

RESOLUTION NO. 3150

A RESOLUTION OF THE CITY OF WILSONVILLE ADOPTING ADMINISTRATIVE RULES RELATING TO PUBLIC CONTRACTING ACTIVITIES.

WHEREAS, the City Council of the City of Wilsonville (“City Council”) is the local contract review board for the City of Wilsonville, as authorized by ORS 279A.060 and Wilsonville Code Section 2.310; and

WHEREAS, ORS 279A.065(6) authorizes local contract review boards to adopt rules of procedure for public contracts; and

WHEREAS, the City Council adopted Ordinance no. 891, effective July 1, 2024, which will repeal and replace Wilsonville Code Sections 2.310 through 2.319 that provide rules regarding public contracting activity; and

WHEREAS, City Council has determined that certain portions of Wilsonville Code Sections 2.310 through 2.319 should be removed from the City’s code, and inserted into a new set of administrative rules relating to public contracting activities, with the same effective date as Ordinance no. 891.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The document attached hereto as **Exhibit A** is hereby adopted as the Administrative Rules Relating to Public Contracting Activities.

Section 2. Effective Date. This Resolution is effective as of July 1, 2024.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 17th day of June, 2024, and filed with the Wilsonville City Recorder this date.

DocuSigned by:
Julie Fitzgerald
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JULIE FITZGERALD MAYOR

ATTEST:

DocuSigned by:
Kimberly Veliz
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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Linville	Yes
Councilor Berry	Yes
Councilor Dunwell	Yes

EXHIBIT:

- A. Administrative Rules regarding public contracting activities

Exhibit A to Resolution No. 3150

Administrative Rules Relating to Public Contracting Activities

1. Definitions

"Land Use Decision" has the meaning provided by ORS 197.015.

"City Manager" means the City of Wilsonville City Manager or designee.

"City Public Contracting Code" means WC 2.308 through 2.312, as codified by Ordinance no. 891 (2024), as may be amended from time to time.

"Model Rules" means the rules of procedure prepared and maintained by the Oregon Attorney General pursuant to ORS 279A.065, which are currently numbered Divisions 47 through 49 of Chapter 137 of the Oregon Administrative Rules, as may be amended or renumbered from time to time.

A "Professional Service" is a service that requires specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of accountants, appraisers, auditors, and other licensed professionals, designers, computer programmers, performers, consultants, and property managers; *except that*, as used in these Administrative Rules, "Professional Services" do not include architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, or related services, as those terms are defined in ORS 279C.100. "Professional Services" are equivalent to the term "Personal Services" used in the Oregon Public Contracting Code.

"Oregon Public Contracting Code" means Oregon Revised Statutes chapters 279A, 279B, and 279C. Unless specifically defined in the City Public Contracting Code, terms shall have the meaning set forth in the Oregon Public Contracting Code.

"Public Art Policy" means the City's Public Art Policy and Guidelines, initially adopted via Resolution No. 3081, as it may be amended from time to time.

2. General

2.1. The purpose of these administrative rules is to: (i) refine, supplement, and provide specificity to the regulations in the City Public Contracting Code ; and (ii) provide City personnel direction on implementing the City Public Contracting Code.

- 2.2. The City may give notice of Public Improvement Contracts by electronic publication where City Council finds that such publication is likely to be cost effective, as provided in ORS 279C.360.
- 2.3. When engaging in Procurement or Public Contracting activities, the City shall:
 - 2.3.1. Abide by City purchasing procedures and administrative policies adopted by City Council or the City Manager;
 - 2.3.2. Operate within its budget, or seek supplemental budgetary authority from City Council;
 - 2.3.3. Plan purchase requirements sufficiently in advance so that orders can be placed in economical quantities; and,
 - 2.3.4. Negotiate purchases on the most favorable terms reasonably possible.
3. **Reporting to City Council.** The City Manager shall, no less than once per calendar quarter, provide a report to City Council that lists and provides a brief description of each contract that: (i) is approved by the City Manager pursuant to WC 2.312(1)(a) that has a value of between \$100,000 and \$250,000, (ii) is approved by the City Manager pursuant to WC 2.312(1)(b), and (iii) is approved by the City Manager pursuant to WC 2.312(1)(c) that results in an increase in the aggregate value of the contract of between 15% and 25%.
4. **Exemptions from Competitive Procurement Requirements.**
 - 4.1. The City may use any exemption available under the Oregon Public Contracting Code or Model Rules.
 - 4.2. When a contract is exempt from a competitive procurement requirement, the City shall use reasonable efforts to ensure it is obtaining goods or services on the best terms (e.g., price and quality).
 - 4.3. The following classes of public contracts are hereby exempted from competitive procurement requirements. The City may engage in these procurements in any manner deemed practical or convenient, including by direct selection or award:
 - 4.3.1. An agreement entered into between the City of Wilsonville and a person responsible for carrying out conditions of approval of a land use decision of the City of Wilsonville;
 - 4.3.2. Purchase of items for which prices or selection of suppliers are regulated by a governmental authority;
 - 4.3.3. Purchase of library lending materials and periodicals;

- 4.3.4. Purchase of used items;
- 4.3.5. Advertising contracts;
- 4.3.6. Contracts for equipment maintenance, repair, and overhaul;
- 4.3.7. Purchases under established price agreements;
- 4.3.8. Purchases of gasoline, diesel fuel, heating oil, lubricants and asphalt;
- 4.3.9. Contracts for oil or hazardous material removal services;
- 4.3.10. Investment contracts;
- 4.3.11. Partnerships with non-profit organizations to promote environmental stewardship; and,
- 4.3.12. The National Citizen Survey.

4.4. Professional Services.

- 4.4.1. The City may procure Professional Services with an estimated aggregate contract price that does not exceed \$100,000 in any manner deemed practical or convenient, including by direct selection or award. Any Professional Services with an estimated aggregate contract price in excess of \$100,000 will be procured in accordance with the Model Rules, particularly OAR Chapter 137, Division 48. Services that are specifically excluded from the definition of Professional Services must be procured in accordance with the Oregon Public Contracting Code and the Model Rules.
- 4.4.2. The following criteria may be considered in the evaluation and selection of a personal service contractor:
 - 4.4.2.1. Specialized experience in the type of work to be performed;
 - 4.4.2.2. Capacity and capability to perform the work, including any specialized services within the time limitations for the work;
 - 4.4.2.3. Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, the exercise of discretion, ability to meet schedules, and contract administration, where applicable;

4.4.2.4. Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable; and,

4.4.2.5. Any other factors relevant to the particular contract.

4.5. Public Art. The City may award a contract for “public art,” as that term is defined in the Public Art Policy, in accordance with the procurement requirements specified in the Public Art Policy.

4.6. Computer Equipment and Software.

4.6.1. The City may award a contract or renew existing contracts for the following information technology systems or system components in any manner deemed practical or convenient:

4.6.1.1. Contracts for the purchase or lease of computer software or hardware, including, but not limited to, software-as-a-service software or subscriptions for cloud-based services, audio-visual systems or components, telecommunication systems or components, GIS/GPS systems or components, and office photocopiers;

4.6.1.2. Contracts for the purchase or lease of infrastructure, systems, or components of a system, that requires closed source software to operate or that the City deems to be vulnerable to corruption or harmful unauthorized access;

4.6.1.3. Contracts to upgrade any systems described in this Section 4.6; or

4.6.1.4. Contracts for maintenance or training related to any systems described in this Section 4.6.

4.6.2. If the City enters into a contract for a system or system component described in this Section 4.6 by direct selection or award, the City shall document the basis for the City’s decision to use a specific vendor (e.g., it is beneficial for the City to work with the City’s current vendor in order to utilize the pre-existing knowledge of the vendor regarding the specifics of the City’s computer system, or to keep the specifics of the City’s computer systems confidential).

5. Surplus Personal Property Disposition

Disposition of surplus personal property may be made, at the discretion of the City Manager, under provisions of the Oregon Public Contracting Code, or the Model Rules, or under the provisions of this section.

- 5.1. Notice Requirement. From time to time and after personal property owned by the City of Wilsonville is determined by the City Manager to be surplus to the needs of the City, the City may sell the property at public auction. The City shall give notice of the public auction by posting notice of the means by which the property will be disposed of on the City of Wilsonville's website, or by advertisement in a newspaper of general circulation.
- 5.2. Auction Procedures. Auction sales may be conducted entirely on the internet. The surplus property shall be sold for cash to the highest bidder. All proceeds of the sale shall be paid to the City's general fund, subject to the terms and conditions of the contract (if any) between the City of Wilsonville and the company selected to conduct the auction.
- 5.3. Property Sold As-Is. All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind, including but not limited to warranties of title or fitness for any purpose. Upon receiving payment for the personal property from the successful bidder, the person or company conducting the auction shall execute an appropriate bill of sale, which shall recite that the sale is without warranty, as provided in this sub-section.
- 5.4. Sale without an Auction. The City may sell surplus personal property by a negotiated sale to a specific buyer if the value of the property is estimated to be less than the cost of the auction sale and expected proceeds. Surplus property which has a value of less than \$500.00, or for which the costs of a negotiated sale are likely to exceed the expected sale proceeds, may be disposed of by any means determined to be cost effective, including by disposal as waste. Alternatively the City may transfer personal property without remuneration or only nominal remuneration to another public agency or any recognized non-profit organization.

6. Bid Rejection; Appeal of Disqualification

- 6.1. Bid Rejection. The City may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may reject all bids if it is in the public interest to do so, including for, but not limited to, the following reasons:
 - 6.1.1. The person does not have sufficient financial ability to perform the contract; Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

- 6.1.2. The person does not have equipment available to perform the contract;
 - 6.1.3. The person does not have personnel or sufficient experience to perform the contract; or
 - 6.1.4. The person has breached contractual obligations.
- 6.2. Appeal of Disqualification. A person who has been disqualified as a bidder may appeal such disqualification to City Council as follows:
- 6.2.1. The person shall, within three business days after receipt of notice of disqualification, in writing, notify the City Recorder that the person wishes to appeal the disqualification;
 - 6.2.2. Upon receipt of such written notice of appeal, the City Recorder shall inform City Council;
 - 6.2.3. As soon as is practicable upon receipt of notice of appeal, City Council shall notify the person appealing the time and place of the public hearing; or
 - 6.2.4. City Council shall consider *de novo* the notice of disqualification, the record of the investigation made by the City Manager, Community Development Director, or City Engineer, and any evidence provided by the parties. City Council must document its decision and reasons therefore in writing.