

CITY OF SOUTH SALT LAKE
CITY COUNCIL WORK MEETING

COUNCIL MEETING

Wednesday July 12, 2017
6:40 p.m.

CITY OFFICES

220 East Morris Avenue #200
South Salt Lake, Utah 84115

PRESIDING
CONDUCTING

Council Chair Ben Pender
Council Chair Ben Pender

COUNCIL MEMBERS PRESENT:

Sharla Beverly, Mark Kindred, Johnny McConnell, Portia Mila
Ben Pender, Kevin Rapp and Shane Siwik

STAFF PRESENT:

Mayor Cherie Wood
Hannah Vickery, Assistant City Attorney
Dennis Pay, City Engineer
Alexandra White, City Planner
Craig Burton, City Recorder
Ariel Andrus, Deputy City Recorder

Matters for Discussion

- 1. Discussion of an Ordinance amending Section 3.12.130 of the South Salt Lake Municipal Code regarding Special Procedures for Public Works Projects and Purchases, including the Construction or Repair of a Public Building.** Council Member Kindred thanked Assistant City Attorney, Hannah Vickery, for her help in writing this ordinance and he also thanked City Council Attorney, Doug Ahlstrom for his assistance on this. He said this ordinance will change the way the City awards Public Works contracts. This ordinance will give preference to contractors and subcontractors that provide healthcare, drug testing, job training, veteran recruitment program and a safety plan for their employees. This will also allow a contractor up to four percent above the lowest bid if they meet these requirements. He thinks this is a good thing for the City and something the City should want from contractors coming in and working on public works projects. He asked why the section regarding design build was taken out.

City Engineer, Dennis Pay said the City has not done any design build so that would not apply to the City.

Council Member Kindred added that this ordinance would not apply to bids under \$30,000 and would only apply to projects above \$250,000. He asked what the area was between \$30,000 and \$250,000.

Ms. Vickery said the bidding requirements are in line with State law. The preference system is triggered at \$250,000 and that number was proposed by Mr. Ahlstrom.

Mr. Ahlstrom said the version of the ordinance he drafted was based off another City and the \$250,000 was modeled after another City. This preference system is only for large projects in the City.

Ms. Vickery said she did some cleanup of the original but the policy decisions were incorporated. She said she did have a chance to meet with staff to get their input on the ordinance.

Council Member Kindred asked why there is not a limit on the number of years a contractor would be suspended or debarred from contracting with the City if the contractor did not meet these requirements.

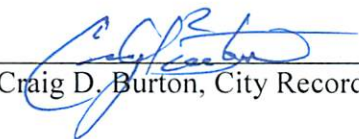
Ms. Vickery said within the chapter there is a suspension and debarment definition and process. She said this debarment would be subject to an appeal to the administrative law judge.

Council Member Kindred clarified that the contractor would pay for the audit if there is a need for one and professional services would not be included in this ordinance.

Council Member Beverly said she really liked the way this whole process worked on this ordinance and liked the way the staff and Council Member Kindred worked together on this.

The meeting adjourned at 6:50 p.m.


Ben Pender, Council Chair


Craig D. Burton, City Recorder

ORDINANCE NO. 2017-_____

**AN ORDINANCE OF THE CITY OF SOUTH SALT LAKE CITY COUNCIL
AMENDING SECTION 3.12.130 OF THE SOUTH SALT LAKE MUNICIPAL
CODE REGARDING SPECIAL PROCEDURES FOR PUBLIC WORKS
PROJECTS AND PURCHASES, INCLUDING THE CONSTRUCTION OR
REPAIR OF A PUBLIC BUILDING; REPEALING SECTION 3.12.130 OF THE
SOUTH SALT LAKE MUNICIPAL CODE AND REPLACING WITH A NEW
SOUTH SALT LAKE MUNICIPAL CODE SECTION 3.12.130**

WHEREAS, the City has formerly adopted Section 3.12.130 regarding bidding requirements and procedures for public works projects and purchases, including the construction or repair of a public building; and

WHEREAS, this council finds it to be in the best interest and welfare of the City to repeal and replace Section 3.12.130 of the South Salt Lake Municipal Code to create a new system for awarding bids and to further clarify the special procedure for purchasing and procuring public works projects and building improvements;

THEREFORE, BE IT ORDAINED by the City Council of the City of South Salt Lake that Section 3.12.130 is hereby repealed in its entirety and new South Salt Lake Municipal Code Section 3.12.130 is adopted to read as follows:

3.12.130 - Special procedures for public works projects and building improvements, including the construction or repair of a public building.

- A. Except as provided in subsections B and D of this section, all purchases of supplies, materials, or equipment shall be made according to the same regulations described in Sections 3.12.100, 3.12.110 and 3.12.120.
- B. All public works projects or building improvements shall adhere to the bidding requirements of Utah State Code Title 11, Chapter 39 and Title 72, Chapter 6, Sections 108 and 109.
- C. Prior to undertaking a public works project or building improvement, the City shall require plans and specifications to be made and prepare an estimate of the cost of the public works project and/or building improvement.
- D. Public works projects and building improvements are subject to the following bidding requirements:
 - 1. Public works projects and building improvements at or below \$30,000, based on the City's prepared estimate, are not subject to the bidding requirements of this section.
 - 2. All public works projects and building improvements falling below the state limit requiring a formal bid and above \$30,000.00, based on the City's prepared estimate, shall be required to follow the informal bidding procedures of Section 3.12.110, except as provided in subsection 4.
 - 3. All public works projects and building improvements in excess of the state bid limit, based on the City's prepared estimate, require a formal bidding procedure as set forth in Utah State Code Ann 11-39-103 and 72-6-108.

4. Public works projects and building improvements falling below the state bid limit may be awarded to a contractor pursuant to a current, state-procured agreement for job order contracting, without following the bidding procedures of this chapter. The City shall follow the procedures established in the state contract when utilizing these agreements.
- E. Notwithstanding 3.12.150, a public works project or building improvement shall be awarded as follows:
1. When the City undertakes a City-funded public works project or building improvement under \$250,000, based on the City's prepared estimate, the City shall award the contract to the lowest responsive responsible bidder;
 2. When the City undertakes a City-funded public works project or building improvement over \$250,000, based on the City's prepared estimate, the City shall seek bids inquiring as to the preferences outlined in 3.12.130(F)(1) and apply the preference system of 3.12.130(F)(2) in determining award of the contract.
- F. Preference System.**
1. When soliciting bids for public works projects or building improvements exceeding \$250,000, the contractor and every subcontractor, if any, shall certify to the Purchasing Agent and provide appropriate documentation whether they have and will maintain the following preference criteria:
 - a. an offer of qualified health insurance available to a contractor's and subcontractor's covered employees and the employee's dependents;
 - b. a drug and alcohol testing policy during the period of the contract that:
 - i. applies to all covered employees of the contractor and any subcontractor; and
 - ii. requires covered employees to submit to random testing under the drug and alcohol testing policy;
 - c. a program to actively recruit and employ veterans;
 - d. a federal or state recognized job training program or a City-approved job training program;
 - e. a safety program; and
 - f. a formal policy of nondiscrimination consistent with federal, state, and local law.
 2. The Purchasing Agent shall apply the Preference System by designating one point for each of the preference criteria set forth in Subsection (F)(1) that both the contractor and all subcontractors, if any, qualify for. In awarding a contract, the Purchasing Agent shall give preference to the responsible bidder who qualifies for the most points based on the preference criteria and whose bid is within 104% of the lowest responsive responsible bid. In the event of a tie, the bid shall be awarded to the lowest of those bidders.
 3. The failure of a contractor or subcontractor to meet the requirements of this section:
 - a. May not be the basis for a protest under this chapter or other action;
 - b. May not be used as the basis for any action or suit that would suspend, disrupt, or terminate a building improvement or public works project; and
 - c. May not be used by an employee of a contractor or subcontractor or any other third party as a basis for any private action or suit against the City

for damages for the failure of a contractor or subcontractor to meet the requirements of this section.

4. Should the City determine that any contractor or subcontractor, deemed to be the lowest responsible bidder under subsection F(2), inappropriately certified the preference criteria listed in Subsection F(1), the Purchasing Agent, at the City's sole discretion and in addition to any other remedies available at law, may:
 - a. terminate the contract for the contractor's failure to comply with the terms of the bid;
 - b. suspend or debar the contractor and/or subcontractor from contracting with the City;
 - c. immediately award the contract to the next lowest responsible bidder;
 - d. order an audit, at the sole expense of the contractor or subcontractors, to determine the extent of the inappropriate certification; or
 - e. bring legal action against the contractor or subcontractor, on behalf of the City and affected employees, for monetary damages.
5. All procedures under Subsection F(4) shall be in accordance with Section 3.12.050.

G. Nothing in this Section shall be construed to apply to:

1. a change order or a modification to an existing contract;
2. a sole source contract;
3. an emergency procurement contract; and
4. a contract subject to a grant requirement or other legal obligation that the City must honor as a condition of receiving the grant or other funds.

H. As used in this section:

1. "Bid limit" means the estimated dollar cost of a building improvement or public work project which, if exceeded, requires bids to be requested for the project, and which shall be as follows:
 - a. for a building improvement:
 - i. for the year 2003, \$40,000; and
 - ii. for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limited for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year; and
 - b. for a public works project:
 - i. for the year 2003, \$125,000.00; and
 - ii. for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.
2. "Building improvement" means the construction or repair of a City building or structure.
3. "City-funded" means the use of funds from a budget approved by the city council to pay a contractor or subcontractor for work on a building improvement or public works project regardless of whether City obtains funds

from a state or federal government grant, or any other source of funds, to pay the cost of a particular project.

4. "Consumer Price Index" means the "Consumer Price Index For All Urban Consumers" as published by the bureau of labor statistics of the United States Department of Labor.
5. "Contractor" means a person or entity who is or may be awarded a construction contract for a building improvement or a public works project.
6. "Covered Employee" means an individual who provides part time or full time services directly related to a construction contract for a contractor or subcontractor, including, but not limited to, an individual in a safety sensitive position such as a design position responsible for the safety of a building improvement or public works project.
7. "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered employee to establish, maintain, or enforce the prohibition of:
 - a. the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug, and
 - b. the impairment of judgment or physical abilities due to the use of drugs or alcohol.
8. "Health benefit plan" means an insurance policy that provides healthcare coverage, including major medical expenses, or that is offered as a substitute for hospital or medical expense insurance, such as a hospital confinement indemnity or limited benefit plan; but a health benefit plan does not include an insurance policy that provides benefits solely for accidents, dental, income replacement, long term care, a Medicare supplement, a specific disease, vision, or a short term limited duration where it is offered and marketed as supplemental health insurance.
9. "Lowest responsive responsible bidder" means a prime contractor who:
 - a. has submitted a bid in compliance with an invitation to bid and within the requirements of the plans and specifications for a building improvement or public works project;
 - b. is the lowest bidder that satisfies the requirements of this chapter relating to financial strength, past performance, integrity, reliability, and other factors used to assess the ability of a bidder to perform fully and in good faith the contract requirements;
 - c. has furnished a bid bond or equivalent in money as a condition to the award of a prime contract; and
 - d. furnishes a payment and performance bond as required by law or City policy.
10. "Public works project" means the construction, replacement, or repair of:
 - a. a park or recreational facility;
 - b. a pipeline, culvert, dam, canal, or other system for water, sewage, stormwater, or flood control;
 - c. Class "C" roads, including maintenance and resurfacing; and
 - d. any other City facility except a building improvement.

11. "Qualified health insurance coverage" means at the time a contract is entered into or renewed:
 - a. a health benefit plan, not including dental coverage, and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan under Utah Code Ann. section 26-40-106, as amended, and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the state of Utah under which:
 - i. the employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the state of Utah; and
 - ii. for purposes of calculating actuarial equivalency under this provision, rather than benchmark plan's deductible and the benchmark plan's out-of-pocket maximum based on income levels:
 - (1) the annual deductible is \$1,000 per individual and \$3,000 per family; and
 - (2) the annual out of pocket maximum is \$3,000 per individual and \$9,000 per family; or
 - b. a federally qualified high deductible health plan, not including dental coverage, that, at a minimum:
 - i. has a deductible that is either:
 - (1) the lowest deductible permitted for a federally qualified high deductible plan; or
 - (2) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for an employer offered federal qualified high deductible plan;
 - ii. has an out of pocket maximum that does not exceed three times the amount of the annual deductible; and
 - iii. the employer pays at least 60% of the premium for the employee and the dependents of the employee who work or reside in the state of Utah.
12. "Random testing" means periodic examination of a covered employee, selected on the basis of chance, for drugs and alcohol in accordance with a drug and alcohol testing policy.
13. "Subcontractor" means any person or entity who may be awarded a contract with a contractor or another subcontractor to provide services or labor for a building improvement or public works project, and includes a trade contractor or specialty contractor but does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.
14. "Veteran" means an individual who:
 - a. has served in the United States Armed Forces for at least 180 days:
 - i. On active duty; or

- ii. In a reserve component, to include the National Guard; or
- b. has incurred an actual service-related injury or disability while in the United States Armed Forces regardless of whether the individual completed 180 days; and
- c. was separated or retired under conditions characterized as honorable or general.

Ordinances in conflict herewith are hereby repealed. This ordinance will take effect upon execution by the Mayor or after fifteen days from transmission to the office of the Mayor if neither approved nor disapproved by the Mayor.

(signatures appear on separate page)

DATED this _____ day of _____, 2017.

BY THE CITY COUNCIL:

Ben Pender, Council Chair

ATTEST:

Craig D. Burton, City Recorder

City Council Vote as Recorded:

Beverly	_____
Kindred	_____
Mila	_____
Pender	_____
Rapp	_____
Siwik	_____
McConnell	_____

Transmitted to the Mayor's office on this _____ day of _____, 2017.

Craig D. Burton, City Recorder

MAYOR'S ACTION: _____

Dated this _____ day of _____, 2017.

Cherie Wood, Mayor

ATTEST:

Craig D. Burton, City Recorder