



Legislation Text

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Clerk 09/14/2016

AN ORDINANCE relating to responsibility determination in the award of county contracts and leases; and amending Ordinance 12138, Section 11, as amended, and K.C.C. 2.93.120, Ordinance 12045, Section 15, as amended, and K.C.C. 4.56.160 and Ordinance 2622, Section 20, as amended, and K.C.C. 4.56.190.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

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

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

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

D. The King County Comprehensive Plan defines a successful economy as one in which the public

sector, nonprofit and private businesses can thrive and create jobs compatible with the environment and community and land use expectations.

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

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

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

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

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

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

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

F. All contracts that provide for reimbursement of contractor travel and meal expenses shall have a provision that limits such reimbursements to eligible costs based on the rates and criteria established in K.C.C.

chapter 3.24 and federal travel rate regulations.

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

H. The criteria listed in subsection G. of this section shall be in addition to any other qualifications criteria stated in the solicitation documents. For solicitations to award a contract for public works, the criteria are deemed supplemental criteria for determining bidder responsibility under RCW 39.04.350. If the executive determines that the use of any of the criteria developed in accordance with subsection G. of this section might cause the county to be in violation of any state or federal procurement law, rule or regulation regarding competitive bidding or competitive proposals, that criteria shall not be included in a solicitation. The criteria shall neither be included in solicitations to award a contract to a government agency or public entity nor be included in solicitations to award any contract that the county enters as the administrator of a grant for a third party.

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

SECTION 3. Ordinance 12045, Section 15, as amended, and K.C.C. 4.56.160 are each hereby amended

to read as follows:

A. Except as provided in K.C.C. 4.56.150.D₂ and E₂ and subsections D₂ and E₂ of this section, fair market rental value, as defined in K.C.C. 4.56.010, shall be the basis for all leases of county real property. All leases ~~((will))~~ shall be awarded upon the best terms and conditions available to the county.

B. Except as provided in subsections D₂ and E₂ of this section, when the county authorizes a new lease, or the renewal of a lease once executed and delivered, the facilities management division shall make an appraisal of the fair market rental value of such property, and ~~((such))~~ the fair market rental value ~~((will))~~ shall serve as the basis for the new lease or renewal. After the review, the manager of the facilities management division shall determine whether the new lease, or renewal of an existing lease, is to be awarded by competitive bidding or by negotiation with interested parties without bidding. New leases shall be awarded by competitive bidding unless the manager of the facilities management division determines it is advantageous to the county to negotiate without bidding. Before awarding a lease on the basis of competitive bidding, the facilities management division shall request and consider the proposed lessees' responses to the criteria listed in subsection C.1.a. through d. of this section. In the event the county negotiates the award of lease contracts, the facilities management division shall submit to the executive the reasons for recommending award through negotiation rather than competitive bidding. At the option of the executive, competitive bidding may be required. The county shall give notice of its intention to execute a lease by publishing a notice in a legal newspaper at least once a week for the term of two weeks. The notice so published shall adequately describe the property to be leased and shall contain a notice that a copy of the lease is available for public inspection at the facilities management division. ~~((Such))~~ The notice requirement shall not apply to leases or renewals awarded through competitive bidding or in accordance with subsections D₂ and E₂ of this section. Before awarding a lease on the basis of negotiations with interested parties without bidding, the facilities management division shall request and consider the proposed lessees' responses to the criteria listed in subsection C.1.a. through d. of this section. Every new lease, or extension, modification or renewal of a lease, once executed and

delivered, shall be signed or caused to be signed by the county executive, in accordance with Section 320.20 of the King County Charter, following analysis and recommendations of the manager of the facilities management division and the county department having custodianship of the property. After awarding of the new lease, modification, extension or renewal, a copy of the instrument as executed and delivered shall be available for public inspection at the facilities management division.

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

~~((1-))~~ a. ~~((F))~~ the financial responsibility of the bidder, and references therefor;

~~((2-))~~ b. ~~((F))~~ the previous and existing compliance by the bidder with the terms of other leases of county real property and the laws relating thereto; ~~((and~~

~~3-))~~ c. The bidder's historical compliance with environmental, worker safety labor, and human trafficking laws, rules and regulations to establish that the bidder is responsible. For the purposes of this subsection, "historical compliance" means a minimum of the three years preceding the bid opening. This subsection C.1.c. shall not apply to any lease with revenue from base rent over the term of the lease and any

potential extensions included in the lease of less than two hundred thousand dollars. Also, this subsection C.1.c. shall not apply to leases with individuals, businesses with fewer than ten employees, government agencies, not-for-profit organizations or utility companies, including cellular providers, or to subleases of less than two hundred thousand dollars; and

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

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

D. If property was obtained by the county through the proceeds of grants or other special purpose funding from either the federal or state government, or both, in which a specific public purpose or purposes are set forth as a condition of use for ~~((such))~~ the property, the purpose or purposes are to be limited to the provision of social and health services or social and health services facilities as defined in chapter 43.83D RCW, and upon recommendation by the county executive and approval by the county council, the facilities management division may obtain and lease out the property ~~((pursuant to))~~ under such terms and conditions as are consistent with ~~((said))~~ those purposes~~((; provided))~~, on the condition that in the event ~~((such))~~ the property is leased ~~((pursuant to the provisions of))~~ in accordance with this subsection, the lessee~~((s))~~ or lessees shall be limited to private, nonprofit corporations duly organized according to the laws of the state of Washington, which are exempt from taxation under 26 U.S.C. Section 501(b), as amended, and ~~((which))~~ that are organized for the purpose of operating social and health services facilities as defined by chapter 43.83D RCW.

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

the land lease. The leases shall include the following provisions:

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

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

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

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

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

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

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

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