



**King County**

**Metropolitan King County Council  
Budget and Fiscal Management Committee**

**STAFF REPORT**

<b>AGENDA ITEM</b>	<u>13</u>	<b>DATE:</b>	<u>July 21, 2009</u>
<b>PROPOSED No.:</b>	<u>2009-0424</u>	<b>PREPARED BY:</b>	<u>Amy Tsai</u>

**SUBJECT:** AN ORDINANCE clarifying that the exceptions from competitive bidding set forth in K.C.C. 4.16.040 do not exempt public works from competitive bid requirements.

**SUMMARY:** This proposed ordinance would make it clear that K.C.C. 4.16.040, which contains exceptions from competitive procurement, does not apply to public works contracts.

**BACKGROUND:**

In March 2008, the State Auditor issued a report with a finding that King County did not comply with competitive bid laws for an emergency correctional facilities security system project.

King County believed at the time of the project that legal authority existed to allow for a special market condition waiver of normal competition requirements. Subsequently, the Auditor, after consulting with the Attorney General's Office, determined that special market condition waivers are not applicable to county public works. Based on that information, King County discontinued use of special market condition waivers for public works contracts.

In June 2009, when the State Auditor released his Accountability Audit Report for King County, he noted that King County Code 4.16.040, which allows market condition waivers to competitive procurement for personal property or services of any kind, has not been revised to ensure compliance with the state law requirements for public works contracts.

KC.C. 4.16.040 contains exceptions from competitive bidding requirements for the lease or purchase of tangible personal property or services of any kind, when that

personal property or service has a single source of supply, or when there are special facilities or special market conditions involved.

A single source of supply exists when there is only one vendor capable of doing the job.

Special facilities exist when a characteristic of the facility results in one vendor being best suited to meet the county's needs, even though there may be multiple vendors able to do the work.

Special market conditions exist when there are unusual conditions or an arrangement that would make it advantageous or cheaper to the county not to do competitive bidding. For the jail project that had the state audit finding, the special market condition claimed by the county involved the unique and difficult scheduling, security and logistical considerations of working in the jail environment.

## ANALYSIS

County public works contracts are exempt from public bidding requirements in the event of an emergency. The State Auditor, after consulting with the Attorney General's Office, concluded that special market conditions do not provide an additional basis for exempting public works contracts from public bidding requirements. The State Auditor noted that when public works projects are not competitively awarded, aside from concerns over compliance with state law, potential responsible contractors lose the opportunity to compete, and the county cannot ensure it is getting the best possible price or proposal.

Based on the Auditor's interpretation of state law, it is likely that special facilities and single source of supply do not provide additional bases for waiving the competitive bidding requirements for public works.

Proposed Ordinance 2009-0424 would revise King County code to make it clear that the exceptions to competitive procurement identified in K.C.C. 4.16.040 do not apply to the competitive bidding requirements for public works contracts, including special market conditions, special facilities and sole source contracts.

The proposed amendment has a larger scope than the concern raised by the state audit, but is responsive to the underlying premise for the audit finding (i.e., that absent statutory authority such as the use of county labor under Title 36 RCW, the only permissible exemption from competitive bidding for county public works is for emergencies.)

The language of Proposed Ordinance 2009-0424 has been reviewed by the Prosecuting Attorney's Office and Procurement Services.

**REASONABLENESS:**

Proposed Ordinance 2009-0424 would make K.C.C. 4.16.040 consistent with state law. Proposed Ordinance 2009-0424 appears to be a reasonable and prudent policy decision.

**AMENDMENT:**

There is a technical striking amendment clarifying wording.

**INVITED:**

Tom Kuffel, Senior Deputy Prosecuting Attorney, Prosecuting Attorney's Office

**ATTACHMENTS:**

1. Striking Amendment S1 to Proposed Ordinance 2009-0424
2. Proposed Ordinance 2009-0424



**S1**

7-21-09

Sponsor: Ferguson, Dunn

at

Proposed No.: 2009-0424

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2009-0424, VERSION**

2 **1**

3 On page 1, beginning on line 9, strike everything through page 2, line 18, and insert:

4 "PREAMBLE:

5 State law does not contain an exemption from county public works bid  
6 requirements for special market conditions, special facilities, or sole  
7 sources of supply. This ordinance makes the King County Code  
8 consistent with state law.

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 SECTION 1. Ordinance 12138, Section 9, as amended, and K.C.C. 4.16.040 are  
11 each hereby amended to read as follows:

12 A. The competitive procurement provisions of this chapter shall not apply to the  
13 lease or purchase of tangible personal property or to services of any kind ~~((which))~~ that  
14 are clearly and legitimately limited to a single source of supply or ~~((which))~~ that involve  
15 special facilities or special market conditions, in which instances the lease or purchase  
16 price shall be established by direct negotiations by the manager. ~~((The executive shall~~

17 ~~approve~~) Executive approval is required for such leases or purchases in excess of  
18 twenty-five thousand dollars.

19 B. Notwithstanding subsection A. of this section, the competitive bidding  
20 requirements for public works may not be waived on the basis of single source of supply,  
21 special facilities or special market conditions."

22 **EFFECT: Technical clarification that it is the competitive bidding requirements for**  
23 **public works that cannot be waived under all of these circumstances.**



KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

Signature Report

July 20, 2009

Ordinance

Proposed No. 2009-0424.1

Sponsors Dunn and Ferguson

1 AN ORDINANCE relating to public works bid  
2 requirements; and amending Ordinance 12138, Section 9,  
3 as amended, and K.C.C. 4.16.040.

5 PREAMBLE:

6 State law does not contain an exemption from public works bid  
7 requirements for special market conditions. This ordinance makes the  
8 King County Code consistent with state law.

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 SECTION 1. Ordinance 12138, Section 9, as amended, and K.C.C. 4.16.040 are  
11 each hereby amended to read as follows:

12 Except for contracts for public works, ((F))the competitive procurement  
13 provisions of this chapter shall not apply to the lease or purchase of tangible personal  
14 property or to services of any kind ((which)) that are clearly and legitimately limited to a  
15 single source of supply or ((which)) that involve special facilities or market conditions in  
16 which instances the lease or purchase price shall be established by direct negotiations by

5  
Ordinance

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17 the manager. ((The executive shall approve)) Executive approval is required for such  
18 leases or purchases in excess of twenty-five thousand dollars.

19

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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ATTEST:

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APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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Attachments      None