



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 20, 2016

Ordinance 18372

Proposed No. 2016-0420.2

Sponsors Dembowski and Kohl-Welles

1 AN ORDINANCE relating to responsibility
2 determination in the award of county contracts and
3 leases; and amending Ordinance 12138, Section 11,
4 as amended, and K.C.C. 2.93.120, Ordinance 12045,
5 Section 15, as amended, and K.C.C. 4.56.160 and
6 Ordinance 2622, Section 20, as amended, and K.C.C.
7 4.56.190.

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 **SECTION 1. Findings:**

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

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

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

22 D. The King County Comprehensive Plan defines a successful economy as one in
23 which the public sector, nonprofit and private businesses can thrive and create jobs
24 compatible with the environment and community and land use expectations.

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

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

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

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

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

39 D. Contracts for the lease or purchase of tangible personal property and the
40 purchase of services and technical services shall be awarded in accordance with RCW
41 36.32.245, 36.32.253 and 39.04.190. If the manager determines that soliciting bids is not

42 in the best interest of the county, the contract shall be awarded under a competitive
43 proposal process.

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

48 F. All contracts that provide for reimbursement of contractor travel and meal
49 expenses shall have a provision that limits such reimbursements to eligible costs based on
50 the rates and criteria established in K.C.C. chapter 3.24 and federal travel rate
51 regulations.

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

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

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

79 SECTION 3. Ordinance 12045, Section 15, as amended, and K.C.C. 4.56.160 are
80 each hereby amended to read as follows:

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

85 B. Except as provided in subsections D₂ and E₂ of this section, when the county
86 authorizes a new lease, or the renewal of a lease once executed and delivered, the

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

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

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

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

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

134 ~~3.))~~ c. The bidder's historical compliance with environmental, worker safety
135 labor, and human trafficking laws, rules and regulations to establish that the bidder is
136 responsible. For the purposes of this subsection, "historical compliance" means a
137 minimum of the three years preceding the bid opening. This subsection C.1.c. shall not
138 apply to any lease with revenue from base rent over the term of the lease and any
139 potential extensions included in the lease of less than two hundred thousand dollars.
140 Also, this subsection C.1.c. shall not apply to leases with individuals, businesses with
141 fewer than ten employees, government agencies, not-for-profit organizations or utility
142 companies, including cellular providers, or to subleases of less than two hundred
143 thousand dollars; and

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

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

153 D. If property was obtained by the county through the proceeds of grants or other
154 special purpose funding from either the federal or state government, or both, in which a

155 specific public purpose or purposes are set forth as a condition of use for ~~((such))~~ the
156 property, the purpose or purposes are to be limited to the provision of social and health
157 services or social and health services facilities as defined in chapter 43.83D RCW, and
158 upon recommendation by the county executive and approval by the county council, the
159 facilities management division may obtain and lease out the property ~~((pursuant to))~~
160 under such terms and conditions as are consistent with ~~((said))~~ those purposes~~((;~~
161 ~~provided))~~, on the condition that in the event ~~((such))~~ the property is leased ~~((pursuant to~~
162 ~~the provisions of))~~ in accordance with this subsection, the lessee~~((s))~~ or lessees shall be
163 limited to private, nonprofit corporations duly organized according to the laws of the state
164 of Washington, which are exempt from taxation under 26 U.S.C. Section 501(b), as
165 amended, and ~~((which))~~ that are organized for the purpose of operating social and health
166 services facilities as defined by chapter 43.83D RCW.

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

- 172 1. No part of the cost of construction of the building shall ever be or become an
173 obligation of King County;
- 174 2. King County shall have a prior right to occupy any or all of the building upon
175 payment of rent as agreed upon by the parties, which rent shall not exceed prevailing
176 rates for comparable space;

177 3. During any time that all or any portion of the building is not required for
178 occupancy by King County, the lessee of the land may rent the unneeded portion to
179 suitable tenants approved by King County; and

180 4. Upon expiration of the leases, all buildings and improvements on the land
181 shall become the property of King County.

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

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

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

192 C. For all leases having an original term exceeding five years, amendments
193 ~~((which))~~ that would extend the term by more than five years, ~~((or))~~ increase the area
194 leased by more than twenty percent, ~~((or))~~ require construction of improvements
195 ~~((which))~~ that would cost at least fifty percent of the estimated value of the property
196 leased~~((;))~~ or substantially change the overall use of the leased property, must be
197 approved by the King County council ~~((prior to))~~ before execution by the King County
198 executive. The executive shall include in the legislative transmittal package submitted to

199 the council a written explanation of the prospective lessee's response to the elements
200 listed in K.C.C. 4.56.160.C.1.a. through d.

201 SECTION 5. The executive shall develop the criteria required by this ordinance
202 and, by no later than July 1, 2017, begin using the criteria in all solicitations under K.C.C.
203 2.93.120 or in awarding of a lease under K.C.C. 4.56.160.

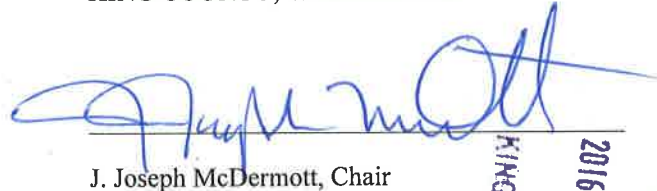
204 SECTION 6. A. When developing the responsibility criteria that evaluates
205 historical compliance with environmental, worker safety, labor, and human trafficking
206 laws, rules and regulations in section 2 of this ordinance, the executive may also develop
207 criteria that evaluates best practices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

213 B. The executive may also consider those recommendations made by a human
214 labor trafficking and economic exploitation task force.
215

Ordinance 18372 was introduced on 8/22/2016 and passed by the Metropolitan King County Council on 9/19/2016, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



J. Joseph McDermott, Chair

ATTEST:



Anne Noris, Clerk of the Council

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APPROVED this 27 day of SEPTEMBER 2016.



Dow Constantine, County Executive

Attachments: None