

## LEGL AND LEGISLATIVE COMMITTEE

February 2, 2010

4:40 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative Committee to order, with Councilpersons Scott, Rico, Berz, Benson, Gilbert, and McGary present. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Dan Johnson, Daisy Madison and Richard Beeland.

**On motion of Councilman Rico, seconded by Councilman McGary, the minutes of the previous meeting were approved.**

Chairman Murphy stated that we had Attorney Jimmy Rodgers, representing the Labor Council, with us today, and he would explain the Local Preference Ordinance and why it reads the way it does.

Attorney Rodgers thanked Attorney McMahan and Chairman Murphy for trying to put time and thought into this; that he had taken what Attorney McMahan and Chairman Murphy had come up with and would clarify a few points. He read from the present Ordinance (a) "*A purchase order **may** be issued, and/or awarded, to the lowest responsible bidder submitting the best bid after approval by the city council*". He stated that where this read "may", they would like to change this word to "shall". In addition to the 13 present subsections, they would add the 14<sup>th</sup>, which provides a definition for local resources and labor. (This document is made a part of this minute material). Finally, at the bottom, under **Section 2-553**, there is (c), which is the transparency component and gives an idea of transparency, where all is spelled out for the public to see; that it opens everything up and is a very positive addition to this whole process.

Councilwoman Berz stated that she wanted to get this straight and asked if we were getting rid of other language? She asked if they were taking Attorney McMahan's and Chairman Murphy's words that they offered and elaborating slightly? She questioned what **comparable and local resources** meant and noted that transparency was a new thing.

Councilman McGary noted that in regards to section (14), the first definition of local resources could be health care, minority hiring, etc. He questioned if "lowest responsible bidder" meant that two bidders were equal and one is slightly higher and one provides health care, etc. and the other does not---He questioned if this was what "local resources" meant?

Attorney Rodgers agreed that this was the biggest uncertainty, and there was room for interpretation; that there was concern in the past that this was not in here.

Councilman Rico questioned how we could do this without opening the door; that it was too vague in interpretation; that what we had now was not broken; that we are following State Laws now; that he thought we would just be opening up a “can of worms”.

Chairman Murphy noted that State Law uses locality as a tie breaker.

Attorney McMahan stated that number (14) would be legally defensible; that concerning local resources the only factor would be that Purchasing will have to put something in the bid package.

Chairman Murphy stated that this would function as a “tie breaker”; that if we get a “tie”, we will have a form across the table; that he interpreted this to be a supplier.

Councilman Benson thanked Attorney Rodgers for giving the Council evidence of what appears in other cities in writing. He stated that he had no problem with the number (14), but trying to change the word “may” to “shall” and living with this, he could see as a negative or positive impact. He stated he did not know the significance of the 75-mile radius. He asked to be shown why “shall” would work better than “may”.

Mr. Johnson stated that he resented the indication that Purchasing makes decisions behind closed doors; that the word “shall” puts undo burden; that if the cheapest comes from local, and we prefer the other in comparison; that this is all bound by State Law now.

Councilman Gilbert stated that where we have specs to go by, we bid off the specs; that he liked the part of putting this on the Internet; that the City would gain; that often small businesses do not know how to bid. He stated that it was a good idea to put this on the website.

Attorney Rodgers stated that he did not mean to disparage the current Administration but was just trying to give the City and their constituents a system that could be put in place.

Councilman Benson stated that he would be agreeable to this provided that we keep the word “may” rather than “shall”.

Attorney Rodgers stated that some of the factors may not apply; but from the Council’s perspective, they would know the factors have been taken into account.

Councilman Benson felt that the transparency would answer another check.

Councilwoman Berz pointed out to Councilman Benson that there were two “shalls”—one in the 14<sup>th</sup> factor; that in the transparency section (c), there is also a “shall”—that the transparency section is checks and balances.

Roger Tudor noted that when contractors bid a job, they have no idea where the materials are coming from; that he had had to read this quickly, but he thought number (14) only came into play if both bids are equal in value. He stated that he still did not like the 75 mile radius.

Chairman Murphy stated that this would be an infrequent occurrence; that a “tie” bid could be determined by a “coin toss”—that this is more practical.

Mr. Tudor asked that they be given time to digest this.

Chairman Murphy stated that the transparency portion is excellent; that we need to hear from IS personnel about the cost. He asked if a 90 day delay was in order, stating that we needed to have a procedure if the bid “ties”.

Councilwoman Berz noted that this had been placed on the agenda based on former things that had now been corrected, and she would propose a motion to defer this for one week.

Chairman Murphy stated that at tonight’s meeting we could approve, deny, defer or substitute; that he would make a motion to defer.

Councilwoman Berz added, to defer for one week and language could be discussed, like transparency.

Mr. Johnson asked if any city in the southeast United States has such a procedure in effect and questioned the definition of 75 miles.

Attorney Rodgers mentioned lots of cities such as Memphis, which are far more restrictive. Mr. Tudor agreed that Memphis has something, as does Atlanta.

The meeting adjourned at 5:00 p.m.