

RES 16-030

Wilmington, Delaware  
April 7, 2016

#4197

**Sponsors:**

**Council  
President  
Gregory**

**Council  
Member  
Freel**

**WHEREAS**, pursuant to Title 22, Section 811 of the Delaware Code, a municipal corporation's home rule charter may be amended by act of the Delaware General Assembly passed with the concurrence of two-thirds of all members elected to each House thereof; and

**WHEREAS**, the City of Wilmington, upon the recommendation of the Department of Finance, desires to amend Section 8-200 of the City Charter relating to contracts and procurement requirements, in order to improve the City's procurement procedures, increase public access to City contracting opportunities through internet advertising, and to authorize the City's participation in cooperative purchasing agreements, as more particularly set forth in the proposed "House Bill," a copy of which is attached as Exhibit "A" hereto and incorporated by reference herein.

**NOW, THEREFORE**, the Mayor and the Council of the City of Wilmington respectfully request the members of the Delaware General Assembly to amend Section 8-200 of the City Charter as provided in Exhibit "A," a copy of which is attached hereto.

Passed by City Council,  
April 7, 2016

ATTEST: Maribel Seijs  
City Clerk

Approved as to form this 6<sup>th</sup>  
day of April, 2016

  
First Assistant City Solicitor

**SYNOPSIS:** This Resolution requests the Delaware General Assembly to amend Section 8-200 of the City Charter to improve City's procurement procedures, increase public access to City of Wilmington contracting opportunities through the authorization of internet advertising, and authorize the City to participate in cooperative purchasing agreements with other public procurement agencies.

**Sponsor:**

**DELAWARE HOUSE OF REPRESENTATIVES**

**148<sup>th</sup> GENERAL ASSEMBLY**

**HOUSE BILL NO.**

**AN ACT TO AMEND SECTION 8-200 OF THE CHARTER OF THE CITY OF WILMINGTON RELATING TO CITY OF WILMINGTON 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):**

**SECTION 1.** Amend Section 8-200 of the Charter of the City of Wilmington by deleting the stricken language and adding the underlined language as follows:

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

- (1) Except in the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, or material that is computer hardware and/or software as hereinafter provided, or used equipment or buildings as hereinafter provided, competitive bids shall be secured before any purchase, by contract or otherwise, is made or before any contract is awarded for construction, alterations, repairs or maintenance or for rendering any services to the city other than professional services and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder.
  - (a) If the material to be purchased is computer hardware and/or software, the primary purpose of which is to process information in the form of data, words, images, graphics, or voice, the purchase shall be an exception, as aforesaid, and the following conditions shall apply:
    1. Materials that contain computers or computer components but do not have a primary purpose of processing information, such as a microwave oven, are specifically excluded from this exception.
    2. Nothing in this section shall be construed to permit any department, board, commission, or other agency of the city to procure computer hardware and/or software without the approval of the procurement and records division.
    3. In lieu of competitive bidding, the procurement and records division shall establish policies and procedures under which procurement of these materials

may take place. Such policies and procedures shall be subject to the approval of the administrative board.

- (b) A department may purchase used equipment or buildings by negotiations rather than by competitive bidding, as an exception as aforesaid, if it is demonstrated to the satisfaction of both the procurement and records division and the administrative board that the negotiated price is reasonable for the intended use.
- (2) If any purchase or contract for which competitive bidding is required involves an expenditure of ~~five~~ fifteen thousand dollars (\$~~5~~15,000.00) or more but less than ~~twenty-five~~ sixty thousand dollars (\$~~25~~60,000.00), the procurement and records division shall obtain quotations from at least three (3) vendors or contractors for the items to be purchased or contract to be performed.
  - (3) If any purchase or contract for which competitive bidding is required involves an expenditure of ~~twenty-five~~ sixty thousand dollars (\$~~25~~60,000.00) or more but less than one hundred thousand dollars (\$100,000.00), the competitive bidding for such purchase or contract shall be conducted in accordance with such procedures as council by ordinance prescribes.
  - (4) If any purchase or contract for which competitive bidding is required involves an expenditure of one hundred thousand dollars (\$100,000.00) or more, the following procedure shall be applicable:
    - (a) The procurement and records division shall advertise for sealed bids at least once a week for two (2) weeks in one of the two (2) newspapers having the largest paid circulation in the city and in such other newspapers as it deems necessary. In addition to or in lieu of such newspaper advertising, the division may advertise for sealed bids at least once a week for two weeks by electronic publication on the city's website or other publicly accessible internet location. The division may require a certified check or a good and sufficient bid bond to the City of Wilmington, with corporate surety authorized to do business in the State of Delaware, the form of the bond and surety to be approved by the city solicitor, with a warrant of attorney to confess judgment thereon attached thereto in an appropriate 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;
    - (b) Bids shall publicly be opened and tabulated in the presence of a representative of the city auditor at the time specified for their meeting. The division may correct or waive patent, provable or technical errors or omissions in 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. Otherwise the contract shall be awarded to the lowest responsible bidder;
    - (c) When all bids received pursuant to the procedure set forth above are clearly unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the head of the division that time or other circumstances make it impractical to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

1. Each bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
  2. The negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation; and
  3. The negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.
- (d) Within ten (10) days after the award of a contract, the successful bidder shall, unless specifically waived in the specifications, furnish to the city a performance bond, and where appropriate, a labor and materials bond containing such terms as the division and the city solicitor shall require and in such amount as the division may determine;
- (e) The contract shall be in writing and shall be executed in behalf of the city by the mayor and clerk of the council 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 auditor and the director of finance. 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 race, color, sex, religion or national origin;
- (f) The procurement and records division may, in its discretion, permit a bidder to file an annual bond 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 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.
- (5) Contracts may be made for the leasing of real estate to the city and for personal property to be supplied or services to be rendered to the city over a period of more than one year only when permitted by ordinance. Otherwise no contract shall be binding upon the city unless there is an appropriation available for its payment. When the term of a contract exceeds four (4) years, there shall be inserted a clause reserving to the city the right to terminate it at the option of the city at any time after the expiration of four (4) years without liability to the other party for damages or loss of profits which would have been realized had the contract not been terminated, except that, upon the approval of city council, the city may omit insertion of the clause and waive its right to terminate under this section. The limitations of this paragraph shall not apply to any contract entered into between the city and any authority.
- (6) A department, subject to the approval of the procurement and records division, may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of goods or services with one or more public procurement agencies either within the State of Delaware or within another state in accordance with an agreement entered into between the participants.

**SECTION 2.** This Act shall take effect immediately upon its enactment into law.

## **SYNOPSIS**

The purpose of this amendment to Section 8-200 of the Charter of the City of Wilmington 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.