

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 561, Amending Shoreline Municipal Code Section 2.60 - Purchasing
DEPARTMENT:	Finance
PRESENTED BY:	Debbie Tarry, Finance Director Cathy Robinson, Purchasing Officer

BACKGROUND:

Construction projects are governed by State law and are classified under two areas, Public Works and Small Works. Public Works projects require a formal bidding process. State law allows Small Works projects to use a less formal bidding process utilizing a small works roster. The Small Works Roster is a process through which there is competition for public works contracts following notification, normally through a request for quotes (RFQ), to some or all public works contractors who have requested placement on a roster kept by the local government agency. The City has adopted a small work roster process and uses a third party share procurement portal roster maintained by eCityGov Alliance.

Prior to July 2009, State law limited small works projects to \$200,000 or less. The City's adopted policies allow the City Manager to execute small works projects of \$200,000 or less. Earlier this year, HB 1196 increased the threshold to \$300,000 for small works projects. Staff recommends that the City's policies align with state law, and therefore the City's policies need to be updated to reflect the increase.

PROBLEM/ISSUE STATEMENT:

Chapter 2.60 of the Shoreline Municipal Code (SMC) is the City's adopted purchasing policies. The City Council last amended the City's purchasing policies in 2007 to reflect changes in State law. In 2009 the State Legislature enacted a number of bills that impact public works contracting in Washington State. Staff is recommending amendments to the City's policies to reflect the changes in State law. The specific changes recommended by staff are as follows:

- ◆ HB 1196 raised the dollar amount that required notification of all contractors on the small works roster from between \$100,000 and \$200,000 to between \$150,000 and \$300,000. Staff recommends amending SMC 2.60.060, Section D to include language to allow the City to follow the guidance of State law.
- ◆ HB 1196 increased the dollar limit for small works roster projects. The maximum dollar amount allowed for use of a small works roster process was raised from \$200,000 to \$300,000. The City's purchasing policies allow the City Manager to

execute public works contracts up to \$200,000, the limit for small works roster projects prior to the recent legislative change. Staff recommends that the City's purchasing policies be amended to allow the City Manager to execute public works contracts that are equal to or less than the legal limit that the State allows for award through the small works roster process. Staff recommends amending SMC 2.60.060, Section F, to reflect this change.

In 2007 the State Legislature increased the ceiling amount from \$25,000 to \$35,000 that allows contractors to choose to have 50 percent of the contract retained for a period of 30 days after the date of final acceptance in lieu of issuing a performance bond. The City's policy still reflects the lower amount of \$25,000. Staff recommends changing the language in SMC 2.60.060 Section G to correspond to the threshold allowed by State law. In the future if the legislature changes the dollar threshold then the City's policies will not need to be amended.

Ordinance No. 561 provides for all of the staff recommendations. The proposed ordinance, where appropriate, changes the dollar threshold limitations with language to tie the limitations to that reflected in the appropriate Revised Code of Washington (RCW), as amended from time to time. This will allow staff to administratively update the thresholds to comply with the RCW when amended by the State Legislature.

RECOMMENDATION

Staff recommends that Council approve Ordinance No. 561, amending Section 2.60 of the Shoreline Municipal Code.

Approved By:

City Manager

City Attorney

ATTACHMENTS

Attachment A- Ordinance No. 561, amending Chapter 2.60 of the Shoreline Municipal Code.

ORDINANCE NO. 561

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON,
REVISING PURCHASING PROCEDURES AND AMENDING CHAPTER
2.60 OF THE SHORELINE MUNICIPAL CODE**

WHEREAS, the City Council adopted an ordinance regulating the procurement of goods and services in conformance with state law and recommended business practices; and

WHEREAS, there is a desire to amend the adopted ordinance to facilitate more effective procurement procedures; and

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Amendment. SMC 2.60.060 *Public Works Projects* is hereby amended to read as follows:

[Subsections A-B unchanged]

C. Competitive Bids. "Craft" or "trade" means a recognized construction trade or occupation for which minimum wage categories are established by the Department of Labor and Industries of the State of Washington in the locality of the city's projects or purchases.

1. Projects for single craft or multiple crafts with a reasonably anticipated price equal to or less than the dollar thresholds as provided under RCW 35.22.620, as amended, do not require the use of competitive quotes or bids. Departments are allowed to make these purchases administratively in accordance with procedures adopted and approved by the finance director and the city manager. All purchases require a purchase order and executed contract.

2. Projects for single craft or multiple crafts with a reasonably anticipated price higher than the dollar thresholds as provided under RCW 35.22.620, as amended, up to \$100,000 shall either use the small works roster or a formal competitive bid procurement process detailed in SMC 2.60.050(D). All purchases require a purchase order and executed contract.

3. Projects with a cost in excess of \$100,000 up to the maximum dollar threshold as provided in RCW 39.04.155, as amended, shall either use the small works roster or a formal competitive bid procurement process. All purchases require a purchase order and executed contract.

43. Projects with a cost in excess of the maximum dollar threshold as provided in RCW 39.04.155, as amended, require a formal competitive bid process. The city council shall authorize these purchases and provide authority for the city manager to execute the related contract. All purchases require a purchase order and executed contract.

D. Small Works Roster. There is established for the city of Shoreline a small works roster contract award process for accomplishment of public works projects with an estimated value

threshold as provided under RCW 39.04.155, as amended. The city may create a single small works roster, or may create small works rosters for different categories of anticipated work.

1. Roster List. The purchasing officer shall establish the small works roster or rosters which shall consist of all responsible contractors who have requested to be on the list, and where required by law, are properly licensed or registered to perform such work in the state of Washington. The In addition to mandatory criteria for determining a responsible vendor under RCW 39.04.350, the purchasing officer may use add other criteria listed in SMC 2.60.050(E) including the basis for evaluation in determining responsible vendors.

2. Publication. At least once a year, the city shall publish in a newspaper of general circulation within the city the notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. Responsible contractors shall be added to an appropriate roster or rosters at any time that they submit a written request and necessary records. The city may require master contracts to be signed that become effective when a specific award is made using a small works roster. An interlocal contract or agreement between the city of Shoreline and other local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the small works roster provisions.

3. Prequalification and Appeal. Any contractor whose request to be on the list has been denied may appeal, within 10 days after the denial by the purchasing officer to the city manager, and the city manager will make a decision within 30 days of the notice of appeal. Any contractor whose appeal to be on the list has been denied by the city manager may appeal, within 10 days after the denial by the city manager, to the city council, and the city council shall hold a hearing on the issue and make a decision within 45 days of the notice of appeal. A denial that is not appealed or that is appealed and results in a final decision against the contractor, prevents the contractor from applying to be on the list for a period of one year from the initial application.

4. Process. Whenever work that has received city council approval in the current budget, or otherwise been approved by the city council, is sought to be accomplished using a small works roster, a city representative shall obtain telephone, written or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder as follows:

a. 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 paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes.

b. Quotations may be invited from all appropriate contractors on the appropriate small works roster. ~~As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. If the estimated cost of the work is \$100,000 \$150,000 but less than or equal to the dollar threshold for small works projects as provided under RCW 39.04.155, as amended, the city may choose to solicit bids from less than all the appropriate contractors on the~~

~~appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the works are being sought. The city has the sole option of determining whether this notice to the remaining contractors is made by:~~

- ~~i. Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;~~
- ~~ii. Mailing a notice to these contractors; or~~
- ~~iii. Sending sending a notice to these contractors by facsimile or other electronic means.~~

c. For purposes of this policy, "equitably distribute" means that the city may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the city representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

d. A written record shall be made by the city representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

e. At least once every year a list of the contracts awarded under this process are to be furnished to the city council and made available to the general public. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.

5. Determining Lowest Responsible Bidder. Where bidders have not been requalified, the city shall award the contract for the public works project to the lowest responsible bidder; provided, that whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the city may call for new bids.

6. Cancellation of Invitations for Quotations. An invitation for quotations may be canceled at the discretion of the finance director. The reasons shall be made part of the contract file. Each invitation for quotations 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 quotations and state briefly the reasons for cancellation.

E. Limited Public Works Process. The city may use the limited public works process to award public works projects as provided under RCW 39.04.155, as amended.

F. Formal Competitive Bid. For public works not using a small works roster, the formal competitive bid process of SMC 2.60.050 (D) (2) through (6) shall be used; provided, the city manager may award contracts of less ~~than~~ than \$200,000 the dollar threshold as provided under RCW 39.04.155, as amended.

G. Bid Deposit, Performance Bond and Noncollusion Affidavit for Public Works Improvement Projects. Whenever competitive quotes or bids are required, a bidder shall make a deposit in the form of a certified check or bid bond in an amount equal to not less than five percent of the total bid, which percentage shall be 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 that he/she has not entered into collusion with any other bidder or any other person.

All public works contractors shall furnish a performance ~~or~~ bond in an amount equal to the total amount of the contract and ~~an executed and notarized a non collusion affidavit declaration~~ on a form approved by the city attorney. In lieu of a performance bond on contracts of \$25,000 ~~or less, less than the dollar threshold as provided under per~~ RCW 39.08.010, ~~as amended~~, a contractor may choose to have 50 percent of the contract retained for a period of 30 days after the date of final acceptance.

Section 2. Effective Date. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five (5) days after publication.

PASSED BY THE CITY COUNCIL ON NOVEMBER 23, 2009.

Cindy Ryu, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication: November 26, 2009
Effective Date: December 1, 2009