

Ordinance No. 120782

Council Bill No. 114150

The City of Seattle
Council Bill/Ordinance

AN ORDINANCE relating to the City's Small Construction Projects Roster, changing bonding and retainage requirements for small construction projects to conform to State law, exempting small construction project bids from current bid protest procedures, and amending Chapters 20.48 and 3.38 of the Seattle Municipal Code in connection therewith.

NO PASS 3-0
4-22-02 Pas

CF No. _____

Date Introduced: <u>APR 13 2002</u>	DRAGO	
Date 1st Referred: <u>APR 13 2002</u>	To: (committee) Finance, Budget, Business & Labor Committee	
Date Re- Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>4-22-02</u>	Full Council Vote: <u>B-O</u>	
Date Presented to Mayor: <u>4-23-02</u>	Date Approved: <u>4/29/02</u>	
Date Returned to City Clerk: <u>4/30/02</u>	Date Published: <u>3/10/02</u>	T.O. <input checked="" type="checkbox"/> F.T. <input checked="" type="checkbox"/>
Date Vetted by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

This file is complete and ready

Law Department

Law Dept. Review

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

Jan Pardo

Councilmember

Committee Action:

NO RISS 3-0 (JD, NL, PS)
4-22-02 Passed 8-0 (Excused Pageler)

This file is complete and ready for presentation to Full Council. Committee: _____

(initial/date)

Department

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed

*(CV) Search completed 4/24/02
attached text 4/24/02
4/24/02 NOTE*

ORDINANCE 120782

AN ORDINANCE relating to the City's Small Construction Projects Roster, changing bonding and retainage requirements for small construction projects to conform to State law, exempting small construction project bids from current bid protest procedures, and amending Chapters 20.48 and 3.38 of the Seattle Municipal Code in connection therewith.

WHEREAS, the Small Construction Project Roster Program was initially established, in great part, to provide small businesses with better access to City contracting opportunities for projects with an estimated cost of less than \$35,000, and to offer City departments a more expedient way to complete small jobs; and,

WHEREAS, the State Legislature recently amended Chapter 39.04 to allow local governments to waive the payment and performance bond requirements of RCW Chapter 39.08 and the retainage requirements of RCW Chapter 60.28; and,

WHEREAS, being fully cognizant of the attendant risks, the City wishes to take advantage of the flexibility of this new provision; and,

WHEREAS, the current appeal process for Small Construction Project Roster participants calls for the Hearing Examiner to review the decision of the Construction and Consultant Contracting Division Director; and

WHEREAS, after consulting with the Hearing Examiner, the Department of Finance has determined that the timelines required under the City's current administrative appeal procedures actually negate the time savings provided by using the Roster; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 20.48.010 of the Seattle Municipal Code is amended as follows:

SMC 20.48.010 Contractor's bond required.

Before any contract for a public work or improvement shall be valid or binding against the City, the contractor shall make, execute and deliver to the City a bond(s) that meets the requirements of RCW Ch. 39.08 as now or hereafter amended. Such bond shall be in an amount equal to not less than twenty-five



1 (25) percent, nor more than one hundred (100) percent of the full contract price agreed to be paid for
2 such public work or improvement. Contract Awarding Authorities shall determine whether to require
3 bond or retainage for limited public works projects awarded under the provisions of RCW 39.04.155(3),
4 as now or hereafter amended. If required, a bond shall name the City as obligee, and shall be filed with
5 the City Clerk. The amount of the bond to be required of any contractor shall be (1) stated in the call for
6 bids for the doing of the public work or improvement; or (2) if there is no call for bids, as required by
7 the department awarding the contract.

8 Section 2. Subsection 3.38.100 of the Seattle Municipal Code is amended as follows:

9 **SMC 3.38.100 Review of Construction & Consultant Contracting ((Services)) Division**
10 **Recommendation for contract awards by the Hearing Examiner.**

11 A. The Hearing Examiner shall hear and make a recommendation to the Director of Finance with
12 respect to any protest by a bidder in connection with the awarding of a public works or purchase contract
13 including, but not limited to, a determination by the Director of Construction & Consultant Contracting
14 ((Services)) regarding: the immateriality of one (1) or more bidding errors, omissions, or variations;
15 selection of a bidder as the apparently lowest and best bidder; implementation of SMC Chapters 20.44
16 (City Contracts -- Prevention of Discrimination) and 20.46A (Women's and Minority Business
17 Enterprise Utilization); and the rejection or disqualification of any bidder. This subsection shall not
18 apply to protests regarding small construction projects awarded under the provisions of Chapter 20.40
19 SMC. Those protests shall be heard by the Department of Finance as that Department may provide for
20 by Contract Specification.

21 Section 3. Any acts consistent with the authority and prior to the effective date of this ordinance
22 are hereby ratified and confirmed.
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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 22nd day of April, 2002, and signed by me in open session in authentication of its passage this 22nd day of April, 2002.

Pete Stemburgh
President _____ of the City Council

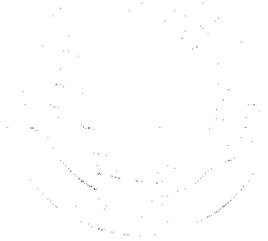
Approved by me this 29 day of April, 2002.

Greg Kibler
Mayor

Filed by me this 30th day of April, 2002.

Jason E. Lipman
City Clerk

(Seal)



Fiscal Note

Department: Department of Finance	Contact Person/Phone: Steve Gross/3-9583	CBO Analyst/Phone: Greg Petersen/4-8075
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Legislation Title: AN ORDINANCE relating to the City's Small Construction Projects Roster, changing bonding and retainage requirements for small construction projects to conform to State law, exempting small construction project bids from current bid protest procedures, and amending Chapters 20.48 and 3.38 of the Seattle Municipal Code in connection therewith.

Summary of the Legislation:

The attached ordinance amends Section 20.48.010 of the Seattle Municipal Code. It exempts small construction projects (those with an estimated cost of under \$35,000) from the payment and performance bond, and the retainage requirements of State law. It also exempts Small Construction Project Roster ("SCPR") contracts (those estimated to cost less than \$200,000) from the standard bid protest process while allowing the Department of Finance, by Rule, to establish a protest process.

Background:

Bonding: Chapter 39.08 RCW requires government agencies to obtain a performance bond from contractors performing construction work for those agencies. Chapter 60.28 RCW requires government agencies to hold back, or "retain," five percent of the contract price¹.

The State Legislature recently amended Chapter 39.04 RCW to allow local governments to waive both the bond and retainage requirement for small construction projects whose estimated cost is less than \$35,000.

Currently, SMC 20.48.010, which implements the bonding requirement, does not allow for the exemption provided for by statute.

Protest: Currently, the Hearing Examiner hears bid protests. This process may take months to resolve. The Department believes that the dollar amount of these projects (Under \$200,000) results in a low risk of protests. The Department will establish a quick and equitable protest process. Additionally, a bidder always has the option to seek a court's review.

¹ The statute allows different methods of achieving this 5% retainage, including bond, dedicated bank account, and the agency keeping the money.



Public Private Partnership Review Status: N/A

Is the legislation subject to public hearing requirements? No.

Fiscal Sustainability Issues (related to grant awards): N/A

Estimated Expenditure Impacts: None.

Bonding: The Construction and Consultant Contracting Division believes that the expenditure impacts are negligible. While there is a risk of payment or performance default in any contract, the Division's experience indicates that the risk is considerably lower for contracts under \$35,000. This is because these smaller contracts are more likely to be simple, single-trade contracts, performed wholly by the general contractor.

Protests: Because of the low number of bid protests, and the even lower number of anticipated protests for SCPR projects, there is no estimated expenditure impact.

Estimated Revenue Impacts: None.

Other Issues: None.



City of Seattle
Department of Finance
City Budget Office



Dwight Dively, Director, Department of Finance
Gregory J. Nickels, Mayor

MEMORANDUM

DATE: February 1, 2002

TO: Honorable Peter Steinbrueck
Council President

FROM: Dwight Dively, Director
Department of Finance

SUBJECT: AN ORDINANCE relating to the City's Small Construction Projects Roster, changing bonding and retainage requirements for small construction projects to conform to State law, exempting small construction project bids from current bid protest procedures, and amending Chapters 20.48 and 3.38 of the Seattle Municipal Code in connection therewith.

The Small Construction Project Roster (SCPR) was established in 2001 to provide small businesses with easier access to City contracting opportunities for projects with an estimated cost of less than \$35,000, and to offer City departments a more expedient way to complete small jobs. The attached ordinance further streamlines SCPR by authorizing the City to waive bonding and retainage requirements for SCPR participants, and by amending the SCPR bid protest process. As reflected on the attached fiscal note, we believe that the costs of implementing the proposed ordinance are negligible.

Waiver of Bonding and Retainage Requirements

The purpose of the payment and performance bond is to ensure that contractors faithfully perform all the provisions of their contract, and pay all of their subcontractors, suppliers and workers. The Mayor's Contracting Task Force recently re-confirmed that smaller contractors are either unable to, or have difficulty, obtaining payment and performance bonds. Waiving these requirements means the City could be held financially responsible for the contractor's non-payment of subcontractors, suppliers, or workers. However, this liability is unlikely to have an adverse financial impact on the City. First, the City will have the right of recovery against the contractor for any payments made on their behalf. The Construction and Consultant Contracting Division estimates this risk to be negligible in that smaller contracts (contracts less than \$35,000) have typically been 'single-trade' jobs performed wholly by the general contractor. Second, the scope of work on these contracts tends to be simple, and the City has found that very few of these contractors have defaulted on the performance of their contracts. The primary benefit of



Dively/Steinbrueck
Small Construction Roster Program Amending Ordinance
February 1, 2002
Page 2

waiving the bond and retainage requirements for projects under \$35,000 is that smaller contractors will have more working capital, and the administrative burden both for the contractor and the City staff who administer the contract will be reduced.

Amending SCPR Hearing Procedures

Currently, contracting bid protest procedures provide for a hearing before the City Hearing Examiner. The time period needed for the Hearing Examiner to consider such appeals can add months to the SCPR contracting process, thereby negating any time savings that the SCPR Program is able to provide. The current appeals process before the Hearing Examiner has resulted in fewer than five appeals per year. The proposed ordinance, which exempts SCPR projects from this process, states that the Director of the Department's Construction and Consultant Contracting Division shall provide for protests to be heard as part of the contract specifications. The Hearing Examiner did not have any objection to the proposed change. Finally, nothing in the proposed legislation prevents an aggrieved bidder from seeking relief in the courts.

We believe that this legislation supports the City's ongoing effort to streamline the contracting process for public works construction. We appreciate your consideration of this legislation. If you have any questions, or would like an individual briefing on this matter, please call Steve Gross at 733-9583 or Linneth Riley-Hall at 684-4548.

cc: Ken Nakatsu
Brenda Bauer
Linneth Riley-Hall
Steve Gross



STATE OF WASHINGTON – KING COUNTY

--SS.

144749
City of Seattle, Clerk's Office

No. ORDINANCE IN FULL

Affidavit of Publication

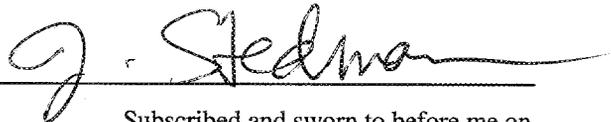
The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published 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:120782

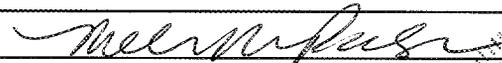
was published on

5/13/2002

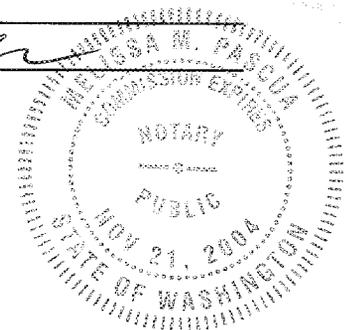


Subscribed and sworn to before me on

5/13/2002


Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication



State of Washington, King County

City of Seattle

ORDINANCE 120782

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WHEREAS, the State Legislature recently amended Chapter 39.04 to allow local governments to waive the payment and performance bond requirements of RCW Chapter 39.08 and the retainage requirements of RCW Chapter 69.28; and,

WHEREAS, being fully cognizant of the attendant risks, the City wishes to take advantage of the flexibility of this new provision; and,

WHEREAS, the current appeal process for Small Construction Project Roster participants calls for the Hearing Examiner to review the decision of the Construction and Consultant Contracting Division Director; and

WHEREAS, after consulting with the Hearing Examiner, the Department of Finance has determined that the timelines required under the City's current administrative appeal procedures actually negate the time savings provided by using the Roster; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

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SMC 20.48.010 CONTRACTORS BOND REQUIRED.

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Section 2. Subsection 3.38.100 of the Seattle Municipal Code is amended as follows:

SMC 3.38.100 REVIEW OF CONSTRUCTION & CONSULTANT CONTRACTING (SERVICES) DIVI-

SION RECOMMENDATION FOR CONTRACT AWARDS BY THE HEARING EXAMINER.

A. The Hearing Examiner shall hear and make a recommendation to the Director of Finance with respect to any protest by a bidder in connection with