

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Action: An Ordinance Concerning Public Contracts; Amending Sections 2.1400, 2.1405, 2.1410, 2.1415, 2.1420, 2.1425, 2.1430 and 2.1445 of the Eugene Code, 1971; Repealing Sections 2.1435, 2.1440 and 2.1450 of that Code; and Adding Section 2.1451 to that Code

Meeting Date: October 27, 2014
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 3
Staff Contact: Vicki Silvers
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ISSUE STATEMENT

The City Council is scheduled to take action on proposed code changes to existing Eugene Public Contract law. The proposed changes add and delete sections of the Eugene City Code concerning public contracting; amendments include exemptions of certain classes of special procurements and public improvement contracts from competitive bidding requirements. As required by Oregon state public contracting law, the filing of findings for exemptions is included. The council held a public hearing concerning the proposed ordinance on October 13, 2014, at which there was no public testimony.

BACKGROUND

The City of Eugene is subject to the public contracting laws of the State of Oregon. In 2005, the Eugene City Public Contracting Code was amended in accordance with state legislative changes in public contracting laws. Since that time, additional changes have been made to legislation. The proposed amended code will streamline and update the City's current Public Contracting Code provisions and exemptions, and authorize the City Manager, acting as the City's Purchasing Agent, to adopt updated rules to implement the code and exemptions in compliance with current state public contracting law.

Public procurement and contracting requires the interpretation and application of state law, City code, State Attorney General's model rules and City administrative rules. City purchasing staff have been working with legal counsel to amend the City's public contracting code provisions to comply with statutory changes made since 2005, when the City last made major amendments to its public contracting code. During this process, staff and legal counsel identified other areas in the City's public contracting code provisions that are duplicative or inconsistent with state public contracting laws. The proposed code amendments are made in order to comply with legislative amendments and to remove the portions that are duplicative or inconsistent with state law. This process has also included an update of City public contract administrative rules, for much the same reasons. The goal is to have the new rules better reflect actual City procurement practices

and more closely conform to the Attorney General's model rules. The majority of the code amendments proposed attempt to streamline the procurement process and consolidate the rules and laws in order to support the procurement business practice of City purchasing staff as stewards of public resources.

Amending City code by removing language that is already included in statute reduces the need for the council to adopt code amendments whenever the Oregon legislature changes public contracting law. Where code has outlined specific business practices, moving those to the updated administrative rules will allow the City to be more flexible and responsive when legislative changes or new City goals are identified, (i.e. administrative rules don't require a code change and the lengthy process involved with amending code).

The proposed ordinance concerning public contracts amends, repeals and adds a section to that code. These changes require approval from the City Council, acting as the contract review board. The sections modifying the code provisions by this ordinance are as follows with a brief description.

- 2.1410 Public Contracts – Regulation by City Council. Deletes language that is included in Oregon Public Contracting Code and is unnecessary.
- 2.1415 Public Contracts – Authority of Purchasing Agent. (4) Mandatory Review of Rules. Eliminated because it is required by ORS 279A.065.
- 2.1420 Public Contracts – Definitions. Those sections that are stricken are terms not used within the revised City Code or are terms that are defined by Oregon Public Contracting Code.
- 2.1425 Public Contracts – Process for Approval of Special Solicitation Methods and Exemptions. These changes will streamline contracting rules and align City business practice with the Attorney General's model rules. This also is an area that will allow for flexibility when the legislature makes changes.
- 2.1430 Public Contracts – Solicitation Methods for Classes of Contracts. Language stricken throughout this section is granted outright by statute.
- 2.1430(3)(c), Some areas of state public contracting law allows for local government to provide their own guidelines and rules for public contracting. Previously public entities were able to undertake Construction Manager/General Contractor (CM/GC) Contracts pursuant to their own rules. As of July 1, 2014, state law changed and public entities must follow the Attorney General's Contractor Management/General Contractor Model Rules. Adding this subsection emphasizes the change in this practice.
- 2.1430(6)(d), In 2013, state legislation raised this threshold from \$5,000 to \$10,000 for small procurements for goods and services, which may be awarded through any procurement method, including direct appointment. This new law was enacted January 1, 2014. Because City code specifies the \$5,000 threshold, staff are unable to make this improvement in business practice until the council takes action on the proposed ordinance. Removing this specific language allows the Purchasing Agent to adopt an Administrative Rule more quickly and efficiently whenever changes are made to statute.

- 2.1430(7), Contracts Required by Emergency Circumstances. This amended section provides for a manageable business practice when small, unexpected/emergency purchases are necessary.
- 2.1435 and 2.1440 deleted because they are governed by statutes or Administrative Rules.
- 2.1445 Public Contracts – Electronic Advertisement of Public Contracts. Reflects ORS 279C.360 requirements and updates business practice as electronic media increasingly replaces print publications.
- 2.1450 deleted because it is governed by ORS 279B.425 and 279C.430 to 279C.450.
- Section 2.1451, this section is inserted as required by ORS 279C.305 and 279C.310 and is not found in any other areas of City code. Without adopting this section and the required Model Cost Accounting Guidelines, the City would be prohibited from constructing public improvements costing \$5,000 or more with City equipment and/or personnel.

RELATED CITY POLICIES

Recently, the council had a conversation regarding City contracting with Minority and Women Owned Businesses and Disadvantaged Emerging Business Enterprises. The council is scheduled to have an additional work session on this topic in January 2015. The ordinance changes proposed here do not prevent future action by the council in this area.

COUNCIL OPTIONS

1. Approve the ordinance.
2. Revise and approve the ordinance.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends the adoption of the public contracting ordinance as provided in Attachment A.

SUGGESTED MOTION

Move to adopt Council Bill 5128, concerning public contracting.

ATTACHMENTS

- A. Proposed Ordinance with changes marked and Findings in Support of Ordinance

FOR MORE INFORMATION

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