

Chapter 3.05

PURCHASING AND PUBLIC WORKS

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Section 3.05.010 Purpose.

It is the purpose of this chapter to prescribe and establish comprehensive policies for the purchase and/or lease of all materials, supplies, equipment and services, including professional services, and for procurement of contracts for public works and capital improvements.

(M-4018, Amended, 07/16/2012, Sec 1-Effective 08/16/2012; M-3129, Added, 07/18/1994, Sec 2)

Section 3.05.020 Responsibility for procurement.

The Director of Financial and Management Services shall be responsible for all City government purchasing and public works construction contract procurement. The Director may appoint a designate or designates who shall, subject to the exceptions stated in this chapter, make all purchases of materials, supplies and equipment, and contractual services for all departments, offices, boards and other agencies of the City government.

The Director is authorized to promulgate written rules and regulations as necessary for the administration of this chapter. Such rules and regulations also shall provide for a system of procurement for purchases and contracts of an amount below the competitive bid limits. Such system shall include, but not be limited to, formal and informal quotes, requests for proposal, local purchase orders, purchases from published price lists, petty cash and other appropriate provisions of a similar nature.

For purposes of this chapter, the terms "Director" and "Director of Financial and Management Services" shall be interchangeable. All references to the plural of "designate" herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 2-Effective 9/15/2016; M-3960, Amended, 08/02/2010, Sec 1-Effective 9/2/2010; M-3592, Amended, 09/03/2002)

Section 3.05.030 Emergency procurement--Authorization.

The Director or designate is authorized to make all emergency procurements, except those for public works which are governed by VMC 3.05.240, upon a written finding by the Director or designate of the existence of an emergency. Procurements under this section are exempt from competitive procurement requirements. Such emergencies may include, but are not limited to unforeseen circumstances beyond the control of the City:

1. Which present a real, immediate threat to the proper performance of essential functions is interrupted or is about to be interrupted; or
2. Which will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 3-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 2-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 2-Effective 9/2/2010)

Section 3.05.035 Local vendors.

Bids and price quotes shall be solicited whenever possible from vendors located in the City of Vancouver. However, pursuant to the City Charter and Washington law on competitive procurement, the City may not favor local businesses in the award of competitively awarded contracts. Under the adoption of an appropriate administrative procedure by the Director or designate, sales tax and other locally generated tax revenues referenced in RCW 39.30.040 may be considered in determining the lowest bid for the purchases of supplies, materials and equipment.

(M-4173, Amended, 08/15/2016, Sec 4-Effective 09/15/2016; M-3960, Added, 08/02/2010, Sec 3-Effective 9/2/2010)

Section 3.05.040 Special market conditions.

The Director or designate is authorized to make purchases which are subject to special market conditions as set forth below by negotiation without competitive bid; provided that the purchases are subject to City Council approval under Section 3.05.100, 3.05.210 or 3.05.240, prior to the making of such purchase, which approval may be continuing as to the special market condition. Special market conditions include the following examples set forth below:

1. When a purchase or service is clearly limited to a sole source or supply;
2. When an item required is of special design, shape or manufacture to match or fit in with an existing installation or standardization plan and competitive bidding is found to be impracticable;
3. When it is possible to procure what the Director or designate finds to be an obvious bargain in surplus or used material, supplies or equipment;
4. Insurance and bonds;
5. Banking Services;
6. Securities and investment purchases;
7. Subscriptions, including but not limited to, periodicals and databases;
8. Works of art, copyrighted materials, books, and other publications;
9. Memberships in professional organizations;
10. Software, including but not limited to, software licenses and maintenance fees, unless otherwise subject to RCW 39.04.270;
11. Advertisements;
12. Off-site training and classes; and
13. When a purchase of supplies, materials or equipment or for services, other than professional services, is for use in a pilot or an experimental project.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 5-Effective 09/15/2016; M-4173, Amended, 08/15/2016, Sec 5-; M-4018, Amended, 07/16/2012, Sec 3-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 4-Effective 9/2/2010)

Section 3.05.045 Auction purchases.

The Director or designate may, in accordance with RCW 39.30.045 and this ordinance, purchase any supplies, materials or equipment at auctions conducted by the government of the United States or any agency thereof, any agency of the State of Washington, any municipality or other governmental agency, or any private party without being subject to public bidding requirements if the items can be obtained at a competitive price.

(M-3960, Added, 08/02/2010, Sec 5-Effective 9/2/2010)

Section 3.05.050 Unauthorized purchases.

Except as provided in this chapter, or as provided in rules and regulations promulgated pursuant to Section 3.05.030, no City employee shall lease, purchase or contract on behalf of the City for any supplies, material, equipment or professional service or make any contract within the purview of this chapter other than through the Procurement Services Division and its staff. Any lease, purchase or contract made contrary to the provisions hereof shall not be approved by any City officer and the City shall not be bound thereby, except insofar as may be required or provided by law.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 6-Effective 09/15/2016)

Section 3.05.055 Contract Amendments.

A. Contract amendments that do not change the total value of the contract may be approved in accordance with rules and regulations adopted under Section 3.05.020.

B. Contracts not requiring approval by the City Council may be amended to increase the contract amount up to a total value which would require City Council approval in accordance with rules and regulations adopted under Section 3.05.020.

C. Contracts requiring approval by the City Council may be amended to increase the contract amount up to ten percent of the initial value of the contract. Any increases above ten percent of the initial value of the contract shall require City Council approval.

(M-4173, Added, 08/15/2016, Sec 7-Effective 09/15/2016)

Section 3.05.060 Formal contract approval and signing requirements.

All contracts for the purchase of supplies, materials, services, and the lease or lease/purchase of equipment, or public works required by this chapter shall be approved as to legal form by the City Attorney or his or her designate. Such contracts shall be executed on behalf of the City by the Mayor, City Manager, Director or designate as appropriate and in accordance with this chapter and with rules and regulations adopted under Section 3.05.020.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 8-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 4-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 6-Effective 09/02/2010)

Section 3.05.070 Equipment leases and lease/purchase agreements.

The lease of equipment shall, for the purposes of this chapter, be deemed to be the equivalent of a purchase of equipment, whether or not an option to purchase is included in the lease. Lease contracts shall be approved and signed as provided in Section 3.05.060.

(Ord. M-3129 § 2 (part), 1994)

Section 3.05.090 Interlocal or intergovernmental cooperative purchasing.

a. The Director or designate is authorized to enter into interlocal governmental cooperative purchasing arrangements with other public agencies similarly authorized when the best interests of the City of Vancouver would be served thereby. Any cooperative purchasing agreement shall set forth the purposes, powers, rights, objectives and responsibilities of the contracting parties and shall be governed by the requirements of Washington state law in regard to competitive bidding, when applicable.

b. The Director or designate is further authorized to make purchases of supplies, materials or equipment:

1. Under a contract entered into by another state or local governmental agency subject to compliance with RCW 39.34.030; and

2. Through or from the federal government under the authority of RCW 39.32.070 through RCW 39.32.090.

c. The Director or designate is further authorized to make purchases of supplies and services available to local governments through the federal General Services Administration ("GSA") pursuant to 40 U.S.C. 502.

d. Such purchases as described in subsections (a) through (c) of this section are authorized as an exception to the competitive bidding requirements of the City Charter.

e. Where the value of the purchases as described in subsections (a) through (c) of this section is in excess of three hundred thousand dollars, the City Manager shall present the proposed purchase contract, along with the recommendations of the department or departments concerned, to the City Council for its authorization to enter into such purchase.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 9-Effective 09/15/2016; M-3960, Amended, 08/02/2010, Sec 7-Effective 09/02/2010)

Section 3.05.095 Debarment - Suspension.

A. Pursuant to the City Charter and this chapter, the city attempts only to solicit offers from, award contracts to, and consent to subcontracts with responsible contractors. In the event that an illegal, improper, or unethical practice has occurred, debarment and suspension are discretionary actions that are appropriate means to effectuate the City's goal.

B. Vendors, contractors, subcontractors, or principals (contractor) of a business that have been debarred or suspended by the City are excluded from entering contracts with the City, and the City shall not solicit offers from, award contracts to, or consent to subcontracts with debarred or suspended contractors and the principals involved; provided, however, the Director or designate, as applicable, may waive this requirement if it is determined, in consultation with the City Attorney, that there is a compelling reason for such action, and the City Manager is informed of such action.

C. Causes for debarment or suspension. A vendor, contractor, subcontractor, or principal of a business (collectively “contractor”) may be debarred or suspended for any of the following reasons:

1. The commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
2. The commission of embezzlement, theft, forgery, bribery, falsification of records, perjury, or receiving stolen property;
3. The commission of a serious offense that indicates a lack of business integrity or business honesty that may seriously affect the present responsibility of a contractor; or
4. The violation of the terms of any public contract or subcontract so as to result in serious and direct consequences for the public entity letting the contract, including, but not limited to, a history of a failure to perform or unsatisfactory performance of, one or more contracts.

D. Investigation and notice of intent to debar or suspend. The Director or designate, may initiate an investigation and, if warranted, and after consultation with the City Attorney and notice to the City Manager, provide notice to a contractor of the City’s intent to debar or suspend said person and/or entity from bidding on and contracting with the City for a specified period. The notice may specify corrective actions or conditions for lifting the suspension or debarment. The notice shall provide that the debarment or suspension becomes effective within ten (10) business days unless the person or entity appeals said action to a hearing examiner appointed pursuant to Chapter 2.51 VMC. The Director or designate is authorized and directed to promulgate rules consistent with this section for the purpose of carrying out the provisions of Chapter 3.05 VMC.

E. Filing an appeal. An appeal from a notice to debar or suspend shall be in writing, signed by the person appealing, and shall be filed with the Director or designate no more than ten (10) business days from the date the notice to debar or suspend is served personally on the contractor or after the City deposits the notice in the U.S. mail addressed to the contractor. The written appeal shall state the name and address of the contractor and shall list grounds for the appeal, including any alleged error of fact or law in the notice of intent to debar or suspend. Failure to appeal constitutes a waiver of all right to an administrative hearing and determination of the debarment or suspension.

F. Hearing procedures. The pre-hearing procedures of VMC 22.03.030 shall apply to debarment and suspension proceedings except those of VMC 22.03.030(A)(2)(3) specific to nuisance vehicles. The hearing procedures of VMC 22.03.040 shall govern hearings regarding debarment and suspension except those of VMC 22.03.040(B) pertaining to nuisance vehicles and those of VMC 22.03.040(C) pertaining to burden of proof.

G. Burden of proof. The City has the burden of proof in appeal hearings. The city must prove by a preponderance of credible evidence that the contractor has committed any act(s) set forth in subsection C of this section.

H. Period of debarment or suspension. Debarment shall be for a period commensurate with the gravity of the causes therefore, provided that in no instance shall debarment extend for a period longer than five years unless the contractor has failed to satisfy any condition of debarment or implement any required corrective action. Suspension shall be for a temporary period commensurate with the gravity of the causes therefore, provided that in no instance shall a suspension extend for a period longer than twelve (12) months unless the contractor has failed to satisfy any condition of suspension or implement any required corrective action.

I. Court review. Court review of the decisions of the Hearing Examiner shall be sought within thirty (30) days by appropriate legal action filed in the Clark County Superior Court.

(M-4173, Amended, 08/15/2016, Sec 10-Effective 9/15/2016; M-4018, Amended, 07/16/2012, Sec 5-Effective 08/16/2012; M-3960, Added, 08/02/2010, Sec 8-Effective 9/2/2010)

Section 3.05.100 Competitive processes--Purchase of supplies, materials or equipment or services, other than professional services--When required.

The City may use competitive sealed bidding or competitive sealed proposals for any purchase of supplies, materials or equipment, including lease or lease/purchase of equipment, or of services other than professional services.

Any purchase of supplies, materials or equipment, including lease or lease/purchase of equipment, or of services other than professional services, where the cost thereof exceeds three hundred thousand dollars must be approved by the City Council and may use either a competitive sealed bidding or a competitive sealed proposal process.

Purchases of supplies, materials or equipment, including lease or lease/purchase of equipment, or of services other than professional services, where the cost thereof is three hundred thousand dollars or less but more than thirty five thousand dollars, may be approved by the Director or designate, and may use either a competitive sealed quotation or a competitive sealed proposal process.

Purchases or supplies, materials or equipment, including lease or lease/purchase of equipment, or of services other than professional services, where the cost thereof is thirty five thousand dollars or less but more than five thousand dollars, may be approved by the Director or designate, and must be made by obtaining at least three documented quotes in accordance with rules and regulations adopted under Section 3.05.020.

Purchases of supplies, material or equipment, including lease or lease/purchase of equipment or of services other than professional services, where the cost thereof is five thousand dollars or less, may be approved by the Director or designate, and need not involve competitive solicitation.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 11-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 6-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 9-Effective 9/2/2010; M-3592, Amended, 09/03/2002)

Section 3.05.110 Notice to potential bidders or proposers.

Notice of call for bids or solicitations for proposals for supplies, materials or equipment or services other than professional services shall be advertised for contracts expected to exceed three hundred thousand dollars. The deadline for receiving bids or solicitations for proposals shall be stated in the call for bids or solicitations for proposals. The Director or designate shall determine the manner and means for advertising that in his or her judgment will attract qualified bids or proposals, including but not limited to posting on websites, publication in newspapers or journals, or other means.

(Ord. M-3129 § 2 (part), 1994)(M-4018, Amended, 07/16/2012, Sec 7-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 10-Effective 9/2/2010)

Section 3.05.120 Cancellation of invitation to bid or request for proposals.

An invitation to bid or request for proposals may be canceled at the discretion of the Director or designate. The reasons therefore shall be made part of the bid or proposal file. Each invitation to bid or request for proposals issued by the City shall state that the invitation to bid or request for proposals may be canceled and that the City reserves the right to reject any and all bids or proposals.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 13-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 8-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 11-Effective 9/2/2010)

Section 3.05.130 Bids and proposals to comply with regulations.

All bids and proposals must comply with the terms of the notice of invitation to bid or request for proposal document(s), the specifications and any other conditions issued or published by the City in connection therewith.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 14-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 9-Effective 08/16/2012)

Section 3.05.140 Submission of bids and proposals.

For a competitive sealed bidding process, each bid shall be submitted sealed to the office of the Director or designate at any time within regular business hours by such date, time, and location, and identified as instructed in the solicitation document(s). Bids shall be opened in public by the Director or designate, at the time and place stated in the call for bids. The Director or designate shall tabulate the bids. The Director or designate shall make recommendations to the City Manager or designate, who shall seek approval for award of contract per Section 3.05.100.

For a competitive sealed proposal process, each proposal shall be submitted sealed to the office of the Director or designate at any time within regular business hours by such date, time, and location, and identified as instructed in the solicitation document(s). No public opening is required; however, a list of received proposals shall be made available, identifying the proposer's name and address. The selection of the successful proposer(s) shall be done by a selection committee and shall be based upon a set of pre-determined criteria, including, but not limited to any combination of proposer ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, compliance with statutes and rules, cost, or other criteria relevant to obtaining value for the City in procurement of the particular materials, supplies, equipment or services other than professional services. The Director or designate shall make a recommendation to the City Manager or designate, who shall seek approval for award of contract per Section 3.05.100.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 15-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 10-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 12-Effective 9/2/2010)

Section 3.05.150 Award or rejection of bids or proposals.

For contracts exceeding three hundred thousand dollars, the City Manager shall present the bids received or the apparent successful proposal to the City Council at a regular meeting. In the case of a sealed competitive bid, the council shall award the bid to the lowest responsive and responsible bidder. In the case of a competitive sealed proposal, the council shall award to the highest scored, responsive and responsible proposer. The council may reject any and all bids or proposals when it finds that the public interest will be served thereby. If council finds reason to reject any or all bids or proposals, appropriate findings shall be made and these shall be set forth in the City Council minutes.

(Ord. M-3129 § 2 (part), 1994)(M-4018, Amended, 07/16/2012, Sec 11-Effective 08/16/2012)

Section 3.05.160 Award to other than low bidder.

When the bid is awarded to a bidder other than the lowest bidder in price, findings shall be made which shall be stated as the City Council's findings and be set forth in the City Council's minutes. This section does not affect the use of other solicitation methods where price is not the only consideration.

(Ord. M-3129 § 2 (part), 1994)(M-4018, Amended, 07/16/2012, Sec 12-Effective 08/16/2012)

Section 3.05.200 Professional services--Defined.

The phrase "professional services" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other scope of work, and excludes the following services:

1. Purchased services provided by a vendor to accomplish routine, continuing and necessary functions, including but not limited to: equipment maintenance and repair, operation of a physical plant, security, computer analysis and programming, banking services, solid waste collection or recycling services. Such services are subject to the requirements of Section 3.05.100.

2. Retaining Special Assistant City Attorneys or attorneys to represent or advise the City in a given situation, investigative services, and/or expert witnesses shall be by rules adopted by the City Attorney and approved by the City Manager.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 18-Effective 09/15/2016)

Section 3.05.210 Competitive Solicitation and Approval of Professional Service Contracts.

All contracts for professional services, where the cost thereof exceeds three hundred thousand dollars must be approved by the City Council and shall be made by competitive sealed proposal process. Advertisement of the competitive solicitation is optional, but recommended.

All contracts for professional services, where the cost thereof is three hundred thousand dollars or less but more than one hundred thousand dollars, may be approved by the Director or designate, and shall be made by competitive sealed proposal process. Advertisement of the competitive solicitation is optional, but recommended.

All contracts for professional services where the cost thereof is one hundred dollars or less but more than thirty-five thousand dollars, may be approved by the Director or designate, and shall be made using an expedited informal competitive proposal process in accordance with rules and regulations adopted under Section 3.05.020.

All contracts for professional services where the cost thereof is thirty-five thousand dollars or less, may be approved by the Director or designate, and need not involve competitive solicitation.

The selection processes described herein shall be followed for the procurement of professional services with the following exceptions:

1. Emergency contracts;
2. Sole source contracts;
3. Services of licensed architects, engineers or landscape architects;
4. Other specific contracts exempted by the Director or designate when it has been determined that a competitive solicitation process, quote or informal quote process outlined herein is not appropriate or cost-effective.
(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 19-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 13-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 13-Effective 09/02/2010; M-3592, Amended, 09/03/2002)

Section 3.05.220 Competitive solicitation--Process.

The solicitation shall be made using a formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with ordinances and rules relating to contracts for services and consistent with state laws and City ordinances including those related to affirmative action and equal opportunity. (Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 20-Effective 09/15/2016)

Section 3.05.225 Solicitation of licensed architects, engineers or landscape architects--Process.

Contracts for services required to be performed by licensed architects, engineers or landscape architects, shall follow the procedural requirements of RCW Chapter 39.80. (Ord. M-3129 § 2 (part), 1994)

Section 3.05.240 When bids required for public works and improvements.

a. Except when otherwise authorized herein or by Section 3.05.030, Section 2.12.080 or RCW Chapters 39.04 and 39.28 relating to emergency public works or other applicable general state law as now enacted, or as hereafter amended, all public works and improvements shall be done by contract. Such contracts shall be awarded pursuant to public notice and call for competitive bids. Provided, that small works and limited public works may be done pursuant to Section 3.05.330; and provided further that the City may have public works performed by City employees during any biennial budget period which are cumulatively equal to a dollar value which does not exceed ten percent of the total public works construction budget of all City departments, including any amount in a supplemental public works construction budget and any amount of public works that the City has a county perform under RCW 35.77.020, for that biennial budget period. In addition to the biennial percentage limitation, City employees will not perform such public work whenever the estimated cost of such public work or improvement, including the cost of labor, materials and supplies, equipment and applicable Washington state and local sales tax, will exceed the sum of ninety thousand

dollars if more than a single craft or trade is involved with the public works project, or forty-five thousand dollars if a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A "public works project" means a complete project as defined in Section 3.05.241.

b. When any emergency requires the immediate execution of such public work, the City shall comply with the provisions of RCW 35.22.620(6),), RCW 39.04.280, and Section 2.12.080 as now or hereafter amended. The Director or designate shall within two weeks following award of an emergency public work contract enter into the public record written findings of the existence of an emergency. Entry into the public record may be by written report to the City Manager and City Council, posting on the City website or such other means as are practicable under the circumstances.

c. Notice of call for bids shall be given by posting thereof in a public place in the City and by publication in a newspaper of general circulation within the City once each week for two consecutive weeks. The deadline for receiving bids shall be not less than thirteen days from the date of first publication; except that notice by publication may be given in the manner authorized by RCW 39.28.020(5) or other general state law when applicable. Provided, that prior to notice of call for bids, the Director of public works, at his or her discretion, may require any and all potential bidders interested in bidding on a public works project to participate in a pre-qualification process. The pre-qualification process shall be to ensure that each such bidder(s) has the means, plans, equipment and experience to bid and complete the project. The Director of public works is authorized to, and shall, develop written procedures for the administration of such pre-qualification process. (Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 22-Effective 09/15/2016; M-3960, Amended, 08/02/2010, Sec 15-Effective 09/02/2010)

Section 3.05.241 Cost of public work or improvement defined.

The cost of any public work or improvement for the purposes of this chapter shall be the aggregate of all amounts to be paid for labor, material and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence; provided, that the cost of water services and metering equipment furnished in the course of water service installation from the utility-owned main to and including the meter box assembly shall not be included as a part of the aggregate cost as provided herein. The breaking down of any public work or improvement into units, or accomplishing any public work or improvement by phases, for the purpose of avoiding the minimum dollar amount prescribed in this chapter, is contrary to public policy and is prohibited. (Ord. M-3129 § 2 (part), 1994)

Section 3.05.242 Equality of opportunity to participate.

All contracts by and between the City and contractors for any public work or improvement exceeding the sum of ten thousand dollars, or fifteen thousand dollars for construction of water mains, shall comply with RCW 35.22.650 relating to minority businesses and minority employment and all such contracts shall comply with the City workforce diversity program established pursuant to Ordinance M-3082. (M-4173, Amended, 08/15/2016, Sec 23-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 15-Effective 08/16/2012; M-3129, Added, 07/18/1994, Sec 2)

Section 3.05.250 Cancellation of invitation to bid.

An invitation for bids on a public works project or improvement may be canceled at the discretion of the Director or designate. The reasons therefore shall be made part of the contract file. Each invitation for bids issued by the City shall state that the invitation may be canceled. Notice of cancellation shall be sent to all

parties that have been provided with a copy of the invitation. The notice shall identify the invitation for bids and state briefly the reason for cancellation. (Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 24-Effective 09/15/2016; M-3960, Amended, 08/02/2010, Sec 16-Effective 09/02/2010)

Section 3.05.260 Bids to comply with regulations.

All bids offered by persons, associations or corporations on a public works project or improvement shall comply with the terms of the notice of invitation for bids and the specifications or general conditions issued or published by the City in connection therewith, and with all applicable state laws relating to public works contracts, the terms of which shall be deemed included in such specifications or general conditions whether or not they are expressly set out therein. (Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 25-Effective 09/15/2016)

Section 3.05.270 Bidder (contractor) qualification.

Each public works bidder bidding on a contract in excess of one hundred thousand dollars may be required to submit to the director of public works or other appropriate department director, upon demand and at any time prior to the award of contract, satisfactory evidence that the bidder has sufficient means, plans, equipment and experience to enable the bidder to undertake and successfully complete the work specifications. The director of public works or other appropriate department director may accept as satisfactory evidence and contractor's certification that the bidder/contractor is pre-qualified for similar work by the Washington State Department of Transportation. (Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 26-Effective 09/15/2016)

Section 3.05.280 Bid deposits, performance bond and non-collusion affidavit for public works improvement projects.

Each public works bidder on projects in excess of three hundred thousand dollars shall make a deposit in the form of a certified check or of a bid bond in an amount equal to not less than five percent of the total bid, which percentage shall have been specified in the call for bids. As part of any bid submitted, the bidder shall be required to warrant that the bid is a genuine bid, and submit on a form approved by the City Attorney a declaration under penalty of perjury under the laws of the State of Washington that he has not entered into collusion with any other bidder or any other person. The successful bidder shall furnish a performance bond, payment bond or both a payment and performance bond in an amount equal to the total amount of the contract; provided that the City may accept such lesser or alternative payment and performance security as is authorized by RCW 39.08.010 for certain public works contracts.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 27-Effective 09/15/2016; M-3960, Amended, 08/02/2010, Sec 17-Effective 09/02/2010)

Section 3.05.290 Bid opening.

Each bid shall be submitted sealed to the office of the Director or designate at any time within regular business hours and shall be identified as "bids" on the envelope. Bids shall be opened in public by the Director or designate, at the time and place stated in the call for bids. The Director or designate shall tabulate the bids. The Director or designate shall make appropriate recommendations to the City Manager. (Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 28-Effective 09/15/2016; M-3960, Amended, 08/02/2010, Sec 18-Effective 09/02/2010)

Section 3.05.300 Award or rejection of bids.

For contracts for public works or improvements in excess of three hundred thousand dollars, the City Manager shall present to the City Council at a regular or special meeting the bids received, together with recommendations of the department or departments concerned and any bidder protests submitted to the City in conformity with RCW 39.04.105. The City shall provide the protesting bidder with not less than two business days' notice of the intent to award the bid to the recommended bidder and to execute a contract. The City Council shall award the contract to the lowest responsible bidder or may reject any and all bids when it finds that the public interest will be served thereby.

For contracts for public works and improvements of three hundred thousand dollars or less, the Director or designate shall, subject to review of any bidder protest submitted to the Director or designate in conformity with RCW 39.04.105, award the contract to the lowest responsible bidder based on the criteria set forth in Section 3.05.310 or may reject any and all bids when he/she finds that the public interest will be served thereby. The Director or designate shall provide the protesting bidder with not less than two business days' notice of the intent to award the bid to another bidder and to execute a contract.

If no bid is received on the first call for bids, the City may re-advertise and make a second call or may enter into a contract without any further call or may purchase the supplies, materials or equipment and perform such work and improvement by day labor, subject to the limitation set forth at Section 3.05.240. (Ord. M-3129 § 2 (part), 1994)

(M-4173, Amended, 08/15/2016, Sec 29-Effective 09/15/2016; M-3960, Amended, 08/02/2010, Sec 19-Effective 09/02/2010)

Section 3.05.310 Standards for determining lowest responsible bidder.

A. Public works - State mandated criteria. In determining lowest responsible bidder for a public works project, in addition to price, the criteria for bidder responsibility set forth in RCW 39.04.350(1) and RCW 39.06.020 shall be considered.

B. Public works - Supplemental criteria. Supplemental criteria for bidder responsibility for public works projects may be considered and shall be set forth in the applicable bid documents.

C. Responsible bidder criteria. The following may also be considered by the City in determining bidder responsibility for all City procurements:

1. The ability, capacity and skill of the bidder to perform the contract;
2. Whether the bidder can perform the contract promptly, or within the time specified, without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
4. The quality of performance of any previous contract by the bidder;
5. The previous and existing compliance by the bidder with state and federal laws and regulations and with local ordinances relating to contracts;
6. The sufficiency of the financial resources and ability of the bidder to perform the contract;
7. The quality, availability and adaptability of the materials, supplies or equipment to the particular use required;

8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

9. The number and scope of conditions attached to the bid;

10. Compliance with Section 3.05.242 and all affirmative action requirements insofar as permitted by Law.

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 30-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 16-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 20-Effective 09/02/2010)

Section 3.05.320 For contracts awarded by the City Council to contractor other than low bidder.

When the contract is not awarded to the lowest bidder in price, the reasons for making the award otherwise shall be stated as the council's findings and be set forth in the City Council's minutes for projects in excess of three hundred thousand (\$300,000) dollars or in a written finding by the Director or designate for projects of three hundred thousand (\$300,000) dollars or less. In the event award to other than the low bidder in price is on account of a determination that a bidder has not met bidder responsibility criteria for the project, and if the bidder has filed a timely bidder responsibility appeal pursuant to RCW 39.04.350, the City shall not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination. (Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 31-Effective 09/15/2016; M-3960, Amended, 08/02/2010, Sec 21-Effective 09/02/2010)

Section 3.05.330 Small works roster - Limited public works.

For public works in which the estimated cost is three hundred thousand dollars or less, the City may use a small works roster or rosters or limited public works as an alternative to bidding in accordance with RCW 39.04.155, as amended; provided, that in such case, the Director or designate shall prescribe policies and procedures to implement small works roster and limited public works programs in accordance with law.

All contracts for public works, where the cost thereof is three hundred thousand dollars or less but more than thirty five thousand dollars, may be approved by the Director or designate, and shall be made by the small works roster contract procedures in accordance with RCW 39.04.155, as amended.

All contracts for public works, where the cost thereof is thirty five thousand dollars or less, may be approved by the Director or designate, and shall be made by the limited public works process procedures in accordance with RCW 39.04.155, as amended.

The City shall award all contracts under this section to the lowest responsible bidder as defined in Section 3.05.310; provided, however, that the City reserves its right under applicable law to reject any and all bids, and also to waive "minor irregularities if in the public interest."

(Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 32-Effective 09/15/2016; M-4018, Amended, 07/16/2012, Sec 17-Effective 08/16/2012; M-3960, Amended, 08/02/2010, Sec 22-Effective 09/02/2010; M-3592, Amended, 09/03/2002)

Section 3.05.340 Competitive bidding--When required by federal or state regulations.

Whenever the conditions of an inter-governmental agency or of a county, state or federal grant establish competitive bidding procedures and requirements inconsistent with the procedures and requirements of this chapter, the conditions of such grant shall apply to public works projects and purchases to be paid for in full or in part by moneys received from such grant.

To insure compliance with this section, the Director or designate having responsibility for the public improvement shall advise the Director or designate as to the source of funding for each public works or improvement project together with any specific procurement requirements or conditions of the funding or grant contract. (Ord. M-3129 § 2 (part), 1994)(M-4173, Amended, 08/15/2016, Sec 33-Effective 09/15/2016; M-3960, Amended, 08/02/2010, Sec 23-Effective 09/02/2010)