



ORDINANCE NO. 3297

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING LMC 2.92, UPDATING THE PROCUREMENT AND CONTRACT AWARD PROVISIONS; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

WHEREAS, in Title 2 of the Lynnwood Municipal Code, the City of Lynnwood has established a system of procurement and contract authority as authorized by state law; and

WHEREAS the City of Lynnwood desires to conduct competition in an open, fair, transparent and inclusive environment; and

WHEREAS the City of Lynnwood ensures that the award of contracts is accountable, ethical and professional; and

WHEREAS the City of Lynnwood requires clear and efficient rules to govern the contract award processes; now, therefore

THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 2.92 LMC is repealed.

Section 2. A new Chapter 2.92 LMC relating to and regulating the procurement and contracting process is adopted as written and provided by Exhibit A to this Ordinance.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase or word of this ordinance.

Section 4. Effective Date: This ordinance or an approved summary thereof consisting of its title shall be published in the City's official newspaper of record and shall take effect and be in full force five days following its publication.

1 PASSED BY THE CITY COUNCIL THIS 14th day of May 2018.
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4 APPROVED:

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8 Nicola Smith, Mayor
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11 ATTEST/AUTHENTICATED:

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15 Sonja Springer, Finance Director

16 per DEA 5/17/2018
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APPROVED AS TO FORM:


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42 Rosemary Larson, City Attorney

43 PASSED BY THE CITY COUNCIL: 05/14/2018
44 PUBLISHED: 05/18/2018
45 EFFECTIVE DATE: 05/23/2018
ORDINANCE NUMBER: 3297

Exhibit A

Title 2

Chapter: 2.92 Procurement and Contracting

Sections:

2.92.010	Applicability, administration, and grant fund compliance.
2.92.020	Authorization.
2.92.030	Definitions.
2.92.040	Receipt and opening of bids, proposals or statements of qualification.
2.92.050	Procurements of goods and services.
2.92.060	Procurements of professional services and public works contracts.
2.92.070	Procurement of small works roster and limited public works projects.
2.92.080	Procurement of noncompetitive purchases and contracts.
2.92.090	Emergency purchases.
2.92.100	General provisions.
2.92.110	Credit card payments by officers and employees.
2.92.120	Collusion.
2.92.130	Cooperative purchasing.
2.92.140	Protest and appeal procedures.

2.92.010 Applicability, administration, and grant fund compliance. To ensure open, fair and competitive procurement processes, to establish a procurement system of quality and integrity and to maximize the purchasing value of public funds, this chapter applies to contracts for the procurement of goods, services, professional services, and public work entered by city elected officials, department heads and their designees. Except where exempt by state law or city ordinance, city procurement shall be administered through the procurement and contract services division to maximize economies of scale, consistency in city practices, and accountability.

When a procurement involves the expenditure of federal, state, or county assistance, grants or funds, the manager shall conduct the procurement in accordance with this chapter unless the federal, state, or county agency specifically requires otherwise. This chapter does not limit the city's authority to procure goods, services, professional services, or public work in a manner otherwise provided for in law.

2.92.020 Authorization.

- A. The city council authorizes the mayor to enter into and execute on behalf of the city contracts involving a total cost of \$250,000 or less without individual approval of each contract by the city council, so long as the contract is consistent with the approved budget for the city, the contractor selection is in accordance with this chapter, and the city's liability under the contract does not exceed available fund balances.

- B. Department directors and city officers shall be responsible for verifying the availability of fund balances for any contracts, agreements or purchases attributable to their departments, and ensuring that any contract is consistent with the approved budget for the city, and the city's liability under the contract does not exceed available fund balances
- C. The Mayor is hereby authorized to take all actions necessary and appropriate to implement the policies and provisions in this chapter, and to promulgate such rules, regulations and guidelines as the Mayor deems necessary to carry out the purposes or provisions of this chapter.

2.92.030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- A. "Bid" or "proposal" means an offer to provide goods, services, professional services, or public work in response to a solicitation for bids or proposals issued by the city.
- B. "Bidder" or "proposer" means a person, firm, partnership, corporation or other entity that formally submits a bid, proposal or offer to provide goods, services, professional services, or public work to the city in response to a solicitation for bids or proposals or request for qualifications issued by the city.
- C. "Collusion" means a willful act to defraud others of their rights or to obtain an unfair advantage in a public contracting process.
- D. "Contract" means a mutually binding legal relationship or any modification thereof obligating a person, firm, partnership, corporation, or other entity to provide goods, services, professional services or public work to the city, and that obligates the city to compensate the other party.
- E. "Day" means a calendar day.
- F. "Director" means the city's finance director.
- G. "Goods" means equipment, supplies, materials and goods, and includes both tangible and intangible personal property that is movable, subject to ownership, and has exchange value.
- H. "Manager" means the city's procurement manager.
- I. "Mayor" means the Mayor or the Mayor's designee.
- J. "Personal services" means those consulting services where the work is primarily intellectual in nature, and the reports or recommendations are incidental to the required performance.
- K. "Professional services" means those services provided by licensed or certified individuals or consulting firms associated with either the development, design or construction, or any combination thereof, of a public works project.
- L. "Public work" means all work, construction, alteration, enlargement, repair, demolition or improvement, other than ordinary maintenance, executed at the cost of the city or that is by law a lien or charge on any property therein.
- M. "Sealed bid" means a method for submitting a bid to provide or perform work on a contract, inclusive of electronic sealed bidding systems, and where all bids are opened at the same time.
- N. "Services," except for professional services, means the furnishing of labor, time or effort by a contractor.

- O. "Waiver" means a process whereby the manager may procure without formal solicitation procedures because of the uniqueness of circumstances related to that procurement action, or a declared emergency.

2.92.040 Receipt and opening of bids, proposals or statements of qualification.

- A. Sealed bids shall be received in the manner and form, including electronically if specified by the city in the invitation to bid, and at the location the manager shall designate up to the time and date identified in the invitation to bid. The bids shall be time-recorded by a city representative when received. After the expiration of the time for the receipt of bids, the bids will be publicly opened and read. The city reserves the right to reject any bid, any portion of any bid, or all bids and to waive immaterial irregularities in accordance with applicable law.
- B. Written proposals or statements of qualification shall be received in the manner and form, including electronically if specified by the city in the request for proposals or qualifications, at the location the manager shall designate up to the time and date identified in the request for proposals or qualifications. The proposals or statements shall be time recorded by a city representative when received. After expiration of the time for receipt of proposals or statements, a submittal list shall be compiled and made public. The city reserves the right to reject any proposal or statement of qualification, any portion thereof, or all proposals or statements of qualification and to waive immaterial irregularities in accordance with applicable law.

2.92.050 Procurements of goods and services.

This section applies to contracts or procurements for goods and services, including personal services. Contracts shall be solicited under the following competitive process thresholds, with the price inclusive of taxes, freight, and any related costs.

- A. For purchases and contracts below \$10,000, inclusive of taxes, freight and any related cost employees and officials are responsible for selecting goods and services in the open market and ensuring best value for the city.
- B. For purchases and contracts between \$10,000 and \$50,000, informal price quotations shall be secured. Employees must:
 - 1. Research the good or service, and provide a clear and open description of the needs of the city;
 - 2. Secure a written price quote from multiple sources;
 - 3. Identify the best price;
 - 4. Provide written quotes to the manager; and
 - 5. Manager reviews the informal price quotations and approves or rejects the purchase.

Procurement may conduct quotations on behalf of departments and offices when requested.

- C. Purchases and contracts more than \$50,000 must be formally advertised in a public manner.
 - 1. The manager or the manager's designee shall advertise solicitations for the submittal of bids, qualifications or proposals. The notice shall state the date and time for submissions. The solicitation for submittals shall state the relative importance of price and all other evaluation factors.
 - 2. All bids submitted shall be reviewed for the responsiveness to the bid requirements and for the responsibility of the firm to perform the work described. When all factors have been evaluated, the award of the contract shall be to the lowest responsible, responsive bidder.
 - 3. For Requests for Proposals or Qualifications and other solicitation methods where price is not the only determining factor, discussions may be conducted with responsible proposers to determine which proposals should be evaluated in more detail or which proposers should be requested to enter negotiations, or both. Negotiations may be conducted concurrently or sequentially. The city may request clarifications and consider adjustments in the proposals to better understand the proposals and to qualify them for further consideration, though information discussed or obtained from one proposer shall not be disclosed to competing proposers during the discussions and negotiations.
 - 4. Contract award, if at all, shall be made to a responsible offeror(s) whose bid or proposal is determined to be the most advantageous to the city, taking into consideration price and the other established evaluation factors.

2.92.060 Procurements of professional services and public works contracts.

This section applies to the procurement and contracting for public works contracts, architect and engineering services and construction management services.

- A. Contracts for architect and engineering services shall be solicited in accordance with chapter 39.80 RCW.
- B. Contracts for professional services, other than architectural or engineering, shall be solicited using the procedures in chapter 39.80 RCW, with price as an additional element of consideration.
- C. Public works contracts shall be solicited and awarded in accordance with the authority granted by state law, including but not limited to Titles 35A and 39 RCW, and any additional requirements prescribed by city ordinance or executive policy.

2.92.070 Procurement of small works roster and limited public works projects.

The city may award public works contracts using the small works roster or the limited public works projects procedures authorized by 39.04.155.

- A. The manager or the manager's designee shall be responsible for the administration of the small works roster system, including any limited public works process authorized under RCW 39.04.155.

- B. In the discretion of the manager or the manager's designee, solicitations under the small works roster system or limited public works process may be conducted in writing or electronically, including but not limited to using a web-based solicitation process. The manager may use a regional small works roster or limited public works project system when it is deemed to benefit the city and potential contractors.

2.92.080 Procurement of noncompetitive purchases and contracts.

- A. The competitive procurement provisions of this chapter shall not apply to the lease or purchase of goods or services that are clearly and legitimately limited to a single source of supply, involve special facilities, special design or special market conditions. The price shall be established by direct negotiations by the manager. The manager shall provide a procedure for requesting a waiver of the competitive process for purchases under this section. Departments and offices requesting such waivers shall secure the manager's approval prior to any such purchase.
- B. Notwithstanding subsection A. of this section, the competitive bidding requirements for public works may not be waived based on a single source of supply, special facilities, special design, or special market conditions.
- C. The following expenditures, purchases and contracts, based on their nature, are exempt from the competitive processes of this chapter:
 - 1. Real Estate related contracts;
 - 2. Utilities limited to one source;
 - 3. Legal settlements;
 - 4. Membership fees and dues;
 - 5. Registration and travel for training;
 - 6. Employment and personnel matters;
 - 7. Grant agreements;
 - 8. Contracts to acquire goods and services which are purchased on another governmental entity's bid documents, contract or other cooperative purchasing arrangement, in accordance with state law and LMC 2.92.130; and
 - 9. Items purchased for resale to the public in support of a city program or facility, such as inventory for resale at the city golf course, as determined by the manager.
 - 10. Agreements or contracts which carry out or implement a provision of the Lynnwood Municipal Code or established city policy, e.g., maintenance or performance bonds for plat improvements.
 - 11. Interlocal Agreements

The manager may determine other similar expenditures, purchases and contracts which are exempt from competitive processes. The manager shall provide a list of any additional exempt expenditures, purchases and contracts to all offices and departments.

D. Mayor's approval authority.

1. The Mayor may approve the following agreements and expenditures without individual Council approval, regardless of dollar amount:

- a) Utilities limited to one source;
- b) Membership fees and dues;
- c) Registration for training;
- d) Grant agreements;
- e) Contracts to acquire goods and services which are purchased on another governmental entity's bid documents, contract or other cooperative purchasing arrangement, in accordance with state law and LMC 2.92.130;
- f) Payments required by the processing of payroll, such as deductions for taxes, insurance, union dues and similar disbursements.
- g) Payments the City is legally required to make to local, state or federal agencies.
- h) Agreements or contracts which carry out or implement a provision of the Lynnwood Municipal Code or established city policy, e.g., maintenance or performance bonds for plat improvements

2. The Mayor may approve the following agreements and expenditures up to \$250,000 without individual Council approval:

- a) Real Estate related contracts;
- b) Legal settlements;
- c) Employment and personnel matters; and
- d) Items purchased for resale to the public in support of a city program or facility, such as inventory for resale at the city golf course, as determined by the manager.
- e) Interlocal Agreements

2.92.090 Emergency purchases.

- A. In the event of an emergency, as defined in RCW 39.04.280, as now in effect and as hereinafter amended, the Mayor may issue a declaration of emergency. The declaration shall recite the facts constituting the emergency and may include a waiver of the requirements of this chapter, with reference to any contract relating to the city's lease or purchase of goods or services, contracts for public works, or to the selection and award of either professional service or consultant contracts.
- B. The Mayor, or designated director, shall report such emergency expenditures to the city council within forty-five days of determining an emergency.
- C. Waivers shall continue to have force and effect until terminated by order of the Mayor or action of the council, or until it expires, which shall be twenty days after the declaration. The Mayor may extend a waiver beyond the twenty-day period as necessary to complete a contract for any work already undertaken to address the emergency.
- D. In the event a waiver authorized under this section expires or is terminated, no further contracts or purchases may be made without complying with the nonemergency contracting provisions of this chapter.

- E. Reasonably necessary expenditures to respond to the emergency will not result in contracts or purchases being null and void, notwithstanding the lack of an appropriation. If the responsible director determines that the expenditures were more than the amount appropriated, the mayor will request an appropriation, specifying the source of funds.

2.92.100 General provisions.

- A. The sale of surplus property with an estimated value of \$50,000 or less, which has been certified for disposition, may be made by the manager in accordance with any applicable law and best practice to ensure the most favorable financial return and risk reduction.
- B. Splitting purchases or breaking down the requirements of any purchase or contract into units to avoid the maximum dollar thresholds requirements above is strictly prohibited.
- C. The contract approval threshold amount includes all amendments. Amendments that do not exceed in total 10 percent of the amount may be entered into without prior council approval unless the new total of the contract would then require council approval for the first time. Amendment in excess of 10% of a council awarded amount require council approval prior to the Mayor entering into the contract.
- D. The Mayor may delegate certain purchasing and contracting authority to a department or office of the city, such as procurement card activities, low dollar contracts using established templates, or public works contracting activities.
- E. Prequalification of goods or services may occur before procurement of the items. Under those circumstances, only goods or services that are determined to meet the qualifying criteria will be acceptable in the subsequent procurement.
- F. Technology procurements. All purchases of information technology products and services, including, but not limited to, hardware, software or applications, cellular or mobile devices, computer-related peripherals or components, audio-visual equipment, telecommunications systems or equipment, drones, or technology services or consulting shall be approved in advance by the city's chief technology officer and City Clerk, or designees to ensure system and equipment compatibility, records retention, and reporting capacity. The purchase of electronic data and telecommunications systems may be made by competitive negotiations in accordance with RCW 39.04.270.
- G. The Mayor or manager may elect to request council approval of any agreement, contract, or expenditure.
- H. Interlocal agreements or contracts with an expense to the City below \$250,000 may be made by the Mayor.

2.92.110 Credit card payments by officers and employees.

- A. The manager shall implement the following system for the authorization, distribution, control, implementation and administration of credit cards by officers and employees:
 - 1. Credit cards may be distributed to those city officers and employees who, as determined by the manager, have job responsibilities that would benefit from, or otherwise be facilitated by, the use of a credit card;
 - 2. Credit cards may only be used for purchases or acquisitions the user would be authorized to make with city cash, purchase order, or voucher;
 - 3. Credit cards may not be used for cash advances;
 - 4. Policies and procedures and accounting controls shall be developed and implemented to ensure the proper usage of credit cards and credit card funds including compliance with city code and city purchasing policies and procedures;
 - 5. Credit cards may be required to be immediately surrendered if used in a manner inconsistent with city code, policies, or procedures; and
 - 6. Credit limits shall be set on each credit card issued.
- B. The manager may adopt any additional policies and procedures the manager determines are necessary to implement, and are not inconsistent with, this chapter.

2.92.120 Collusion. Regardless of whether bids or proposals have been solicited by the city for the purchase of goods or the performance of services, the manager shall report to the executive any suspected collusion. The Mayor may order the suspected collusion to be reported to the appropriate authorities.

2.92.130 Cooperative purchasing. The manager shall have authority to join with other units of government in cooperative purchasing when the best interests of the city would be served thereby, but each of the participating units shall be separately invoiced by the vendors for the purchases and the city shall not be obligated for purchases other than those required for its own use. Interlocal purchasing agreements may be made by the manager. The city may utilize federal, state or local governments' contracts that, in the determination of the manager, have conducted a fair and open competition for the contracting opportunity, and such purchases or contracts shall not be subject to the competitive procedures of this chapter. The manager may establish a purchasing administrative fee to recover costs from the contractor associated with other public agencies' use of these contracts.

2.92.140 Protest and appeal procedures. The Mayor shall establish procedures for considering and determining bid and proposal protests and appeals. The Mayor or designee shall render the final administrative determination on all such protests and appeals.



On the 14th day of May 2018 the City Council of the City of Lynnwood, Washington, passed ordinance 3297. A summary of the content of this ordinance, consisting of the title, provides as follows:

ORDINANCE 3297

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING LMC 2.92, UPDATING THE PROCUREMENT AND CONTRACT AWARD PROVISIONS; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

The full text of this ordinance will be mailed upon request.

DATED this 18th day of May 2018.

A handwritten signature in blue ink that reads 'D. Karber'.

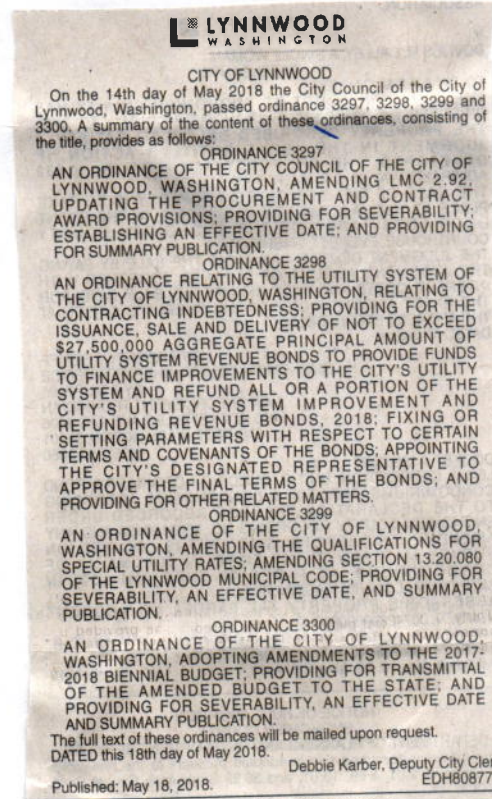
Debbie Karber, Deputy City Clerk

Everett Daily Herald

Affidavit of Publication

State of Washington }
County of Snohomish } ss

Dicy Sheppard being first duly sworn, upon oath deposes and says: that he/she is the legal representative of the Everett Daily Herald a daily newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a daily newspaper in Snohomish County, Washington and is and always has been printed in whole or part in the Everett Daily Herald and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Snohomish County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of EDH808774 ORDINANCE 3297-3300 as it was published in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 05/18/2018 and ending on 05/18/2018 and that said newspaper was regularly distributed to its subscribers during all of said period.



The amount of the fee for such publication is \$70.48.

Dicy Sheppard

Subscribed and sworn before me on this 18th day of May, 2018.

Linda Phillips

Notary Public in and for the State of Washington.

City of Lynnwood - LEGAL ADS | 14127890
DEBBIE KARBBER





LYNNWOOD
WASHINGTON

CERTIFICATE

I, the undersigned, Debra Karber, the duly appointed Deputy City Clerk of the City of Lynnwood, Washington, hereby certify that the Ordinance hereto attached is a full, true and correct copy of Ordinance No. 3297 of the City of Lynnwood, Washington, entitled as follows:

ORDINANCE 3297

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, AMENDING LMC 2.92, UPDATING THE PROCUREMENT AND CONTRACT AWARD PROVISIONS; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

That said ordinance was passed by the Council on May 14, 2018 of said City and was published and posted according to law; that said ordinance was duly published in the official newspaper of said City on May 18, 2018.

Debra Karber, Deputy City Clerk