

RESOLUTION NO. 2905

RESOLUTION ADOPTING A PURCHASING AND CONTRACTING POLICY

WHEREAS, the City desires to adopt a written purchasing and contracting policy that satisfies Federal grant requirements, that establishes the parameters of City staff's authority, and that clarifies the circumstances in which City Council approval is necessary;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the attached "Purchasing and Contracting Policy" is hereby approved and adopted.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 12th day of April, 2022.

Sherry Raymond
Sherry Raymond, Mayor

ATTEST:

Dale E. Novobielski
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

R. Case
Rob Case, City Attorney



CITY OF SELAH

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PURCHASING AND CONTRACTING POLICY

A. The City Council is the Purchasing and Contracting Authority for the City.

The City's municipal code – specifically SMC 1.04.010 – recites, in relevant part, that the City is “a noncharter code city operating under the mayor-council plan of government under RCW Chapter 35A.12, endowed with all the applicable rights, powers, privileges, duties and obligations of noncharter code cities as set forth in Title 35A of the Revised Code of Washington”.

In turn, state law – specifically RCW 35A.12.190 – provides that “[t]he council of any code city organized under the mayor-council plan of government provided in this chapter shall have the powers and authority granted to the legislative bodies of cities governed by this title, as more particularly described in chapter 35A.11 RCW.” Furthermore, RCW 35A.11.010 provides, in relevant part, that the City acting “by and through its legislative body . . . may contract and be contracted with” and “may purchase, lease, receive, or otherwise acquire real and personal property of every kind”.

The City Council is the legislative body of the City. Thus, the City Council holds purchasing and contracting authority on behalf of the City. As recited in this Purchasing and Contracting Policy, the City Council will and does directly exercise such authority as to certain types of contracts, agreements and transactions, and, by contrast, will and does delegate specific and limited purchasing and contracting authority to the City's Department Heads.

B. Types of Contracts the City Council Must Approve.

The City Council must approve, via item-specific direct action (*e.g.*, Resolution or Ordinance) or via its adoption and/or amendment of the City's annual budget, the following types of contracts, agreements and transactions:

1. Those that are entered into following a formal sealed bid process, a competitive Request for Proposals (RFP) process, or other similar process;
2. Those that will exceed one year in duration, unless a non-appropriation clause or other equivalent type of clause (confirming that the City will not incur any financial outlay) is included in the contract, agreement or transaction documents;
3. Those that are entered into with a sole source vendor or provider, because no potential alternative vendor or provider exists;
4. Those that concern, in whole or in part, real estate title, occupancy or appurtenant interests or rights, including but not limited to purchases, sales, easements, deeds and leases;

5. Collective Bargaining Agreements (irrespective of label, title or form);
6. Interlocal Agreements (irrespective of label, title or form);
7. Grant Agreements;
8. Those that by law or regulation – whether federal, state or municipal – are required to be approved by the legislative body of the City;
9. Those that by their own terms are required to be approved by the legislative body of the City; and
10. Any amendment, change order or other modification – of a contract, agreement or transaction – that will result in a financial outlay by the City in excess of the amount previously established.

Any contract, agreement and/or transaction entered into, or purportedly entered into, on behalf of the City in violation of this Section B shall and will be deemed void ab initio (*i.e.*, void from the outset) with regard to the City, unless the appropriate authority on behalf of the City chooses to and formally does ratify that contract, agreement and/or transaction.

C. Types of Contracts the City’s Department Heads May Approve.

See Appendix 1. The City Council, via its adoption of this Purchasing and Contracting Policy, delegates specific and limited purchasing and contracting authority to the City’s Department Heads to approve the following types of contracts, agreements and transactions:

1. Those that are for the purchase of goods and/or for the receipt of services at an aggregate maximum financial outlay by the City not exceeding fifteen thousand dollars (\$15,000.00), subject to the restrictions and requirements of the City’s Resolution No. 795, and further provided that sufficient monies are available per the applicable fund category of the City’s annual budget and also that Department Heads may not artificially split or segregate goods and/or services into separate or successive contracts, agreements or transactions in an effort to circumvent the aggregate maximum financial outlay cap; and
2. Interlocal Agreements (irrespective of label, title or form) with another government entity to use that entity’s small works roster and/or to obtain assistance on competitive bids, subject to the requirements of Chapter 39.34 RCW.

In the event of any actual or apparent conflict between this Section C and the preceding Section B and/or between **Appendix 1** and said Section B, Section B shall control and prevail.

Any contract, agreement and/or transaction entered into, or purportedly entered into, on behalf of the City in violation of this Section C shall and will be deemed void ab initio (*i.e.*, void from the outset) with regard to the City, unless the appropriate authority on behalf of the City chooses to and formally does ratify that contract, agreement and/or transaction.

D. The City Complies with Laws Governing Procurement.

See **Appendix 2** (second and third charts). State laws govern purchasing and contracting by cities, primarily Title 39 RCW and Title 35A RCW. These laws set dollar limits for soliciting quotes or conducting formal competitive processes. All dollar limits include freight, handling, and set-up, plus appropriate sales tax.

See **Appendix 2** (first chart). When procuring goods and/or services via the use of federal funds or grants, the City may also be subject to federal procurement laws, including debarment and suspension regulations. Federal procurement standards are outlined in the Code of Federal Regulations (CFR), 2 CFR Part 200.

City employees are responsible for understanding and complying with applicable state and/or federal laws when purchasing and contracting on behalf of the City. City employees are encouraged to review the procurement reference materials available online from the Municipal Research and Services Center (MRSC).

Any contract, agreement and/or transaction entered into, or purportedly entered into, on behalf of the City in violation of this Section D shall and will be deemed void ab initio (*i.e.*, void from the outset) with regard to the City, unless the appropriate authority on behalf of the City chooses to and formally does ratify that contract, agreement and/or transaction.

E. Employees Must Follow Ethical Standards when Purchasing or Contracting.

City employees must follow the ethical standards established by and recited within the City's personnel policies and rules. City employees shall have no personal beneficial interest in any contract, agreement or transaction entered into by the City with a vendor of goods and/or provider of services, and, likewise, no beneficial interest in any closely-held (*i.e.*, not publicly-traded) entity, organization or association that provides goods and/or services to the City.

City employees must timely report any suspected violation of any applicable ethical standard to the City Administrator, or to the State Auditor, for investigation. Any City employee found to have violated any applicable ethical standard may be subject to disciplinary action, up to and including termination of employment. Moreover, any City employee found to have violated any applicable ethical standard may also be liable to the City for monetary penalties as allowable by law, in addition to any civil or criminal liabilities or penalties that may be imposed by a court.

Any contract, agreement and/or transaction entered into, or purportedly entered into, on behalf of the City in violation of this Section E shall and will be deemed void ab initio (*i.e.*, void from the outset) with regard to the City, unless the appropriate authority on behalf of the City chooses to and formally does ratify that contract, agreement and/or transaction.

F. Employees May Not Artificially Split or Segregate Purchases in an Effort to Circumvent Competitive Bidding Requirements.

City employees must not artificially split or segregate any project and/or action into separate or successive contracts, agreements or transactions in an effort to circumvent an applicable dollar cap

threshold whereby a competitive bidding process is required.

City employees are encouraged to plan and forecast the need for identical or similar items within a calendar year that can be purchased at the same time to benefit from market competition and volume discounts.

Any contract, agreement and/or transaction entered into, or purportedly entered into, on behalf of the City in violation of this Section F shall and will be deemed void ab initio (*i.e.*, void from the outset) with regard to the City, unless the appropriate authority on behalf of the City chooses to and formally does ratify that contract, agreement and/or transaction.

G. The City Encourages Cooperative Purchasing.

The City finds that using contracts competitively awarded by another public entity can, in some circumstances, increase logistical efficiencies and yield greater volume discounts.

The City encourages the use of cooperative purchasing in accordance with Chapter 39.34 RCW, provided that the public agency awarding the contract, agreement or transaction complies with its own procurement requirements and also publicly posts the corresponding bid or solicitation on the internet.

H. Employees Should Endeavor to Use Standard-Form Contracts.

To the extent practical, City employees should use standard-form contracts, agreements and/or transaction documents that have been prepared and/or previously approved by the City Attorney. Standard-form contracts, agreements and documents are designed to include terms and conditions that protect the City's interests and that comply with applicable laws and regulations.

Sometimes the City must use a template – for a contract, agreement or transaction document – that is mandated by a vendor, supplier, contractor or other involved party such as another governmental entity. In those circumstances, City employees shall submit the proposed template to the City Administrator for review. The City Administrator may seek further review and/or action by the City Attorney.

I. IT Purchases.

The City historically has, and presently still is, obtaining information technology (IT) services from an outside IT vendor rather than maintaining its own IT department or employees. To ensure effective and reliable security, support and compatibility, IT purchases must comply with the established standards of any outside IT vendor that the City is then using. City employees considering an IT purchase must seek and obtain advance suitability and compatibility approval for the IT system, software and/or component specifications from any outside IT vendor that the City is then using.

State law allows cities to make IT purchases through competitive negotiation rather than through competitive bidding (RCW 39.04.270). In some cases, it may be in the City's best interest to have IT procurements conducted directly by the outside IT vendor that the City is then using rather than

the City conducting those procurements directly itself.

J. Types of Contracts that are Exempt from Competitive Solicitation and Bidding Requirements.

The following types of contracts, agreements and transactions are exempt from competitive solicitation and bidding requirements (but not, by contrast, exempt from the other provisions of this Purchasing and Contracting Policy):

1. Those that are for the purchase of goods and/or for the receipt of services at an aggregate maximum financial outlay by the City not exceeding five thousand dollars (\$5,000.00), provided that City employees may not artificially split or segregate goods and/or services into separate or successive contracts, agreements or transactions in an effort to circumvent the aggregate maximum financial outlay cap;
2. Purchases of goods via auction (RCW 39.30.045);
3. Those that are for architectural and/or engineering services (Chapter 39.80 RCW);
4. Interlocal Agreements (Chapter 39.34 RCW);
5. Interfund Agreements.
6. Purchases of employment test materials and/or employment testing services;
7. Expert witness services for legal matters and/or proceedings;
8. Legal services, including but not limited to public defender services;
9. Those with Community Service Organizations for park improvements and/or maintenance (RCW 35.21.278);
10. Performance-based contracts for energy equipment (Chapter 39.35A RCW);
11. Emergency purchases (RCW 39.04.280), provided that the Mayor or a designee specified by the Mayor who is a current City employee must approve purchases during a federally declared disaster and further that such purchases must follow procedures that ensure compliance with federal and state regulations and FEMA guidelines for emergency purchasing and contracting; and
12. Those that are entered into with a sole source vendor or provider, because no potential alternative vendor or provider exists (RCW 39.04.280), provided that a sole-source procurement is permissible only if the written specification for the goods and/or services are such that only one respondent will reply (or there is only one source for the goods and/or services capable of meeting the needs of the City) and further that the specifications are material to the purpose of the purchase and not artificially written in an effort to circumvent the competitive solicitation and bidding requirements.

In the event of any actual or apparent conflict between this Section J and the preceding Section B, Section B shall control and prevail.

K. Small Works.

RCW 39.04.155 provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property.

For public work projects valued below \$350,000, the Small Works Roster may be used in lieu of formal bidding as authorized by RCW 39.04.155(1)&(2). Use of the Small Works Roster allows the City to waive the advertisement requirements of the formal competitive process. The Washington State Municipal Research Services Center (MRSC) compiles small works rosters for cities and counties throughout the State of Washington. The City of Selah has contracted with MRSC to use its small works rosters for public works contracts valued below \$350,000.

1. **Invitations for Quotations.** Invitations for Quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.
2. **Number of Quotations Solicited.** Quotations shall be solicited from all, or at least five (5), appropriate contractors and/or vendors.
3. **Other requirements still apply.** Contractors and/or vendors selected from the Small Works Roster are not relieved from observing applicable legal requirements such as Contract Bond, Prevailing Wage, Retainage, etc.
4. **Quotations to be Made Public.** Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.
5. **Annual List.** As required by RCW 39.04.200, the City must post a list of contracts awarded from the small works roster once every year. The list must contain the name of the contractor, the amount of the contract, a brief description of the type of work performed, and the date of the award.

For public works projects valued below \$50,000.00, the Limited Public Works Process may be used in lieu of formal bidding as authorized by RCW 39.04.155(3).

L. Miscellaneous.

The section headings and labels used in this Purchasing and Contracting Policy are for convenience only and shall not be interpreted or enforced so as to alter the substantive provisions.

M. Definitions.

The following words and phrases shall have the meanings specified below, irrespective of capitalization or other emphasis (and any undefined word or phrase shall have an ordinary meaning):

Bid means an offer to perform a contract for work and labor or supplying materials at a specified price. The response submitted by a bidder to an invitation for bids.

Competitive Bid/ding means the offer of firm bids to supply specified services by individuals or firms competing for a contract.

Contract means a binding obligation (other than a purchase order) between parties stipulating obligations of one to another. It is a mutually binding legal relationship obligating the seller to furnish the product, materials, or services and the buyer to pay for them.

Contractor means a vendor who has been awarded a contract for goods and/or services and has entered into a contract with the City.

Cooperative Purchase/Contract means an agreement that uses contracts awarded by another public agency to achieve efficiency, easier access, or greater volume discounts.

Emergency Purchase means a purchase made to maintain safety, security, and/or preservation of City assets during emergency events, provided an emergency is declared by the Council or other lawful authority as soon as practicable.

Grant means non-repayable funds or products disbursed or given by one party (grantor) to a recipient (grantee), whether absolute or conditional, for any purpose. The City may be the grantor or the grantee.

Information Technology (IT) means the equipment, software, and services used in storing, processing, copying, transmitting, and displaying all forms of electronic information. Information technology includes but is not limited to: personal computers, servers, laptops, tablets, printers, and all associated peripheral devices. It also includes network components, backup systems, wireless networks, copy machines, fax machines, telephones, cell phones, software licenses, imaging systems, and audio/visual/media systems. NOTE: Cabling and other IT related improvements to the infrastructure of a City owned or leased building is not included in this definition because such projects generally fall within the definition of a Public Work.

Interlocal Agreement means an agreement between the City and other public agency as defined under Chapter 39.34 RCW.

Interfund Agreement means a brief written memo of understanding defining a scope of work and time period for work to be performed by one City department for another City department and signed by the department heads. interfund agreements are not considered a

“contract” for the purposes of this policy.

Procurement means all activities involved in finding, agreeing to terms, and acquiring goods, services, infrastructure, and public work either purchased or leased, including but not limited to:

- Identifying the need to procure;
- Selecting vendors;
- Contracting and making purchases; and
- Managing contracts and vendors.

Professional Services Contract means a contract for professional or technical expertise to accomplish a specific study, project, task, or other work statement.

Proposal means an offer submitted by a vendor in response to a request for proposals and intended to be used as a basis for negotiation for a contract.

Public Work means all work involving construction, alteration, repair, or improvement, other than ordinary maintenance, executed at the cost of the City. This includes, but is not limited to, road, building, and utility construction, demolition, remodeling, and renovation. In terms of building construction, it includes anything that is permanently affixed to the building (RCW 39.04.010).

Purchase Order means a document generated by the City that authorizes a purchase transaction. When accepted by the seller, it becomes a contract binding on both parties. A purchase order sets forth the descriptions, quantities, prices, discounts, payment terms, date of performance or shipment, other associated terms and conditions, and identifies a specific seller.

Request for Proposal (RFP) means a method used to solicit written proposals for services. The intent of the RFP is to acquire, by the most advantageous and flexible method, the services needed at the highest possible quality. An RFP differs from a Competitive Bid in three important ways:

It permits the City to hold discussions and negotiations with competing proposers and allows changes in proposals, including price, after proposals are opened.

It allows the City to make comparative evaluations when selecting among acceptable proposals for Contract awards.

It provides the City a flexible method of approaching a project which has limited specifications or requirements. The results wanted are known but there may not be a clear understanding of the specific requirements needed to identify how or what the methods may be, or what the services may entail.

Request for Qualifications (RFQ) means a method used to solicit written proposals for Engineering Architecture, and other professional services (Chapter 39.80 RCW).

Responsible Bidder means a bidder on a Public Work that, at the time of bid submittal, complies with the criteria set forth in RCW 39.04.350. For other types of contracting, the same criteria apply except those only related to the construction of facilities.

Responsive Bidder means a bidder that has adequately addressed the requirements of the contract as set forth in the RFP, RFQ, or another soliciting document. A bidder must be a Responsive Bidder in order to be considered a Responsible Bidder.

Small Works Roster means a list of pre-qualified contractors used for the purpose of obtaining quotations and awarding contracts for Public Work with an estimated cost of \$350,000 or less (RCW 39.04.155).

Standard Contract means a written contract template specific to various types of commonly procured goods and services prepared and/or reviewed by the City Attorney.

Vendor means a potential provider of goods and/or services.

N. Cross-Reference to Certain City Resolutions.

City's Resolution No. 795: "Procedure to secure telephone and/or written quotations to establish a competitive price and award a contract for the purchase of materials, equipment and/or services that can be acquired between \$7,500 and \$15,000."

City's Resolution No. 1663: "Providing a waiver from bidding requirements for purchase of used materials, supplies or equipment that are subject to special market conditions."

APPENDIX 1: PURCHASE AUTHORITY DELEGATION CHART

The chart set forth below in this Appendix 1 is for convenience only and shall not be interpreted or enforced so as to alter the substantive provisions of this Purchasing and Contracting Policy.

City Department Heads	Contracts, Agreements and Transactions valued up to \$7,500 related to City administration or operations.
City Clerk/Treasurer	Contracts, Agreements and Transactions valued up to \$5,000 related to Council administrative processes and public records.
Police Chief	Contracts, Agreements and Transactions valued up to \$5,000 related to public safety and Police administrative processes and operations.
Fire Chief	Contracts, Agreements and Transactions valued up to \$5,000 related to public safety and Fire administrative processes and operations.
Public Works Director	Contracts, Agreements and Transactions valued up to \$5,000 related to public safety and Public Works administrative processes and operations.
Court Clerk	Contracts, Agreements and Transactions valued up to \$5,000 related to public safety and court operations.
Planning Supervisor	Contracts, Agreements and Transactions valued up to \$5,000 related to public safety and planning operations.

APPENDIX 2: PROCUREMENT THRESHOLDS

Federal Bid Thresholds:

Method	Used for	Federal Thresholds
Micro Purchase Procedures (not competitive, distribute equitably)	Purchases Services	Under \$10,000
Small Purchase Procedures (price or rate quotations)	Purchases Purchased Services (for routine functions) Personal Services (e.g., consultant) Public Works	Under \$250,000
Sealed/Formal Bids	Purchases Purchased Services (for routine functions) Personal Services (e.g., consultant) Public Works	\$250,000 or more
Competitive Proposals	Personal Services Purchases	\$250,000 or more
Competitive Proposals	Architecture/Engineering	No threshold for A&E *Note: Federal has more requirements than the RCW process with the same name.
Non-competitive Proposals	Any	No threshold. Only for sole source (RARE), emergency, grantor-authorized, or if competition not adequate.

These thresholds were established by Memorandum M-18-18 dated June 20, 2018, by the federal Office of Management and Budget (OMB).

State Bid Thresholds for Public Works:

Government Type	Bid Threshold Single Craft	Bid Threshold Multiple Craft	Small Works Roster Threshold	Limited Public Works Process Threshold	RCW References
Code City Pop: 8,180	\$75,500	\$116,155	\$350,000	\$50,000	35.23.352 35A.40.210 35.04.155

These thresholds were established by ESSB 5418 as passed and enacted into law during the 2019 legislative session.

ESSB 5418 also allows code cities to award a contract to the second lowest bidder in limited circumstances if the lowest bidder has submitted a project within the past three years that was late, over budget, or did not meet specifications.

Code cities may use their own employees to perform public works projects with an estimated cost up to \$75,500 (single craft) or \$116,155 (multiple craft). For larger projects, code cities must contract with a responsible contractor.

Code cities may also use unit priced (“on call”) public work contracts.

State Bid Threshold for Purchases of Goods, Equipment, Supplies or Materials not connected with a Public Works project:

Government Type	Direct Buy/Vendor List	Informal Bid/Vendor List	Formal Competitive Bid Threshold	RCW Reference
Code City Pop: 8,180	>\$7,500	>\$7,500	>\$15,000	35A.40.210

State Bid Thresholds for Personal Services or Purchased Services:

State law does not require any thresholds or processes for personal services or purchased services contracting. Contractors may need state licenses or certification, depending on the type of service provided.