



SPONSOR: Rep. Keeley & Sen. Henry
Reps. Bolden, Brady, J. Johnson, Mitchell, Potter; Sen.
Marshall

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 324

AN ACT TO AMEND THE HOME RULE CHARTER OF THE CITY OF WILMINGTON RELATING TO
CONTRACTS AND PROCUREMENT REQUIREMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members
elected to each house thereof concurring therein):

1 Section 1. Amend Section 8-200 of the Charter of the City of Wilmington by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 Sec. 8-200. - Purchases and contracts generally.

4 (1) Except in the purchase of unique articles or articles which for any other reason cannot be obtained in the open
5 market, or material that is computer hardware and/or software as hereinafter provided, or used equipment or buildings as
6 hereinafter provided, competitive bids shall be secured before any purchase, by contract or otherwise, is made or before any
7 contract is awarded for construction, alterations, repairs or maintenance or for rendering any services to the city other than
8 professional services and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder.

9 (a) If the material to be purchased is computer hardware and/or software, the primary purpose of which is to
10 process information in the form of data, words, images, graphics, or voice, the purchase shall be an exception, as aforesaid,
11 and the following conditions shall apply:

12 1. Materials that contain computers or computer components but do not have a primary purpose of processing
13 information, such as a microwave oven, are specifically excluded from this exception.

14 2. Nothing in this section shall be construed to permit any department, board, commission, or other agency of
15 the city to procure computer hardware and/or software without the approval of the procurement and records division.

16 3. In lieu of competitive bidding, the procurement and records division shall establish policies and procedures
17 under which procurement of these materials may take place. Such policies and procedures shall be subject to the
18 approval of the administrative board.

19 (b) A department may purchase used equipment or buildings by negotiations rather than by competitive bidding, as
20 an exception as aforesaid, if it is demonstrated to the satisfaction of both the procurement and records division and the
21 administrative board that the negotiated price is reasonable for the intended use.

22 (2) If any purchase or contract for which competitive bidding is required involves an expenditure of ~~five-fifteen~~
23 thousand dollars ~~(\$5,000.00)~~ (\$15,000.00) or more but less than ~~twenty-five sixty~~ thousand dollars ~~(\$25,000.00)~~
24 (\$60,000.00), the procurement and records division shall obtain quotations from at least three (3) vendors or contractors for
25 the items to be purchased or contract to be performed.

26 (3) If any purchase or contract for which competitive bidding is required involves an expenditure of ~~twenty-five~~
27 sixty thousand dollars ~~(\$25,000.00)~~ (\$60,000) or more but less than one hundred thousand dollars (\$100,000.00), the
28 competitive bidding for such purchase or contract shall be conducted in accordance with such procedures as council by
29 ordinance prescribes.

30 (4) If any purchase or contract for which competitive bidding is required involves an expenditure of one hundred
31 thousand dollars (\$100,000.00) or more, the following procedure shall be applicable:

32 (a) The procurement and records division shall advertise for sealed bids at least once a week for two (2) weeks
33 in one of the two (2) newspapers having the largest paid circulation in the city and in such other newspapers as it
34 deems necessary. In addition to or in lieu of such newspaper advertising, the division may advertise for sealed bids at
35 least once a week for two weeks by electronic publication on the city's website or other publicly accessible internet
36 location. The division may require a certified check or a good and sufficient bid bond to the City of Wilmington, with
37 corporate surety authorized to do business in the State of Delaware, the form of the bond and surety to be approved by
38 the city solicitor, with a warrant of attorney to confess judgment thereon attached thereto in an appropriate amount
39 which shall be stated in the specifications to accompany all bids unless a bidder has filed an annual bid bond in excess
40 of such amount;

41 (b) Bids shall publicly be opened and tabulated in the presence of a representative of the city auditor at the
42 time specified for their meeting. The division may correct or waive patent, provable or technical errors or omissions in
43 bids which do not prejudice other bidders or may reject all bids if it shall deem it in the interest of the city to do so.
44 Otherwise the contract shall be awarded to the lowest responsible bidder;

45 (c) When all bids received pursuant to the procedure set forth above are clearly unreasonable, noncompetitive,
46 or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by
47 the head of the division that time or other circumstances make it impractical to resolicit competitive sealed bids, a
48 contract may be negotiated pursuant to this section, provided that:

49 1. Each bidder who submitted a bid under the original solicitation is notified of the determination and is
50 given reasonable opportunity to negotiate;

51 2. The negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder
52 under the original solicitation; and

53 3. The negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

54 (d) Within ten (10) days after the award of a contract, the successful bidder shall, unless specifically waived in
55 the specifications, furnish to the city a performance bond, and where appropriate, a labor and materials bond containing
56 such terms as the division and the city solicitor shall require and in such amount as the division may determine;

57 (e) The contract shall be in writing and shall be executed in behalf of the city by the mayor and clerk of the
58 council but only after it has been approved as to form by the city solicitor and as to availability of funds under the
59 budget and appropriations by the city auditor and the director of finance. It shall contain a provision that in the
60 performance of the contract the contractor will not discriminate nor permit discrimination against any person because
61 of race, color, sex, religion or national origin;

62 (f) The procurement and records division may, in its discretion, permit a bidder to file an annual bond to cover
63 bids that may be made by, or the performance of contracts that may be awarded to, such bidder during an annual
64 period. Such bond shall be in such an amount as the department may determine and may be increased from time to
65 time, as the department may require, in order to keep it commensurate with the bids made or contracts awarded during
66 the annual period.

67 (5) Contracts may be made for the leasing of real estate to the city and for personal property to be supplied or
68 services to be rendered to the city over a period of more than one year only when permitted by ordinance. Otherwise no
69 contract shall be binding upon the city unless there is an appropriation available for its payment. When the term of a
70 contract exceeds four (4) years, there shall be inserted a clause reserving to the city the right to terminate it at the option of
71 the city at any time after the expiration of four (4) years without liability to the other party for damages or loss of profits
72 which would have been realized had the contract not been terminated, except that, upon the approval of city council, the
73 city may omit insertion of the clause and waive its right to terminate under this section. The limitations of this paragraph
74 shall not apply to any contract entered into between the city and any authority.

75 (6) A department, subject to the approval of the procurement and records division, may participate in, sponsor,
76 conduct or administer a cooperative purchasing agreement for the procurement of goods or services with one or more
77 public procurement agencies either within the State of Delaware or within another state in accordance with an agreement
78 entered into between the participants.

SYNOPSIS

This amendment to Section 8-200 of the Charter of the City of Wilmington raises some of the threshold amounts in the procurement process. The purpose of the amendment is to improve City of Wilmington procurement procedures, increase public access to City of Wilmington contracting opportunities through the authorization of internet advertising, and authorize the City of Wilmington to participate in cooperative purchasing agreements with other public procurement agencies.