

ORDINANCE NO. 2021-10-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TONKAWA, OKLAHOMA, AMENDING CHAPTER 7, ARTICLE 1 OF THE TONKAWA MUNICIPAL CODE 2021, PERTAINING TO THE CODIFICATION AS MUNICIPAL ORDINANCES OF CERTAIN AMENDMENTS TO STATE LAW PERTAINING TO THE PUBLIC COMPETITIVE BIDDING ACT ("ACT") AND RELATED MATTERS; BY THE AMENDMENT OF SECTION 7-109 ENTITLED "PURPOSE AND EFFECT"; BY THE AMENDMENT OF SECTION 7-110, SUBSECTIONS E AND F, INCREASING THE CONTRACT AMOUNT REQUIREMENT THAT CERTAIN CONTRACTS SUBJECT TO THE ACT MUST BE BID; BY THE AMENDMENT OF SECTION 7-111 ENTITLED "OKLAHOMA PUBLIC COMPETITIVE BIDDING ACT", SUBSECTIONS A, B, C, D, E AND N, INCREASING FROM FIFTY THOUSAND DOLLARS (\$50,000.00) TO ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) OR ANY CONSTRUCTION MANAGEMENT TRADE CONTRACT OR SUBCONTRACT, AS DEFINED BY TITLE 61, SECTION 102.5 OF THE OKLAHOMA STATUTES AS AMENDED, IN EXCESS OF FIFTY THOUSAND DOLLARS (\$50,000.00), SUBJECT TO BE BID IN ACCORDANCE WITH THE ACT; BY THE AMENDMENT OF SECTION 7-113, SUBSECTION A, INCREASING TO ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) THE CONTRACTS SUBJECT TO THE FORMAL CONTRACT PROCEDURE; BY THE AMENDMENT OF SECTION 7-116, INCREASING THE AMOUNT OF EMERGENCY PURCHASES FROM SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) TO ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00) THAT CAN BE AUTHORIZED BY THE CITY MANAGER WITHOUT CITY COUNCIL APPROVAL; BY THE AMENDMENT OF SECTION 7-117, SUBSECTION A, INCREASING THE BID AMOUNT FOR PROFESSIONAL SERVICE CONTRACTS FROM FIFTY THOUSAND DOLLARS (\$50,000.00) TO ONE HUNDRED THOUSAND DOLLARS (\$100,000.00); PROVIDING FOR REPEALER; SAVINGS; CODIFICATION; SEVERABILITY; EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

EMERGENCY ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONKAWA, OKLAHOMA:

Section I: Chapter 7, Article 1, Division 2 of the Tonkawa Municipal Code 2021, shall have the specific sections or subsections amended as follows:

Section 7-109 PURPOSE AND EFFECT.

The primary purpose of Division 2 of this Article is to codify in the Tonkawa Municipal Code, ~~2017~~ 2021, the essential statutory requirements of the Competitive Bidding Act of 1974

(Title 61, Section 101 et seq. of the Oklahoma Statutes (1998 2021 Supplement), as amended, and the essential requirements of the Title 60, Section 1076 H, known as competitive bidding requirements of the "Public Trust Law." A secondary but equally important purpose of this Division is to establish local competitive bidding procedures, which procedures are guidelines, but not requirements, to be considered for use during those times that neither the Competitive Bidding Act of 1974 nor any other state law requires competitive bidding. In that state law does not require municipalities to competitively bid professional services or the purchase of equipment, materials, and supplies, in order to "fill the gap" and thereby reduce the potential for improprieties, these local competitive bidding procedures are adopted. Since such local competitive bidding procedures are merely guidelines, with respect to any individual purchase, the procedures may be followed or waived. The City Council may waive compliance with the local competitive bidding procedures, which waiver may often occur due to advantageous conditions in the marketplace or for such other reasons as listed in this Division. However, in each and every instance of such waiver under this Division, the City Manager or his designee shall certify in writing the reason for the waiver as provided by Section 7-114 and the City Council shall approve such waiver. In addition, since these local competitive bidding procedures are discretionary and not mandatory, no resident, competing vendor or seller, or any other person, firm or corporation, may secure a temporary restraining order, injunction (temporary or permanent), or sue for damages, costs, or attorney fees, based on the City Council's waiver of competitive bidding, or any other failure to follow the procedure contained herein, unless such person proves that a violation of federal or state law has occurred.

#### Section 7-110    DEFINITIONS

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

E. "Public construction contract" or "contract" for purposes of Section 7-111 and the Public Competitive Bidding Act of 1974, as amended (hereinafter the "Act"), shall mean any contract, exceeding One Hundred Thousand Dollars (\$100,000.00) in amount, or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00) in

amount, awarded by the City or any of its public trust authorities for the purpose of making any public improvements or constructing any public building or making repairs to or performing maintenance onto same, except where the improvements or buildings leased to a person or other legal entity exclusively for private and not for public use and no public tax revenues shall be expended on or for the contract unless the public tax revenues used for the project are authorized by a majority vote of the applicable public agency voting at an election held for that purpose and the public tax revenues do not exceed twenty-five percent (25%) of the total project cost. The amount of public tax dollars committed to the project will not exceed a fixed amount established by resolution of the governing body prior to or concurrent with approval of the project;

F. "Public improvement" means any beneficial or valuable change or addition, betterment, enhancement, or amelioration of or upon any real property, or interest therein, belonging to a public agency, intended to enhance its value, beauty or utility or adapt it to new or future purposes. The term does not include the direct purchases of materials, equipment or supplies, or any personal property, including property defined by paragraphs 1 and 4 of Section 430.1 of Title 62 of the Oklahoma Statutes, as amended. ~~provided the materials are not purchased in increments for an amount less than Fifty Thousand Dollars (\$50,000.00) and used for the purposes of completing a single project, equipment or supplies by the City or any of its public trust authorities or personal property as defined herein.~~

Section 7-111 OKLAHOMA PUBLIC COMPETITIVE BIDDING ACT.

A. Unless otherwise provided by law, all public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or any construction management trade contract or subcontract, as defined by Title 61, Section 102.5 of the Oklahoma Statutes as amended, exceeding Fifty Thousand Dollars (\$50,000.00), shall be let and awarded to the lowest responsible bidder, by free and open competitive bidding after solicitation for sealed bids, in accordance with the terms of the Public Competitive Bidding Act of 1974, 61 Okla. Stat. 101, et seq. or as hereafter amended by the State Legislature. No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the city.

B. Notwithstanding subsection A of this section, in awarding public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) or construction management trade contracts or subcontracts exceeding Fifty Thousand Dollars (\$50,000.00), the City and its public trust authorities may provide for a local bid preference of not more than five percent (5%) of the bid price if the awarding public agency determines that there is an economic benefit to the local area or economy. Provided, however, the local bidder or contractor must agree to perform the contract for the same price and terms as the bid proposed by the nonlocal bidder or contractor. Any bid preference granted hereunder must be in accordance with an established policy adopted by the governing body of the awarding public agency to clearly demonstrate the economic benefit to the local area or economy. Provided, further, no local bid preference shall be granted unless the local bidding entity is the second lowest qualified bid on the contract. The bid specifications shall clearly state that the bid is subject to a local bidder preference law. For purposes of this section, "local bid" means the bidding person is authorized to transact business in this state and maintains a bona fide establishment for transacting such business within this state. This provision does not apply to any construction contract for which federal funds are available for expenditure when its provisions may be in conflict with federal law or regulation.

1. ~~Except as provided in subsection C hereinbelow,~~ Other construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same for One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ or less shall be let and awarded to the lowest responsible bidder by receipt of written bids or awarded on the basis of competitive quotes to the lowest responsible qualified contractor as provided in this subsection. In providing for such written bids, the City Clerk may solicit bids from qualified bidders after posting a notice at city hall for at least three (3) days preceding the last day set for the receipt of bids or by causing the notice inviting bids to be published in the local newspaper of the city, at least once, three (3) days preceding the last day set for the receipt of proposals. The notice required herein, shall include a general description of the services required and shall state where bid blanks and specifications may be secured, and the time and place for opening bids. Work may be commenced in accordance

with these purchasing policies of the City.

2. Public construction contracts for less ~~Five Thousand Dollars (\$5000.00)~~ Ten Thousand Dollars (\$10,000.00) may be negotiated with a qualified contractor and work commenced in accordance with the purchasing policies of the City.

3. The City or its public authorities shall not let or award a public construction contract exceeding One Hundred Thousand Dollars (\$100,000.00) or a construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00) to any contractor affiliated with a purchasing cooperative unless the purchasing cooperative and the contractor have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including but not limited to open competitive bidding after solicitation for sealed bids. The City or its public authorities shall not let or award a public construction contract exceeding Ten Thousand Dollars (\$10,000.00) up to One Hundred Thousand Dollars (\$100,000.00) to any contractor affiliated with a purchasing cooperative unless the purchasing cooperative and the contractor have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including submission of a written bid upon notice of competitive bidding.

4. A purchasing cooperative and its affiliated contractors shall not be allowed to bid on any public construction contract exceeding One Hundred Thousand Dollars (\$100,000.00) or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00) unless the purchasing cooperative and its affiliated contractors have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including but not limited to open competitive bidding after solicitation for sealed bids. A purchasing cooperative and its affiliated contractors shall not be allowed to bid on any public construction contract exceeding Five Thousand Dollars (\$5,000.00) unless the purchasing cooperative and its affiliated contractors have complied with all of the provisions of the Public Competitive Bidding Act of 1974, including submission of a written bid upon notice of open competitive bidding.

BC. For public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ or any construction management trade contract or

subcontract exceeding Fifty Thousand Dollars (\$50,000.00),  
Department heads or third-party contractors shall prepare bid specifications along with requisitions and submit same to the City Council for their approval.

ED. The city clerk will develop a bidder's list. Bid solicitations will be made equally and uniformly known to all prospective bidders and the public:

1. For public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00), notice will be mailed twenty (20) days prior to the bid opening date to prospective bidders who have made known, in writing, to the using agency their interest in bidding within twelve (12) months immediately preceding the date of opening the bids;

2. For public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00), notice will be published in two (2) consecutive issues of a newspaper of general circulation twenty (20) days prior to the bid opening date; and

3. For public construction contracts exceeding One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00), notice will be sent to trade or construction publications when the estimated cost exceeds Fifty Thousand Dollars (\$50,000.00).

DE. One complete set of bidding documents will be kept on file in the City Clerk's office twenty (20) days prior to the bid opening date. Copies may be obtained by prospective bidders after paying a reasonable deposit as set by the City Manager.

A bidder on a public construction contract exceeding One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00), will accompany the bid with:

1. A certified or cashier's check or bid bond or

irrevocable letter of credit in an amount equal to five percent (5%) of the bid, which shall be deposited with the City as a guaranty; or

2. An irrevocable letter of credit containing terms the Department of Central Services prescribes, issued by a financial institution insured by the Federal Deposit Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in an amount equal to five percent (5%) of the bid. The City shall deposit the irrevocable letter or credit with the Department of Central Service.

The cost of republication of the notice to bidders, actual expenses incurred by reason of the bidder's default and the difference between the low bid of the defaulting bidder and the amount of the bid of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of the certified check, bid bond or irrevocable letter of credit may, at the discretion of the City, be forfeited to the City in the event the apparently successful bidders fails to execute the contract or fails to provide the required bonds or irrevocable letters of credit and insurance to the City.

The cost of republication of the notice to bidders, actual expenses incurred by reason of the bidder's default and the difference between the low bid of the defaulting bidder and the amount of the bid of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of the certified check, bid bond or irrevocable letter of credit may, at the discretion of the City, be forfeited to the City in the event the apparently successful bidders fails to execute the contract or fails to provide the required bonds or irrevocable letters of credit and insurance to the City.

N. If no timely bid is received on any public construction contract not exceeding One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00), the City Council may direct the City Manager to negotiate a contract with the prospective bidder. The amount of the contract which may be awarded by the governing body pursuant to this Section shall not exceed One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ or any construction management trade contract or subcontract exceeding Fifty Thousand Dollars (\$50,000.00), and

the work to be performed shall be as specified in the initial bidding documents. The contract shall be executed within six (6) months after the date initially set for opening of bids. The contract and contract procedure shall conform to all the other applicable provisions of the Public Competitive Bidding Act of 1974.

Section 7-113 FORMAL CONTRACT PROCEDURE

A. Except as provided by this Division, all expenditures for supplies, materials, equipment or contractual services, when the estimate cost thereof will exceed One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand dollars (\$50,000.00)~~ shall be purchased by formal written contract or purchase order from the lowest secured bidder after due notice inviting proposals, except that in cases where the prices bid are higher than prices available under contract let by the State of Oklahoma or a division, branch or agency of the United States of America, the city shall exercise the option of awarding its own contract or of buying it under the terms of the state or federal contract.

Section 7-116 EMERGENCY PURCHASES

The provisions of this Division with reference to notice and bids shall not apply to an emergency if:

1. The City Council declares by a two-thirds (2/3) majority vote of all of its members that an emergency exists; or

2. The City Manager, without a governing body, declares that an emergency exists; provided however, the City Manager's authority to declare an emergency whereby the provisions in reference to notice and bids shall not apply is limited to contracts less than One Hundred and Fifty Thousand Dollars (\$150,000.00) ~~Seventy-five Thousand Dollars (\$75,000.00)~~ in amount. The City Manager shall notify the City Council within ten (10) days of the declaration of an emergency if the City Council did not approve the emergency. The notification shall contain a statement of the reasons for the action and shall be recorded in the official minutes of the City Council. For purpose of this section, the term "Emergency" shall be limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition whereby the public health or safety is endangered. The City Manager shall report an emergency within ten (10) days of the emergency declaration and include



the official minutes of the City Council, to the State Construction Administrator of the Construction and Properties Division of the Office of Management and Enterprise Services.

Section 7-117 PROFESSIONAL SERVICES

A. All professional services where the estimated cost will exceed One Hundred Thousand Dollars (\$100,000.00) ~~Fifty Thousand Dollars (\$50,000.00)~~, the City Council may direct that the same be purchased by formal written contract after due notice inviting proposals, from the proposer whose services are determined to be in the best interest of the city, except those services or situations specifically exempted by the City Council.

Section II. REPEALER. All ordinances or parts thereof which are inconsistent with this ordinance are hereby repealed.

Section III. SAVINGS CLAUSE. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired, or liability incurred nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this ordinance.

Section IV. CODIFICATION. This ordinance shall be codified as herein provided.

Section V. SEVERABILITY. If any one or more of the sections, sentences, clauses or parts of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of this ordinance. It is hereby declared to be the intention of the City Council of the City of Tonkawa that this section of the Tonkawa Municipal Code would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

Section VI. EFFECTIVE DATE. This ordinance shall become effective on November 1, 2021.

Section VII. EMERGENCY. WHEREAS, it being immediately necessary for the preservation of the peace, health, safety and

public good of the City and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect in order immediately codify certain state law amendments as municipal ordinances; By reason whereof, this Ordinance shall take effect and be in full force and effect after its passage, as provided by law.

Approved and executed this 19<sup>th</sup> day of October 2021.



(Seal)

THE CITY OF TONKAWA, OKLAHOMA

  
\_\_\_\_\_  
KENNETH W. SMITH, MAYOR

ATTEST:

  
\_\_\_\_\_  
NANCY C. SKIPPER, CITY CLERK

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
BRYCE S. KENNEDY, CITY ATTORNEY