

Stephen E. Glass  
4705 Cherry Hills Court  
Lawrence, Kansas 66047

August 11, 2006

Mayor Mike Amyx  
City of Lawrence  
P.O. Box 708  
Lawrence, KS 66044

Re: Charter Ordinance No. 38

Dear Mike:

I am writing to express my opposition to the changes to the City of Lawrence bidding procedures as proposed in Charter Ordinance No. 38. My opposition is not based on the impact on public works contractors rather it is based on the concern that the proposed change is potentially not in the best interest of the public.

Proposed Charter Ordinance No. 38 would exempt the City from the requirements of Kansas Statute 13-1017 which requires that cities of the first class reject all bids for public works projects by stating "If no responsible person proposes to enter into the contract at a price not exceeding the estimated cost, all bids shall be rejected . . .". Choosing to exempt a city from the specific requirements of Statute 13-1017 is permitted and the City of Lawrence currently does so in Charter Ordinance No. 19. Based on my reading there are three significant differences between Ordinance No. 19 and proposed Ordinance No. 38. First the proposed ordinance is more clearly written and thus less likely to be subject to varying interpretations. Second the cost at which the ordinance requires that sealed proposals be solicited is increased from \$4,000 to \$15,000, which is a reasonable change given today's costs. The third difference is that the proposed ordinance allows the City Commission to accept a bid even if it exceeds the engineers estimate while the current ordinance prohibits that from being done.

Staff has previously contended that the current ordinance allows the City Commission to accept bids that exceed the engineers estimate; however, I disagree with their basis for that interpretation. The last sentence of the first paragraph of Section 2 of Ordinance No. 19 states "The Governing Body shall let all such work by contract to the lowest responsible bidder who submits a responsive bid, if there is any whose bid does not exceed the estimate". Staff has argued that the first sentence of the second paragraph of Section 2 allows the Governing Body to waive the requirement that the accepted bid be less than the engineers estimate. I disagree that this sentence overrules the requirement of the previous sentence, but agree that adoption of a new ordinance without conflicting wording will eliminate the confusion.

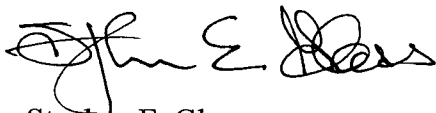
Given that a new, clearer, ordinance should be adopted the question becomes whether the Governing Body should be empowered to accept a bid that exceeds the engineers estimate. Proposed Ordinance No. 38 clearly allows this to be done in the third paragraph of Section 2 although it does require an explanation from the department director if the cost is over the estimate by more than seven percent. Beyond the explanation requirement the ordinance imposes no limitation to the powers of the governing body to accept a bid that exceeds the engineers estimate. My concern is that giving the Governing Body unlimited power to exceed the estimate both negates the purpose of even having an estimate and fails to protect the public against unreasonable acts by the Governing Body. I believe it is a reasonable assumption that the intent of the Kansas Statute was that when considering bids for public works projects the Governing Body should reconsider the cost and/or design of a project for which the bids exceed the estimate. My question is why does the City of Lawrence want to exempt themselves from this requirement?

While I have full confidence that the current City Commission would not take unreasonable action in the expenditure of public funds the goal of the ordinance should be to protect the public against the unreasonable action of some future City Commission. Therefore, my suggestion is that the second sentence of the third paragraph of Section 2 of proposed Charter Ordinance No. 38 be modified as follows:

In the alternative, if all bids exceed the estimated cost, the Governing Body may accept the bid and let the work by contract to the lowest and best responsible bidder provided that the accepted bid shall not exceed the estimate by more than seven percent.

The revised sentence would provide the Governing Body with the ability to, but not the requirement to, accept a bid that slightly exceeds the estimate. At the same time it would provide the public with the assurance that if the lowest bid for a project exceeds the estimate by more than seven percent the Governing Body will have to re-bid the project and presumably prior to the re-bid will reevaluate the cost of the project. As a taxpayer this seems to me to be a reasonable limitation of the powers of the Governing Body that we have elected to represent our interests and prudently spend our tax dollars.

Sincerely,



Stephen E. Glass

Cc: Sue Hack  
Boog Highberger  
Mike Rundle  
David Schauner  
David Corliss