



# **PROCUREMENT POLICY & PROCEDURES**

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## **I. GENERAL**

### **1.1 Purpose**

This document is intended to direct the procurement of goods and services at a reasonable cost. An open, fair, documented, and competitive process is to be used whenever reasonable and possible. The integrity, efficiency, and effectiveness of the City's procurement processes are critical elements of sound government.

### **1.2 Objectives**

The objectives of the City's Procurement Policy are as follows:

- To provide a uniform system to obtain supplies, materials, equipment, and services in an efficient and timely manner;
- To facilitate responsibility and accountability with the use of City resources;
- To ensure equal opportunity and competition among vendors and contractors;
- To promote effective relationships and clear communication between the City and its vendors and contractors;
- To comply with State procurement statutes governing expenditures of public funds;
- To promote use of recycled materials and products and dispose of surplus and scrap materials with regards to cost savings and the environment.

### **1.3 Scope**

These guidelines apply to purchases of:

- Supplies, materials, and equipment
- Professional services (including architectural and engineering services)
- Non-professional services (purchased services)
- Public works projects

The guidelines do not apply to the acquisition, sale, or lease of real property, except as described in Section 15.3.

If grant or debt funding is involved in the proposed purchase, applicable requirements should be obtained from the funding agency. Such requirements may be more restrictive than the City's policy.

## **1.4 Controlling Laws**

All procurements shall comply with appropriate and relevant Federal, State, and City laws and policies. If the appropriate and relevant Federal or State laws, regulations, grants, debt, or requirements are more restrictive than this Procurement Policy, such laws, regulations, grants, debt, or requirements must be followed.

The City Attorney shall be consulted when questions regarding potential conflicts arise. Applicable laws and regulations will be cited throughout this document.

## **2.0 DETERMINING TOTAL PURCHASE COST**

### **2.1 Use Anticipated Cost**

The anticipated 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, or other related purchasing requirements apply.

### **2.2 No “Bid Splitting”**

Procurements of goods or services shall not be divided to come up with a lower total cost to avoid contract approval levels or competition requirements contained in this Procurement Policy or in state or federal law. For example, 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 vendor.

### **2.3 Costs to include**

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.

### **2.4 Include Total Quantity Needed**

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

## **2.5 Multiphase Projects**

If a project is to be completed in phases, the total accumulated cost for all phases should be considered when determining which cost threshold applies.

## **3.0 CONTRACT APPROVAL LEVELS**

These approval levels are designed for contracts whose costs are covered by budget appropriations previously approved by the City Council. Contracts requiring additional appropriations must be approved by the Council.

### **3.1 Equipment, Supplies, & Materials (Unrelated to a Public Works Project)**

#### **3.1.1 \$15,000 or Less**

Purchases in this price range are to be approved by the Department Director or City Supervisor.

#### **3.1.2 \$15,001 to \$25,000**

Purchases in this price range are to be approved by the City Supervisor or Mayor.

#### **3.1.3 \$25,001 or More**

Purchases in this price range are to be approved by the City Council.

### **3.2 Professional Services**

#### **3.2.1 \$25,000 or Less**

Contracts in this price range are to be approved by the Department Director or City Supervisor.

#### **3.2.2 \$25,001 to \$50,000**

Contracts in this price range are to be approved by the City Supervisor or Mayor.

#### **3.2.3 \$50,001 or More**

Contracts in this price range are to be approved by the City Council.

### **3.3 Non-Professional Services (Purchased Services)**

#### **3.3.1 \$15,000 or Less**

Contracts in this price range are to be approved by the Department Director or City Supervisor.

### **3.3.2 \$15,001 to \$25,000**

Contracts in this price range are to be approved by the City Supervisor or Mayor.

### **3.3.3 \$25,001 or More**

Contracts in this price range are to be approved by the City Council.

## **3.4 Public Works Projects (Including Related Materials, Supplies, and Equipment)**

### **3.4.1 \$25,000 or Less**

Contracts in this price range are to be approved by the Public Works Director or City Supervisor.

### **3.4.2 \$ 25,001 to \$50,000**

Contracts in this price range are to be approved by the City Supervisor or Mayor.

### **3.4.3 \$50,001 or More**

Contracts in this price range are to be approved by the City Council.

## **4.0 Equipment, Supplies, & Materials (Unrelated to a Public Works Project) and Non-Professional Services (Purchased Services)**

The following cost thresholds apply for procurements of non-professional services and purchases of supplies, materials, and equipment unrelated to a public works project.

Refer to Section 10.0 in situations involving *competitive bidding exemptions* or *emergency* purchases of equipment, supplies, & materials.

Non-professional services, referred to as “purchased services” by the Municipal Research and Services Center (MRSC), are for routine and continuing functions, mostly related to physical activities that:

- Follow established or standardized procedures
- Contribute to the day-to-day business operations
- Completion of assigned and specific tasks
- Require only routine decisions
- May require payment of prevailing wages

Examples include delivery services, landscaping and janitorial services, vehicle inspection and repair services, HVAC system maintenance, and office furnishings installation and repair service.

Consult with the City Attorney prior to contracting for these services for advice on bidding and prevailing wage requirements.



#### **4.1 \$15,000 OR LESS – Direct Negotiation**

Procurements or purchases in this price range may be entered through direct negotiation. Competition is not required, though departments should still make every effort to receive the best price possible. Award of a contract will be based on qualifications and price. Documentation (e.g., date, time, vendor contract name, phone #, email of applicant) on all quotes must be retained to the extent required under state law.

#### **4.2 \$15,001 TO \$50,000 – three (3) minimum Quotes**

For procurements or purchases in this price range, it is recommended that at least three quotes be obtained when possible. Quotes may be obtained by telephone or in writing (electronic submittals are ok). Documentation (e.g., date, time, vendor contract name, phone #, email of applicant) on all quotes must be retained to the extent required under state law.

#### **4.3 \$50,001 or More– Competitive Quotes**

For purchases in this price range, competitive quotes should be solicited from at least three vendors. Quotes submitted by each vendor do not need to be sealed but shall be in writing only (electronic submittals are ok). A bid security may be required in an amount and type approved by the Public Works Director. Award of a contract will be based on qualifications and price. Documentation (e.g., date, time, vendor contract name, phone #, email of applicant) on all quotes must be retained to the extent required under state law.

#### **4.4 Alternative Methods of Procurement and Purchasing**

If applicable, the City may utilize any one of the following methods as an alternative to the requirements of sections 4.1, 4.2, and 4.3 above.

##### **4.4.1 Auctions**

RCW 39.30.045 allows for the purchase of any supplies or equipment at auctions rather than through competitive bidding, if the items can be obtained at a competitive price. This authority allows the City to make a purchase on an internet-based auction service, such as eBay, as well as through in-person auctions. The City may also use federal, state, or local governmental auctions.

##### **4.4.2 Purchasing Surplus Property from Other Governmental Agencies**

RCW 39.33.010 allows for the purchase of surplus property from other governmental agencies without regard to bid laws.

#### **4.4.3 Contracting for Services with Other Governmental Agencies**

RCW 39.04.080 authorizes one public agency to contract with another public agency to perform any function which each agency is authorized by law to perform itself.

### **4.5 Environmentally-Friendly Purchasing**

**4.5.1** Where appropriate environmentally-friendly products are available and reasonably priced compared to competing products, such environmentally-friendly products are to be purchased by the City. Environmentally-friendly products may include, but are not limited to, products that are: less toxic or hazardous, energy and water efficient, recyclable or made from recycled content or renewable resources, bio-based, sustainably certified, or shipped or made with reduced packaging.

## **5.0 PUBLIC WORKS PROJECTS**

As defined in RCW 39.04.010, *public works* include all work, construction, alteration, repair, or improvement (other than *ordinary maintenance* and professional services associated with the public works project) executed at the City's cost, or which is by law a lien or charge on any property therein.

### **5.1 Defining Project Cost**

The cost of a public works project includes the costs of materials, supplies, equipment, and labor on the construction of that project. Section 2.0 of this manual provides additional guidance on determining project cost.

### **5.2 Bid Requirements**

Pursuant to RCW 35A.40.210, procedures for any public work undertaken by the City is governed by RCW 35.23.352, which requires the City to call for bids whenever the cost of a public work will exceed \$116,155, if more than one craft or trade is involved. If only a single craft or trade is involved, or if the project is for street signalization or street lighting, bids must be called for if the cost is greater than \$75,500. RCW 35.23.352 also authorizes the City to utilize, at the City's discretion, the small works roster process outlined in RCW 39.04.155, described in more detail in Section 5.6 below.

In accordance with these provisions of state law, the following cost thresholds and bidding procedures apply when the City is soliciting bids for a public works project:

### **5.3 \$0 to \$2,500 – Project Less than \$2,500**

If the estimated cost of the public works project is \$0 to \$2,500 and the City determines that the work should be performed by contract, the City shall require one quote; two recommended.

#### **5.3.1 \$2,501 to \$50,000 – Limited Public Works Process**

If the estimated cost of the public works project is \$2,501 to \$50,000 and the City determines that the work should be performed by contract, the City shall utilize the limited public works process outlined in RCW 39.04.155(3) and described in Section 5.7.

### **5.4 \$50,001 to \$350,000 – Five Bids from the Small Works Roster**

If the estimated cost of the public works project is \$50,001 to \$350,000, then the City shall solicit five written bids from the small works roster in accordance with the procedure set forth in RCW 39.04.155(2), which procedure is described in more detail in Section 5.6.

If the estimated cost of the public works project is \$250,000 to \$350,000, then, in accordance with RCW 39.04.155(2)(c), the City must provide notice to the remaining contractors on the small works roster that bids are being sought. The notice can be made by:

- Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; or
- Mailing a notice to these contractors; or
- Sending a notice to these contractors by electronic means such as email or fax.

If the estimated cost of the public works project is \$250,000 or greater and funded in whole or in part by Federal funds, then the formal competitive bidding process outlined in Section 6.0 is required. This threshold is set by the federal government at 2 CFR § 200.88 and 48 CFR § 2.101 (“Simplified acquisition threshold”) and is subject to periodic adjustment for inflation pursuant to 41 U.S.C. § 1908.

### **5.5 \$350,001 or Greater – Formal Competitive Bids Required**

If the estimated cost of the public works project is \$350,001 or greater, then the formal competitive bidding process outlined in Section 6.0 is required.

## **5.6 Small Works Roster Process**

Under RCW 35.23.352 and RCW 39.04.155, the City is authorized to use the small works roster process to award public works contracts estimated to cost less than \$350,000. As described in Section 5.4 above, the City will use the small works roster process outlined in RCW 39.04.155(2) to award contracts for public works projects estimated to cost between \$50,001 and \$350,000, except as otherwise stated in Section 5.4.

Under RCW 39.04.155, a small works roster consists of all responsible contractors who have requested to be listed and are properly licensed or registered to perform such work in the State of Washington. As an alternative to creating and maintaining the City's own small works roster for construction of public works projects, the City Supervisor is authorized to enter into agreements with the Municipal Research and Services Center (MRSC) or any other agency for use of their small works roster, as long as such small works rosters are in compliance with the latest State of Washington rules, regulations, requirements, and laws regarding the establishment, maintenance, and use of small works rosters for public works projects.

A contract awarded from a 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 materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

The Public Works Director shall post a list of the contracts awarded using the small works roster at least once a year. The list shall contain the names of the contractors awarded the contracts, the amount of the contracts, a brief description of the type of work performed under the contracts, and the date the contracts were awarded. The list shall also state the location where the bid proposals for the contracts are available for public inspection.

## **5.7 Limited Public Works Process**

As stated in Sections 5.3 and 5.3.1, the City shall use the limited public works process to award contracts for public works projects with an estimated cost of \$0 to \$50,000.

The limited public works process is a type of small works roster process that applies only to public works projects estimated to cost less than \$50,000. To use this process, the City must solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster, or use the more limited process authorized under 5.3 for contracts less than \$2,500. The City may waive the payment and performance bond requirements of Chapter 39.08 RCW and the retainage requirements of Chapter 60.28 RCW. Staff shall consult the City Attorney's Office prior to waiving either of these requirements. The City must also comply with all requirements specified under RCW 39.04.155(3) regarding the limited public works process.

## **5.8 Unit Price Contracts**

Under RCW 35.23.352(13), the City is authorized to procure public works with a unit priced contract, also known as an “On-Call” public works contract. Unit priced contracts allow the City to contract for anticipated types of public works projects on a recurring basis, where the contractor agrees to supply an indefinite quantity of work at a defined unit price over a fixed period of time.

Unit priced contracts may be executed for an initial contract term not to exceed three years, with the city having the option of extending the contract for one additional year.

Unit priced contracts must be awarded to the lowest responsible bidder, and unit price contractors must pay prevailing wages in accordance with RCW 35.23.352(13)(e). The City shall comply with all of the requirements of RCW 35.23.352(13) when soliciting bids for and awarding unit price contracts.

## **5.9 Public Works Performed by City Employees**

RCW 35.23.352(1) allows City employees to perform public works projects as long as the project’s estimated cost is lower than the bidding limits (\$75,500 single craft/trade or \$ 116,155 multiple craft/trade).

Work performed within the City by other public employees under an interlocal agreement shall also be included in these limits.

The City is required to provide a report to the state auditor of the costs of all public works in excess of \$5,000 that are not let by contract (RCW 35A.40.200 and 35.23.352(4)). For any project using City employees in excess of \$25,000, the City must publish a description of the project and its estimated cost in the official newspaper at least fifteen days before beginning the work (RCW 39.04.020), except that in circumstances where an emergency is declared, publication of the description and estimate may be made within seven days after the commencement of the work.

## **5.10 Prevailing Wages**

The City is required by RCW 39.12.040 to require contractors to pay prevailing wages on all public works contracts.

A “Statement of Intent to Pay Prevailing Wages” must be received from a contractor before any payment is made, and an “Affidavit of Wages Paid” must be received following final acceptance of the work. As for RCW 60.28.011, all projects funded with Federal transportation funds (whole or in part), must have an “Affidavit of Wages Paid” submitted to the City prior to final acceptance of the project.

## **5.11 Performance and Payment Bonds**

Under RCW 39.08.010, payment and performance bonds are required for every public works contract, except as described below. This ensures that the job will be completed and that all workers, vendors, and subcontractors will be paid.

The bonds shall be executed by a surety company authorized to do business in Washington State, in an amount equal to 100% of the price specified in the contract. The bonds shall be issued on a form approved by the City Attorney's Office.

Payment and Performance bonds are required on small works roster projects. However, for small works roster projects estimated to cost \$150,000 or less, the City is allowed, at the option of the contractor, to forego requiring payment and performance bonds and instead retain 10% of the contract for 30 days after final acceptance, or until receipt of all necessary releases from the Department of Revenue, Department of Labor & Industries, and Employment Security Department, and settlement of any liens filed under Chapter 60.28 RCW, whichever is later (RCW 39.08.010(3)). The intent of this exception is to assist small contractors who may have difficulty securing bonds.

The City may waive the payment and performance bond requirements of Chapter 39.08 RCW and the retainage requirements of RCW 60.28.011(1)(a) for contracts awarded through the limited public works process, described in Section 5.7.

RCW 39.08.015 subjects the City to claims of laborers, materialmen, subcontractors, and mechanics if the required payment and performance bonds are not obtained.

Under RCW 60.28.011(1)(b), the City is prohibited from withholding retainage on public works projects funded in whole or in part by federal transportation funds. Instead, agencies must rely on the contractor's payment and performance bonds.

## **5.12 Public Works over \$1 Million**

Under RCW 39.30.060, for all public works projects expected to cost one million dollars or more, the City must require each prime contract bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work of: HVAC (heating, ventilation, and air conditioning); plumbing as described in chapter 18.106 RCW; and electrical as described in chapter 19.28 RCW, or to name itself for the work. Failure of the prime contract bidder to submit as part of the bid the names of such subcontractors or to name itself to perform such work or the naming of two or more subcontractors to perform the same work shall render the prime contract bidder's bid nonresponsive and, therefore, void.

### **5.13 Construction Change Orders**

Change orders are to be approved in accordance with the cost thresholds outlined in this section, provided that the changes do not increase the project's cost in excess of previously approved budget appropriations.

Change orders issued under this section shall be presented to the City Council as soon as practicable.

Unless authorized by the City Council for a specific project (i.e., resolution delegating authority to manage a project), the City Council must approve any change order that increases a project's cost beyond previously approved budget appropriations.

**5.13.1: Public Work Contract total remains below \$350,000** – Change orders are to be approved by the Public Works Director or City Supervisor.

**5.13.2: Public Work Contract total moves to \$350,000 or more, but the total cumulative amount of change orders is 10% or less** – Change orders are to be approved by the Public Works Director or City Supervisor.

**5.13.3: Public Work Contract total moves to \$350,000 or more and the total cumulative amount of change orders is more than 10%** – Council must authorize the Public Works Director or City Supervisor to approve the revised contract.

Additionally, the Director of Public Works may execute construction change orders that change the time for performance but do not increase the construction contract amount.

In the event unforeseen conditions necessitate an immediate change to avoid a contractor's claim against the City for delays, the Public Works Director or City Supervisor may authorize and direct work irrespective of the limits above, provided any work change directive issued in excess of the Public Works Director or City Supervisor's authority shall be incorporated into a change order and presented to the City Council as soon as practicable.

### **5.14 Project Acceptance**

At the completion of a public works project, as confirmed by the Director of Public Works or designee, the City Supervisor is authorized to accept the work.

The Director of Public Works and the Director of Finance, or their designees, are further authorized to sign exoneration and release forms for bonds and other security devices submitted with respect to project completion.

## **6.0 Formal COMPETITIVE BIDDING PROCEDURES**

### **6.1 Public Notice**

Whenever the cost of the public work or improvement, including materials, supplies, and equipment, will exceed the amounts outlined in RCW 35.23.352(1), the same shall be done by contract. All such contracts shall be let at public bidding. For contracts that require a formal competitive bidding process, a notice shall be published in the official newspaper at least 13 days prior to the due date for bids. For all Federal Aid projects as per the LAG Manual Chapter 46.24, an advertisement must run for a three-week period prior to opening of the bids. They must run at least twice, 20 calendar days prior to the last date upon which the bids will be received.

Advertisements for bids should include the following items:

- Title of the project
- Nature and scope of the work
- Materials and equipment to be furnished
- Where contract documents (plans, *specifications*) may be obtained
- Cost to obtain a set of contract documents
- Place, date, and time that bids are due
- Statement that a *bid bond* must accompany the bid
- Statements that the City retains the right to reject any or all bids, and to waive minor irregularities in the bidding process
- Title VI requirements and reference

### **6.2 Bid Specifications**

Bid specifications should incorporate a clear and accurate description of the technical requirements for the material, product, or service to be provided. Such descriptions should not contain features that unduly restrict competition.

When it is impractical or uneconomical to make clear and accurate description requirements, a “brand name or equal” description may be used. The responsibility of demonstrating to the City’s satisfaction that a product is “equal” to that specified shall be on the vendor proposing the substitution.

Requests for approval of substitutions must be made with sufficient time to allow the City to adequately review the proposal, including time for vendors to respond to questions and



requests for additional information or clarification. The City has no obligation to accept proposed substitutions.

Acceptance of a substitute product proposed as an “equal” to that specified will be made in writing. If this acceptance occurs prior to the bid, other bidders will be notified to the extent practical.

### **6.3 Award**

The contract will be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and criteria included in the invitation for bids, or all bids will be rejected. However, in accordance with RCW 35.23.352(2), if the City issues a written finding that the lowest responsive and responsible bidder has delivered a project to the City within the last three years which was late, over budget, or did not meet specifications, and the City does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications, then the City may award the contract to the second lowest responsive and responsible bidder whose bid is within five percent of the lowest bid. If in any year a contract is awarded to the second lowest responsive and responsible bidder in this manner, the City will prepare an annual report as required under RCW 35.23.352(14).

RCW 39.04.350 establishes bidder responsibility criteria. Before the City may accept a Contractor’s bid, the contractor must:

- Be a registered contractor at the time of bid submittal (RCW 18.27.020)
- Have a current Unified Business Identifier (UBI) number
- Have industrial insurance coverage
- Have an employment security department number
- Have a state excise tax registration number
- Have never been disqualified from bidding under RCW 39.06.010 or 39.12.065(3)
- Have received required training as listed under RCW 39.12
- Have not been determined within the three years prior to solicitation date by a final and binding citation and notice of assessment by L&I under RCW 49.46, 49.48 or 49.52

The City also requires that the contractor and all subcontractors must:

- Have or agree to obtain a current City business license
- Be current with all applicable licenses, taxes, and fees owed to the City of Sedro-Woolley

In addition, the City adopts the following supplemental criteria which may be used in connection with specified projects:

- The ability, capacity, and skill of the bidder to perform the contract or provide the service required
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder
- Whether the bidder can perform the contract within the time specified
- The quality of performance of previous contracts or services
- The previous and existing compliance by the bidder with laws relating to the contract or services
- Such other information as may be secured having a bearing on the decision to award the contract

When using the supplemental criteria described above, the City will include the supplemental criteria in the bidding documents, together with a basis for evaluation, deadline for bidder to submit responsibility documentation, and deadline for bidder to appeal a “not responsible” determination.

When a trade-in option exists and is in the City’s best interest, the price offered on the trade will be considered when determining the lowest responsive and responsible bid.

RCW 39.30.040 allows any local sales tax revenue generated by the purchase to be considered in determining the lowest responsive and responsible bid. Other preferences favoring local businesses are not permitted.

## **6.4 Cancellation**

An invitation for bids may be cancelled. Additionally, the City (at its sole discretion) may choose to reject any or all bids, in whole or in part, except as otherwise provided under state or federal law or as conditions of receiving state or federal funding.

## **6.5 Submittal of Bids**

Bids will be submitted as specified in the invitation for bid by the appointed date and time listed in the invitation. Each bid will be dated, and time stamped as it is received. Late bids will not be accepted. If the bid is a sealed bid, all qualified bids will be opened and read aloud publicly at the appointed time.

No City representative shall inform a contractor of the terms or amount of any other contractor’s bid for the same project prior to the bid opening date and time. Once bids have

been submitted (and opened, if the bids are sealed), the City may not negotiate with bidders. The contract must be awarded to the lowest responsive and responsible bidder, or else all bids must be rejected.

A written record shall be made of each contractor's bid on a project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations shall be recorded, open to public inspection, and available by electronic request.

Original specifications and the original bid responses will be retained for review and audit as required.

## **6.6 Bid Security**

In accordance with RCW 35.23.352(1), each bid submitted through a formal competitive bidding process shall be accompanied by a bid security for a sum of not less than five percent of the amount of the bid. The bid security may be in the form of a cashier's check, postal money order, or surety bond provided by a surety company that is authorized to do business in Washington State in a form approved by the City Attorney's Office. No bid solicited through a formal competitive bidding process shall be considered unless accompanied by such a bid security.

A bid security is only required for bids solicited through a formal competitive bidding process. A bid security is not required for bids solicited through the small works roster process, limited public works process, or through the procedures described in Sections 5.3, 5.3.1, 5.4, and 5.5.

However, if a public works project is estimated to be \$250,000 or greater and will be funded in whole or in part with federal funds, a formal competitive bidding process, that which requires a bid security, is required.

If a bidder is permitted to withdraw a bid before award, its bid security shall be returned.

## **6.7 Non-Collusion Affidavit**

Each bidder shall be required to warrant that their bid is genuine, and that they have not entered into collusion with other bidders, by submitting with their bid an executed and notarized affidavit on a form approved by the City Attorney.

## **7.0 PROFESSIONAL SERVICES**

Professional services are services which provide professional or technical expertise to accomplish a specific study, project, task, or other work statement.

Professional services include, but are not limited to:

- Architectural, engineering, or surveying services
- Accounting and auditing
- Bond or insurance brokerage
- Consulting services
- Legal services
- Real estate appraisal or title abstracts
- Relocation assistance
- Design
- Soils analysis or core testing

## **7.1 Competitive Process**

Under Chapter 39.80 RCW, a competitive process is required for all architectural, engineering, or surveying services. This competitive process is further outlined in Section 8.0. It is recommended, but not required, to follow the same process for all other professional services.

## **7.2 Consultant Solicitation**

Except as required under Chapter 39.80 RCW, the City may use, as the first step in the evaluation and hiring of a consultant to provide professional services, the Municipal Research and Services Center's (MRSC) annual roster or advertise a Request for Qualifications (RFQ). By first reviewing qualifications of consultants on MRSC's consultant roster, or reviewing qualifications from solicited consultants via an advertised RFQ, the City can narrow down and choose a consultant that is best qualified to provide the needed professional services. After firms are narrowed down, a Request for Proposal (RFP) is then requested. Each proposal should outline the firm's scope of services that includes information on their recommended schedule and deliverables.

An RFP should include:

- a detailed scope of services describing the project tasks
- an estimated budget
- an estimated schedule
- evaluation criteria
- instructions regarding the submittal information (page limitations, number of copies, etc.)
- proposal deadline
- copy of agreement for professional services

A department director may evaluate proposals for smaller projects, but a Consultant Selection Committee consisting of at least three employees or council members appointed by the mayor is recommended for more complex projects. City staff should prepare an independent estimate of cost of the work, a RSQ or RFP as appropriate, and prepare a Consultant Ranking Checklist with proposed evaluation criteria for use by the Committee. City staff should review all submittals received prior to the deadline to ensure they comply with the requirements of the RFP. The director or Committee should then use evaluation criteria to score each firms proposal.

Agency guidelines for RFPs and RFQs are as follows:

**Process:** Minimal Solicitation

**Estimated Cost for Services:** \$0 to \$25,000

**Complexity:** Minimal, with two or less sub consultants required.

**Major Activities:**

- Prepare a RFP for the proposed project.
- Select 1-3 qualified firms based on established criteria from MRSC roster.
- Request proposals (RFP) from selected firm(s) (non-cost for Architecture, Engineering and Surveying work).
- Evaluate response(s) and select most qualified firm.
- Negotiate a contract with the firm deemed the most highly qualified.
- Document the process.

**Process:** Informal Solicitation

**Estimated Cost for Services:** \$25,001 to \$100,000

**Complexity:** Moderate, with one to four sub consultants required.

**Major Activities:**

- Prepare a RFP for the proposed project.
- Select 3-5 qualified firms based on established criteria from MRSC roster.
- Request proposals (RFP) from selected firm(s) (non-cost for Architecture, Engineering and Surveying work).
- Evaluate responses and select most qualified firm.
- Negotiate a contract with most qualified firm.
- If negotiations with top ranked consultant fail, repeat with the next highest ranked consultant. Repeat process as needed.
- After award, notify submitting firms of final selection and award.
- Document the process for file, including selection criteria, names of firms considered, all responses to RFP, basis for award decision, and copy of contract.

**Process:** Formal Solicitation (for Non-federal aid projects. For federal aid projects, see Public Works Department “Guidelines for Consultant Selection”, current edition.)

**Estimated Cost for Services:** Over \$100,001

**Complexity:** Complex, with multiple sub consultants required.

**Major Activities:**

- Prepare Request for Qualifications (RFQ) for the proposed project including, at a minimum: description of services required, estimated schedule, evaluation criteria, instructions on submittal information, and due date for the responses
- Advertise RFQ by publishing as a legal notice in the City’s newspaper of record and by posting the RFQ on the City’s website.
- Provide answers to consultant questions via addenda and post on website.
- Date and time stamp proposals received by the due date.
- Evaluate proposals strictly against criteria set forth in the RSQ and score. Use mayor appointed consultant selection committee consisting of 3 to 5 evaluators for scoring and score proposals using score sheets. Tabulate scores and determine preliminary ranking of consultants.
- Request non-cost proposals (RFP) from top finalists (if additional information is needed).
- Schedule and conduct live or telephone interviews and presentation of proposals by top finalists, if desired.
- Determine final scoring and select most qualified firm.
- Notify submitting firms of preliminary selection.
- Negotiate a contract with most qualified firm.
- If negotiations with top ranked consultant fail, repeat with the next highest ranked consultant. Repeat process as needed.
- After award, notify submitting firms of final selection and award.
- Document the process for file, including selection criteria, names of firms considered, all responses to RFP, basis for award decision, and copy of contract.
- Conduct debriefing conferences with unsuccessful firms, if requested.

## **8.0 ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES**

Services for professional architectural (including landscape architectural), engineering, or surveying services are procured using the qualifications-based selection requirements in Chapter 39.80 RCW. Examples include architectural blueprints, road design, and sewer and water system design. The requirements outlined in that chapter, as stated in these guidelines, or as may be amended by the State Legislature, must be carefully followed.

## **8.1 Annual Roster**

As an alternative to creating and maintaining the City's own annual roster for the procurement of architectural, surveying, and engineering services, the City Supervisor is authorized to enter into agreements with the Municipal Research and Services Center (MRSC) and/or any other agencies for use of their annual rosters as long as such rosters are in compliance with the latest state of Washington rules, regulations, requirements, and laws regarding the procurement of architectural, surveying, and engineering services.

The City encourages architectural, engineering, and surveying firms to submit to MRSC a statement of qualifications and performance data annually. When services are needed, the City will evaluate current statements of qualifications and performance data on file. The City continues to have the option to formally advertise for consultant qualifications aside from using the MRSC roster.

## **8.2 Contract Negotiations**

Discussions will be conducted with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. Using criteria established by the City for the project, category, or type of services needed, a professional services contractor will be selected that is deemed to be the most highly qualified to provide the services required for the proposed project. See Section 7.2 for the RFQ and RFP process. RFPs for architectural, engineering, and surveying services may not request a price. The City must select the most qualified firm and then negotiate a price for the project.

The City will negotiate a contract with the most qualified firm at a price that the City determines is fair and reasonable. In making its determination, the City will consider the estimated value of the services to be rendered as well as the scope, complexity, and professional nature of the service to be provided. If the City is unable to negotiate a satisfactory contract with the firm selected at a price that is determined fair and reasonable, negotiations with that firm will be formally terminated. Another firm will then be selected, and the process continued until an agreement is reached or the process terminated.

## **9.0 CONTRACT AMENDMENTS**

The City Supervisor may execute an amendment to a contract without City Council approval, provided that the amendment:

- Simply extends the time of completion for a project;
- Provides for a cost increase that does not exceed 10% of the original contract cost (or \$50,000, whichever is greater), and is within the approved budget; or

- Is solely for “On-Call” services to ensure compliance with City Codes and regulations by development applications and studies associated with development applications, when the cost of the work performed is recovered from applicant reimbursements or application fees. Examples include agreements for geotechnical studies and traffic impact analysis.

The Public Works Director may execute an amendment to a contract without City Council approval for Public Works related Professional Services Agreements, provided that the amendment:

- Simply extends the time of completion for a project;
- Provides for a cost increase that does not exceed 10% of the original contract cost (or \$25,000, whichever is greater), and is within the approved budget; or
- Is solely for “On-Call” services to ensure compliance with City Codes and regulations by development applications and studies associated with development applications, when the cost of the work performed is recovered from applicant reimbursements or application fees. Examples include agreements for geotechnical studies and traffic impact analysis.

All changes to the scope of work must be done by contract amendment. Substantial changes to the scope of work must be submitted to the City Attorney for a determination as to whether the work should be a new contract.

This section does not apply to contracts for public works projects. Amendments to contracts for public works projects shall be in the form of a change order approved in accordance with Section 5.13.

## **10.0 COMPETITIVE BIDDING EXEMPTIONS AND EMERGENCIES**

Under RCW 39.04.280, competitive bidding requirements may be waived 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.

Purchases may be made from a *sole source* vendor without soliciting other quotes or bids. In non-emergency situations, written documentation demonstrating the appropriateness of a sole source purchase shall be submitted to the Finance Department in advance of the purchase. Finance (and the City Attorney, when needed) will evaluate whether a vendor can legitimately



be defined as a sole source and shall provide written concurrence to be maintained in the purchasing file. Council action is not required, but may be requested by the Finance Director.

Purchases involving special facilities or market conditions may be made without soliciting quotes or bids. In non-emergency situations, written documentation demonstrating the appropriateness of a purchase involving special facilities or market conditions shall be submitted to the Finance Department in advance of the purchase. Finance (and the City Attorney, when needed) will evaluate whether special facilities or market conditions legitimately exist and shall provide written concurrence to be maintained in the purchasing file. Council action is not required, but may be requested by the Finance Director.

In accordance with RCW 39.04.280 and Chapter 2.40 SWMC, if an *emergency* exists, the Mayor, the City Council, the City Supervisor, Department Directors, or the person(s) designated by the Mayor (or by Chapter 2.40 SWMC) to act in the event of an emergency may:

- Declare that an emergency situation exists.
- Waive competitive requirements.
- Award, on behalf of the City, contracts necessary to address the emergency (including, but not limited to, contracts for architectural and engineering services).

Chapter 2.40 SWMC contains additional provisions relating to emergency management and Section 2.40.140 contains specific provisions for public works emergencies. RCW 39.04.280 requires that a written finding of the existence of an emergency be made and entered into the public record no later than two weeks following the award of the contract. Such written findings authorizing the emergency procurement shall be presented to the City Council for ratification and confirmation, modification or rejection. However, all emergency procurements under this section shall be considered to be in full force and effect until the City Council acts otherwise.

See the Emergency Operations Plan for additional information on the resource request process used in the Emergency Operations Center during emergencies. Nothing in this Section 10.0 is intended to supersede the City's adopted Emergency Plan and procedures as outlined in Chapter 2.40 SWMC.

## **11.0 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS**

RCW 39.34.030 allows the City to join with other governmental agencies for the purchase of supplies, equipment, or services. This is done by entering into a written Intergovernmental Cooperative Purchasing Agreement (also known as an "Interlocal Agreement").

Prior to making a purchase under such an agreement, the City must ensure that the procedure used by the agency that originally awarded the bid, proposal, or contract is allowable with the City's purchasing policy. The originating agency must also have fulfilled one of two additional public notice requirements:

- 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.
- Provided an access link on the state's web portal to the notice.

The City may also make a bid call with another government entity as a joint purchase that complies with the procurement requirements of both jurisdictions.

When practical, the City should include language in its solicitations that allows other public agencies to purchase from City of Sedro-Woolley's contracts or purchase orders, provided that other agencies provide similar rights and reciprocal privileges to the City of Sedro-Woolley.

Pursuant to RCW 39.34.030, the City may make purchases through state contracts including, for example the Department of Enterprise Services ("DES"). The City has signed a Master Contracts Usage Agreement with DES. The DES' webpage provides information and instructions for making purchases with the state contract.

The City Council shall approve all Intergovernmental Cooperative Purchasing Agreements.

## **12.0 VENDOR RELATIONS**

### **12.1 Code of Ethics**

Employees will follow Chapter 2.62 SWMC in this subject area.

### **12.2 Quote or Bid Revisions**

If a vendor is permitted to submit a revised quote or bid, other competitors will be given the same opportunity. Bidders are expected to offer their best bid first and offering an opportunity to re-quote should be done only when necessary.

### **12.3 Samples**

When vendors offer samples for evaluation, they will be accepted only under the following conditions:

- The sample is accepted as property of the City.
- The product is of a type presently in use by the City or is of potential use. Samples of goods not likely to be purchased are not to be accepted.
- The quantity or size of the sample is relatively small and of minimal value.
- Any chemicals offered as vendor samples shall not be accepted unless accompanied by an OSHA product safety data sheet or material safety data sheet (MSDS).
- If vendor samples are accepted, they must be sent to the appropriate location or department for testing.
- Samples that are requested for evaluation must be purchased.

### **12.4 Local Business Participation**

The City will take affirmative steps not only to encourage local businesses to apply to participate in the procurement process, but to the extent legally possible, the City will consider the use of those local businesses.

## **13. Bid Protests**

A bidder wishing to protest the City's award of a contract for a public works project that was the subject of competitive bidding must strictly follow the procedures described below. To the extent that these procedures are not followed, the City will not review a bid protest submitted by a bidder.

### **13.1 Requests for Copies of Bids Received by City**

In accordance with RCW 39.04.105, within two business days of the bid opening on a public works project that is the subject of competitive bids, the City will provide, if requested by a bidder, copies of the bids the City received for the public works project. The City will not execute a contract for the public works project for two full business days from the date that copies of the received bids were provided. Intermediate Saturdays, Sundays, and legal holidays are not counted as “business days.”

### **13.2 Procedure for Submission of a Bid Protest**

All bid protests must be filed in writing with the City Clerk and must be submitted no later than: two full business days following bid opening, if no bidder requested copies of the bids received for the project; or two full business days following the date on which the City provided copies of the bids to requesting bidders. The City may provide copies of the bids by posting them to the City’s website. Intermediate Saturdays, Sundays, and legal holidays are not counted as “business days.”

All bid protests must:

- Be submitted in writing;
- Explicitly identify itself as a bid protest;
- Explicitly identify the bid/project/request for which the protest is made;
- Explicitly state all reasons and bases in law and fact supporting the protest; and
- Include any and all supporting documents.

### **13.3 Consideration of a Bid Protest**

Submitted bid protests complying with the requirements outlined above will be reviewed by the Mayor, the City Attorney, and the Public Works Director, or their designees.

The bid protest will be decided based upon the written materials, supporting documents, and other information submitted with the bid protest as well as other records or information known to the City relating to the public works project in question. In the event that a meeting or conference with the protesting bidder would materially assist the City in making its decision, a meeting may be scheduled at the discretion of the Mayor or their designee.

Only those issues identified by the bidder in the written protest filed with the City Clerk will be considered. The City Attorney or their designee will issue a written decision no later than 10 business days after the filing of the bid protest with the City Clerk, which shall be the final decision of the City on the bid protest.

## **14.0 SALE OR DISPOSAL OF CITY Personal PROPERTY**

### **14.1 Authorization**

The City Supervisor may authorize the sale or disposal of personal property owned by the City, provided that the property is no longer needed and that notice of intention to sell is given as provided in this section. The personal property will be deemed as surplus or scrap.

Permission must be obtained from the grantor before selling or disposing of any personal property which was purchased with grant funding. Failure to obtain permission could obligate the City to repay grant funding used to purchase the personal property.

Section 14 does not address the sale or disposal of real property owned by the City.

### **14.2 Sale versus Disposal**

Sales of surplus items to other governmental agencies may occur via private sale. Other sales of surplus items shall be sold via public auction. It is the City's policy to utilize third-party auction services rather than conduct the auction itself.

Scrap may be sold via public auction, via private sale at prices established by current market conditions or may be disposed of if there is not a viable market. The City Supervisor may donate items with a nominal value to a charitable organization which is tax exempt pursuant to Internal Revenue Code Section 501(c)(3).

### **14.3 Trade-Ins**

Trade-in of old equipment to upgrade similar or reasonably related equipment is permitted when it is in the best interest of the City. The requesting Department Director shall be responsible for the sale, trade, or other disposition of surplus property and scrap belonging to the City of Sedro-Woolley when used for a trade-in.

### **14.4 Public Notice of Sale**

If the City opts not to use a third-party auction service and instead chooses to conduct an auction itself, the notice of intent to sell surplus or scrap at a public sale shall be published once a week for two consecutive weeks in the City's official newspaper immediately prior to the sale. The notice shall state the time and place at which the property will be sold. Any other reasonable means to attract potential buyers to the sale may be used in conjunction with the notice posted in the official newspaper.

## **14.5 Conflict of Interest**

Because City employees have more information than the general public about City property to be auctioned and an appearance of fairness is necessary to maintain the public trust, employees, their spouses, and their agents are not permitted to bid on or buy personal property auctioned or sold directly by the City.

## **14.6 Inventoried Items**

Surplus, scrap, or trade-in of any inventoried item will be confirmed by the employee responsible and approved by the Department Director. A Property Disposition form will be completed and submitted to the Finance Department.

Each Department will be responsible for storing and retaining an inventory of such property until issued disposition instructions.

## **15.0 ADDITIONAL SIGNING AUTHORITY**

### **15.1 Grants**

If a grant would require the City to contribute more than \$50,000 in material matching dollars, then City Council approval is required prior to applying. The City Council may also initiate the process of pursuing a grant. If other entities, such as non-profit organizations or community interest groups, wish to apply for a grant on behalf of the City, the group must first obtain the approval of City Council.

The City Supervisor, or designee, is authorized to execute all required agreements and documents with a grant-issuing agency to effectuate any grant approved or accepted by the City Council.

Amendments to grants that simply extend the term of the grant may be approved by the City Supervisor.

### **15.2 Interlocal Agreements**

All interlocal and interagency agreements must be approved by City Council. Amendments to interlocal agreements that simply extend the term of the agreement may be approved by the Mayor.

### **15.3 Real Property**

Contracts and agreements that relate to real property (other than as described below) must be approved by the City Council.

The Mayor is authorized to enter into leases of real property where the rent does not exceed \$50,000 total over the term of the lease; Provided, that the City Council's approval is required for all leases of real property that are for a term of more than five (5) years.

The Mayor is authorized to enter into licenses, permits, or other agreements in order to manage the use of the City's right-of-way.

The Mayor is authorized to accept dedications, easements, rights-of-way, fee estates, or other interests in real property for use by or on behalf of the city. Pursuant to this authority, the Mayor is authorized to sign and accept delivery of real property acquisition documents on behalf of the City.

The Director of Planning is further authorized to sign and accept documents relating to any notice to title recorded with Skagit County in connection with the Critical Areas ordinance.

#### **15.4 Settlement Authority**

The City Council shall approve all agreements intended to resolve and settle any damage claims or suits against the City.

#### **16.0 COMPLIANCE WITH POLICY**

A violation of any of the provisions of this policy may result in discipline to the individual employee involved where, in the opinion of the Mayor, such discipline is in the interest of the public and good government.

Officers and employees should be aware of possible personal penalties, termination, and financial liability for intentional or willful violation of competitive bidding laws. RCW 39.30.020 states (emphasis added):

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution, or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in willful and intentional violation of any law, municipal charter, ordinance, resolution, or other enactment requiring competitive bidding upon such contract shall be held liable to civil penalty of not less than three hundred dollars and may be liable, jointly and severally, with any other such municipal officer for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit their office. For purposes of this section "municipal officer" shall mean an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020(2).

## 17.0 SUMMARY OF PROCUREMENT GUIDELINES

### Public Works Projects

Estimated Cost	Signing Authority	Purchase/Bidding Process	Contract Mechanism	
\$0 - \$2,500	Public Works Director	Really Small Public Works Projects	Limited Public Works Contract – 2,500k	Unit Price Contract (Follow the same threshold amounts and signing authority requirements)
\$2,501 - \$25,000	Public Works Director or City Supervisor	Limited Public Works Process	Limited Public Works Contract – 25k	
\$25,001 - \$50,000	City Supervisor or Mayor	Limited Public Works Process	Limited Public Works Contract – 50k	
\$50,001 - \$350,000	Authorized by City Council	Solicit 5 bids from small works roster. Must provide notice to other appropriate contractors on the roster for projects estimated to cost \$250,000 - \$350,000.	Small Works Contract	
\$250,000 or greater (funded by whole or in part by Federal Funds)		Formal competitive bidding process with advertisement	Formal Bid Contract	
\$350,001 - Greater		Formal competitive bidding process with advertisement	Formal Bid Contract	

- All equipment, supplies, and materials purchased separately but as part of the Public Work project, will be part of the aggregate cost of all phases of the project when determining the applicable bid process to be used. Municipalities may not break public works projects into separate phases or parts to avoid compliance with bidding statutes (RCW35.23.352(1))

Exception: If the public works project is \$250,000 or greater and is funded in whole or in part with federal funds, a formal bid process is required. This threshold is set by the federal government at 2 CFR § 200.88 and 48 CFR § 2.101 (“Simplified acquisition threshold”) and is subject to periodic adjustment for inflation pursuant to 41 U.S.C. § 1908.



## Purchasing

This matrix is to be used for purchasing charges that includes, goods, equipment, materials, and supplies that are **not** part of a public works project (telecommunications is not included and is governed by RCW 39.04.270). For items that are defined as a purchased service, please see “Non-professional Services” matrix. For purchases relative to a public works project, please see “Public Works Projects.”

<b>Purchasing Procedure</b>	<b>Signing Authority</b>	<b>Purchase \$15,000 Or Less</b>	<b>Purchase \$15,001 - \$25,000</b>	<b>Purchases \$25,001 and over</b>
Direct Negotiations	Directors or City Supervisor	X		
Quotes (recommend obtaining 3 quotes when possible.) Telephone, fax, or email	City Supervisor or Mayor		X	
Quotes (3 vendors should be solicited) Must be in writing	City Council			X

## Non-Professional Services

### (Purchased Services)

Non-Professional Services shall be described as services provided by a vendor for routine, necessary and continuing functions of a local agency, relative to a physical activity. Examples include courier, janitorial, disposal, vehicle inspection repair or up-fitting, office furnishing install.

Non-Professional Services is not public works, therefore can be let by using a solicitation, evaluation, and award process based on qualifications and price.

Note that prevailing wages may need to be paid in connection with the contract. To verify if Labor and Industries will require prevailed wages for the service being provided, please contact L & I directly for assistance.

<b>Purchased Service Procedure</b>	<b>Signing Authority</b>	<b>Services \$15,000 or Less</b>	<b>Services \$15,001 - \$25,000</b>	<b>Services \$25,001-greater</b>
Qualifications/ Price Direct Negotiations	Directors or City Supervisor	X		
Qualification /Price (recommend obtaining 3 quotes when possible) Telephone, fax or email	City Supervisor or Mayor		X	
Qualification /Price (3 vendors should be solicited) must be in writing.	City Council			X

## Professional Services

(Architecture, Engineering and Surveying Services and other Services that are performed)

Chapter 39.80 RCW must be followed for architectural, engineering, and surveying services (see Section 8.0) and price may not be considered in the initial selection process.

<b>Estimated Agreement Amount</b>	<b>Signing Authority</b>	<b>Recommended Solicitation Process</b>
\$25,000 or Less	Directors or City Supervisor	Minimal Solicitation. Contact 1-3 qualified firms.
\$25,001 or \$50,000	City Supervisor or Mayor	Minimal Solicitation. Contact 1-3 qualified firms.
\$50,001 to \$100,000	Authorized by City Council	Informal Solicitation. Prepare RFQ/RFP and contact 3-5 qualified firms.
Over \$100,000		Formal Solicitation. Prepare RFP/RFQ and advertise.