

IMPACT STATEMENT

Legislation title: Amend Finance and Revenue Code to streamline the procurement and contracting process (Ordinance; amend Code Chapters 5.33, 5.34 and 5.68)

Contact name: Lester Spitler, Chief Procurement Officer

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Presenter name: Lester Spitler, Chief Procurement Officer

Purpose of proposed legislation and background information:

The purpose of this Ordinance is to approve a comprehensive set of revisions to Procurement City Code, Chapters 5.33, 5.34, and 5.68. The Code revisions included in the Ordinance will help to streamline the procurement and contracting process for the City. Over the course of the past year, Procurement Services worked with our bureau customers to coordinate a review of Portland City Code, Chapters 5.33, 5.34 and 5.68. We collected feedback and recommendations and incorporated into the revisions included in this Ordinance.

No revenues will be impacted by this legislation.

Financial and budgetary impacts:

There is no direct budgetary impact based on this legislation, however, it is believed that the revisions included in this Ordinance will enable bureaus to execute contracts in a more streamlined manner and accomplish work more efficiently.

Community impacts and community involvement:

It is expected that the contracting community, including contractors certified with the State of Oregon as Disadvantaged, Minority-owned, Woman-owned, Emerging Small Business or Service-disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) will be positively impacted by the changes as they help create a more streamlined process that will result in a shorter timeframe for execution of contracts, which means money in the hands of those contractors sooner. The City will be positively impacted as well based on faster project completion and more efficient resource allocation.

No known person or group will be testifying.

Budgetary Impact Worksheet

Does this action change appropriations?

YES: Please complete the information below.

NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

Section 5.33.130 – Emergency Procurements: Provide authority for CPO and bureau directors to execute contracts resulting from emergencies of any amount with Commissioner in Charge approval. Require emergency contacts over \$150k to be brought to Council at the next possible scheduled session.

Section 5.33.060 – Authority of Directors: Maintains authority to award grants up to \$5k. No increase

Section 5.33.060 – Authority of Directors: Gives authority to award, execute, amend and terminate IGA's up to \$50k (currently \$5k); Removes Procurement from the IGA process.

5.33.130 Emergency Procurements.

(Amended by Ordinance Nos. 181547 and 183445, effective January 6, 2010.)

- A.** The City may Award a Contract as an Emergency Procurement without the use of competitive sealed Bidding or competitive sealed Proposals as authorized by ORS 279B.050(2) when the requirements of ORS 279B.080 and this rule are met.
- B.** The Council, or person authorizing the Emergency Procurement, shall document the nature of the Emergency and describe the method used for the selection of the particular Contractor. The City shall encourage competition for Emergency Procurements to the extent reasonable under the circumstances.
- C.** ~~The authority to declare an Emergency and authorize an Emergency Procurement shall be as follows:~~
- C1.** ~~The Chief Procurement Officer or designee may declare award, execute, amend, and terminate the existence of an Emergency and authorize the City or any of its bureaus to enter into an Emergency Procurement Contract under \$150,000 if the original value of the Emergency Procurement Contract is \$500,000 or less with authorization from the Commissioner-in-Charge of the City Office, Bureau or Department.~~
- D.** ~~If the Chief Procurement Officer or person to whom the powers of the Chief Procurement Officer have been delegated is unable to perform the duties of the Chief Procurement Officer position, the director of a City Office, Bureau or Department may award, execute, amend, and terminate an Emergency Procurement Contract if the original value of the Emergency Procurement Contract is \$500,000 or less with authorization from the Commissioner-in-Charge of the City Office, Bureau or Department.~~
- 2.** ~~The director of a City Office, Bureau or Department may declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract under \$150,000 only if the Chief Procurement Officer or person to whom the powers of the Chief Procurement Officer have been delegated, is not available when the Procurement needs to be made.~~
- 3.** ~~A Commissioner in Charge of a City Office, Bureau or Department may declare determine the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract not exceeding \$500,000.~~
- E4.** ~~A Commissioner in Charge of a City Office, Bureau or Department may award, execute, amend, and terminate declare the existence of an Emergency and authorize that Office, Bureau or Department to enter into an Emergency Procurement Contract exceeding \$500,000 subject to the following procedures:-~~

- 1a.** ~~Following the declaration of Emergency~~ ~~For all Emergency Procurement Contracts exceeding \$150,000 the Commissioner-in-Charge shall immediately prepare an ordinance for City Council approval of the Emergency Procurement Contract by the City Council at its next regularly scheduled session or as soon as possible thereafter. That Contract shall be added to the regular agenda of the Commissioner without the need for approval for inclusion on the agenda by other Commissioners.~~
- 2b.** If ~~the~~ City Council adopts the ordinance, the City will pay for the Work required by the Emergency Procurement Contract. If City Council disapproves the ordinance, the City only will pay for Work performed prior to the date that ~~the~~ City Council considered the ordinance for approval. If ~~for any reason~~ presentation of the ordinance to ~~the~~ City Council is delayed, the City will pay ~~still will only be liable~~ for Work performed prior to the time when the ordinance first was presented to ~~the~~ City Council.
- FD.** All documentation of Emergency Procurements shall be sent to the Chief Procurement Officer for record keeping purposes.
- E.** ~~All Emergency Procurement Contracts Awarded when there was no Emergency or reasonable perception of Emergency are void unless the Contract was otherwise valid under another portion of the City Code.~~
- F.** ~~After the Award of an Emergency Procurement Contract, the City shall execute a Written Contract with the Contractor as soon as possible, and in no event later than 60 Days after the Award.~~
- G.** ~~All such Emergency Procurement Contracts, whether or not signed by the Contractor, shall be deemed to contain a termination for convenience clause permitting the City to immediately terminate the Contract at its discretion and, unless the Contract was void, the City shall may pay the Contractor only for Work performed prior to the date of termination plus and the Contractor's unavoidable costs incurred as a result of the termination. In no event will Tthe City pay shall not be liable for Contractor's anticipated lost profits or consequential damages as a result of the termination.~~
- H.** For an emergency procurement of construction services that are not public improvements, the City official authorized to execute an Emergency Procurement Contract under this section shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the City official authorized to execute an Emergency Procurement Contract under this section shall set a solicitation time period that the City determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in case of extreme necessity.

5.33.060 Authority of Directors.

(Amended by Ordinance Nos. 183445, 185898, 187373 and 187974, effective September 7, 2016.) Directors of Bureaus or Offices are authorized to:

- A. Execute Contracts obligating the City for purchases of Goods and Services for use by their bureau in an amount not to exceed \$10,000 for a single transaction as specified in Section 5.33.180. Procurements shall not be artificially divided or fragmented so as to constitute Procurements under \$10,000.
- B. Execute Contracts whenever an ordinance approved by the City Council grants additional authority to a Bureau Director beyond that stated in these rules.
- C. Authorize the awarding of grants not to exceed \$5,000 when the proposed grant is included within the current fiscal year budget. Amendments to grants that increase the grant amount may occur only when the additional amount is included within the current fiscal year budget or as otherwise adopted by the City Council by ordinance.
- D. Award, execute, amend, and terminate Intergovernmental Agreements (IGA) whenever the IGA amount is less than \$50,000 unless the IGA creates a new government body.
- E. Execute nondisclosure agreements (other than those set forth in PCC 3.15.070) between the City and vendors in order for the Bureau to review proprietary, trade secret and confidential information on products, services and technologies that are, or might be, considered for use by the Bureau. A nondisclosure agreement is one that prohibits the release of proprietary, trade secret or confidential information, whether held by the City or the vendor, and does not include any monetary consideration. Non-disclosure agreements must be approved as to form by the City Attorney's Office.
- F. Execute data grant agreements (other than those set forth in PCC 3.15.070) between the City and grantees in order for the Bureau to share Bureau data. A data grant agreement is one in which the City will grant the use of pertinent City data to other agencies, organizations or individuals for research projects or projects performed under Contract with the City. Data grant agreements may include monetary consideration to the City. Data grant agreements must be approved as to form by the City Attorney's Office.
- G. Execute intellectual property license agreements between the City and third parties for the sale, license or permission to use City intellectual property, as managed by the Bureau. Develop, adopt and maintain any Bureau policies related to the use of the Bureau's intellectual property, including the maintenance, protection and enforcement of the Bureau's rights in their intellectual property. Intellectual property license agreements must be approved as to form by the City Attorney's Office.

5.34.510 Prequalification of Offerors.

(Amended by Ordinance Nos. 183445, 184403, 185065, 185898 and 187373, effective October 14, 2015.)

- A. The City of Portland requires prequalification of all prime construction contractors, except for prime construction contractors that are enrolled in the Prime Contractor Development Program, on public improvement contracts with an estimated value of ~~\$250,000~~ \$500,000 or greater, per ORS 279C.430(1) which allows public agencies the option to adopt their own rules for mandatory prequalification of contractors desiring to bid for public improvement contracts let by that agency. The Chief Procurement Officer has the authority to require Prequalification for public improvement contracts ~~\$250,000~~ \$500,000 or less. The City shall not consider a Bid from a Bidder that is not prequalified, if the City required Prequalification.