

## ORDINANCE NO. 19-35

AN ORDINANCE RELATING TO FINANCE AND PURCHASING REQUIREMENTS; AMENDING SECTIONS 10-1-101, 10-1-102 AND 10-1-113, ARTICLE 10-1 (CITY CONTRACTS AND SALES) OF CHAPTER 10 OF THE LAWTON CITY CODE, 2015; BY INCREASING THE PURCHASING AND CONTRACTING AUTHORITY OF THE CITY MANAGER FOR THE PROCUREMENT OF BUDGETED SUPPLIES, MATERIALS, EQUIPMENT AND SERVICES, PERSONNEL OR ANY PERSONAL PROPERTY, FROM FIFTY THOUSAND DOLLARS (\$50,000) TO SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) WHEN THE PURCHASES AND PROCUREMENT PROCESS DO NOT REQUIRE COMPLIANCE WITH THE OKLAHOMA PUBLIC COMPETITIVE BIDDING ACT OF 1974; FURTHER EXPRESSING THE PURCHASE AUTHORITY DELEGATED TO THE CITY MANAGER; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION OF THE ORDINANCE AS REQUIRED BY SECTION C-2-15 OF THE LAWTON CITY CHARTER.

### **ORDINANCE**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAWTON, OKLAHOMA:

**SECTION 1.** That Section 10-1-101 of Article 10-1, Chapter 10 of the Lawton City Code, 2015, is hereby amended to read as follows:

10-1-101 - General bidding requirements.

- A. For the procurement of or contracting for budgeted supplies, materials, equipment, personnel or services, or any personal property, valued singularly or totally during any budget year, in excess of seventy-five ~~fifty~~ thousand dollars (\$~~75~~50,000.00) all contracts shall be let and awarded to the lowest responsible bidder, by free and open competitive bidding after solicitation for sealed bids, except as hereafter provided ~~for purchase of PVC pipe~~. A procedure for formal bids and awards is hereby adopted and authorized, but the city council may accept or reject any or all bids or award any or all items.
- B. For the procurement of or contracting for budgeted supplies, materials, equipment, personnel and services, or any personal property, valued singularly or totally during any budget year up to seventy-five ~~fifty~~ thousand dollars (\$~~75~~50,000.00), the city manager will prepare and publish a policy delegating purchasing and contracting authority to himself or department directors, which shall be under strictly controlled competitive purchasing procedures where required by law. The city manager, and department directors subject to the city manager's discretion, are hereby delegated the authority to execute contracts [written obligations] pursuant to such policy prepared and published by the city manager within the dollar limitation set forth above.
- C. Procurement for integral components such as automotive parts, motor fuels, lubricants, hydraulic fluids, propane gas, asphalt and road oils will be solicited by the city on the telephone and awarded by the city up to seventy-five ~~fifty~~ thousand dollars (\$~~75~~50,000.00)

following strictly controlled competitive procedure prepared and published by the city manager. Competitive bids for the purchase of automotive parts, motor fuels, lubricants, hydraulic fluids, propane gas, asphalt and road oils will be made on the basis of a single day's delivery. Successful bid prices for motor fuel, propane gas, asphalt, and road oil will be reported to the council and to all bidders in writing once a month.

- D. A contract for public improvements of less than fifty thousand dollars (\$50,000.00) may be awarded only to the lowest responsible bidder through the competitive bidding process following a strictly controlled competitive procedure prepared and published by the city manager. Contracts for public improvements of more than fifty thousand dollars (\$50,000.00) must follow the procedures as set out in the Public Competitive Bidding Act of 1974, Oklahoma Statutes, Title 61 (1991), Section 101 et seq. or as it may be amended from time to time.
- E. Pricing for the procurement of data processing equipment and software will be solicited by the city from suppliers by obtaining pricing from internet, facsimile or e-mail quotes and awarded by the city in an amount not to exceed seventy-five ~~thirty~~ thousand dollars (~~\$7550~~,000.00) for each purchase following procedures prepared and published by the city manager. Competitive bids for the purchase of computer equipment and software will be made on the basis of a single day's delivery price. Single item purchases exceeding seventy-five ~~thirty~~ thousand dollars (~~\$7550~~,000.00) will be made in accordance with the requirements of subparagraph A hereof.
- F. Procurement of PVC pipe, water treatment plant and wastewater treatment plant chemicals will be solicited by the city by obtaining pricing from suppliers using a telephone, facsimile and e-mail quotes, and awarded by the city up to seventy-five thousand dollars (\$75,000.00) following strictly controlled competitive procedures. Competitive bids for the purchase of pipe will be made on the basis of a single day's delivery.
- G. The city may, in conjunction with all other requirements for competitive bidding in this code, the City Charter and the statutes of the State of Oklahoma, utilize electronic sealed bidding and a reverse auction procedure as provided by the Reverse Auction Bidding Procedure Act of 2004, Oklahoma Statutes, Title 11, Section 17-115 or as it may be amended from time to time.
- H. For purchases that do not require compliance with the Public Competitive Bidding Act of 1974, the city, in lieu of the requirements set forth in subsections A, B, C, E and F of this section, may purchase budgeted supplies, materials, equipment and services, or any personal property, through any purchasing cooperative in which it is a member, provided the purchasing cooperative utilizes a competitive procurement process for the selection of eligible vendors.

**SECTION 2.** That Section 10-1-102 of Article 10-1, Chapter 10 of the Lawton City Code, 2015, is hereby amended to read as follows:

10-1-102 - Definitions.

A. When used in this article, the following words and terms shall have the meanings ascribed to them in this section:

1. "All other contracts" means procurement of budgeted supplies, materials, equipment, and services, or any personal property, excluding public construction contracts, valued singularly or totally during any budget year in excess of seventy-five ~~five~~ thousand dollars (\$~~7550~~,000.00).
2. "Bidding documents" means the bid notice, plans and specifications, bidding form, bidding instructions and all other written instruments prepared by or on behalf of the city for use by prospective bidders;
3. "Integral component" means a major component of a vehicle, equipment or machinery which is critical for the operation and performance of such vehicle, equipment or machinery which would not normally require routine repair or replacement of such component due to normal ~~fair~~ wear or tear of such vehicle, equipment or machinery.
4. "Local vendor" means any person or business whose primary place of business is located and operating within the corporate limits of the city who submits responsive bids for the purchase of goods and materials in response to the city's solicitation for bids.
5. "Non-responsive ~~responsible~~ bid" means any bid that does not conform to the mandatory or essential requirements of the invitation for bid.
6. "Disqualified/ineligible vendor/contractor" means any vendor/contractor who has on any contract awarded by the city or any of its agencies. It shall also include any contractor who has been assessed liquidated damages for exceeding the time of completion specified in the contract by more than ten percent (10%) by the city council. Termination of a previously awarded contract for failure to perform or the assessment of liquidated damages by the city council as provided above shall be deemed sufficient to suspend a vendor's/contractor's ability to bid on city contracts for a period of thirty-six (36) months. A vendor may submit to the city a justification for noncompliance. Said justification shall be in the form of an affidavit which may be from the vendor's supplier stating that the failure to comply with the terms and conditions of the contract was the fault of the supplier. If said affidavit states a reason that is determined by the City Council to be sufficient justification the vendor will not be considered a disqualified/ineligible ~~non-responsive~~ vendor/contractor. Contractors on public construction contracts ~~or other contracts of that nature~~ shall not be excused for any reason if there is a failure to comply.
7. "Public agency" means:
  - a. Any political subdivision of this state;
  - b. Any agency of the state government or the United States;
  - c. Each and every public trust of this state regardless of whether the beneficiary of such trust is a municipality, a county, or the state of Oklahoma, except the Oklahoma Ordinance Works Authority;

- d. Any corporation organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act, Section 1001 et seq. of Title 18 (18-1001) of the Oklahoma Statutes; and
  - e. Any political subdivision of another state.
- 8. "Public construction contracts" means any contract which exceeds fifty thousand dollars (\$50,000.00) in amount awarded by the city for the purpose of making any public improvements or constructing any public building or making repairs to same.
  - 9. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or to adapt it to a new or further purpose. The term does not include the direct purchase of materials, equipment or supplies by a public agency, or any personal property, including personal property as defined in paragraphs 1 and 4 of subsection B of Section 430.1 of Title 62 of the Oklahoma Statutes.
  - 10. "State" means a state of the United States and the District of Columbia.
  - 11. "Timely completion of a public construction contract" means that the bidder completed the work within the calendar days specified in the contract plus additional days, if any, granted by the council in a change order.

**SECTION 3.** That Section 10-1-113 of Article 10-1, Chapter 10 of the Lawton City Code, 2015, is hereby amended to read as follows:

**10-1-113 - Exceptions, emergencies, proposals, professional services, utilities, public agencies.**

- A. The provisions of this article with reference to competitive bid requirements shall not apply whenever the city council declares by a two-thirds (2/3) vote of all of the members that an emergency exists. "Emergency" as used in this section shall be limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition and situation wherein the public health or safety is endangered. The reasons for declaring an emergency and not complying with the provisions of this article shall be entered into the official minutes of the city council meeting and open to public inspection.
- B. Exceptions to this article shall be made when the scope of the work or identification of the materials, supplies, equipment or services cannot be defined precisely or sufficiently to allow the city to specify for prospective bidders or the public in sufficient detail, exactly what is desired or what the bidders' obligations will be. In this instance requests for proposals may be used, which shall be for the purpose of obtaining various alternatives from which the city administrative officials can further define the needs of the city and can make recommendations to the city council regarding the securing of the materials, supplies, equipment or services. However, this exception shall not be construed as applying to public construction contracts.
- C. Competitive bid requirements shall not apply to contracts for architectural, engineering, legal and other professional services, providing nothing herein conflicts with any state law or attorney general's opinion.

- D. Competitive bid requirements shall not apply to utility services where rates therefor are regulated by a state or federal regulatory commission or by city ordinance.
- E. Competitive bidding requirements shall not apply and purchases may be made directly under a state or federal contract as provided in the Oklahoma Central Purchasing Act.
- F. Competitive sealed bidding requirements shall not apply for the replacement or repair of integral component or components which does not exceed ~~seventy-five~~ ~~thirty~~ ~~thousand~~ dollars (\$7550,000.00). Provided, however, that before such replacement or repair is made the ~~city financial services division~~ shall obtain bids before an award is made consistent with established purchasing policies and procedures ~~of the city manager~~.
- G. Competitive bidding requirements shall not apply to contracts with public agencies. The city may contract with one or more public agencies to perform any public service, activity, or undertaking, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the responsibilities of the contracting parties. However, this exception shall not be construed as applying to public construction contracts.

**SECTION 4. SEVERABILITY.** If any section, subsection, sentence clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall become effective thirty (30) days after its passage by the Council of the City of Lawton, Oklahoma.

**SECTION 6. PUBLICATION.** This Ordinance shall be published as required by Section C-2-15 of the Lawton City Charter.

Adopted and approved by the council of the City of Lawton, Oklahoma this 17th day of December, 2019.

CITY OF LAWTON, OKLAHOMA  
A Municipal Corporation

\_\_\_\_\_  
STANLEY BOOKER, MAYOR

ATTEST:

\_\_\_\_\_  
TRACI L. HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_ day of December, 2019.

\_\_\_\_\_  
ROBERT L. ROSS, INTERIM CITY ATTORNEY