ORDINANCE NO. 1470

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby created a new subtitle 2.300 entitled "Purchases and Bidding" to the Oak Harbor Municipal Code which shall consist of the following seven chapters:

CHAPTER 2.300
PURCHASES AND BIDDING

2.310 Purchase and Bidding -- General Provisions.
2.320 Purchase -- Supplies, Material and Equipment.
2.330 Public Works.
2.340 Small Works Roster.
2.350 Contracts for Architectural and Engineering Services.
Section Two. There is hereby added a new Chapter 2.310 entitled “Purchase and Bidding -- General Provisions" to the Oak Harbor Municipal Code which shall read as follows:

CHAPTER 2.310
PURCHASE AND BIDDING -- GENERAL PROVISIONS

Sections:
2.310.010 Purpose and application.
2.310.020 General control of purchasing and contracting.
2.310.030 Adoption of procedure.
2.310.040 Grants.
2.310.050 Professional service contracts.
2.310.060 General standards for determining lowest responsible bidder.
2.310.070 Emergency procurements.
2.310.090 Cancellation of invitations for bids or requests for proposals.
2.310.100 Unauthorized purchases.
2.310.110 Administrative guidelines, policies and procedures -- Purchases for special events.
2.310.120 Vendor's lists.
2.310.130 Administrative policies.
2.310.140 Purchase coordinator.
2.310.150 Insurance requirements.
2.310.160 Specifications.

2.310.010 Purpose and application.

(1) The purpose of this subtitle is to establish procedures and guidelines for making purchases of supplies, materials and services and contracting for public works.

(2) The provisions of this chapter shall apply to all chapters codified in OHMC Subtitle 2.300.

2.310.020 General control of purchasing and contracting. Subject to the provisions of this subtitle and state law, the Mayor has authority to coordinate and supervise purchases of supplies, materials, equipment and services and for contracting for public works projects including, but not limited to, the power to direct specific purchases be made in accordance with the budget limits for the expenditure of funds. The Mayor may delegate these powers as he/she determines to be appropriate including assigning responsibility of this section to the City Administrator pursuant to OHMC 2.05.030. Except for emergency expenditures, nothing in this provision or this subtitle shall authorize the Mayor to exceed the contracting limits set out in Chapter 2.390 or other provisions or subtitle.
2.310.030 Adoption of procedure. Whenever the Mayor or his/her designee is authorized to promulgate administrative procedure under this code, notice of such promulgation or adoption shall be given to the City Council along with the procedures thereby adopted and a copy filed with the City Clerk for public inspection. City Council may amend, change or delete such procedures by written resolution or ordinance.

2.310.040 Grants.

(1) Nothing in this chapter shall prevent the City from complying with the terms and conditions of any grant, gift or bequest which is otherwise consistent with law.

(2) The Mayor or his/her designee is authorized to apply for grants in any amount and to execute grant contracts for grants of not more than Thirty Thousand Dollars ($30,000). The Mayor or his/her designee shall notify the City Council periodically of such grant applications and grant contract approvals.

(3) Grant contracts in excess of Thirty Thousand Dollars ($30,000) shall require Council approval.

2.310.050 Professional service contracts. Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of this subtitle. The Mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with OHMC Chapter 2.350 and Chapter 39.80 RCW. For purposes of this section, "professional services" are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The Mayor shall establish guidelines and procedures for obtaining professional services. Professional Service Contracts in excess of Thirty Thousand Dollars ($30,000) shall require approval by the City Council. Contracts for professional services under Thirty Thousand Dollars ($30,000) shall be reviewed by the Finance Director or the City Attorney prior to signing to assure compliance with the Oak Harbor Biannual Budget, provisions of OHMC Chapter 2.390 and purchasing policies promulgated by the Mayor.

2.310.060 General standards for determining lowest responsible bidder. In determining the lowest responsible bidder for purchase of supplies, material and equipment and for public works, in addition to price, the following may be considered:

(1) The ability, capacity and skill of the bidder to perform the contract;

(2) Whether the bidder can perform the contract promptly, or within the time specified, without delay or interference;

(3) The reputation, experience and efficiency of the bidder;

(4) The quality of performance of previous contracts by the bidder;
(5) The previous and existing compliance by the bidder with laws and ordinances relating to contracts or services;

(6) The sufficiency of the financial resources and ability of the bidder to perform the contract;

(7) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract; or

(8) The number and scope of conditions attached to the bid.

2.310.070 Emergency procurements. Notwithstanding any other provisions of this chapter, the Mayor or his/her designated agent(s) may make or authorize others to make emergency procurements of materials, supplies, equipment, services or public works, without complying with the requirements of this chapter when there exists a threat to public health, welfare, or safety or where the City may suffer a substantial monetary loss by reason of the time required to follow regular purchasing procedures; provided, that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor’s name, the amount and type of the contract, and a listing of the item(s) procured under the contract, which shall be reported to the City Council at the next subsequent meeting.

2.310.090 Cancellation of invitations for bids or requests for proposals. An invitation for bids may be canceled in the discretion of the Mayor or the person or persons she or he designates to make such decisions. The reasons therefor shall be made part of the contract file. Each invitation for bids issued by the City shall state that the invitation may be canceled. Notice of cancellation shall be sent to all parties that have been provided with a copy of the invitation. The notice shall identify the invitation for bids and state briefly the reasons for cancellation.

2.310.100 Unauthorized purchases. Any purchase or contract made contrary to the provisions hereof shall not be approved by any City officer and the City shall not be bound thereby, except as may be required or provided by law. City employees making purchases and contracts must follow administrative policies and procedures of the Mayor even if the same are more restrictive than this subtitle.

2.310.110 Administrative guidelines, policies and procedures – Purchases for special events. The Mayor may promulgate procedures to govern the purchase of supplies, materials, equipment services and public works which are supplemental to City ordinances, state statutes and rules and procedures which are more restricted than the requirements of this subtitle.

2.310.120 Vendor’s Lists. At least twice per year, the City shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of vendor lists and solicit the names of vendors for the lists. The Purchasing Coordinator or Department Director shall secure Purchases and Public Works Bidding Ordinance - 5
telephone or written quotations, or both, from at least three (3) different vendors whenever possible to assure that a competitive price is established and for awarding the contracts for the purchase of any materials, equipment or supplies to the lowest responsible bidder as defined in this chapter unless waiver is authorized by this subtitle or state law. The bid quotations obtained shall be recorded, opened to public inspection, and shall be available by telephone inquiry. A contract awarded pursuant to this subtitle and procedures authorized hereby.

2.310.130 Administrative policies. The Mayor or his/her designee may promulgate rules, policies and procedures for the approval of all other contracts not otherwise covered by this chapter. These contracts shall include, but shall not be limited to: nonprofessional service contracts, maintenance agreements and contracts, instructor contracts, entertainment contracts and any other personal service contract. The same are at least as restrictive as this subtitle or requirements of state law.

2.310.140 Purchase coordinator. The Mayor may appoint one (1) or more Purchasing Coordinators to carry out the duties of this subtitle. Appointment shall be in writing and filed with the Finance Director. A Purchasing Coordinator may not be an employee of the Finance Department.

2.310.150 Insurance requirements. Liability and property damage insurance requirements for any contract entered into by the City under this chapter shall be determined by the City Attorney or such other person designated by the Mayor. These requirements may include coverage requirements, limits of liability, necessary endorsements, and other matters relating to insurance.

2.310.160 Specifications. For purchase of supplies, material and equipment and for public works, the following specification rules may apply:

1. **Maximum Practicable Competition.** All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage maximum free and open competition in satisfying the City's needs. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the City by architects, engineers, designers and draftsmen.

2. **"Brand Name or Equal" Specification.** Brand name or equal specifications may be used when the Purchasing Coordinator determines that use of a brand name or equal specification is in the City's best interest.

3. **Brand Name Specification.** Because use of a brand name specification is restrictive of competition, it may be used only when the Purchasing Coordinator makes a written determination that only the identified brand name item or items will satisfy the City's needs.
Section Three. There is hereby added a new Chapter 2.320 entitled "Purchase -- Supplies, Material and Equipment" to the Oak Harbor Municipal Code which shall read as follows:

CHAPTER 2.320
PURCHASE -- SUPPLIES, MATERIAL AND EQUIPMENT

Sections:
2.320.010 Purpose.
2.320.020 Application.
2.320.030 Responsibility for purchasing.
2.320.040 Competitive bidding -- Materials, supplies and equipment.
2.320.050 Small purchases of materials, supplies and equipment.
2.320.060 Small purchases -- Filing of statements on awards to other than vendor submitting lowest quotation.
2.320.070 Small purchases -- Rejection of quotations.
2.320.080 Noncompetitive purchases.
2.320.090 Lease agreements.
2.320.100 Cooperative purchasing.
2.320.110 Federal and State contract purchases.
2.320.120 Sole source procurement.
2.320.125 Use of existing contract documents or solicitations.
2.320.130 Competitive negotiations for purchase of electronic data processing and telecommunications systems.
2.320.140 City procurement records.
2.320.150 Inspection and testing.
2.320.160 Procurement of recycled and recyclable products.

2.320.010 Purpose. The purpose of this chapter is to protect and advance the public interest by providing for the fair and equitable treatment of all persons involved in the purchasing process, by maximizing the purchasing value of public funds and by providing safeguards for maintaining a purchasing system of quality and integrity.

2.320.020 Application. This chapter applies to the award of contracts by the City for purchases of materials, supplies, and equipment. This chapter does not apply to following:

(1) the reimbursement of business expenses incurred by employees;

(2) the purchase of real estate; or

(3) litigation costs and expenses.

2.320.030 Responsibility for purchasing.

(1) General. The Mayor shall be responsible for all City purchasing under this chapter except where otherwise provided. The Mayor may appoint such persons as he or she determines

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appropriate to administer the system. Designation shall be in writing and filed with the City Clerk.

(2) Duties. In accordance with this chapter, the Mayor's designee(s) shall:

(a) Purchase or coordinate the purchase of all materials, supplies, equipment, and nonprofessional services.

(b) Sell, trade or otherwise dispose of surplus personal property belonging to the City;

(c) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the City departments using the items purchased.

2.320.040 Competitive bidding – Materials, supplies and equipment.

(1) General. Any purchase of material, supplies, and equipment, where the cost thereof exceeds Thirty Thousand Dollars ($30,000) shall be by competitive bidding, except for purchases made pursuant to this ordinance.

(2) Invitation for Bids. An invitation for bids shall be issued which shall include the specifications and the contractual terms and conditions applicable to the procurement.

(3) Public Notice. Public notice of the invitation for bids shall be given not less than fourteen (14) calendar days prior to the date set forth therein for the opening of bids. Such notice shall be published at least once in a newspaper of general circulation. The public notice shall state the date and time of bid opening. Bids not received by the date and time stated for bid opening will not be accepted or considered.

(4) Bid Opening. Bids shall be opened publicly by the Purchasing Coordinator or his or her designee at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Purchasing Coordinator deems appropriate, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.

(5) Bid Evaluation. Bids shall be evaluated based on the specifications and other relevant evaluation criteria set forth in the bid specifications. The evaluation criteria shall be objectively measurable whenever possible, and may include such factors as discounts, transportation costs, and total or life cycle costs, inspection or testing which has been done of the product bid, quality, workmanship, delivery time, and suitability for a particular purpose.

(6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted by the City. Mistakes discovered
before bid opening may be modified or the bid may be withdrawn by written or
telegraphic notice received in the office designated in the invitation for bids prior to the
time set for opening. After bid opening, corrections in or withdrawal of bids shall be
permitted only to the extent that the bidder can show by clear and convincing evidence
that a mistake was made, the nature of the mistake, and the bid price actually intended.
However, downward correction of a bid, which would displace the apparent low bidder,
shall only be permitted if the error made and the intended bid price can be determined
solely from the bid documents. All decisions to permit the correction or withdrawal of
bids after bid opening, or to cancel awards or contracts based on bid mistakes, shall be
made by the City Council.

(7) **Award.** The bids shall be submitted to the City Council by the Mayor, along with the
recommendation of the appropriate department. The City Council may award the bid to
the lowest responsible bidder as determined under the standards set forth in OHMC
chapters concerned with bids and purchases, or may reject all bids in its discretion. The
contract shall be awarded to the lowest responsible bidder whose bid meets the
specifications and evaluation criteria set forth in the invitation for bids.

2.320.050 **Small purchases of materials, supplies and equipment.** Any purchase not
exceeding Thirty Thousand Dollars ($30,000) shall be considered a “small purchase” and may be
made in accordance with small purchase procedures to be adopted by the Mayor Purchasing
Coordinator. The requirements of OHMC 2.320.040 shall not apply to such purchases. Insofar as
it is practical, three (3) businesses shall be solicited to submit quotations. The Purchasing
Coordinator shall keep a record of all small purchases and quotations submitted in competition
thereon and such records shall be open for public inspection during regular office hours. The
Purchasing Coordinator with the Department Director concurrence shall award to such vendor to
have submitted the lowest responsible quotation, in accordance with the provisions of this
chapter; provided, that the Mayor may authorize any or all purchases through designated
Purchasing Coordinator.

2.320.060 **Small purchases – Filing of statements on awards to other than vendor
submitting lowest quotation.** When the award for a small purchase is not given to the vendor
submitting the lowest quotation, a statement of the reasons for placing the order elsewhere shall
be prepared and filed with the other papers relating to the transaction and shall be open to public
inspection during regular office hours.

2.320.070 **Small purchases – Rejection of quotations.** The City shall have the authority to
reject all quotations or parts thereof, with regard to a small purchase of any materials, supplies,
or equipment when it is determined that public interest will be served thereby, and upon rejection
of such quotations shall include the reason therefor in the records of the transaction, which shall
be open for public inspection.
2.320.080 Noncompetitive purchases.

(1) **Open market conditions.** The City is authorized to make open market purchases without obtaining competitive bids or quotations therefor as required under this chapter when any of the following conditions exist:

   (a) **Items of Special Design.** When an item required is of special design, shape or manufacture to match or fit in with an existing installation and competitive bidding is impracticable;

   (b) **Surplus or Distress Sales.** When it is possible to procure obvious bargains in surplus or distress material, supplies or equipment;

   (c) **Items for Quick Delivery.** When the obtaining of competitive bids or quotations will cause delay resulting in an appreciable loss to the City;

(2) **Ordinary Continuing Expenses – Small Items Not Stocked, Monthly Purchase Orders.** The City is authorized to establish monthly purchase orders with local vendors for periods of not more than twelve (12) months for the purchase of items which are not stocked by the departments of the City and are available at usual market prices. Such local vendors shall be selected on the basis of best overall price policies, breadth and depth of stocks and delivery service;

(3) **Petty Cash Accounts.** The Finance Director is authorized to establish petty cash accounts for City departments for reimbursement of legally payable expenses incurred on behalf of the City, which shall be paid in accordance with rules and regulations established by the finance department.

2.320.090 Lease agreements. Lease agreements for materials, supplies and equipment are not subject to the requirements of this chapter, but shall be subject to such procedures as are established by the Mayor or his/her designee. All such agreements in excess of Thirty Thousand Dollars ($30,000) must, however, be approved by the City Council. Lease agreements shall comply with any applicable state law regarding debt capacity. Lease agreement in excess of one (1) year must be approved by the City Council unless the same may be cancelled on thirty (30) days' notice without penalty.

2.320.100 Cooperative purchasing. The City Council authorizes the use of cooperative purchasing arrangements with other public agencies similarly authorized, when the best interests of the City would be served thereby. Any cooperative purchasing agreement shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties and shall be governed by the requirements of state law in regard to competitive bidding when applicable. Approval of such cooperative purchasing arrangements shall be by the City Council prior to use by the City.
2.320.110 Federal and State contract purchases. The City may purchase supplies, material and equipment from surplused supplies, material and equipment from the United States, State of Washington or other municipality and through State contract without going out to bid.

2.320.120 Sole source procurement. A contract for the purchase of materials, supplies or equipment may be awarded without complying with the bidding requirements of this chapter when the Purchasing Coordinator determines in writing, subject to the approval of the Finance Director or such other person appointed by the Mayor to review the determination, after conducting a good faith review of available sources, that there is only one source for the required materials, supplies or equipment. The Purchasing Coordinator shall conduct negotiations, as appropriate, as to price, terms, and delivery time. A record of sole source procurements shall be maintained that lists each contractor's name, the amount and type of each contract, and a listing of the item(s) procured under each contract. Sole source determinations in excess of Thirty Thousand Dollars ($30,000) shall be made by the City Council.

2.320.125 Use of existing contract documents or solicitations. Department Directors may use existing contracts or proposed solicitations of other local, state, or federal agencies to procure materials, supplies, and equipment for the City if such method of procurement would foster economy and efficiency as permitted by law.

2.320.130 Competitive negotiations for purchase of electronic data processing and telecommunications systems.

(1) The City may acquire electronic data processing or telecommunications software or services through competitive negotiations pursuant to Chapter 257 of 1996 Laws, to be codified as a section of Chapter 39.04 RCW, rather than through competitive bidding as required in this chapter.

(2) "Competitive negotiation", for the purposes of this section, shall include, as a minimum, the following requirements:

(a) A request for proposal shall be prepared and submitted to an adequate number of qualified sources, as determined by the City Administrator, to permit reasonable competition consistent with the requirements of the procurement. Notice of the request for the proposal must be published in a newspaper of general circulation in the city at least thirteen (13) days before the last date upon which proposals will be received. The request for proposal shall identify significant evaluation factors, including price, and their relative importance.

(b) The City shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract.

(c) The award shall be made to the qualified bidder whose proposal is most advantageous to the City with price and other factors considered.
(d) The City may reject any and all proposals for good cause and request new proposals.

2.320.140 City procurement records.

(1) Contract File. All determinations and other written records pertaining to the invitation to bid, award, or performance of a contract shall be maintained in accordance with procedures approved by the Finance Director.

(2) Retention of Procurement Records. All procurement records shall be retained and disposed of by the City in accordance with state law and City ordinances, regulations and guidelines. If a contract is being funded in whole or in part by assistance from a federal agency, then all procurement records pertaining to that contract shall be maintained in accordance with any applicable requirements of federal law.

2.320.150 Inspection and testing. The Purchasing Coordinator shall assure processes and procedures are in place to inspect all deliveries of materials, supplies, or equipment to determine their conformance with the specifications set forth in the invitation to bid solicitations.

(1) Inspection by Using Department. The Purchasing Coordinator may authorize using the initiating department to complete the inspection so long as records are kept of such inspection in a manner approved by the City.

(2) Tests. The Purchasing Coordinator may require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, he/she shall have the authority to make use of laboratory facilities of any outside laboratory.

2.320.160 Procurement of recycled and recyclable products. The Mayor is hereby authorized and directed to promulgate procedures and guidelines to govern the procurement of products and materials made from recycled or recyclable materials to the maximum extent practicable by all City departments, and to encourage waste reduction. The Purchasing Coordinator shall list products and materials that have significant levels of recovered materials that can and should be readily procurable. Designated products or materials shall qualify as recycled products if they meet minimum content standards as defined by the Purchasing Coordinator.

The guidelines promulgated by the Mayor shall include the following requirements:

(1) In procuring designated products and materials, the City shall require recovered material and/or post-consumer material content to be factors in determining the lowest responsible bid in any competitive bidding procurement process initiated pursuant to City ordinance. Guidelines for purchasing materials, supplies and equipment which encourage recycled or recyclable products shall be developed.
(2) The City shall promote the use of recycled and recyclable products by publicizing its procurement program and by disseminating information about recycled and recyclable products.

(3) The Mayor shall report periodically to the City Council on progress in procuring recycled and recyclable products.

(4) It is not intended that the City or its contractors procure products that do not perform adequately for their intended end use or products that are not available at a reasonable price within a reasonable period of time.

Section Four. There is hereby added a new Chapter 2.330 entitled "Public Works" to the Oak Harbor Municipal Code which shall read as follows:

CHAPTER 2.330
PUBLIC WORKS

Sections:

2.330.010 When bids required for public works and improvements. Except as otherwise authorized by Chapters 39.04 and 39.28 RCW, or RCW 35.22.620, relating to emergency public works, or other applicable general state law, as now enacted or as hereafter amended, all public works and improvements shall be done by contract pursuant to public notice and call for competitive bids in accordance with this chapter whenever the estimated cost of such public work or improvement, including the cost of materials, supplies, equipment and labor will exceed the sum of Thirty Thousand Dollars ($30,000) if more than one craft or trade is involved with the public works project, or in excess of Twenty Thousand Dollars ($20,000) if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting; provided, the City may use a small works roster pursuant to RCW 35.22.620. It is further provided, Council may authorize public works construction projects without bid up to the bid limitation in RCW 35.22.620 as now in effect or as hereafter amended.

Whenever the estimated cost of the public work or improvement is less than the amounts provided above, a contract for the public work or improvement may be awarded by the applicable Department Director, or other person designated by the Mayor, consistent with the

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procedures set forth in this chapter and as required under state law for the purchases of materials, supplies and equipment or, within the limits and to the extent authorized by RCW 35.22.620 (2), the public work or improvement shall be performed by City employees.

The Mayor, or his/her designee, is authorized to accept the public works and improvements performed under any contract awarded hereunder after determining that such work has been satisfactorily completed in accordance with the contract terms thereof.

2.330.020 Cost of public works or improvements. The cost of any public work or improvement for the purposes of this chapter shall be the aggregate of all amounts to be paid for labor, material, supplies, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence; provided, that the cost of water services and metering equipment furnished in the course of water service installation from the utility-owned main to and including the meter box assembly shall not be included as part of the aggregate cost as provided in this chapter. The breaking down of any public work or improvement into units or accomplishing any public work or improvement by phases for the purpose of avoiding the minimum dollar amount prescribed in this chapter is contrary to public policy and is prohibited.

2.330.030 Equal opportunity requirements for contractual service providers. All contractors, subcontractors, consultants, vendors and suppliers who contract with the city in a total amount of Thirty-five Thousand Dollars ($35,000) or more within any given year shall meet nondiscrimination requirements imposed by the state of Washington. The City may enter into requirements with state and federal agencies for nondiscrimination and equal opportunity as under state or federal law.

2.330.040 Bids to comply with regulations. All bids offered by persons, associations or corporations desiring to sell or supply material, equipment, or supplies to, or to construct a public work or improvement for the City, shall comply strictly with the terms of the notice of invitation for bids and the specifications and evaluation criteria issued or published by the City in connection therewith, together with all relevant state laws, the terms of which shall be deemed included in such specifications whether or not they are expressly set out therein.


(1) Bid Security.

(a) Requirement for Bid Security. Bid security shall be required for all competitive bidding for public work or improvement contracts. Bid security shall be of a type and in a form approved by the Purchasing Coordinator, which may include a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or certified check and shall be included in the bid package. Bid security shall be required on bids for materials, supplies and equipment only if determined necessary by the Purchasing Coordinator.

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(b) **Amount of Bid Security.** Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

(c) **Rejection of Bids for Noncompliance with Bid Security Requirements.** When the invitation for bids requires submittal of bid security, noncompliance will result in rejection of the bid.

(d) **Withdrawal of Bids.** If a bidder is permitted to withdraw its bid before award as provided in this chapter or state law, the bidder’s bid security shall be returned.

(2) **Contract Performance and Payment Bonds.**

(a) **When Required – Amounts.** When a public works or improvement contract is awarded as a result of a call for bids under state law or this chapter, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

(i) A performance bond satisfactory to the City, executed by a surety company authorized to do business in this state, in an amount equal to One Hundred Percent (100%) of the price specified in the contract; and

(ii) A payment bond satisfactory to the City, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the City for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to One Hundred Percent (100%) of the price specified in the contract.

(b) **Authority to Require Additional Bonds.** Nothing in this section shall be construed to limit the authority of the City to require a performance bond or other security in addition to the bonds specified herein.

(3) **Noncollusion Affidavit.** As part of any bid submitted, the bidder shall be required to warrant that the bid is a genuine bid and that he has not entered into collusion with any other bidder or any other person by submitting with his bid an executed and notarized noncollusion affidavit on a form approved by the City Attorney.

(4) **Insurance.** Contracts for public works and improvements shall contain such requirements for the provision of insurance by the contractor as are determined by the City risk manager.

2.330.070 **Bid opening.** Bids shall be submitted sealed to the City Clerk at any time within regular business hours and shall be identified as bids on the envelope. Bids shall be opened in public by the City Clerk at the time and place stated in the call for bids. The City Clerk shall
tabulate the bids and submit them to the department concerned which will make appropriate recommendations to the Mayor.

2.330.080 Award or rejection of bids. For the purchase of materials, supplies, and equipment which are required to be competitively bid under this chapter, and for contracts for public works or improvements which are required to be competitively bid under this chapter, the Mayor shall present the bids received, together with recommendations of the department or departments concerned, to the City Council at a regular meeting. The Council shall award the contract to the lowest responsible bidder or may reject any and all bids for any transaction when the public interest will be served thereby.

2.330.090 Bid irregularities. Except where otherwise provided in this chapter, bids containing irregularities will be accepted by the City and presented for consideration by the City Council. Any action concerning the bid(s) containing irregularities shall be at the discretion of the City Council. The call for bids for all bids shall state the reserved right of the City to reject any and all bids and to waive irregularities in any bid, provided that no bidder shall be permitted to gain unfair advantage over other bidders by action of the City Council pertaining to this section.

2.330.100 Rejecting bids – Recalling for bids. The City Council may reject any or all bids and make further calls for bids in the same manner as the original call. If no responsive bid is received on the first call, the City may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, materials, or equipment or perform such work and improvement by day labor.

2.330.110 Administrative procedures – Public works contracts. The Mayor, or his/her designee, may promulgate procedures for the purpose of administering public works improvement contracts. Such procedures may define the levels of authority pertaining to review and approval of contract change orders.

2.330.120 Records. Records of solicitations, contract awards and public works contracts shall be kept by the City Clerk. The City Engineer shall keep all records of contract administration.

Section Five. There is hereby added a new Chapter 2.340 entitled "Small Works Roster" to the Oak Harbor Municipal Code which shall read as follows:

Chapter 2.340
SMALL WORKS ROSTER

Sections:
2.340.010 Small works roster.
2.340.020 Definition.
2.340.030 Small works roster -- Application required.
2.340.040 Posting of small works roster or purchase awards.

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2.340.010  Small works roster. This Chapter provides a uniform process to award contracts for public works projects. The City may award contracts under this process in amounts up to One Hundred Thousand Dollars ($100,000). However, if the estimated cost of the work is from One Hundred Thousand Dollars ($100,000) to Two Hundred Thousand Dollars ($200,000), the City, that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster, must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The City has the sole option of determining whether this notice to the remaining contractors is made by:

1. publishing notice in a legal newspaper of general circulation in the area where the work is to be done;
2. mailing a notice to these contractors; or
3. sending a notice to these contractors by facsimile or other electronic means.

2.340.020  Definition.

For purposes of this subchapter, "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

1. There shall be a single, general small works roster provided, however, the City Administrator may create such additional small works rosters for different categories of anticipated work as he or she deems appropriate to provide the best possible listing of competent contractors to do public work projects for the City of Oak Harbor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law, are properly licensed or registered to perform such work in this state.

2. At least twice a year, the City Clerk shall publish, in a newspaper of general circulation within the jurisdiction, a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. There shall be a sixty (60) day time period as to when a contractor may add his or her name to the list. The contractor will stay on the list for one (1) year, unless they do not stay current with their requirements.

3. The City Administrator, or his or her designee or an authorized Department Director, shall secure telephonic or written quotations from the contractors on the general small works roster, or a specific small works roster for the appropriate category of work, to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911. (A copy of which is attached.) Such invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. Whenever possible, at least five (5) contractors shall be invited to submit bids. Once a contractor has been afforded an opportunity to submit a proposal, that contractor shall not be offered another opportunity until all other appropriate contractors on the small works roster have been invited to submit bids.
afforded an opportunity to submit a proposal on a contract. Proposals may be invited from all appropriate contractors on the small works roster.

(4) A contract awarded from a small works roster under this Chapter need not be advertised. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

2.340.030 Small works roster -- Application required.

(1) In order to be included on the roster, the contractor shall supply information as follows in response to a standard form questionnaire.

(a) The contractor’s State license or registration, where required by law;
(b) The contractor’s banking references;
(c) The contractor’s experience and technical qualifications necessary to perform proposed contracts;
(d) The contractor’s ability to comply with the required performance schedules, taking into consideration its existing business commitments;
(e) The contractor’s satisfactory record of performance, integrity, judgment, and skills;
(f) Such other information as may be secured concerning the contractor’s ability to satisfactorily perform a contract with the City of Oak Harbor; and
(g) Contractors and subcontractors shall have a City of Oak Harbor business license upon the awarding of a contract.

(2) The questionnaire required in (1) shall be sworn before a Notary Public and shall be submitted once a year, and at such other times as the Oak Harbor City Council shall require.

2.340.040 Posting of small works roster or purchase awards. The City Administrator shall direct that a list of the contracts awarded under RCW 39.04.155 and 39.04.190 be posted at least once every two months. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.
Section Six. There is hereby added a new Chapter 2.350 entitled "Contracts for Architectural and Engineering Services" to the Oak Harbor Municipal Code which shall read as follows:

Chapter 2.350
CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

Sections:
2.350.010 Purpose.
2.350.020 Definitions.
2.350.030 City's requirement for Architect, Engineer and Surveyor Services – Advance publication.
2.350.050 Procurement of architectural and engineering services – Contract negotiations.
2.350.060 Procurement of architectural and engineering services – Exception for emergency work.

2.350.010 Purpose. The City hereby establishes a policy consistent with the state requirements under Chapter 39.80 RCW, to publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

2.350.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the City, contracting to perform activities within the scope of the general definition of professional practice in Chapters 18.08, 18.43 or 18.96 RCW as now in effect or as hereafter amended.

These provisions of the RCW cover architects, professional engineers, surveyors and landscape architects.

(2) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.

(3) "Consultant" means any person providing professional services who is not an employee of the City for which the services are provided.

(4) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services.
2.350.030  City’s requirement for Architect, Engineer and Surveyor Services -- Advance publication. The City shall publish in advance the City’s requirement for professional services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the City who can provide further details. The City may comply with this section by:

(1) Publishing an announcement on each occasion when professional services provided by a consultant are required by the City; or

(2) Announcing generally to the public its projected requirements for any category or type of professional services.

2.350.040  Procurement of architectural and engineering services -- Submission of statement of qualifications and performance data -- Participation by minority and women-owned firms. In the procurement of architectural and engineering services, the City shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The City shall evaluate current statements of qualifications and performance data on file with the City, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, based upon criteria established by the City, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Minority and women-owned businesses shall be encouraged to apply.

2.350.050  Procurement of architectural and engineering services -- Contract negotiations.

(1) The City shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the City determines is fair and reasonable to the city. In making its determination, the City shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

(2) If the City is unable to negotiate a satisfactory contract with the firm selected at a price the City determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the City shall select other firms in accordance with OHMC 2.49.040 and continue in accordance with this section until an agreement is reached or the process is terminated.

2.350.060  Procurement of architectural and engineering services -- Exception for emergency work.

(1) This chapter need not be complied with by the City when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

Purchases and Public Works Bidding
Ordinance - 20
(2) Nothing in this chapter shall relieve the City from complying with applicable law limiting emergency expenditures.

Section Seven. There is hereby added a new Chapter 2.360 entitled "Purchase Service Policies" to the Oak Harbor Municipal Code which shall read as follows:

CHAPTER 2.360
PURCHASE SERVICE POLICIES

Sections:
2.360.010 Definitions.
2.360.020 Policy and application.
2.360.030 Competitive processes.
2.360.050 Administrative rules.

2.360.010 Definitions. "Purchase services" means services provided by a vendor to accomplish routine, contrary and necessary functions such as operation of equipment, shredding, janitorial services, security, yard maintenance, gardening, computer hardware and software maintenance or data entry. It does not include professional services as defined under RCW 39.80, or services such as accounting, legal, medical, planning, management or artistic services.

2.360.020 Policy and application. It is the intent of the City to use competitive processes to the extent possible to procure purchase services.

2.360.030 Competitive processes. Where reasonably possible, the City is directed to use competitive bid processes or competitive solicitation processes for purchase services as in the same manner as is used for purchase of supplies and equipment.

2.360.050 Administrative rules. The Mayor may promulgate procedures and rules to implement purchase service solicitations. Procedure promulgation shall comply with Section 2.310.030.

Section Eight. There is hereby added a new Chapter 2.390 entitled "Contract Authority" to the Oak Harbor Municipal Code which shall read as follows:

CHAPTER 2.390
CONTRACT AUTHORITY

Sections:
2.390.010 Council approval.
2.390.020 Mayor's authority to contract.
2.390.030 City Administrator's authority to contract.
2.390.040 Departmental authority to contract.
2.390.050 Contracts exceeding one (1) year or the limit of the biannual budget.
2.390.060 Records and reporting of contracts.

Purchases and Public Works Bidding
Ordinance - 21
2.390.010 Council approval. Unless otherwise authorized or directed by law, ordinance or Council resolution (example responding to an emergency), all contracts over Thirty Thousand Dollars ($30,000) require Council approval.

2.390.020 Mayor's authority to contract. The Mayor shall, subject to budgetary restrictions, and the conditions and exceptions stated in this subtitle, regulation, procedures adopted by the Mayor and State law make purchases of materials, supplies, equipment and services and contract for public works and enter into contracts or purchase orders for the same in amounts up to Thirty Thousand Dollars ($30,000) without prior Council approval so long as the same is within the fund budget; provided, that this restriction does not apply to emergencies or market conditions as defined by state law so long as the conditions and procedures therein imposed are followed for exercise of these powers.

2.390.030 City Administrator's authority to contract. The City Administrator shall, subject to the Mayor's direction and control, budgetary restrictions, and the conditions and exceptions stated in this subtitle, regulation, procedures promulgated by the Mayor and state law make purchases of materials, supplies, equipment and services and enter into contracts or purchase orders for the same in amounts up to Twenty Thousand Dollars ($20,000) without prior Council approval so long as the same is within the fund budget.

2.390.040 Departmental authority to contract. Each Department Director shall, subject to the Mayor's direction and control, budgetary restrictions, and the conditions and exceptions stated in this subtitle, regulation, procedures adopted by the Mayor and State law make purchases of materials, supplies and equipment and enter into contracts or purchase orders for the same in amounts up to Ten Thousand Dollars ($10,000) without prior Council approval.

2.390.050 Contracts exceeding one (1) year or the limit of the biannual budget. Authorizations under this chapter shall not authorize contracts to be made by the Mayor, City Administrator or Department Director which exceed one (1) year in length or exceed the end of the term of the biannual budget in which contract is made, whichever is longer, unless the same is terminable by thirty (30) days' notice or less without penalty and payments are prorated monthly or based on effort expended or goods supplied.

2.390.060 Records and reporting of contracts. The Department Director, City Administrator or Mayor making a contract made without specific prior Council approval pursuant to the authorizations in this ordinance or under other law, ordinance or resolution shall immediately document the same and advise the Finance Director. In addition, a report of the contracting shall be made to the City Council. The report can be by agenda item or separate report in a form determined appropriate to provide information to the Council. This provision does not apply to purchase of supplies, materials and equipment since these are normally reported through the accounts payable system.
Section Nine. Savings and Construction.

(1) This subtitle is supplemental to other ordinances of the City.

(2) Nothing herein shall be construed as impairing any contract or purchase entered into previously by Council authorization.

Section Ten. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Eleven. Repeal and Savings.

(1) Oak Harbor Municipal Code Chapters 2.48 and 2.49 are hereby repealed. This repealer shall not be construed as having impaired any contract entered into by the City or impaired any bid process started under those Chapters.

(2) Resolution #99-3 is hereby repealed.

Section Twelve. Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the City Council and approved by its Mayor this 28th day of September, 2006.

THE CITY OF OAK HARBOR

Patricia A. Canney
Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: October 4, 2006