

## **Council Policy 4-5 - SOLICITATION AND AWARD OF PUBLIC CONSTRUCTION CONTRACTS**

**Subject:** Solicitation and award of public construction contracts

**Distribution:** All Departments & City Council

**Effective Date:** January 11, 2022

**PURPOSE:** To establish a policy that provides for a local bid preference in certain qualifying instances for public construction contracts, to set forth parameters that clearly demonstrate the economic benefit to the local area or economy and give direction to staff as appropriate.

**BACKGROUND:** On November 1, 2021, state law was amended permitting municipalities to allow a local vendor preference for public construction contracts in certain circumstances. The amendment to state law by the Oklahoma Legislature created two versions of 61 O.S. §103 (the applicable provision in state law for local vendor preference in public construction contracts). One version allows for the preference in certain circumstances for public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding Fifty Thousand Dollars (\$50,000.00). The other version of the statute allows for the preference in certain circumstances for public construction contracts exceeding Fifty Thousand Dollars (\$50,000.00). Section 10-1-116 of City Code currently allows the ability for the city to give preference for local vendors who submit responsive bids within 5% of the lowest responsive bidder who is not a local vendor for non-public construction contracts, this policy is a prerequisite for such a preference regarding public construction contracts.

### **PROCEDURES:**

A. Unless otherwise provided by this policy, all public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding Fifty Thousand Dollars (\$50,000.00) shall be let and awarded to the lowest responsible bidder, by open competitive bidding after solicitation for sealed bids, in accordance with the provisions of the Public Competitive Bidding Act of 1974. No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding City of Lawton entity or political subdivision.

B. Notwithstanding subsection A of this policy, in awarding public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding Fifty Thousand Dollars (\$50,000.00), the City of Lawton as its sole beneficiary provides for a local bid preference of not more than five percent (5%) of the bid price. Provided, however, the local bidder or contractor must agree to perform the contract for the same price and terms as the bid proposed by the nonlocal bidder or contractor. Provided, further, no local bid preference shall be granted unless the local bidding entity is the second lowest qualified bid on the contract. All bid specifications for Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding Fifty Thousand Dollars (\$50,000.00) shall clearly state that the bid is subject to a local bidder preference law. Before any contract is awarded the Finance Department and applicable managing Department for the Public Construction Contract must demonstrate there is an economic benefit to the local area or economy. For purposes of this section, "local bid" means the bidding person is authorized to transact business in this state and their business address is located within the corporate limits of the City of Lawton. This provision does not apply to any construction contract for which federal funds are available for expenditure when its provisions may be in conflict with federal law or regulation.

C. Except as provided in subsection E of this section, other construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same for One Hundred Thousand Dollars (\$100,000.00) or less shall be let and awarded to the lowest responsible bidder by receipt of written bids or awarded on the basis of competitive quotes to the lowest responsible qualified contractor. Work may be commenced in accordance with the purchasing policies of the City of Lawton Administrative Policy 4-2 Purchasing and Payment Procedures.

D. Except as provided in subsection E of this section, other construction contracts for less than Ten Thousand Dollars (\$10,000.00) may be negotiated with a qualified contractor. Work may be commenced in accordance with the purchasing policies City of Lawton Administrative Policy 4-2 Purchasing and Payment Procedures.

E. The City of Lawton may award contracts using best value competitive proposals. As used in this subsection, "best value" means an optional contract award system which can evaluate, and rank submitted competitive performance proposals to identify the proposal with the greatest value to the state to the City of Lawton.

F. 1. No entity of the City of Lawton shall award a public construction contract exceeding One Hundred Thousand Dollars (\$100,000.00) or a construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00) to any contractor affiliated with a purchasing cooperative unless the purchasing cooperative and the contractor have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including but not limited to open competitive bidding after solicitation for sealed bids. No entity of the City of Lawton shall let or award a public construction contract exceeding Ten Thousand Dollars (\$10,000.00) up to One Hundred Thousand Dollars (\$100,000.00) to any contractor affiliated with a purchasing cooperative unless the purchasing cooperative and the contractor have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including submission of a written bid upon notice of competitive bidding.

2. A purchasing cooperative and its affiliated contractors shall not be allowed to bid on any public construction contract exceeding One Hundred Thousand Dollars (\$100,000.00) or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00) unless the purchasing cooperative and its affiliated contractors have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including but not limited to open competitive bidding after solicitation for sealed bids. A purchasing cooperative and its affiliated contractors shall not be allowed to bid on any public construction contract exceeding Five Thousand Dollars (\$5,000.00) unless the purchasing cooperative and its affiliated contractors have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including submission of a written bid upon notice of open competitive bidding.

**REFERENCES:** City of Lawton Administrative Policy 4-2: Purchasing and Payment Procedures, 61 O.S. §103.

**RECISSION:** None

**RESPONSIBLE DEPARTEMNT:**

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STANLEY BOOKER, MAYOR

January 11, 2022