

September 13, 2016

R. Contracting

GD

Sponsor: CM Dembowski

Proposed No.: 2016-0420.1

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2016-0420, VERSION**

2 **1**

3 On page 1, beginning on line 5, strike everything through page 9, line 178, and insert:

4 "BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. Responsible business owners understand and accept that they have an
7 obligation to engage in business practices that support the health and welfare of the local
8 community and environment. They recognize that living-wage jobs and a safe workplace
9 are key to the success of any company and the sustained growth of local economies.

10 B. The King County Strategic Plan seeks to safeguard and enhance the county's
11 natural resources and environment through the use of regulations that promote desirable
12 environmental practices by individuals and businesses. The plan also seeks to create a
13 strong, diverse and sustainable economy through partnerships with regional
14 organizations, other jurisdictions, and the private sector.

15 C. The King County council is committed to worker's rights, having enacted laws
16 that create a paid family leave program for county employees and that require the county
17 and certain of its contractors and subcontractors to pay their employees a living wage.

18 D. The King County Comprehensive Plan defines a successful economy as one in
19 which the public sector, nonprofit and private businesses can thrive and create jobs
20 compatible with the environment and community and land use expectations.

21 E. It is in the interest of the county to protect the health, safety and welfare of its
22 residents by ensuring that prospective bidders or proposers on county contracts and leases
23 of county real property are evaluated for responsibility factors that include responsible
24 employment, worker safety and environmental practices.

25 SECTION 2. Ordinance 12138, Section 11, as amended, and K.C.C. 2.93.120 are
26 hereby amended to read as follows

27 A. Contracts for architect and engineering services shall be solicited in
28 accordance with chapter 39.80 RCW.

29 B. Contracts for professional services, other than architectural or engineering,
30 shall be solicited using the procedures in chapter 39.80 RCW, with price as an additional
31 element of consideration.

32 C. Public works contracts shall be solicited and awarded in accordance with the
33 authority granted by state law, as in Titles 36 and 39 RCW and any additional
34 requirements prescribed by county ordinance or executive policy.

35 D. Contracts for the lease or purchase of tangible personal property and the
36 purchase of services and technical services shall be awarded in accordance with RCW
37 36.32.245, 36.32.253 and 39.04.190. If the manager determines that soliciting bids is not
38 in the best interest of the county, the contract shall be awarded under a competitive
39 proposal process.

40 E. Prequalification of tangible personal property and services may occur before
41 procurement of the items. Under those circumstances, only tangible personal property
42 and services that are determined to meet the qualifying criteria will be acceptable in the
43 subsequent procurement.

44 F. All contracts that provide for reimbursement of contractor travel and meal
45 expenses shall have a provision that limits such reimbursements to eligible costs based on
46 the rates and criteria established in K.C.C. chapter 3.24 and federal travel rate
47 regulations.

48 G. For all solicitations with a value of one hundred thousand dollars or more, the
49 executive shall develop responsibility criteria, relevant to the proposed scope of work, to
50 determine whether a bidder or proposer's historical compliance with environmental,
51 worker safety, labor, and human trafficking laws, rules and regulations establishes the
52 bidder or proposer to be a responsible contractor. For the purposes of this subsection,
53 "historical compliance" means a minimum of three years preceding the submittal date for
54 the solicitation. The executive, when developing responsibility criteria that evaluates
55 historical compliance with environmental, worker safety, labor and human trafficking
56 laws, rules and regulations, may also develop criteria to use in determining the
57 responsibility of a bidder or proposer, that evaluates a bidder or proposer's record in
58 providing employee benefits, including an employer or union provided retirement plan,
59 health benefits and either paid parental leave or paid family leave, or both.

60 H. The criteria listed in subsection G. of this section shall be in addition to any
61 other qualifications criteria stated in the solicitation documents. For solicitations to
62 award a contract for public works, the criteria are deemed supplemental criteria for

63 determining bidder responsibility under RCW 39.04.350. If the executive determines that
64 the use of any of the criteria developed in accordance with subsection G. of this section
65 might cause the county to be in violation of any state or federal procurement law, rule or
66 regulation regarding competitive bidding or competitive proposals, that criteria shall not
67 be included in a solicitation. The criteria shall neither be included in solicitations to
68 award a contract to a government agency or public entity nor be included in solicitations
69 to award any contract that the county enters as the administrator of a grant for a third
70 party.

71 I. If council approval of a contract is requested under K.C.C. 4A.100.070.D.2.b.
72 or is required under state law, the executive shall include in the legislative transmittal
73 package submitted to the council a written explanation of the prospective contractor's
74 response to the criteria in subsection G. of this section.

75 SECTION 3. Ordinance 12045, Section 15, as amended, and K.C.C. 4.56.160 are
76 each hereby amended to read as follows:

77 A. Except as provided in K.C.C. 4.56.150~~2~~₂ and E~~2~~₂ and subsections D~~2~~₂ and E~~2~~₂ of
78 this section, fair market rental value, as defined in K.C.C. 4.56.010, shall be the basis for
79 all leases of county real property. All leases ~~((will))~~ shall be awarded upon the best terms
80 and conditions available to the county.

81 B. Except as provided in subsections D~~2~~₂ and E~~2~~₂ of this section, when the county
82 authorizes a new lease, or the renewal of a lease once executed and delivered, the
83 facilities management division shall make an appraisal of the fair market rental value of
84 such property, and ~~((such))~~ the fair market rental value ~~((will))~~ shall serve as the basis for
85 the new lease or renewal. After the review, the manager of the facilities management

86 division shall determine whether the new lease, or renewal of an existing lease, is to be
87 awarded by competitive bidding or by negotiation with interested parties without bidding.
88 New leases shall be awarded by competitive bidding unless the manager of the facilities
89 management division determines it is advantageous to the county to negotiate without
90 bidding. Before awarding a lease on the basis of competitive bidding, the facilities
91 management division shall request and consider the proposed lessees' responses to the
92 criteria listed in subsection C.1.a. through d. of this section. In the event the county
93 negotiates the award of lease contracts, the facilities management division shall submit to
94 the executive the reasons for recommending award through negotiation rather than
95 competitive bidding. At the option of the executive, competitive bidding may be
96 required. The county shall give notice of its intention to execute a lease by publishing a
97 notice in a legal newspaper at least once a week for the term of two weeks. The notice so
98 published shall adequately describe the property to be leased and shall contain a notice
99 that a copy of the lease is available for public inspection at the facilities management
100 division. ~~((Such))~~ The notice requirement shall not apply to leases or renewals awarded
101 through competitive bidding or in accordance with subsections D₂ and E₂ of this section.
102 Before awarding a lease on the basis of negotiations with interested parties without
103 bidding, the facilities management division shall request and consider the proposed
104 lessees' responses to the criteria listed in subsection C.1.a. through d. of this section.
105 Every new lease, or extension, modification or renewal of a lease, once executed and
106 delivered, shall be signed or caused to be signed by the county executive, in accordance
107 with Section 320.20 of the King County Charter, following analysis and
108 recommendations of the manager of the facilities management division and the county

109 department having custodianship of the property. After awarding of the new lease,
110 modification, extension or renewal, a copy of the instrument as executed and delivered
111 shall be available for public inspection at the facilities management division.

112 C.1. When the county elects to lease its property pursuant to public bidding, the
113 county shall advertise to the extent ~~((which))~~ that the county deems necessary to effect an
114 advantageous lease. ~~((Such))~~ The advertising shall include publishing a notice in a legal
115 newspaper at least once a week for three consecutive weeks, the last notice to appear no
116 more than five days ~~((prior to))~~ before the date of the auction or bid opening. When a
117 lease of county real property is awarded through competitive bidding, the lease shall be
118 awarded to the highest responsible bidder ~~((; provided, that))~~. However, whenever there
119 is reason to believe that the highest acceptable bid is not the best rental obtainable, all
120 bids may be rejected and the county may call for new bids or enter into direct
121 negotiations to achieve the best possible rental. Each bid, with the name of the bidder,
122 shall be recorded by the facilities management division, and each record, with the name
123 and address of the successful bidder and the amount of the successful bid, shall, after the
124 awarding of the lease, be open to public inspection at the facilities management division.
125 In determining the highest responsible bidder, in addition to rental, the following
126 responsibility criteria shall be given consideration:

- 127 ~~((1.))~~ a. ~~((F))~~ the financial responsibility of the bidder, and references therefor;
128 ~~((2.))~~ b. ~~((F))~~ the previous and existing compliance by the bidder with the terms
129 of other leases of county real property and the laws relating thereto; ~~((and))~~
130 c. The bidder's historical compliance with environmental, worker safety labor,
131 and human trafficking laws, rules and regulations to establish that the bidder is

132 responsible. For the purposes of this subsection, "historical compliance" means a
133 minimum of the three years preceding the bid opening. This subsection C.1.c. shall not
134 apply to any lease with revenue from base rent over the term of the lease and any
135 potential extensions included in the lease of less than two hundred thousand dollars.
136 Also, this subsection C.1.c. shall not apply to leases with individuals, businesses with
137 fewer than ten employees, government agencies, not-for-profit organizations or utility
138 companies, including cellular providers, or to subleases of less than two hundred
139 thousand dollars; and

140 d. ((S))such other information as may be secured relevant to the decision to
141 award the lease.

142 2. The executive, when developing responsibility criteria that evaluates
143 historical compliance with environmental, worker safety, labor and human trafficking
144 laws, rules and regulations, may also develop criteria to use in determining the
145 responsibility of a bidder or interested party, that evaluates the record of a bidder or
146 interested party in providing employee benefits including an employer- or union-provided
147 retirement plan, health benefits and either paid parental leave or paid family leave, or
148 both.

149 D. If property was obtained by the county through the proceeds of grants or other
150 special purpose funding from either the federal or state government, or both, in which a
151 specific public purpose or purposes are set forth as a condition of use for ~~((such))~~ the
152 property, the purpose or purposes are to be limited to the provision of social and health
153 services or social and health services facilities as defined in chapter 43.83D RCW, and
154 upon recommendation by the county executive and approval by the county council, the

155 facilities management division may obtain and lease out the property (~~((pursuant to))~~)
156 under such terms and conditions as are consistent with (~~((said))~~) those purposes(~~(;~~
157 ~~provided))~~, on the condition that in the event (~~((such))~~) the property is leased (~~((pursuant to~~
158 ~~the provisions of))~~) in accordance with this subsection, the lessee(~~((s))~~) or lessees shall be
159 limited to private, nonprofit corporations duly organized according to the laws of the state
160 of Washington, which are exempt from taxation under 26 U.S.C. Section 501(b), as
161 amended, and (~~((which))~~) that are organized for the purpose of operating social and health
162 services facilities as defined by chapter 43.83D RCW.

163 E. If the county desires to have a building for its use erected on land owned or to
164 be acquired by the county, the facilities management division may lease the land for a
165 reasonable rental (~~(; provided, that)~~), on the condition that the county shall lease back the
166 building or a portion thereof for the same term as established for the land lease. The
167 leases shall include the following provisions:

- 168 1. No part of the cost of construction of the building shall ever be or become an
169 obligation of King County;
- 170 2. King County shall have a prior right to occupy any or all of the building upon
171 payment of rent as agreed upon by the parties, which rent shall not exceed prevailing
172 rates for comparable space;
- 173 3. During any time that all or any portion of the building is not required for
174 occupancy by King County, the lessee of the land may rent the unneeded portion to
175 suitable tenants approved by King County; and
- 176 4. Upon expiration of the leases, all buildings and improvements on the land
177 shall become the property of King County.

178 SECTION 4. Ordinance 2622, Section 20, as amended, and K.C.C. 4.56.190 are
179 each hereby amended to read as follows:

180 A. Upon the decision of the county to lease the lands applied for, a lease shall be
181 executed in duplicate to the lessee by the county executive or ~~((his))~~ the executive's
182 designee, which lease shall also be signed by the lessee. The lease shall describe the
183 property conveyed, and the terms of payment.

184 B. The request for proposal or invitation to bid documents, for all new leases of
185 real property for a term exceeding five years, must be approved by the King County
186 council, ~~((prior to))~~ before the advertisement and issuance of the request for proposal or
187 invitation to bid.

188 C. For all leases having an original term exceeding five years, amendments
189 ~~((which))~~ that would extend the term by more than five years, ~~((or))~~ increase the area
190 leased by more than twenty percent, ~~((or))~~ require construction of improvements
191 ~~((which))~~ that would cost at least fifty percent of the estimated value of the property
192 leased~~((,))~~ or substantially change the overall use of the leased property, must be
193 approved by the King County council ~~((prior to))~~ before execution by the King County
194 executive. The executive shall include in the legislative transmittal package submitted to
195 the council a written explanation of the prospective lessee's response to the elements
196 listed in K.C.C. 4.56.160.C.1.a. through d.

197 SECTION 5. The executive shall develop the criteria required by this ordinance
198 and, by no later than July 1, 2017, begin using the criteria in all solicitations under K.C.C.
199 2.93.120 or in awarding of a lease under K.C.C. 4.56.160.

200 SECTION 6. A. When developing the responsibility criteria that evaluates
201 historical compliance with environmental, worker safety, labor, and human trafficking
202 laws, rules and regulations in section 2 of this ordinance, the executive may also develop
203 criteria that evaluates best practices in ethical sourcing of labor, including transactions
204 that are made through supply chains that are free of slavery, child labor, excessive hours,
205 below-subsistence wages, discrimination, abuse, harassment or similar violations and
206 provide a healthy and safe working environment. For the purposes of this section,
207 "supply chains" means the sequence of processes involved in the production and
208 distribution of goods or services.

209 B. The executive may also consider those recommendations made by a human
210 labor trafficking and economic exploitation task force."

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212 **EFFECT:**

- 213 • The provisions in Section 5 are codified.
- 214 • Human Trafficking, Sexual or Economic is added to the list of
215 responsibility determinants.
- 216 • The Executive is given the option to develop determinants that evaluate
217 for ethical sourcing of labor.
- 218 • The requirement to apply weighted responsibility determinants – not less
219 than 10% -- to the evaluation of a bidder is eliminated.
- 220 • The criteria must not cause the County to be in violation of any State or
221 Federal procurement rules regarding adequate competition.
- 222 • For procurement, the criteria shall not be included in solicitations to a
223 government agency or public entity, and when the County is administering
224 a contract on behalf of a third party.
- 225 • Exempts from responsibility determination any lease that not valued at
226 least \$200,000 in Total Consideration. Total Consideration includes the
227 value of revenue from the rent or tenant improvements over the life of the
228 agreement. (Example 6,000 per month lease times 24 months, plus
229 \$75,000 in tenant improvements is \$219,000; which exceeds the \$200k
230 limit and so the responsibility ordinance would apply to that transaction.)

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- For leasing, adds an exemption for individuals, businesses with fewer than 10 employees, government agencies, non-profits, utility companies (including cellular providers), and subleases.
- Adds the same Executive authority to develop responsibility criteria that applies to low-bid leasing that is included for negotiated bids or procurement.