

ORDINANCE No. 118530

Law Department

COUNCIL BILL No. 111655

The City

INDEXED

AN ORDINANCE related to the review of Contracting Services Division recommendations for contract awards by the Hearing Examiner, and adding a new chapter section 3.18.150 to the Municipal Code.

Honorable President:

Your Committee on _____

to which was referred the within Co report that we have considered the

COMPTROLLER FILE No. _____

Introduced: MAR 1 8 1997	By: CHOE
Referred: MAR 1 8 1997	To: Finance & Budget Committee
Referred:	To:
Referred:	To:
Reported: MAR 2 4 1997	Second Reading: MAR 2 4 1997
Third Reading: MAR 2 4 1997	Signed: MAR 2 4 1997
Presented to Mayor: MAR 2 5 1997	Approved: MAR 2 5 1997
Returned to City Clerk: MAR 2 7 1997	Published: <i>Full 2pg</i>
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

Full Co

OK

~~Handwritten signature~~

Department

Passed, 4-0.

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

able President:

Committee on

was referred the within Council Bill No.

that we have considered the same and respectfully recommend that the same:

full Council vote 9-0

Committee Chair

ORDINANCE 118530

1
2 AN ORDINANCE related to the review of Contracting Services Division recommendations for contract
awards by the Hearing Examiner; creating a new SMC § 3.18.150.

3 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

4 Section 1. There hereby is added to Ch. 3.18 of the Seattle Municipal Code, a new section
5 3.18.150 to read as follows:

6 SMC 3.18.150. **Review of Contracting Services Division Recommendations for Contract**
7 **Awards by the Hearing Examiner**

8 A. The Hearing Examiner shall hear and make a recommendation to the Executive Services
9 Department Director with respect to any protest by a bidder in connection with the awarding of a public
10 works or purchase contract including, but not limited to, a determination by the Director of Contracting
11 Services regarding: the immateriality of one (1) or more bidding errors, omissions, or variations;
12 selection of a bidder as the apparently lowest and best bidder; implementation of SMC Chapters 20.44
13 (Nondiscrimination and Affirmative Action) and 20.46A (Women's and Minority Business Utilization);
14 and the rejection or disqualification of any bidder.

15 B. Bid protests shall be heard in an informal manner. Notwithstanding the provisions of
16 SMC Ch. 3.02, the Hearing Examiner shall not act in an appellate capacity with respect to the hearing of
17 any protest, but shall be limited to making an advisory recommendation to the Executive Services
18 Department Director on the bid protest. Bidders may, but are not required to, have their protests heard
19 by the Hearing Examiner prior to seeking other appropriate relief as may be provided by law.

20 C. The Hearing Examiner shall adopt appropriate rules for the hearing of bid award protests
21 given the informal nature of such hearings. Bid award protests are not "contested cases" for the purpose
22
23
24

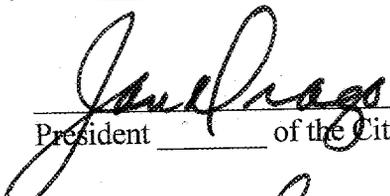
1 of the Hearing Examiner's review and recommendation and the requirements of SMC Sections 3.02.090
2 and 3.02.100 for contested cases shall not apply.

3 Section 2. The requirements of this ordinance are for the purpose of implementing a pilot project
4 and only shall be in effect until, and only apply to bid protests, on bids received on or before April 1,
5 1998.

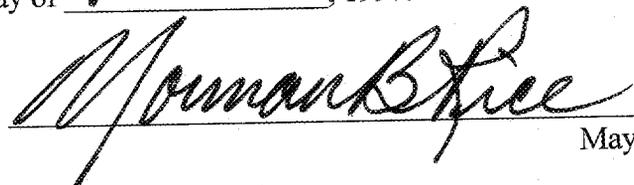
6 Section 3. The Executive Services Department will make recommendations to the Council on
7 whether or not the program should be continued prior to the expiration of the pilot project.

8 Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its
9 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
10 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

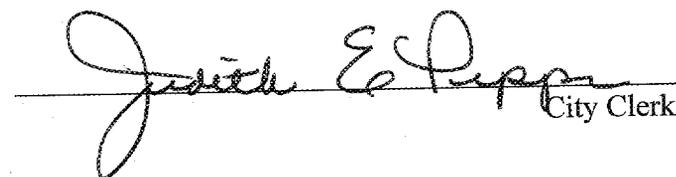
11 Passed by the City Council the 24 day of March, 1997, and signed by me in open
12 session in authentication of its passage this 24 day of March, 1997.

13 
14 _____
15 President _____ of the City Council

16 Approved by me this 26 day of March, 1997.

17 
18 _____
19 Mayor

20 Filed by me this 27 day of March, 1997.

21 
22 _____
23 City Clerk

24 (Seal)

DRAFT Hearing Examiner Rule for Hearing Bid Protests

4.06 BID PROTESTS

In addition to the General Provisions (Section 1) and Rules of General Application (Section 2) of the Hearing Examiner Rules, the Hearing Examiner's review of Bid Protests made pursuant to SMC 3.18.150 shall be conducted in accord with the rules contained in Section 4.06. If there is a conflict with other Rules, Section 4.06 shall control.

(a) Definitions Specific to Rule 4.06:

(1) "Administering Department" means the City office, department, or commission that is responsible for the management of the contract to be awarded as a result of the Procurement Specification.

(2) "Bid" means a bid submitted in response to an Invitation to Bid or a proposal submitted in response to a Request for Proposals.

(3) "Bid Protest" means a timely filed protest by a Bidder in connection with the awarding of a public works or purchase contract.

(4) "Bidder" means any person, contractor, vendor or other entity that submits a Bid in response to a public works or purchasing Procurement Specification.

(5) "Director" means the Director of the Executive Services Department.

(6) "Director of CSD" means the Director of the Contracting Services Division of the Executive Services Department.

(7) "Procurement Specification" means an Invitation to Bid (ITB) or a Request for Proposal (RFP).

(b) Scope of Authority:

(1) The Hearing Examiner shall hear properly filed Bid Protests including, but not limited to, recommendations of the Director of CSD regarding: the immateriality of one (1) or more bidding errors, omissions, or variations; the selection of a Bidder as the apparently lowest and best Bidder; implementation of SMC Chapters 20.44 (Nondiscrimination and Affirmative Action) and 20.46A (Women's and Minority Business Utilization); and the rejection or disqualification of any Bidder. After hearing the protest as provided for in this Rule 4.06, the Hearing Examiner shall make a recommendation to the Director.

(2) Notwithstanding the provisions of SMC Ch.3.02 and the Hearing Examiner Rules governing appeals and other contested cases, and as provided in SMC §3.18.150, the roles and responsibilities of the Hearing Examiner in hearing Bid Protests, shall be advisory only, rather than judicial.

(c) **Filing a Protest:** A Bid Protest may only be filed by a Bidder on Procurement Specification in which the Bidder has submitted a Bid. The protest must be in writing and include the name, address, telephone number (and fax number where available) of the Bidder and the Bidder's authorized representative, and a description of the grounds for the Bid Protest. The protest must be signed by the Bidder's authorized representative.

(1) Unless some other time for filing a protest is expressly included in the Procurement Specifications, a Bid Protest by any Bidder other than the apparent low Bidder must be filed with the Office of Hearing Examiner no later than 5:00 p.m. on the fifth business day following the day that the Bid is due. In the event the apparent low Bidder is declared nonresponsive or not responsible, a protest by the apparent low Bidder must be filed by 5:00 p.m. on the third business day following written or faxed notification of the Director of CSD's recommendation to reject the Bid.

(d) **Notice of Protest:** The Hearing Examiner shall notify the Director and the Administering Department when a properly filed Bid Protest is received.

(e) **Scheduling Hearing:** The Hearing Examiner shall set aside time to hear Bid Protests on a regular weekly basis. The Hearing Examiner shall hear the Bid Protest at the earliest regular weekly scheduled time that is reasonable given the nature of the Bid Protest and the schedule of interested parties; provided, that the Bid Protest shall not be heard less than four business days after the date that the Bid Protest was filed. The Hearing Examiner may reschedule the hearing with the mutual agreement of the parties or for good cause.

(f) **Notice of Hearing:** Within two business days after the filing of a protest, the Hearing Examiner shall provide notice of the time and place of the hearing to the authorized representative for each party: the Bidder who has filed the Bid Protest, any Bidder who is the subject of the Bid Protest, the Director, and the Administering Department. Notice may be given by telephone, followed by a written confirmation.

(g) **Conduct of Hearing:** In order to provide the Hearing Examiner with sufficient reliable information for making an advisory recommendation to the Director, Bid Protest hearings shall be relatively informal proceedings, conducted in an expeditious manner consistent with these rules. The Rules of General Applicability (Section 2) shall also apply to these proceedings except to the extent the Hearing Examiner determines they are not consistent with Rule 4.06.

(1) The evidence received by the Hearing Examiner in a Bid Protest hearing shall not be limited by the formal rules of evidence. To be considered by the Hearing

Examiner, all evidence must be that which a reasonably prudent administrator would consider probative in the conduct of public affairs.

(2) The order of hearing shall be that determined by the Hearing Examiner. All parties involved shall have an opportunity to be heard. As he/she deems necessary, the Hearing Examiner may question witnesses, call witnesses, and/or require that additional information be supplied.

(3) On request, the Hearing Examiner at his/her discretion, may allow limited cross-examination. The party requesting cross-examination shall disclose to the Hearing Examiner the subject of the inquiry, and then, with leave of the Hearing Examiner, may pose the question to the witness.

(h) Recommendation of Hearing Examiner. After the conclusion of the Bid Protest hearing, the Hearing Examiner shall make a written recommendation to the Director and provide a copy of the recommendation to all parties. The Hearing Examiner generally shall recommend, but is not limited to recommending, that the Bid Protest be upheld or denied, or in appropriate circumstances, that the Director of CSD and/or the Administering Department consider new information that was provided at the hearing.



City of Seattle

Norman B. Rice, Mayor
Executive Services Department
Dwight D. Dively, Director

MEMORANDUM

March 11, 1997

TO: The Honorable Jan Drago, President
Seattle City Council

VIA: Tom Tierney, Director
Monica Power
Office of Management and Planning

FROM: Dwight Dively, Director ~~DD~~
Executive Services Department

SUBJECT: Proposed legislation related to the review of Contracting Services Division recommendations for contract awards by the Hearing Examiner; creating a new SMC § 3.18.150.

The Council has expressed an interest in establishing a new pilot program that would allow the Hearing Examiner to hear bidders' protests in connection with the award of public works or purchase contracts. The attached ordinance outlines procedures, and provides the Hearing Examiner with the necessary authority to hear and review bidders' protests, while minimizing delays in contracting for public works, goods and services.

Contracting Services staff have worked in conjunction with the Law Department and the Hearing Examiner to create the attached draft Hearing Examiner Rules for the implementation of the program. These draft rules explain in more detail how bidders might seek a review of their protests under this new process.

If you have any questions, or would like us to provide you with a briefing on this matter, please feel free to call me at 684-5212; Rodney Eng at 684-8241; Rod Brandon at 684-0324; or Meredith Getches at 684-0521. Thank you.

cc: The Honorable Martha Choe
The Honorable Jane Noland
Rodney Eng
Rod Brandon
Meredith Getches

600 Fourth Avenue, Room 103, Seattle, WA 98104-1891, <http://www.ci.seattle.wa.us>
Tel: (206) 684-0484, TDD: (206) 233-7810, FAX: (206) 684-0188

City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director
Norman B. Rice, Mayor

97-043



COPY RECEIVED
97 FEB 28 PM 2:16
SEATTLE CITY ATTORNEY

February 28, 1997

The Honorable Mark Sidran
City Attorney
City of Seattle

*2/28/97
Ordinance title
approved
RST*

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT: Executive Services

SUBJECT: AN ORDINANCE related to the review of Contracting Services Division recommendations for contract awards by the Hearing Examiner, and adding a new chapter section 3.18.150 to the Municipal Code.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and redrafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, please return the legislation to OMP. Any specific questions regarding the legislation can be directed to Monica Power at 684-8076.

Sincerely,

Norman B. Rice
Mayor

by

THOMAS M. TIERNEY
Director

Enclosure

97-056

City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director
Norman B. Rice, Mayor

March 11, 1997

The Honorable Mark Sidran
City Attorney
City of Seattle

*3/11/97
Approved
RJR*



COPY RECEIVED
MAR 11 PM 3:39
CITY ATTORNEY

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT: Executive Services Department

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After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Monica Power at 684-8076.

Sincerely,

Norman B. Rice
Mayor

by *Norman Tierney*

TOM TIERNEY
Director

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TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Martin Chase

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

City of Seattle

ORDINANCE 118530

AN ORDINANCE related to the review of Contracting Services Division recommendations for contract awards by the Hearing Examiner; creating a new SMC § 3.18.150.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. There hereby is added to Ch. 3.18 of the Seattle Municipal Code, a new section 3.18.150 to read as follows:

SMC 3.18.150. REVIEW OF CONTRACTING SERVICES DIVISION RECOMMENDATIONS FOR CONTRACT AWARDS BY THE HEARING EXAMINER.

A. The Hearing Examiner shall hear and make a recommendation to the Executive Services Department Director with respect to any protest by a bidder in connection with the awarding of a public works or purchase contract including, but not limited to, a determination by the Director of Contracting Services regarding the immateriality of one (1) or more bidding errors, omissions, or variations; selection of a bidder as the apparently lowest and best bidder; implementation of SMC Chapters 20.44 (Nondiscrimination and Affirmative Action) and 20.46A (Women's and Minority Business Utilization); and the rejection or disqualification of any bidder.

B. Bid protests shall be heard in an informal manner. Notwithstanding the provisions of SMC Ch. 3.08, the Hearing Examiner shall not act in an appellate capacity with respect to the hearing of any protest, but shall be limited to making an advisory recommendation to the Executive Services Department Director on the bid protest. Bidders may, but are not required to, have their protests heard by the Hearing Examiner prior to seeking other appropriate relief as may be provided by law.

C. The Hearing Examiner shall adopt appropriate rules for the hearing of bid award protests given the informal nature of such hearings. Bid award protests are not "contested cases" for the purpose of the Hearing Examiner's review and recommendation and the requirements of SMC Section 3.02.090 and 3.02.100 for contested cases shall not apply.

Section 2. The requirements of this ordinance are for the purpose of implementing a pilot project and only shall be in effect until, and only apply to bid protests, on bids received on or before April 1, 1998.

Section 3. The Executive Services Department will make recommendations to the Council on whether or not the program should be continued prior to the expiration of the pilot project.

Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 24th day of March, 1997, and signed by me in open session in authentication of its passage this 24th day of March, 1997.

JAN DRAGO
President of the City Council.
Approved by me this 24th day of March, 1997.

NORMAN B. RICE
Mayor.
Filed by me this 27th day of March, 1997.

(Seal) JUDITH E. PIPPIN, City Clerk
Publication ordered by JUDITH PIPPIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, April 2, 1997. 4/2/78926

STATE OF WASHINGTON - KING COUNTY

City Clerk

—SS.

No. ORDINANCE IN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 118530

was published on
04/02/97

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

H. Patterson
Subscribed and sworn to before me on
04/02/97
McClintock

Notary Public for the State of Washington,
residing in Seattle