
RESOLUTION No. 23/24-08
City of Dayton, Oregon

A Resolution of the City of Dayton Adopting Updated Public Contracting Rules

WHEREAS, the City of Dayton (City) last updated its contracting and procurement rules in July of 2017, via Resolution No 17/18-1; and

WHEREAS, since that time, the Oregon Public Contracting Code has been amended in part to permit new approaches for the City when it solicits the services of certain professionals in the context of construction projects (e.g. architects and engineers); and

WHEREAS, since that time, Senate Bill 1047 increased the minimum procurement thresholds for small, intermediate, and large goods and service, and public improvement, procurements; and

WHEREAS, the City anticipates significant construction projects in the near future that will require the City to solicit and procure the services of professional consultants, including but not limited to architects, surveyors and engineers; and

WHEREAS, the City recognizes the need to ensure that procurement of these services is consistent with Oregon laws and rules governing such procurement; and

WHEREAS, the City attorney completed a review of the current contracting and procurement rules and identified a number of areas that she recommends updating, simplifying, or otherwise amending; and

WHEREAS, through this resolution, the City adopts rules related to the procurement goods and services, personal services, public improvements, and construction-related services, raises the dollar thresholds that apply to the solicitation of such services, and makes other housekeeping changes to the City's contracting and procurement rules.

Therefore, the City of Dayton resolves as follows:

- 1) **THAT** the City Council adopts the Public Contracting Rules for the City attached as Exhibit A; and
- 2) **THAT** this resolution shall become effective immediately upon adoption.

ADOPTED this 4th day of December 2023.

In Favor: Mackin, Frank, Maguire, Sandoval-Perez, Marquez, Hildebrandt


Opposed:

Absent: Wildhaber

Abstained:



Trini Marquez, Mayor



Date Signed

ATTEST:



Rocio Vargas, City Recorder



Date of Enactment

Attachment: Exhibit A

Public Contracting Rules for the City of Dayton

1.10.010 General provisions

- (1) Except as provided within these Rules, City public contracting is governed by the Oregon Public Contracting Code (ORS Chapters 279, 279A, 279B and 279C) (the “Code”) and the Oregon Attorney General’s Model Public Contract Rules (OAR Chapter 137, divisions 46, 47 and 49) (the “Model Rules”).
- (2) The Dayton City Council is the City’s Contract Review Board (“Board”). Except as otherwise provided in these rules, the powers and duties of the Board under the Code and Model Rules will be exercised by the Board and the powers and duties given or assigned to contracting agencies by the Code or Model Rules will be exercised by the City Manager as Dayton’s (“the City”) contracting agent.
- (3) For the purposes of these rules, “City Manager” means the City Manager for the City of Dayton, or the City Manager’s designee. The City Manager shall be the purchasing manager for the City of Dayton and is hereby authorized to issue all solicitations and to award all City of Dayton contracts for which the contact price does not exceed [\$50,000.00]. Subject to the provisions of these Rules, the City Manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for the City of Dayton’s contracting needs. The City Manager shall hear all solicitations and award protests.
- (4) For the purposes of these rules, “Emergency” means circumstances that:
 - (A) Could not have been reasonably foreseen;
 - (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
 - (C) Require prompt execution of a contract to remedy the condition.

1.10.020 Personal service contracts

- (1) “Personal service contract” means a contract for personal or professional services performed by an independent contractor, primarily for the provision of services that require 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 attorneys, accounting and auditing services, information technology services, planning and development services, artists, designers, performers, property managers and consultants. The City Manager has discretion to determine whether a particular contract or service falls within this definition. For the purposes of this section, personal services contracts do not include such contracts for architectural, engineering and land surveying services.

- (2) Large Procurements. The following formal selection procedure will be used when the estimated payment to the contractor exceeds \$250,000.
- (a) Announcement. The City will give notice of its intent to procure personal services through the League of Oregon Cities, and/or any other means the City deems appropriate, including contacting prospective contractors directly. Announcements will include:
- (A) A description of the proposed project;
 - (B) The scope of the services required;
 - (C) The project completion dates;
 - (D) A description of special requirements;
 - (E) When and where the application may be obtained and to whom it must be returned;
 - (F) The closing date; and
 - (G) Other necessary information, as determined by the City in its sole discretion.
- (b) Application. Applications will include a statement that describes the prospective contractor's credentials, performance data, examples of previous work product or other information sufficient to establish contractor's qualification for the project, references, and other information identified by the City as necessary to make its selection.
- (c) Initial screening. The City Manager will evaluate the qualifications of all applications and select a prospective contractor or prospective contractors whose application demonstrates that the contractor is the best qualified to meet the City's needs.
- (d) Final Selection.
- (A) The City Manager will interview the finalists selected from the initial screening. At the City Manager's discretion, the interviews may be conducted before the Board.
 - (B) After the interview process concludes, the City Manager will make the final selection. If the interviews are conducted before the Board, the Board will make the final selection.
 - (C) The final selection will be based upon applicant capability, experience, project approach, compensation requirements, references and any other criteria identified by the City as necessary for the City to select a contractor.

- (3) Intermediate Procurements. The following informal selection procedure may be used when the estimated payment to the contractor is equal to or less than \$250,000 and above \$25,000, or when the City Manager determines that the informal procedure will not interfere with competition among prospective contractors, reduce the quality of services, or increase costs. The City Manager will contact a minimum of three (3) prospective contractors qualified to offer the services sought. The City Manager will request an estimated fee, and make the selection consistent with the City's best interests. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.
- (4) Small Procurements. The City Manager may enter personal service contracts when the estimated payment is less than \$25,000 in any manner the City Manager finds practical or convenient, including direct selection or award. However, the City Manager must make reasonable efforts to choose the most qualified contractor to meet the City's needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures.
- (5) Sole Source. The City Manager may negotiate with a single source for personal services if the services are available from only one contractor, or the prospective contractor has special skills uniquely required for the performance of the services. The City must make written finds to demonstrate why the proposed contractor is the only contractor who can perform the services desired, in general compliance with ORS 279B.075.
- (6) Emergency. The City Manager may select a contractor without following any procedures when an emergency is determined to exist. In such instances, the City Manager must make written declarations of the circumstances that justify the emergency appointments.

1.10.030 Contracts for certain construction-related personal services

- (1) Purpose. This section implements ORS 279C.100 to 279C.125. The City will rely on these rules, not the Model Rules, for a contract with an architect, engineer, photogrammetrist, land surveyor, as each is defined in ORS 279C.100, and (in very narrow instances) a transportation planner (collectively referred to herein as "Construction-Related Personal Services").
- (2) Applicability. This section applies only to a Construction-Related Personal Service contract that meets the following criteria:
 - (a) The estimated payment to the contractor exceeds \$100,000; and
 - (b) The contract is for a personal service that is *legally required* to be provided or performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor. For example: hiring an architect to design a building or hiring an engineer to design a wastewater system. Because the law requires licensed professionals to design buildings and infrastructure, the City may rely on this subsection to hire someone to perform those services. However, if the City is

hiring an architect or engineer to perform project management services (for example), it may solicit and award such services under Section 1.10.020 of these Rules. *See* definition of “Related Services” below.

- (c) If either (a) or (b) above is not satisfied (i.e. the contract is for a personal service that is legally required to be provided by a licensed architect, etc. *but* is estimated to not exceed \$100,000; *or* the contract will require an engineer, etc. to perform a Related Service) then the City may rely on Section 1.10.020 of these rules to solicit and award the contract.
 - (d) Mixed contracts. Some contracts will contain a mixture of services covered by this section (i.e. services that only the particular consultant may legally perform) and Related Services. Whether the City uses this section or Section 1.10.020 to solicit and award a mixed contract will depend upon the predominate purpose of the contract. The City will determine the predominate purpose based upon either the amount of money it estimates it will spend for covered services versus Related Services or the amount of time it estimates it the consultant will spend working on covered services versus Related Services. If covered services predominate, the City will solicit the contract under this section. If Related Services predominate, the City will solicit the contract under Section 1.10.020.
- (3) Small Procurements. For clarity’s sake, the City Manager may enter Construction-Related Personal Service contracts when the estimated payment is less than \$100,000 in any manner the City Manager finds practical or convenient, including direct selection or award. However, the City Manager must make reasonable efforts to choose the most qualified contractor to meet the City’s needs. The amount of a given contract may not be manipulated to avoid the informal or formal selection procedures
- (4) Exception for Previous Work. Pursuant to ORS 279C.115, the City may procure a Construction-Related Personal Service contract pursuant to Section 1.10.020(2) if the project described in the procurement document:
- (a) Involves work that was described, planned or rendered in an earlier contract with the Construction-Related Personal Services consultant;
 - (b) The earlier contract was awarded in accordance with the City’s contracting rules in effect at the time of the earlier contract; and
 - (c) The contemplated new contract is a continuation of the project described in the earlier contract.
- (5) Exception for Emergencies. Pursuant to ORS 279C.110(9), the City may directly appoint a Construction-Related Personal Service contract in an Emergency.
- (6) Definitions. The following definitions apply to this section:
- (a) “Price Agreement” means an agreement related to the procurement of architectural, engineering, photogrammetric mapping, transportation planning

or land surveying services, or Related Services, under agreed-upon terms and conditions and possibly at a set price with:

- (A) No guarantee of a minimum or maximum purchase; or
 - (B) An initial order or minimum purchase, combined with a continuing obligation to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or Related Services where the City does not guarantee a minimum or maximum additional purchase.
- (b) “Transportation Planning Services” only includes project-specific transportation planning required for compliance with the National Environmental Policy Act, 42 USC 4321 et seq. and no other types of transportation planning services. By way of example only, Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project required to comply with the National Environmental Policy Act, 42 USC 4321 et. seq.
 - (c) “Related Services” means personal services, other than architectural, engineering, photogrammetric, mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner’s representation services or land-use planning services. In other words, personal services that are *not required by law* to be performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor.
- (7) Intermediate Procurements. The following informal selection procedure may be used when the estimated payment to the consultant for Construction-Related Personal Services is equal to or less than \$250,000 and above \$100,000. The City Manager will contact a minimum of three (3) prospective consultants qualified to offer the services sought. The City Manager will request an estimated fee, and make the selection consistent with the City’s best interests, to the most qualified consultant. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.
 - (8) Large Procurements. The following formal selection procedure will be used when the estimated payment for the Construction-Related Personal Services exceeds \$250,000.

- (a) When selecting a consultant to perform Construction-Related Personal Services under this Section, the City must award a contract to the most qualified consultant.
- (b) Unless the City follows the process set forth in subsection (c) of this Section, when determining which consultant is most qualified, the City may only solicit or use pricing policies and pricing proposals, or other price information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a consultant's compensation *after* the City has selected the most qualified consultant.
- (c) Notwithstanding subsection (b) of this Section, if the solicitation documents include the information described in ORS 279C.110(5)(a), the City may request pricing policies or pricing proposals from prospective consultants, including an estimate of the number of hours that will be needed to perform the work described in the solicitation, and a schedule of hourly rates. A pricing policy or pricing proposal also may include a description of the tasks included in the proposal, a list of persons or labor classifications that will perform the tasks, and a list of expenses. A proposer that does not wish to provide pricing information may withdraw its bid. The City may use the pricing policies or pricing proposals to select a consultant, provided the City does not assign more than 15 percent of weight in its evaluation to the pricing policies or information.
- (d) When soliciting a Construction-Related Personal Service under this Section, the City will use a Request for Proposals ("RFP") or a Request for Qualifications ("RFQ") followed by a RFP, as described below. The City may advertise RFQs and RFPs in any manner it deems appropriate, including electronically.
- (e) RFQ. The City may in its sole discretion issue an RFQ to evaluate potential Construction-Related Personal Service consultants and establish a short list of qualified Construction-Related Personal Service consultants to whom it may issue an RFP for some or all of the Construction-Related Personal Services or Related Services described in the RFQ. RFQs may include:
 - (A) A brief project description;
 - (B) A description of the Construction-Related Personal Services or Related Services required for the project;
 - (C) Any conditions or limitations that may constrain or prohibit the selected consultant's ability to provide additional services related to the project, including but not limited to construction services;
 - (D) A response deadline and a description of how or where to submit a response;

- (E) A statement that interested consultants respond solely at their own expense;
 - (F) RFQ evaluation criteria; and
 - (G) Any other elements the City Manager deems appropriate.
- (f) RFP. The City will issue an RFP to select the most qualified Construction-Related Personal Service consultant, regardless of whether an RFQ precedes an RFP. RFPs will include:
- (A) A description of the project and the specific Construction-Related Personal Services or Related Services sought for the project, the estimated project cost (if deemed necessary and appropriate to provide, in the discretion of the City Manager), the estimated time period during which the project is to be completed, and the estimated time period in which the specific Construction-Related Personal Services or Related Services sought will be performed;
 - (B) The RFP evaluation process and the criteria that the City will use to select the most qualified Construction-Related Personal Service consultant, including the weight, points or other classifications applicable to each criterion. Without limitation, the criteria may include:
 - (i) Proposers' availability and capability to perform the services described in the RFP;
 - (ii) Experience of proposers' key staff persons in providing similar services on similar projects within the last three years;
 - (iii) The amount and type of resources, and number of experienced staff persons proposers will commit to the project;
 - (iv) Proposers' demonstrated ability to successfully complete similar projects on time and within budget, including the hourly rates for key personnel and related cost data for similar projects in the previous 12 months;
 - (v) References and recommendations from past clients; and
 - (vi) Any other criteria the City Manager deems appropriate.
 - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Construction-Related Personal Service consultant's ability to provide additional services related to the project, including but not limited to construction services;
 - (D) Whether interviews will or may occur and, if so, how the interview will factor into the City's selection;

- (E) A proposal deadline and a description of how or where to submit a proposal;
 - (F) A statement whether the City will accept proposals in electronic format;
 - (G) A statement that interested consultants respond solely at their own expense;
 - (H) A statement reserving the City's right to reject any or all proposals and its right to cancel the RFP at any time if doing either would be in the public interest;
 - (I) A statement directing proposers to the protest procedures set forth in the RFP;
 - (J) A statement whether the City will hold a pre-proposal meeting for all interested Construction-Related Personal Service consultants to discuss the project and if a pre-proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory; and
 - (K) Any other elements the City Manager deems appropriate.
- (g) After selecting the most qualified Construction-Related Personal Service consultant in accordance with a RFP, the City Manager will notify each proposer accordingly and state that it will begin negotiating a contract with the most qualified consultant. A resulting contract will at least include:
- (A) The consultant's performance obligations and performance schedule;
 - (B) Payment methodology and a maximum amount payable to the consultant for the services required under the contract;
 - (C) Insurance and indemnification provisions;
 - (D) Legally required terms; and
 - (E) Any other provisions the City believes are in its best interest to negotiate.
- (h) The City will formally terminate negotiations in writing with the most qualified consultant if it is unable for any reason to negotiate a contract within a reasonable amount of time, as the City may determine in its sole discretion. The City may thereafter negotiate with the second ranked consultant, and if necessary, with the third ranked consultant, and so on, until negotiations result in a contract. If negotiations with any consultant do not result in a contract within a reasonable amount of time, the City may end the particular solicitation. Nothing in this section precludes the City from re-entering negotiations, in its own discretion, with a consultant if negotiations were previously terminated for the same contract.

- (9) Price agreements. Solicitation materials and the terms and conditions for a Price Agreement for Construction-Related Personal Services or Related Services must:
- (a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a consultant to decide whether to submit a proposal;
 - (b) Specify whether the City intends to award a Price Agreement to one consultant or to multiple consultants. If the City will award a Price Agreement to more than one consultant, the solicitation document and Price Agreement will describe the criteria and procedures the City will use to select a consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Construction-Related Personal Services are at the City's sole discretion.
 - (c) Specify the maximum term for assigning services under the Price Agreement.

1.10.040 Authority to electronically advertise solicitations for goods and services

- (1) The City Manager is authorized to develop an "electronic procurement system" in accordance with OAR 137-047-0300(2)(b). As described in OAR 137-046-0110(15), this is an information system accessible through the internet that allows the City to post electronic advertisements and receive electronic offers for goods and services. When an electronic procurement system is in place, the Model Rules allow procurement solicitations to be advertised exclusively on the internet. This saves the City time and money over newspaper advertisements.
- (2) Prior to any development of an electronic procurement system, the City may advertise solicitations for goods and services on the internet in addition to newspaper advertisements.

1.10.050 Authority to electronically advertise solicitations for public improvements

- (1) For all public improvement contracts with an estimated cost not exceeding \$125,000, the City Manager may electronically advertise solicitations in a manner deemed appropriate. This method of advertising will save the City time and money, may be used exclusively, and is allowed under ORS 279C.360(1).
- (2) Any advertisement for a public improvement contract with an estimated cost over \$125,000 must be published at least once in a trade newspaper of general statewide circulation, such as the Daily Journal of Commerce.

1.10.060 Small procurements of goods and services, and public improvements

- (1) Any procurement of goods or services or public improvements estimated by the City Manager to not exceed \$25,000 may be awarded in any manner the City Manager finds practical or convenient, including direct selection or award.
- (2) A small procurement contract may be amended in accordance with OAR 137-047-0800 or OAR 137-049-0910, as applicable, but the cumulative amendments may not increase the total contract price to greater than \$31,250.
- (3) A procurement may not be artificially divided or fragmented to qualify for this section.

1.10.070 Intermediate procurements of goods and services, and public improvements

- (1) The following informal selection procedure may be used when the estimated payment to the contractor for goods or services is equal to or less than \$250,000 and above \$25,000, or the estimated payment to the contractor for a public improvement is equal to or less than \$100,000 and above \$25,000. The City Manager will contact a minimum of three (3) prospective contractors qualified to offer the goods or services or public improvement sought. The City Manager will request an estimated fee, and make the selection consistent with the City's best interests. If three (3) quotes are not received, the City Manager will make a written record of efforts to obtain the quotes.
- (2) An intermediate procurement contract may be amended in accordance with OAR 137-047-0800 or OAR 137-049-0910, as applicable.
- (3) A procurement may not be artificially divided or fragmented to qualify for this section.

1.10.080 Large procurements for goods and services, and public improvements

- (1) When the estimated payment to the contractor for goods or services is above \$250,000, the City shall either seek competitive sealed bidding in accordance with OAR 137-047-0255 or competitive sealed proposals in accordance with OAR 137-047-0260.
- (2) When estimated payment to the contractor for a public improvement is above \$100,000, the City shall follow the solicitation procedures set forth in OAR 137-049-0200.
- (3) A procurement may not be artificially divided or fragmented to avoid this section.

1.10.090 Sole-source procurements

- (1) Pursuant to ORS 279B.075(1), the City Manager is authorized to declare in writing certain goods and services to be available from only one source.
- (2) The determination of a sole-source must be based on findings required by ORS 279B.075(2), and otherwise be processed in accordance with OAR 137-047-0275.
- (3) To the extent reasonably practical, the City shall negotiate with the sole source to obtain contract terms that are advantageous to the City.

1.10.100 Special procurements

- (1) Pursuant to ORS 279B.085, to seek approval of a special procurement, the City Manager shall submit a written request to the City Council that describes the contracting procedure, the goods or services or the class of goods or services that are the subject of the special procurement and the circumstances that justify the use of a special procurement.
- (2) The written findings must demonstrate that the use of the special procurement:
 - (a) Is unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and;
 - (b) Is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or;
 - (c) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.
- (3) The City shall provide public notice of the special procurement approval in the same manner as provided in ORS 279B.055(4).

1.10.110 Procurement Exemptions

- (1) Pursuant to ORS 279C.335(2), the City Manager is authorized to seek the procurement of Construction-Related Personal Services or public improvements via procurement or contracting methods, or both, that deviate from those set forth in these Rules, the Code, and the Model Rules.
- (2) In order to qualify for an exemption under this Section, the City Manager must produce written findings that demonstrate all applicable elements of ORS 279C.335(2)(a) and (b), and follow the notice and hearing requirements of ORS 279C.335(5).

1.10.120 Notice of intent to award certain contracts

- (1) At least seven days before the award of a public contract solicited under any invitation to bid or request for proposals, the City will post or provide to each bidder or proposer notice of the City's intent to award a contract.
- (2) If stated in the solicitation document, the City may post this notice electronically or through non-electronic means and require the bidder or proposer to determine the status of the City's intent.
- (3) As an alternative, the City may provide written notice to each bidder or proposer of the City's intent to award a contract. This written notice may be provided electronically or through non-electronic means.

- (4) The City may give less than seven days' notice of its intent to award a contract if the City determines in writing that seven days is impracticable.
- (5) This section does not apply to any goods or service contract, public improvement contract or class of public improvement or goods or services contracts exempted from competitive bidding requirements.
- (6) A protest of the City's intent to award a contract may only be filed in accordance with OAR 137-047-0740, OAR 137-048-0240, or OAR 137-049-0450, as applicable. Protests to the City's intent to award a personal service contract under Section 1.10.020(B) may only be filed in accordance with OAR 137-047-0740.