

Legislation Text

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Proposing an amendment to the Philadelphia Home Rule Charter to modernize the City’s procurement process, including by allowing for electronic bidding, electronic reverse auctions and electronic execution of contracts; for appropriate bidder security; and for cooperative purchasing; all under certain terms and conditions; and providing for the submission of the amendment to the electors of Philadelphia.

WHEREAS, Under Section 6 of the First Class City Home Rule Act (53 P.S. §13106), an amendment to the Philadelphia Home Rule Charter may be proposed by a resolution of the Council of the City of Philadelphia adopted with the concurrence of two-thirds of its elected members; now therefore

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the following amendment to the Philadelphia Home Rule Charter is hereby proposed and shall be submitted to the electors of the City on an election date designated by ordinance:

Bold italics indicates matter added by this amendment.
~~Strikethrough~~ indicates matter deleted by this amendment.

ARTICLE VIII
PROVISIONS OF GENERAL APPLICATION

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CHAPTER 2
CONTRACTS, PROCUREMENT, PROPERTY AND RECORDS

§ 8-200. Contracts.

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(2) ~~If~~ ***Except as authorized by Section 8-200(4), if*** any purchase or contract for which competitive bidding is required involves an expenditure of more than twenty-five thousand (\$25,000) dollars, which amount shall be adjusted every five (5) fiscal years as rounded to the nearest one thousand (\$1,000) dollars to reflect the percentage change in the most recently published Consumer Price Index for All Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, United States Department of Labor, Bureau of Labor Statistics, the following procedure shall be applicable:

(a) The Procurement Department shall advertise for sealed bids ***(which may include, at the discretion of the Department, electronic submission of bids, so long as appropriate safeguards are in place to protect against premature disclosure)*** at least once a week for two weeks in one of the three newspapers having the largest paid circulation in the City and in such other newspapers as it deems necessary. Council may by ordinance adopted by a vote of two-thirds of all of its members specify different or additional methods by which the Department shall provide notice of contracts available for bids, in accordance with

applicable law. Any such ordinance may include a requirement that notice be posted on the City's *official* website. The Department shall require a ~~certified check~~ *bid security* in an appropriate *form and* amount which shall be stated in the specifications to accompany all bids unless a bidder has filed an annual bid bond in excess of such ~~amount;~~ *amount*.

(b) ~~Bids~~ *After the time specified for bid closing, bids* shall publicly be opened and tabulated in the presence of a representative of the City Controller at ~~the time specified for their opening.~~ *At its discretion, and in lieu of sealed bids, the Department may provide for competitive electronic auction bidding under which (i) bids are submitted electronically at the time and in the manner designated in the invitation to bid; (ii) during the auction, only such information regarding the prices bid as the Department determines is likely to result in the lowest price to the City is disclosed to other bidders; (iii) bidders have the opportunity to reduce their prices during the auction; and (iv) at the conclusion of the auction, the name of each bidder and the lowest price it submitted are made available for public inspection. Whether or not the Department utilizes competitive electronic auction bidding, the Department may reject all bids if it shall deem it in the interest of the City so to do. Otherwise the contract shall be awarded to the lowest responsible bidder;* *bidder.*

(c) Within ten days after the award of a contract, the successful bidder shall ~~substitute for his certified check~~ a *furnish such* performance bond, and *security and*, where appropriate, a labor and materials bond *payment security, as the Department may require*, containing such terms as the Department and the City Solicitor shall require. ~~and in such amount as the Department may determine;~~

(d) The contract shall be in writing and shall be executed in behalf of the City by the Procurement Department but only after it has been approved as to form by the City Solicitor and as to availability of funds under the budget and appropriations by the City Controller and the Director of Finance. *The Department may permit the contract to be executed electronically, in a manner approved by the Law Department.* It shall contain a provision that in the performance of the contract the contractor will not discriminate nor permit discrimination against any person because of his race, color, religion or national ~~origin;~~ *origin.*

(e) The Procurement Department may in its discretion, permit a bidder to file an annual bond , *or other security acceptable to the Department*, to cover bids that may be made by, or the performance of contracts that may be awarded to, such bidder during an annual period. Such ~~bond~~ *security* shall be in such an amount as the Department may determine and may be increased from time to time, as the Department may require, in order to keep it commensurate with the bids made or contracts awarded during the annual period.

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(4) ~~The~~ *In lieu of compliance with Section 8-200(1) and 8-200(2), the* Procurement Department may participate in a cooperative arrangement with the procurement office of any public agency for the joint procurement of any services, supplies, equipment or ~~construction where the public agency conducts the procurement,~~ provided the cooperative arrangement is conducted in accordance with a written agreement entered into between the participants and the public agency uses a process comparable to such process as would otherwise be required by this section. *construction, or may utilize contracts of a public agency, upon certification by the Procurement Commissioner and the Director of Finance that the use of such an arrangement or contract is very likely to result in a lower total cost to the City than the use of procurement procedures otherwise authorized or mandated for such a procurement by this section and the basis for such determination; and that the public agency conducts the procurement pursuant to its own standard*

procedures in such a manner as to invite competition, guard against favoritism and corruption, and secure the lowest practicable price. The resulting City contract shall comply with all otherwise applicable ordinances, except and to the extent the Commissioner, after consultation with the Law Department, certifies that compliance is impracticable; and that entry into the contract, as opposed to a contract under Subsection (2) of this section, is unlikely to have a material impact on the City's ability to meet Annual Participation Goals established pursuant to Section 6-109(b). For purposes of this subsection, "public agency" shall mean any federal, State, or municipal government agency or any authority, school district or public college or university, or any consortium of such entities. Certifications required by this subsection shall be within the sole discretion of the designated officers and shall not be subject to further review. Nothing in this Subsection (4) is intended to apply to the making of any professional services contract.

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