

ORDINANCE NO. 26-36

AN ORDINANCE PERTAINING TO BIDDING REQUIREMENTS FOR PUBLIC IMPROVEMENT PROJECTS; AMENDING SECTIONS 3.50.010 AND 3.50.030 OF THE OLATHE MUNICIPAL CODE AND REPEALING THE EXISTING SECTIONS; ALSO ADDING SECTION 3.50.200.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: Section 3.50.010 of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.010 Definitions.

For the purposes of this chapter the following terms, phrases, words, and their derivations have the meaning given herein:

“Advantageous” connotes a judgmental assessment of what is in the City’s best interest.

“Aggregate value” means the total price to be paid by or to the City for all supplies or services to be provided under a single contract, renewal, or amendment.

“Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

“Change order” means a written modification or addition to a purchase order or contract.

“City” is the City of Olathe, Kansas.

“City Manager” means the City Manager or designated representative for the City of Olathe.

“Invitation for bid (IFB)” means a publicly advertised solicitation to prospective vendors requesting a competitive firm price quotation in response to a detailed set of specifications. Not subject to discussion or negotiation after opening.

“Local business” means any business entity based in and operating within the City of Olathe.

“Local preference” means the discretion of the governing body to award contracts for supplies to a local business under the standards set forth in Section 3.50.140.

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“Procurement” means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services not connected to a public ~~works construction~~ improvement project. It also includes all functions that pertain to the obtaining of any supplies or services including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration. For the purposes of this chapter, “procurement” shall not mean the solicitation or award of a public ~~works construction~~ improvement project contract.

“Public ~~works construction~~ improvement project contract” means a contract to construct a public ~~infrastructure~~ improvement project including, but not limited to, ~~waterlines, sewer lines, streets, sidewalks, storm sewers, public buildings or facilities, and water or sewer treatment plants~~ sidewalks, curbs, gutters, sanitary sewers, sanitary sewer treatment plants, lift stations, waterlines, water treatment plants and associated facilities, bridges, culverts, pavements, streets, storm sewers, highways, traffic signals, streetlights, public grounds, public park facilities, public buildings, and public facilities.

“Request for proposal (RFP)” means a publicly advertised request to prospective vendors for a solution to the requested service or supplies with negotiated pricing and other terms and conditions. A solicitation document that is used for negotiated procurements.

“Request for qualifications (RFQ)” means a publicly advertised request to prospective vendors to submit their qualifications to provide the requested service or supplies with negotiated terms and conditions, which may include pricing. A solicitation document that is used for negotiated procurements.

“Responsible bidder” means a vendor who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

“Responsive bidder” means a vendor who has submitted a bid that conforms in all material respects to the invitation for bid, request for proposal, or request for qualifications.

“Services” means the furnishing of labor, time, or effort by a contractor.

“Supplies” or “goods” means all personal property, including but not limited to equipment, materials, commodities, and printing.”

SECTION TWO: Section 3.50.030 is of the Olathe Municipal Code is hereby amended to read as follows:

“3.50.030 Invitation for Bid.

Unless an alternative procedure is authorized by other sections of this chapter, procurement of all supplies and services, when the estimated cost is One Hundred Thousand Dollars (\$100,000.00) or greater, must be by invitation for bid from the lowest responsive and responsible bidder, or at the discretion of the governing body under the standards set forth in Section 3.50.140, after due notice inviting bids and unless specifically provided otherwise herein.

(A) *Public Notice.*

(1) *Distribution.* Invitation for bid (IFB) or notices of the availability of IFBs must be mailed or otherwise furnished to a sufficient number of bidders for the purpose of securing competition. Notices of availability must indicate where, when, and for how long IFBs may be obtained; will generally describe the supplies or services desired; and may contain other information as is appropriate.

(2) *Publication.* A competitive solicitation with an estimated cost that is One Hundred Thousand Dollars (\$100,000.00) or greater, regardless of type of competitive solicitation utilized, must be advertised in a **matter** manner that provides reasonable notice to the public of the competitive bid opportunity. Reasonable notice typically includes, but is not limited to, posting the solicitation on the City of Olathe’s online bidding tool and other means as deemed appropriate by the Procurement Manager in accordance with procurement procedures.

Any solicitations utilizing external funding, such as federal or State grants, will include notices published in a manner that complies with the funding source requirements.

(3) *Public Availability.* A copy of the IFBs will be made available for public inspection upon request. All active IFBs will be available for public access on the City’s designated procurement website.

(B) *Bid Evaluation and Award.* For bids with an aggregate value of One Hundred Thousand Dollars (\$100,000.00) or greater, the City Manager will recommend to the governing body an award determined to be most advantageous to the City, taking into consideration price and any other pertinent evaluation factors. The governing body will make the final award.”

SECTION THREE: Section 3.50.200 is hereby added to the Olathe Municipal Code to read as follows:

“3.50.200 Public Improvement Projects.

(a) *Purpose.* The City exempted itself from the provisions of K.S.A. 13-1017 relating to the procedure to bid public improvement projects pursuant to Charter Ordinance No. 17, which contains substitute and additional provisions. This section contains additional requirements related to the procedures used to bid public improvement projects pursuant to Charter Ordinance No. 17.

(b) *Cost Estimate.* Before the City undertakes the construction or reconstruction of any public improvement, including but not limited to sidewalks, curbs, gutters, sanitary sewers, sanitary sewer treatment plants, lift stations, waterlines, water treatment plants and associated facilities, bridges, culverts, pavements, streets, storm sewers, highways, traffic signals, streetlights, public grounds, public park facilities, public buildings, and public facilities, a detailed cost estimate of the cost of such improvement shall be made under oath by the City Engineer (or some other competent person appointed by the City Engineer and reviewed by the City Engineer) and the estimate shall be submitted to the Governing Body for its action thereon. If such estimate is more than six (6) months old prior to the contract letting processes described below, such estimate shall be updated before the contract is awarded by the Governing Body.

(c) *General Requirement – Lowest Responsible Bidder.* Unless specified below, where the estimated amount of the public improvement amounts to more than \$100,000, sealed proposals for the improvement shall be invited by advertisement in a manner that provides reasonable notice to the public of the competitive bid opportunity. Reasonable notice typically includes, but is not limited to, posting the solicitation on the City of Olathe’s online bidding tool and other means as deemed appropriate by the City. Any solicitations utilizing external funding, such as federal or State grants, will include notices published in a manner that complies with the funding source requirements. The Governing Body shall let all such work by contract to the lowest responsible bidder, if there is any whose bid does not exceed the estimate. If no responsible person proposes to enter into the contract at a price not exceeding the estimated cost, the Governing Body may:

(1) Reject all bids and rebid the project;

(2) Reject all bids and enter into negotiations with any bidder who has submitted a responsible bid, beginning such negotiations with the bidder who has submitted the lowest responsible bid and

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continuing with the next lowest responsible bidder and so on, and enter into a contract with such bidder upon reaching mutually agreeable conditions for both the City and the bidder; or

(3) Reject all bids and authorize said improvements to be made within the estimated cost thereof, and the Governing Body shall have the power accordingly to purchase or rent the necessary tools, machinery, apparatus, and materials, and to employ the necessary labor, in order to construct the necessary improvements.

(d) *Exceptions.* The provisions of subsection (c) shall not apply to:

(1) Any repair or maintenance work not amounting to substantial alteration, addition, or change in any public improvement;

(2) The construction, reconstruction, repair, or maintenance of any public improvement by employees of the City;

(3) Improvements financed by economic development revenue bonds issued pursuant to K.S.A. 12-1740, et seq.;

(4) Public improvements which are to be constructed on or to real estate owned, in whole or in part, by the City and which public improvements are to be constructed by a developer pursuant to a development agreement between the City and such developer;

(5) Public improvements when cost is not the primary factor in making the award for such improvements and other factors may need to be considered, including alternative construction methods, specialized vendor qualifications, or other project-specific needs. A competitive sealed proposal process may be initiated by the City for such projects by issuing a request for proposal (RFP), which shall contain project conditions, requirements, and parameters, including the pertinent criteria that shall be used in evaluating the proposals and awarding the contract. Contracts for such projects do not have to be awarded solely upon the basis of lowest lump-sum, fixed price submitted. A stipend may be considered and paid to proposers selected to submit final proposals in order to allow the City to retain practical project details from any proposal submitted. The Governing Body has the right to reject all proposals submitted;

(6) Public improvements that are constructed pursuant to an alternative delivery method (ADM) such as design-build or construction manager at risk (CMAR). An ADM project shall be initiated by the City issuing an RFP or request for qualifications (RFQ) containing project conditions, requirements, and parameters.

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Contracts for ADM projects do not have to be awarded solely upon the basis of lowest lump-sum, fixed price bid submitted, and may be awarded based upon other pertinent criteria that shall be set by the City prior to the acceptance of proposals. A stipend may be considered and paid to proposers selected to submit final proposals in order to allow the City to retain practical project details from any proposal submitted. The Governing Body has the right to reject all proposals submitted; or

(7) Public improvements adjacent to developments when the developer is making the improvement. Such improvements include, but are not limited to, traditional developer projects, transportation development districts (TDD), community improvement districts (CID), and tax increment financing districts (TIF).

(e) *Payment.* Before any type of public improvements shall be commenced (except for items 3, 4 and 7 in subsection (d) above), the money to pay for the same must be available in the City treasury as provided by law; or provision may be made for the issuance of internal improvement bonds to pay for any such improvement as provided by law.

SECTION THREE: Existing Sections 3.50.010 and 3.50.030 of the Olathe Municipal Code are hereby repealed.

SECTION FOUR: This Ordinance shall take effect and be in force from and after July 27, 2026, and its passage and publication as provided by law.

PASSED by the Governing Body this _____ day of _____, 2026.

SIGNED by the Mayor:

Mayor

ATTEST:

City Clerk

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(SEAL)

APPROVED AS TO FORM:

City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.