

MINUTES OF THE COMMITTEE OF THE WHOLE
March 25, 2019
Auditorium

Present: Council President O’Leary, Vice President Anderson, Councilmembers Bullock, George, Litten, O’Malley & Rader

Also Present: Public Works Director Beno, Finance Director Pae, Chief Assistant Law Director Swallow, 2 members of public, Executive Director of Cleveland Building Trades, Dave Wondolowski

Call to Order: 6:04 p.m.

ORDINANCE 43-18 – AN ORDINANCE establishing Section 111.16, Responsible Contracting Required of the Codified Ordinances of the City of Lakewood (PLACED ON 1ST READING & REFERRED TO COW 10/1/18; 2nd reading 10/15/18)

President O’Leary introduced the ordinance, explaining that it was referred to Committee at the end of 2018. The impetus for the ordinance is a desire to ensure that work being done in exchange for taxpayer dollars is at a high level and is safe for workers and residents. The ordinance proposes to provide the City with additional criteria upon which to make contracting decisions to allow for these assurances. A tangential objective is to employ more workers from Lakewood and the surrounding area. He welcomed suggestions for improvement upon the proposed ordinance.

Mr. O’Malley remarked that he was motivated to co-sponsor this ordinance after seeing its positive effects in other communities. He stated that communities with similar ordinances experience a lower incidence of projects being over budget and off-schedule.

Mr. Anderson remarked that any chance to maximize efficiency is welcome. He noted that while the administration may already employ these best practices, it is good to have them codified.

President O’Leary emphasized that the ordinance aims to provide additional tools to the City and not to limit the City. The suggested criteria will provide an additional basis for making contracting decisions.

Ms. Swallow advised the City regarding a case currently pending before the Ohio Supreme Court challenging Cleveland’s law requiring certain contractors to reside within the City. It is unknown if the opinion on the case will have bearing on Lakewood and this proposed ordinance.

Director Pae advised Council to meet with Purchasing Manager Kim Smith to learn more about the City’s existing bidding requirements and how the additional criteria would fit in. 250 items per year are brought before the Board of Control. Director Pae stated that the City sometimes has trouble getting bidders due to existing requirements.

Director Beno characterized the ordinance as distinguishing union from non-union contractors. He stated that the majority of the City's large contracts for paving, construction, and building are generally union. He provided examples of smaller contracts, specialty contracts, and subcontracted contracts where there is no union affiliation or the affiliation is not known. He noted that the prevailing wage is used for all of these contracts.

Mr. Wondolowski stated that similar ordinances have been adopted by many communities in Ohio and throughout the country. He emphasized that the criteria in the ordinance are not requirements but tools to give the City more leverage when hiring contractors. He suggested putting a threshold of \$250,000 on the criteria. He objected to the characterization of the ordinance as being about union versus non-union and said that it is merely a matter of good public policy that has been effective elsewhere. He stated that this keeps out low bidders who lack qualifications.

President O'Leary agreed that the criteria are broader than just union versus non-union and pointed to examples.

In response to a question by Councilmember Rader, President O'Leary explained that the language is from model legislation uses elsewhere. This one was specifically used by a school district.

Councilmember George expressed support for the ordinance and asked about the suggested \$250,000 threshold.

Mr. Wondolowski replied that not much can be built or renovated for under this amount and that there is a precedent for such thresholds.

Mr. Wondolowski agreed to provide examples of similar ordinances used elsewhere in the country.

In response to a question by Councilmember O'Malley, Mr. Wondolowski explained his organization's rigorous apprenticeship program. He remarked on the sometimes transient nature of the workforce in his industry and the struggle for contractors to find workers on a tight timeline.

Councilmember Anderson asked the administration if it has an extra layer to its bidding process if the lowest bidder is far lower than expected.

Director Beno explained the additional steps that occur in this situation such as checking references and qualifications.

Councilmember Anderson suggested that the ordinance include the measures currently taken by the administration in such situations.

Director Beno mentioned that he currently has a contractor reference review sheet attached to the bid form. It asks for past projects and references.

President O’Leary again emphasized that as proposed, the criteria are not requirements but tools to provide the City with a legal basis upon award of a contract to a bidder other than the lowest.

Councilmember Bullock expressed support for the goals of the ordinance but asked for more information and time to understand it.

Director Pae questioned to what kind of work the ordinance pertains, if it pertains to materials and subcontractors. She stated that adding layers of work is a concern.

Councilmember Bullock advised being prudent and precise with respect to efficiency. He asked if there is truly a concern with the City’s current process.

President O’Leary responded that the ordinance is in part driven by situations the City has experienced where a low bidder had red flags or a contract was awarded to a low bidder with reservations. Currently the City has to consider the risk that it could get sued by not awarding to the lowest bidder. The ordinance says “lowest and best bidder.” But “best” is not defined. This ordinance provides enumerated specific criteria for the City to point to.

Mr. Wondolowski clarified that the ordinance relates only to construction.

Mr. O’Malley noted that a number of cities, counties and school boards that have adopted this throughout the state had “been burned badly” before adopting such an ordinance.

President O’Leary adjourned that meeting at 7:00 p.m. and announced there would be a follow up meeting on this topic to include the Purchasing Manager.