purchase/Bidding Processes	Contract Mechanism
\$0 - \$2,500	Delegated Signers	Informal Quote/Proposal process or Formal Bid process	Quote/Proposal or Formal Bid Contract
\$2501 - \$10,000	Department Director		
\$10,001 - \$40,000	City Manager		
\$40,001 - Greater	City Council		

5. Supplies & Equipment

Purchasing goods, equipment, supplies, or materials. However, if the purchase is directly connected to construction, alteration, repairs, or improvements, other than ordinary maintenance, it is considered to be part of a public works project and subject to public works contracting requirements.

Examples: Office supplies, fire trucks, copy machines, cell phones, off-the-shelf software

Supplies and Equipment - Approval, Process, and Contract Mechanism Requirements

Estimated Cost	Signing Authority	Purchase/Bidding Processes	Contract Mechanism
\$0 - \$2,500	Delegated Signers	Informal Purchase process	Estimate/Invoice
\$2501- \$7,500	Department Director		
\$7501- \$10,000		Formal Bid process	Formal Bid contract
\$10,001 - \$40,000	City Manager		
\$40,001- Greater	City Council		

Alternative processes include Computer & Telecommunications Systems Alternative Process (any amount), Sole Source, and Intergovernmental Cooperative Purchasing Agreement (Piggybacking).