## REVISED STAFF REPORT

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| **Agenda Item:** |  | **Name:** | Andrew Kim |
| **Proposed No**.: | 2021-0108 | **Date:** |  |

**COMMITTEE ACTION**

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| ***Proposed Substitute Ordinance 2021-0108.2 passed out of the Government Accountability and Oversight Committee on June 8, 2021 with a “Do Pass” recommendation. The Ordinance was amended in committee with Amendment S1 to make technical corrections to the body of the ordinance.*** |

**SUBJECT**

An ordinance amending King County Code Chapter 4.14 to defer the competitive procurement processes for the county’s banking services contract for up to two years due to the COVID-19 public health emergency.

**SUMMARY**

King County Code Chapter 4.14 requires that financial services provided to the county by commercial banking institutions shall undergo a competitive procurement process. The chapter, which also outlines the bidding procedures to contract with a commercial banking institution, requires that the competitive procurement process occur at least every 7 years. The current county banking services agreement with U.S. Bank N.A. began on January 1, 2015 and is set to expire on December 31, 2021. The banking services agreement serves all King County agencies and 120 special purpose districts in the county for whom the Finance and Business Operations Division (FBOD) provides treasury services.

The proposed ordinance would amend K.C.C. Sections 4.14.020 and 4.14.070 to allow the FBOD director to extend the banking services agreement for up to two years due to a state of emergency. In effect, the proposed ordinance would also defer the competitive procurement process for a new banking services agreement which is scheduled to take place this year as the current contract is set to expire. FBOD staff state that the procurement process, which can take up to one year to complete, would be difficult to complete this year due to COVID-19 response and recovery activities.

In accordance with K.C.C. Section 4.14.048, on April 28, 2021, the FBOD director certified with the council that U.S. Bank made good-faith efforts to comply with all goals and commitments contained within the community reinvestment plan, maintained its outstanding Community Reinvestment Act rating, and complied with all provisions of the banking services agreement.

Council staff has prepared striking amendment S1 to make technical corrections.

**BACKGROUND**

**KCC Chapter 4.14 (Bidding Procedures for Financial Services Contracts).** On December 18, 1995, the council adopted Ordinance 12076 which established financial requirements consistent with a reorganization of the executive branch at that time. This included establishing requirements for the FBOD director to conduct a competitive procurement process for financial services provided to the county by commercial banking institutions. This was codified under K.C.C. Chapter 4.14.

On February 24, 2014, the council adopted Ordinance 17756[[1]](#footnote-1) which modified K.C.C. Chapter 4.14 to add requirements to establish higher standards for socially responsible practices for commercial banking institutions that provide banking services to the county. Ordinance 17756 was also a result of a trend of local governments adopting socially responsible banking ordinances in an attempt to expand on the concepts of the Community Reinvestment Act (CRA).

*Community Reinvestment Act (CRA).* The CRA, enacted by Congress in 1977, was intended to encourage financial institutions such as banks and credit unions to better meet the financial needs of the communities in which they operate. The CRA is part of a series of legislation, including the Fair Housing Act and the Equal Opportunity Credit Act, which was created in response to concerns about “redlining” and other lending practices which discriminated against individuals and communities on the basis of race, sex, income level or other personal characteristics. The CRA was legislation that reflected the idea that financial institutions owe certain obligations to the communities in which they operate, not just a responsibility to investors and clients.

Under the CRA, the lending practices of depository institutions such as banks and credit unions are subject to periodic review by a variety of federal regulatory agencies to assess performance in helping to meet the credit needs of its community.

The CRA rating is determined by the applicable federal regulator which rates the bank’s involvement in the community. In the case of banks operating in multiple states, the supervisory agencies are required to separately evaluate an institution's CRA performance in each state and metropolitan statistical area (MSA) in which it has a branch in addition to providing an overall rating for the bank's performance. The CRA rating process typically occurs every three to five years for most banks. The three main test areas for the rating are: (1) lending practices, (2) investments, and (3) other services including consumer education programs and the maintenance of bank branches, and other financial services needed by the community.

The CRA evaluation process takes into account information about the institution (such as a bank’s assets and lending capacity), its community (including demographic and economic data), and the performance of peer institutions in the same area. A bank can receive an overall performance rating of “outstanding”, “satisfactory”, “needs to improve”, or “substantial noncompliance”.

As a result of Ordinance 17756, K.C.C. 4.14.040 requires the following:

1. Require that the bank has a current Community Reinvestment Act (CRA) rating of "outstanding" from the U.S. Office of the Comptroller of the Currency, the U.S. Federal Reserve Bank or another applicable federal regulatory agency. The outstanding rating shall apply to a rating assessment area that includes the geographical boundaries of King County.
2. Each bank submitting a proposal is required to submit a community reinvestment plan describing past performance and proposed initiatives within King County related to lending, investing, and providing community banking services to traditionally underserved and disadvantaged communities. The community investment plan shall be part of the evaluation process for awarding a contract.
3. A community reinvestment plan should summarize, as well as supplement, information that each bank is required to submit to a designated federal agency as part of its most-recent CRA rating process for an assessment area that includes King County. All data and reporting within the plan shall focus on actions the bank is taking, or planning to take, to improve access to bank services and to increase opportunities for building assets and providing credit in low-income and racially diverse areas throughout King County.
4. A community reinvestment plan should highlight performance over the previous three years and include goals for the duration of the contract period that fall into three categories: lending, investing and services. The plan shall also describe the approach used by the bank to determine the geographic and socioeconomic distribution of its lending, investing, and services. Following are other specific components of the community reinvestment plan required by the county:
   1. Lending. The plan shall provide information about:
      1. mortgage-lending efforts and products, including innovative loan products with more flexible terms, and how these efforts and products are meeting the credit needs of low and moderate income individuals and geographies,
      2. community development lending, by the bank, that helps develop affordable housing and helps nonprofit organizations and private facilities expand job creation and support services for working families, with the goal of increasing economic stability,
      3. small business lending, by the bank, to establish businesses and create jobs, particularly those in low-income and minority census tracts that foster and support minority and women owned businesses, and
      4. lending, by the bank, to finance improvements to public infrastructure within the county,
   2. Investing. The plan shall provide information about:
      1. tax credit investments, grants, corporate giving activities and nonprofit sponsorships, by the bank, that provide and promote affordable housing, encourage self-sufficiency, and foster economic development, and
      2. grants and corporate giving activities, by the bank, that provide or promote improvements to public infrastructure within the county, and
   3. Services. The plan shall provide information about:
      1. programs and community partnerships of the bank that provide small-business development, workforce development, capacity building and asset development,
      2. community services involving bank employees, including participation in consumer training or seminars, home-buyer seminars, tax-preparation services, and financial education for students and serving on nonprofit boards and committees,
      3. branch networks, including a record of opening and closing of branch offices and information about whether these changes have had a positive or negative effect, particularly in low- and moderate-income geographies, and
      4. services and efforts of the bank that address the credit needs of low- and moderate-income individuals and geographies, including, but not limited to, affordable check cashing, alternatives to payday loans and prepaid debit cards and other outreach and education opportunities aimed at assisting distressed home mortgages.
5. The bank awarded the contract shall provide a plan for reaching individuals with limited English proficiency and provide lending, investing and community banking services to individuals with limited English proficiency.

**Contract with U.S. Bank.** K.C.C. Section 4.14.020 requires that the competitive procurement process occur at least every 7 years. The current county banking services agreement with U.S. Bank N.A. began on January 1, 2015 and is set to expire on December 31, 2021. The banking services agreement serves all King County agencies and 120 special purpose districts in the county for whom FBOD provides treasury services.

K.C.C. Section 4.14.040 also requires that the FBOD director develop specifications stating the financial service needs and the responsible banking requirements of the county. This would need to be reviewed and approved by the council by motion before formally seeking proposals from banks. Given that the contract with U.S. Bank is set to expire on December 31, 2021, the FBOD director would need to develop these specifications this year for council approval as part of the procurement process.

It should be noted that council approval is not required for the county to enter into agreement with the commercial banking institution for county banking services.

**County’s State of Emergency.** On February 29, 2020, the Governor of Washington state declared a state of emergency in all counties in Washington as a result of the COVID-19 pandemic. Subsequently, on March 1, 2020, the executive signed a proclamation of emergency enabling "extraordinary measures" to respond to the COVID-19 pandemic.[[2]](#footnote-2) On March 3, 2020, the council passed Motion 15610 affirming the executive's proclamation of emergency. The county is currently still under the state of emergency until the executive or council terminates the proclamation of emergency.

**ANALYSIS**

**Proposed Ordinance Summary.** The proposed ordinance would amend K.C.C. Sections 4.14.020 and 4.14.070 to allow the FBOD director to extend the banking services agreement for no longer than two years due to a state of emergency. In effect, the proposed ordinance would also defer the competitive procurement process for a new banking services agreement which is scheduled to take place this year as the current contract is set to expire on December 31, 2021.

The Findings section of the proposed ordinance states that the procurement process as prescribed by county code is lengthy, extensive, requires feedback from county agencies and special district finance managers and can take up to a year to complete under normal circumstances. The Findings also state that based on the COVID-19 pandemic impacts to county operations, it would be challenging to complete a competitive procurement process for the county's banking services agreement in 2021 while still implementing critical COVID-19 response and recovery activities and also carrying out other mandated treasury operations.

The Findings further state that the competitive procurement process would not only stress FBOD staff but also staff in county agencies and special districts given the extensive lead time required to conduct a survey of the financial services needs of the county, reprogram complex system integrations and to make banking account changes.

Lastly, the Findings conclude that an extension of the existing banking services agreement for up to two additional years would allow staff to adequately complete the contracting process including the development of requirements, the solicitation of proposals from qualified banks, the evaluation of proposals and the execution of a new agreement.

Of note, K.C.C. 4.14.070 prevents the FBOD director from waiving the requirements of K.C.C. chapter 4.14, including the 7-year limit on the length of the banking services contract as stated in K.C.C. 4.14.020. However, it does allow the FBOD director the option to extend existing banking contracts by up to one calendar year should no banks meet the county's requirements through the request for proposals process. However, this exception would still require staff to conduct a competitive procurement process.

**Annual Certification of County’s Commercial Bank.** In accordance with K.C.C. Section 4.14.048, on April 28, 2021, the FBOD director certified with the council that U.S. Bank:

1. Made good-faith efforts to comply with all goals and commitments contained within the community reinvestment plan,
2. Maintained its “outstanding” Community Reinvestment Act rating from the U.S. Office of the Comptroller of the Currency, the U.S. Federal Reserve Bank, or other applicable federal regulatory agency, and
3. Complied with all provisions of the banking services agreement.

The certification also states that on December 3, 2020, U.S. Bank presented its annual report to the Executive Finance Committee, which addressed all of the annual certification requirements. U.S. Bank also certified that the information included in the annual report to the county was accurate and complete. The information in the annual report included that the bank has made good-faith efforts in pursuing the annual goals regarding lending, investing, and providing community banking services to traditionally underserved and disadvantaged communities.

**AMENDMENT**

Council staff has prepared striking amendment S1 to make technical corrections.

1. Enacted March 6, 2014. [↑](#footnote-ref-1)
2. Document Number: PHL-10-4-EO. [↑](#footnote-ref-2)