

## **ORDINANCE NO. 21-\_\_**

AN ORDINANCE PERTAINING TO FINANCE AND PURCHASING REQUIREMENTS; AMENDING SECTIONS 10-1-101, 10-1-102, 10-1-103, 10-1-105, 10-1-106 AND 10-1-110, ARTICLE 10-1, CHAPTER 10, LAWTON CITY CODE, 2015; BY UPDATING CERTAIN PROVISIONS WITHIN ARTICLE 10-1 OF CHAPTER 10 TO INCLUDE MODIFYING CERTAIN MONETARY LIMITS RELATING TO CONSTRUCTION CONTRACTS; ADDING A DEFINITION FOR “CONSTRUCTION MANAGEMENT TRADE CONTRACT OR SUBCONTRACT”; AMENDING THE DEFINITION OF “PUBLIC CONSTRUCTION CONTRACTS”; AMENDING VARIOUS PROVISIONS RELATING TO PUBLIC CONSTRUCTION CONTRACTS; AMENDING THE PROVISIONS PERTAINING TO PUBLIC CONSTRUCTION CONTRACT CHANGE ORDERS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

### **ORDINANCE**

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

**Section 1.** Section 10-1-101 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 thousand dollars (\$75,000.00) 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. 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 thousand dollars (\$75,000.00), 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 thousand dollars (\$75,000.00) 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~~ 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)~~fifty thousand dollars (\$50,000.00) or less, except for construction management trade contracts or subcontracts exceeding fifty thousand dollars (\$50,000.00), 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. 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.~~
- E. Unless otherwise provided by law, all public construction contracts ~~Contracts for public improvements of more than exceeding one hundred thousand dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding 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 (~~1994~~ 2021), Section 101 et seq. or as it may be amended from time to time.
- ~~EF.~~ 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 thousand dollars (\$75,000.00) 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 thousand dollars (\$75,000.00) will be made in accordance with the requirements of subparagraph A hereof.
- ~~FG.~~ 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.
- ~~GH.~~ 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.

~~HI~~. 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~~ ~~F~~ and ~~F~~ ~~G~~ 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.

(Ord. 2004-38, Amended, 10/27/2004; Ord. 2002-05, Amended, 02/12/2002; 2000-47, Amended, 12/12/2000; 2000-20, Amended, 06/27/2000; 99-25, Amended, 05/11/1999; 98-33, Amended, 08/11/1998; 97-06, Amended, 01/14/1997)

(Ord. 2008-58, Amended, 08/26/2008; Ord. No. 14-11, § 1, 4-22-2014; Ord. No. 14-23, § 1, 8-12-2014; Ord. No. 19-35, § 1, 12-17-2019)

Charter reference(s)—Public improvements contracts over \$2,000.00 awarded after notice and bidding, Sec. 4-4 of the Charter.

State law reference(s)—State public competitive bidding act, applicable to public improvements, \$25,000.00 or more, 11 O.S. Secs. 101 et seq. Reverse Auction Bidding Procedure Act, 11 O.S. Sec. 17-115.

**Section 2.** Section 10-1-102 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 thousand dollars (\$75,000.00).
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. "Construction management trade contract or subcontract" means any public construction contract exceeding Fifty Thousand Dollars (\$50,000.00) in amount that is awarded as a trade contract in an agency construction management contract or awarded as a subcontract in an at-risk construction management contract.
- ~~34~~. "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 wear or tear of such vehicle, equipment or machinery.

45. "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.

56. "Non-responsive bid" means any bid that does not conform to the mandatory or essential requirements of the invitation for bid.

67. "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 vendor/contractor. Contractors on public construction contracts shall not be excused for any reason if there is a failure to comply.

78. "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.

89. "Public construction contracts" means any contract, exceeding one hundred thousand dollars (\$100,000.00) in amount, or any construction management trade contracts or subcontracts exceeding 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~~ or performing maintenance on the same except where the improvements, construction of any building or repairs to the same are improvements or buildings leased to a person or other legal entity exclusively for private and not for public use and no public tax revenues shall be expended on or for the contract unless the public tax revenues used for the project are authorized by a

majority of the voters of the city voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost. The amount of public tax dollars committed to the project will not exceed a fixed amount established by resolution of the governing body prior to or concurrent with approval of the project.

910. "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 purposes. 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.

~~40~~11. "State" means a state of the United States and the District of Columbia.

~~44~~12. "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.

(Ord. 2005-25, Amended, 06/25/2005; Ord. 2002-05, Amended, 02/12/2002; 99-14, Amended, 02/23/1999; 98-33, Amended, 08/11/1998; 97-43, Amended, 08/26/1997; 97-19, Amended, 04/22/1997; 97-07, Amended, 02/11/1997; Ord. 2007-03, Amended, 01/09/2007)

(Ord. No. 09-34, § 1, 10-27-2009; Ord. No. 15-17, § 1, 8-11-2015; Ord. No. 19-35, § 2, 12-17-2019)

**Section 3.** Section 10-1-103 is hereby amended to read as follows:

10-1-103 – Engineer's estimate required on all public construction contracts.

A. For public construction contracts, the following procedures apply:

1. Plans and specifications for public improvements of one hundred thousand dollars (\$100,000.00) in amount or any construction management trade contracts or subcontracts exceeding fifty thousand dollars (\$50,000.00) or more shall be approved by the city engineer and the council and then placed on file in the office of the clerk prior to advertising for bids; and
2. No contract shall be awarded, nor any bid opened, until a sealed estimate of cost thereof shall have been made by the city engineer or consulting engineer and filed with the clerk prior to the bid opening.

(Ord. 2002-05, Amended, 02/12/2002; 98-33, Amended, 08/11/1998; 96-29, Amended, 07/23/1996)

(Ord. No. 14-11, § 2, 4-22-2014)

**Section 4.** Section 10-1-105 is hereby amended to read as follows:

10-1-105 – Notice requirements for bids.

A. All proposals to award contracts shall be made equally and uniformly known by the city to all prospective bidders and the public in the following manner:

1. For public construction contracts:

- a. Notice of the proposed public construction contract shall be mailed, by first class mail, to all known prospective bidders, who have made known in writing to the city their interest in bidding within the twelve (12) months immediately preceding the date of opening bids, at least twenty (20) days prior to the time set for opening bids;
- b. Notice of the proposed public construction contract shall be given by publication in a newspaper of general circulation in Comanche County, Oklahoma. Such notice shall be published in two consecutive weekly issues of the newspaper, with the first publication to be at least twenty-one (2021) days prior to the date and time for bid opening;
- c. Notice of the proposed public construction contract shall be posted, at least twenty (20) days prior to the date and time set for opening bids, on a readily accessible bulletin board within the city hall facility;
- d. Notice of the proposed public construction contract shall be sent to one in-state trade or construction publication ~~publications~~ for their use and information whenever the estimated cost of the contract exceeds one hundred thousand dollars (\$100,000.00) or the cost of the construction management trade contract or subcontract exceeds fifty thousand dollars (\$50,000.00). This shall not be construed as requiring publication of bid notice in these trade or construction publications; and
- e. A sufficient number of complete sets of bidding documents shall be on file in the office of the city clerk at least twenty (20) days prior to the time set for opening bids.

2. For all other contracts:

- a. Notice of the proposed contract may be mailed, by first class mail, to all known prospective bidders who have made known in writing to the city's department responsible for purchasing their interest in bidding within the previous twelve (12) months immediately preceding the date of opening bids. Failure to send notice or receipt of such notice will not invalidate the bidding process or awarding of contracts.
- b. Notice of the proposed contract shall be given by publication in a newspaper of general circulation in Comanche County, Oklahoma. Such notice shall be published at least

once with the first publication to be at least ten (10) days prior to the date and time set for bid opening; and

- c. A sufficient number of complete sets of bidding documents shall be on file in the office of the city clerk at least ten (10) days prior to the time set for opening bids.
- B. Notice shall not be sent under either A.1. or 2. of this section to any vendor or contractor who has been deemed to be a disqualified/ineligible vendor/contractor as defined by the Section 10-1-102.

(Ord. 2005-25, Amended, 06/25/2005; 98-33, Amended, 08/11/1998)

(Ord. 2007-03, Amended, 01/09/2007)

**Section 5.** Section 10-1-106 is hereby amended to read as follows:

10-1-106 – Check to accompany bid – Procedure when default.

- A. Each bidder on 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) shall accompany his bid with a certified or cashier's check or bid bond equal to five percent (5%) of the bid, which shall be deposited with the city as a guarantee. In the event the apparently successful bidder fails to execute the contract and required bonds and insurance, there shall be forfeited to the city the cost of republication of notice, all actual expenses incurred by reason of bidder's default and the difference between the low bid of the defaulting bidder and the amount of the bid of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of the check or bid bond.
- B. Each bidder on all other contracts may be required file a duly certified or cashier's check in the amount of five percent (5%) of his bid, which shall accompany his application and bid. The check shall be forfeited to the city if a contract is awarded to the bidder and he fails to execute the necessary contract, bonds and other documents required.
- C. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the proposal.

(98-33, Amended, 08/11/1998)

**Section 6.** Section 10-1-110 is hereby amended to read as follows:

10-1-110 – Post-contract procedures.

- A. Upon awarding the contract the following actions shall occur:

1. A contract employing the terms set forth in the bidding documents shall be executed within ten (10) days from the date of awarding the contract; and
2. As pertains to public construction contracts:
  - a. No work shall be commenced until all contract documents are signed and a work order issued by the city manager or his designated representative;
  - b. Change orders or addenda to public construction contracts of one million dollars (\$1,000,000.00) or less shall not exceed a fifteen percent (15%) cumulative increase in total of the original contract amount. Change orders or addenda to public construction contracts over one million dollars (\$1,000,000.00) shall not exceed the greater of one hundred fifty thousand dollars (\$150,000.00) or a ten percent (10%) cumulative total in of the original contract amount. Any change orders or cumulative change orders which exceed these limits shall require readvertising for bids on that part of the contract.
  - c. Change orders shall be formally approved by the city council and the reasons therefor recorded in the permanent records; provided, however, change orders up to forty thousand dollars (\$40,000.00) or ten percent (10%) of any contract, whichever is less, may be approved by the city manager or his/her designee, with any change orders so approved being reported to the city council at the next regularly scheduled meeting.
  - d. All change orders shall contain a unit price and total for each of the following items:
    - (1) All materials with cost per item;
    - (2) Itemization of all labor with number of hours per operation and cost per hour;
    - (3) Itemization of insurance cost, bond cost, social security, taxes, workmen's compensation, employee fringe benefits and overhead cost; and
    - (4) Profit for the contractor.
- B. If the construction contract was bid on a unit basis, and the change order is based exactly on the unit price or basis, such a change order will not be subject to this section. Alternates or add items bid with the original bid and contained in the awarded contract as options of the city council shall not be construed as change orders under the provisions of this article;
- C. Any taxpayer of the state or any bona fide unsuccessful bidder on a particular public construction contract, within ten (10) days after such contract has been executed, is empowered to bring suit in the district court of the county where the work, or the major part



of it, is to be done to enjoin the performance of such contract if entered into in violation of this article; and

- D. The party to whom any contract is awarded must execute to the city a bond in the amount of the contract price, for the faithful performance of the contract in accordance with the plans and specifications, and a percentage of the contract price, as established by state laws governing public construction contracts, shall be retained by the city until the contract is completed and the work accepted by the council of the city.

(Ord. No. 20-09 , § 1, 4-28-2020)

**Section 7. Severability Clause.** If any section, 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 8. Effective Date.** The provisions of this ordinance shall become effective thirty (30) days after its passage.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma this 26<sup>th</sup> day of October, 2021.

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STANLEY BOOKER, MAYOR

ATTEST:

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TRACI HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_ day of October, 2021.

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JOHN RATLIFF, CITY ATTORNEY

ORDINANCE NO. 2021-\_\_\_\_

AN ORDINANCE PERTAINING TO FINANCE AND PURCHASING REQUIREMENTS; AMENDING SECTIONS 10-1-101, 10-1-102, 10-1-103, 10-1-105, 10-1-106 AND 10-1-110, ARTICLE 10-1, CHAPTER 10, LAWTON CITY CODE, 2015; BY UPDATING CERTAIN PROVISIONS WITHIN ARTICLE 10-1 OF CHAPTER 10 TO INCLUDE MODIFYING CERTAIN MONETARY LIMITS RELATING TO CONSTRUCTION CONTRACTS; ADDING A DEFINITION FOR “CONSTRUCTION MANAGEMENT TRADE CONTRACT OR SUBCONTRACT”; AMENDING THE DEFINITION OF “PUBLIC CONSTRUCTION CONTRACTS”; AMENDING VARIOUS PROVISIONS RELATING TO PUBLIC CONSTRUCTION CONTRACTS; AMENDING THE PROVISIONS PERTAINING TO PUBLIC CONSTRUCTION CONTRACT CHANGE ORDERS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

Brief Gist

This ordinance amends various Section in Article 10-1 of Chapter 10 of Lawton City Code, to include modifying monetary limits relating to construction contracts; adding a definition for “construction management trade contract of subcontract”; amending the definition of “public construction contracts”; amending various provisions relating to public construction contracts; amending the provisions pertaining to public construction contract change orders; and providing for severability. If approved, this ordinance will become effective thirty days after passage.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma, this \_\_\_\_ day of October, 2021.

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STANLEY BOOKER, MAYOR

ATTEST:

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TRACI HUSHBECK, CITY CLERK

(Published in The Lawton Constitution this \_\_\_\_ day of \_\_\_\_\_, 2021)