

## **ORDINANCE NO. 6 6 7 9**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING SECTIONS 3.10.020, 3.10.025, 3.10.026, 3.12.020, 3.12.030, 3.12.060, 3.12.070 AND 3.12.080 OF THE CITY CODE AND CREATING A NEW SECTION 3.10.060 OF THE CITY CODE RELATING TO PUBLIC CONTRACTING

WHEREAS, the current provisions of the Auburn City Code address requirements for public contracting and purchasing; and

WHEREAS, updates related to retainage requirements are necessary to remain consistent with recent changes to Washington State law; and

WHEREAS, revising certain portions of the purchasing and contracting code will allow the City to more efficiently and effectively procure and administer consultant and construction contracts; and

WHEREAS, updating the dollar thresholds so authorization limits are consistent between the purchasing and contacting sections is needed.

NOW, THEREFORE, THE CITY COUNCIL, THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. AMENDMENT TO CITY CODE. Section 3.10.020 of the Auburn City Code be, and the same hereby is, amended to read as follows:

3.10.020 Contract authorization limits.

A. The following authorization approval limits shall apply for all city contracts. For contracts with total dollar amounts up to \$10,000.00, authority rests at the department director level. All contracts over \$10,000.00, up to \$50,000.00, and contracts that have been individually and separately listed in the city's annual budget shall be approved and signed by the mayor. For all unbudgeted expenditures not individually and separately listed in the city's annual budget in excess of \$50,000.00, approval shall be obtained from the mayor and the city council.

B. For purposes of this section, a contract is "individually and separately listed" if it is:

1. Expressly identified, in writing, defining or describing the expenditure or project as a line-item in the budget;

2. Identified by express reference to the ~~CPF-CFP~~ or TIP project, or other specific project in the budget.

C. If a contract does not provide for cash consideration, the responsible department will estimate the value of the contract as if there was cash consideration. Authorization authority will be based on that estimated value.

D. If a contract does not provide for cash consideration, but requires the city to indemnify the other party, the responsible department, in consultation with the risk manager, shall determine the value of the city's possible indemnification risk. Authorization authority will be based on that estimated value.

E. Unless the value is \$25,000.00 or less, or unless required for a budgeted project, or unless otherwise authorized in this code or otherwise expressly authorized by the city council, all contracts that convey an interest in real estate shall be approved by the city council. (Ord. 6528 § 2, 2014; Ord. 6147 § 1, 2008; Ord. 5778 § 2, 2003; Ord. 5490 § 1, 2000.)

## Section 2. AMENDMENT TO CITY CODE. Section 3.10.025 of the Auburn City

Code be, and the same hereby is, amended to read as follows:

### 3.10.025 Professional and personal services.

A. Professional and personal services are those services involving specialized skill, education, and special knowledge. These services include, but are not limited to, architectural, engineering, design services, accounting, art, real estate appraisal, relocation assistance, title abstracts, surveying, soils analysis, and core testing.

B. Procurement and administration of such contracts are the responsibility of the mayor or the department director. The mayor/designees may sign professional or personal service contracts in conformity with ACC 2.03.030 and 3.10.020. Council action will be required to authorize amendments to contracts that are either not included in the budget or exceed the approved budget as follows:

1. When the original contract is under ~~\$25,000~~\$50,000.00 and was not included in the budget and the total of the amendment(s) will increase the total contract amount to more than ~~\$25,000~~\$50,000.00.

2. When the original contract is ~~\$25,000~~\$50,000.00 or more and was not included in the budget and the total of the amendment(s) will increase the total contract amount by more than ~~\$25,000~~\$50,000.00 and the amendment(s) are also not budgeted.

3. When the original contract was included in the budget and the total of the amendment(s) to the contract will increase the total contract amount to more than ~~\$25,000~~\$50,000.00 above the amount included in the budget.

C. Council action is required for the initial authorization of contracts for on-call services. For contracts solicited for a contract period of up to 5 years, each on-call contract may be amended by the mayor on an annual basis to extend the contract duration by up to 1-year for a total duration not to exceed the original solicited contract period and may be amended by the mayor to increase the contract amount by an amount

equal to or less than the original contract amount authorized by the city council. (Ord. 6147 § 1, 2008; Ord. 5640 § 1, 2002; Ord. 5490 § 1, 2000.)

Section 3. AMENDMENT TO CITY CODE. Section 3.10.026 of the Auburn City Code be, and the same hereby is, amended to read as follows:

3.10.026 Public work projects – Contract amendment – Conditions.

A. Construction contracts which have been initially authorized by the city council or the mayor or mayor's designee may be amended administratively by the mayor/designees by change order, letter of instruction, or other legally appropriate form, up to the total maximum contract amounts set forth below:

1. Awarded contract amount plus up to 20-twenty percent (20%) for contracts originally awarded for up to \$200,000.00.

2. Awarded contract amount plus up to 15-fifteen percent (15%) or \$40,000.00, whichever is greater, for contracts originally awarded for between \$200,000.00 and \$500,000.00.

3. Awarded contract amount plus up to 10-ten percent (10%) or \$75,000.00, whichever is greater, for contracts originally awarded for between \$500,000.00 and \$1,000,000.00.

4. Awarded contract amount plus up to five percent (5%) or \$100,000.00, whichever is greater, for contracts originally awarded for between \$1,000,000.00 and \$5,000,000.00.

5. Awarded contract amount plus up to two and one-half percent (2½%) or \$250,000.00, whichever is greater, for contracts originally awarded for over \$5,000,000.00.

B. If available budget contingency remains after the authorized total maximum contract amount, as defined in subsection A of this section, is reached, additional authorization to increase the total contract amount shall be obtained from the appropriate city council ~~committee~~.

C. No administrative action is authorized, the result of which would be to amend a contract to increase the authorized total maximum contract amount, as defined in subsection A of this section, beyond funds approved by the city council. (Ord. 6147 § 1, 2008; Ord. 5525 § 1, 2001.)

Section 4. AMENDMENT TO CITY CODE. Section 3.12.020 of the Auburn City

Code be, and the same hereby is, amended to read as follows:

3.12.020 Bid solicitation.

A. Formal Advertisement Required. Except as otherwise authorized in Chapters 39.04 and 39.28 RCW or RCW 35.23.352, relating to emergency public works, or other applicable general state law, as now enacted or as hereafter amended, all public work and improvements shall be done by contract pursuant to public notice and call for competitive bids whenever the estimated cost of such public work or improvement,

including the cost of materials, supplies, equipment and labor, will exceed the limits for competitive bid as stated in RCW 35.23.352 as now enacted or as hereafter amended, provided the city may use a small works roster pursuant to RCW 35.23.352.

Where formal bidding is required, a call for bids shall be issued in accordance with the provisions herein before any contract is let for the performance of any public work.

B. Formal Advertising Procedures. For projects requiring formal advertisement per this section, a notice of a call for bids, stating the nature of the contract to be let and the time on or before which sealed bids for the same must be filed with the city clerk, shall be given by posting notice thereof on the bulletin board in the lobby of City Hall. The notice shall also be published in the official newspaper, and a newspaper of general circulation most likely to bring responsive bids, at least 13 days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done, where the plans and specifications may be seen or obtained, and a specified hour and date when such bids shall be opened, and that the sealed bids be filed with the city clerk within the time specified therein. The clock within the city clerk's office shall be the official time used for determining receipt of bids.

C. Council Approval. Issuance of solicitations for bids shall require city council consent approval unless the solicitation is for a project identified in the city's current approved budget at the time of bid solicitation or if the estimated contract amount is within the budget authority of the mayor as provided in Chapter 3.10 ACC.

D. For the purposes of determining whether or not bidding contractors must declare the names of subcontractors for certain work based on the amount of the contractor's expected costs per RCW 39.30.060, the expected costs of the contract shall be the engineer's estimate of the contract work plus the amount of any work added by addenda to the bid documents, plus any applicable sales tax computed at the rate in place at the time of bid opening.

E. For ~~projects-contracts~~ not required to be formally advertised, the city shall issue an invitation to bid, request for quote or other form as determined appropriate by the city engineer ~~and in accordance with the requirements of~~ Non-formal advertised contracts may conform to the small works roster or limited public works process described in RCW 39.04.155 or other procurement process as deemed appropriate by the city engineer. (Ord. 6545 § 1, 2014; Ord. 5866 § 1, 2004; Ord. 4924 § 2, 1997; Ord. 4581 § 2, 1992. Formerly 3.12.011 and 3.12.020.)

## Section 5. AMENDMENT TO CITY CODE. Section 3.12.030 of the Auburn City

Code be, and the same hereby is, amended to read as follows:

### 3.12.030 Bid opening.

A. For ~~projects-contracts~~ utilizing a formal advertisement process per ACC 3.12.020, bids shall be opened and publicly read aloud by the city clerk at the time and location as set forth in the contract advertisement.

B. For ~~projects-contracts~~ not utilizing a formal advertisement process, the city engineer shall determine whether a public reading of the bids is required and indicate this in the new invitation to bidders or request for quote documents. (Ord. 6545 § 1, 2014.)

Section 6. AMENDMENT TO CITY CODE. Section 3.12.060 of the Auburn City

Code be, and the same hereby is, amended to read as follows:

3.12.060 Award.

For contracts greater than the bid limits as provided in RCW 35.23.352, as now enacted or as hereafter amended, the city council shall award the contract to the lowest responsible bidder. For contracts less ~~then~~ than the bid limits provided in RCW 35.23.325, as now enacted or as hereafter amended, the director or his/her designee shall have the authority to award the contract. (Ord. 6545 § 1, 2014.)

Section 7. AMENDMENT TO CITY CODE. Section 3.12.070 of the Auburn City

Code be, and the same hereby is, amended to read as follows:

3.12.070 Contractor's bond.

A. Whenever the city shall contract with any person or corporation to do any work, the city shall require the person or persons with whom such contract is made to make, execute, and deliver to the city clerk a sufficient bond, with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work. Said security company in accordance with RCW 39.08.010 shall be bound by the laws of the state of Washington and subject to the jurisdiction of the state of Washington. The provisions of RCW 39.08.010 through 39.08.030 shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work.

B. For contracts using the limited public works process, the city may waive the payment and performance bond requirements of Chapter 39.08 RCW and retainage requirements of Chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialmen, suppliers, and taxes imposed under RCW Title 82 that may be due from the contractor for the limited public works project; however, the city shall have the right of recovery against the contractor for any payments made on the contractor's behalf. The city engineer shall have the authority to waive the payment and performance bond requirements and retainage requirements based on his/her evaluation of the project and determination of risk.

C. On contracts of ~~\$35,000~~ \$150,000.00 or less, upon ~~mutual agreement~~ request by the contractor, the city may, in lieu of the bond, retain ~~50-ten~~ (10%) percent of the contract amount for a period of 30 days after the date of final acceptance, or until receipt of all necessary releases from the Department of Revenue, Employment Security Department, and the Department of Labor and Industries receipt of all affidavits of wages paid for the prime and subcontractors, and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

D. For the purposes of determining the timeframe required for notices of claims against retainage and release of retainage, the city engineer shall have the authority to take affirmative action to determine that a contract is complete and to accept the contract work. (Ord. 6545 § 1, 2014; Ord. 5866 § 1, 2004; Ord. 4924 § 2, 1997; Ord. 4581 § 2, 1992. Formerly 3.12.040.)

Section 8. AMENDMENT TO CITY CODE. Section 3.12.080 of the Auburn City Code be, and the same hereby is, amended to read as follows:

3.12.080 Contractor evaluation form.

A. After work is performed by a contractor, the ~~inspector, project manager, and contract administrator for the project city~~ shall evaluate the contractor's work performance as to certain criteria but not limited to the following:

- A1. Progress of the work, including:
  - 4a. The ability, capacity and skill of the contractor to perform the work;
  - 2b. Whether the contractor performed the work promptly and within the time specified without delay or interference;
- B2. Quality of the work;
- G3. Equipment;
- D4. Administration/management/supervision;
- E5. Coordination and control of subcontractors;
- F6. Whether the contractor provided a safe working environment for his/her employees and the general public;
- G7. Whether the contractor stood behind his/her service or work performed.

B. A copy of the contractor evaluation form will be sent to the contractor ~~if requested~~ and any contractor responses will be added to the evaluation. The contractor evaluation form may be used by the city to determine whether or not the contractor is a responsible bidder who should be considered for further public works projects. The city may also complete evaluations for subcontractors utilizing the same process described herein for contractors and then utilize the subcontractor evaluations to determine bidder responsibility and in determining whether or not to approve a contractor's request to sublet. (Ord. 6545 § 1, 2014; Ord. 4924 § 3, 1997. Formerly 3.12.025.)

Section 9. NEW SECTION TO CITY CODE. That a New Section 3.10.060 of the Auburn City Code be, and the same hereby is created to read as follows:

3.10.060 Sole Source Purchases of Equipment and Materials – Authorization

The mayor is hereby authorized to waive competitive bidding requirements for purchases of equipment or material when the purchase is limited to a single source of supply as determined by the city engineer, pursuant to RCW 39.04.280. A single source of supply shall be defined as either 1) only one available brand, manufacturing company, or vendor from which the city may purchase the needed material or 2) city engineer has

determined that it is in the public's best interest to purchase only one particular brand, type, or model of material for maintenance and/or quality performance reasons.

Section 10. ADMINISTRATIVE PROCEDURES. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 11. SEVERABILITY. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 12. EFFECTIVE DATE. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: \_\_\_\_\_

PASSED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

CITY OF AUBURN

ATTEST:

\_\_\_\_\_  
NANCY BACKUS, MAYOR

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Daniel B. Heid, City Attorney

Published: \_\_\_\_\_