ORDINANCE NO. 20404

AN ORDINANCE introduced by City Manager Stephen Wade, concerning contracts and procurement regulations, amending § 3.30.010 through § 3.30.220 of the Topeka Municipal Code.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 3.30.010, Authority of City Manager to sign certain contracts – Professional service contracts, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Authority of City Manager to sign certain contracts – Professional service contracts.

(a) Pursuant to Charter Ordinance No. 94, Section 22 (Appx. A, Section A2-55), the City Manager is hereby authorized to sign all contracts binding the City, unless:

(1) Governing Body approval of the contract or the subject matter of the contract is required by City ordinance or resolution;

(2) Governing Body approval of the contract or the subject matter is required by State or Federal law; or

(3) Other City officers or employees are specifically authorized by ordinance to approve and sign the contract.

(b) On and after October 1, 2021, any contract for professional services exceeding $50,000 shall be approved by the Governing Body. “Professional services” includes architects, engineers, appraisers, land surveyors, management and systems analysts, financial and accounting firms, attorneys, information technology consultants, land use planners, project management and other similar services requiring specialized knowledge or certification in a particular field.
(c) The authority granted by this section is subject to all ordinances and laws which restrict and limit the ability of the City to enter into binding contracts. Further, this section does not authorize the avoidance of or exemption from any administrative reviews or approvals of contracts as required by City ordinances or regulations.

(d) The provisions of this section shall not preclude the City Manager from seeking and obtaining the approval of the Governing Body prior to signing certain contracts, notwithstanding the authority granted in this section.

Section 2. That section 3.30.020, Competitive bids – Supplies, materials, equipment, and services, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Competitive bids – Supplies, materials, equipment, and services; lowest responsible bidder; exceptions.**

In the manner as provided in this chapter and the rules and regulations established hereunder:

(a) If the amount of the purchase or sale is estimated to exceed approximately $50,000, sealed bids shall be solicited by notice published once in the official City newspaper not less than 10 days before the date stated therein for the opening of such bids. Additional newspapers or journals may be designated for such publication. Notices shall be sent to all active prospective bidders. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice. Except as provided in subsection (d), all competitive procurements for goods and services shall be awarded to the lowest responsible bidder in accordance with TMC 3.30.030 and rules and regulations promulgated pursuant to TMC 3.30.050.
(b) If the amount of the procurement is estimated to exceed $25,000, but not more than $50,000, shall be made after receipt of sealed bids following at least three days’ notice posted on a public bulletin board in City Hall and the City’s website. Sealed bids may also be solicited as provided in subsection (a) of this section.

(c) All purchases or sales estimated to be more than $5,000 but less than $25,000 may be made after receipt of three or more bid solicitations by telephone, telephone facsimile or sealed bid following at least three days’ notice posted in a public bulletin board in City Hall and the City’s website. $10,000 or less shall be made in accordance with rules and regulations promulgated pursuant to TMC 3.30.050.

(d) All purchases or sales estimated to be less than $5,000 shall be made in accordance with written rules promulgated by the Director of Administrative and Financial Services.

(ed) Notwithstanding any provision to the contrary, subsections (a), (b) and (c), sealed-competitive bids shall not be required:

(1) For contractual goods or services where no competition exists;

(2) For sales in an established market;

(3) When an emergency requires immediate delivery of supplies, materials or equipment or immediate performance of services;

(4) When, in connection with the sale of property, it would be more advantageous to sell the property at a public auction;
(53) When a contract for supplies, services, or equipment was executed by a vendor with a State agency, municipality, or political subdivision whose procurement practices include competitive bidding, goods or services is competitively procured by a public or non-profit cooperative purchasing organization for the benefit of governmental entities. “Competitively procured” means that the procurement process meets or exceeds the City’s procurement requirements; or

(64) When the Director of Contracts and Procurement or designee determines that negotiated procurement, pursuant to TMC 3.30.035, qualifications based selection or a request for proposal is appropriate for the procurement of goods or services or products.

(f) Contracts and purchases of goods and services shall in all cases be based on City specifications. When deemed applicable and feasible such specifications shall include either energy efficiency standards or appropriate life cycle cost formulas, or both. A contract or purchase may be rejected on the basis that a product is manufactured or assembled outside the United States. No such specification shall be fixed in a manner to effectively exclude any responsible bidder offering comparable supplies, materials, equipment or contractual services.

(g) Notwithstanding anything in this section to the contrary, the Director of the Department of Administrative and Financial Services may authorize City departments to contract for services and materials with other City departments, or with State agencies, Federal agencies, or other political subdivisions of the State without competitive bids if:
(1) The obligations and duties imposed on, and the benefits and privileges to be received by, each City department which is a proposed party to the contract do not exceed the authority and powers delegated to such City department by the City Council, including the authority to enter into the contract;

(2) The obligations and duties imposed on the City department required to perform services or supply materials are within the normal scope of duties of the City department and the competence of the City department to perform the contracted services and to deliver the prescribed materials is demonstrated to the satisfaction of the purchasing officer; and

(3) Where the contract or service is financed entirely from money derived exclusively from the City general fund, the Director of Administrative and Financial Services must first determine that comparable materials or services are not reasonably available at a lower cost from responsible sources other than governmental agencies.

(h) Except as otherwise specifically provided by law, no City department shall enter into any lease of real property without the prior approval of the Director of the Department of Administrative and Financial Services. Such City department shall submit to the Director of the Department of Administrative and Financial Services such information relating to any such proposed lease as the Director may require. The Director shall either approve, modify and approve, or reject any such proposed lease.

(i) Notwithstanding anything in this section to the contrary, sales of retired motor vehicles, mowers, graders and other construction machinery and equipment from any department of the City shall be to the highest responsible bidder at either an advertised public auction or by sealed competitive bids or as otherwise authorized by this section.
Nothing in this subsection shall preclude a City department from trading in such vehicles and equipment when authorized.

Section 3. That section 3.30.030, Awarding of bids and contracts, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Awarding of bids and contracts.

(a) All contracts and purchases for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the invitation for bids.

(b) The Director of Administrative and Financial Services or designee shall have power to decide as to the lowest responsible bidder for all purchases. In cases where the dollar amount of the bid received from the lowest responsible bidder from within the City is identical to the dollar amount of the bid received from the lowest responsible bidder from without the City, the contract shall be awarded to the bidder from within the City. In cases where none of the bidders are from within the City and where the dollar amount of the bid received from the lowest responsible bidder from within Shawnee County is identical to the dollar amount of the bid received from the lowest responsible bidder from without Shawnee County, the contract shall be awarded to the bidder from within Shawnee County. If a tie bid exists between identically domiciled bidders, a witnessed coin flip shall break the tie.

(c) Any or all bids may be rejected, and a bid shall be rejected if it contains any material alteration or erasure. The bid of any bidder who has failed to perform satisfactorily on a previous contract with the City may be rejected. In any case
where competitive bids are required and where all bids are rejected, new bids shall be invited as in the first instance, unless otherwise expressly provided by law may be solicited.

(d) All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained for five years and shall be open to public inspection at all reasonable times.

Section 4. That section 3.30.035, Procurement negotiating committee, of The Code of the City of Topeka, Kansas, is hereby renumbered as 3.30.040 and amended to read as follows:

**Procurement negotiating committee** Qualification based selection; request for proposal.

(a) Qualification based selection is a procurement method for goods and services that does not require an award to the lowest responsible bidder. Qualification based selection allows the City to evaluate qualifications of a person or a firm and to negotiate project scope, schedule, budget and any other matter relative to procurement. The Director of Contracts and Procurement or designee may convene a procurement negotiating committee to obtain services or products for a City department. Each procurement negotiating committee shall be comprised of the Financial Services Director, the Director of Contracts and Procurement, and the director of the requesting agency or their designee. Initiate a qualifications based selection in accordance with rules and regulations promulgated pursuant to TMC 3.30.050.
(b) The procurement negotiating committee shall negotiate contracts with qualified parties to provide services or products for City departments. The Director of Contracts and Procurement shall publicize requests for proposals and shall evaluate such proposals according to the following criteria:

A request for proposal is a procurement method for goods and services that does not require an award to the lowest responsible bidder. The City identifies the goods or services needed, including the scope of work and deliverables. The Director of Contracts and Procurement or designee may initiate a request for proposal in accordance with rules and regulations promulgated pursuant to TMC 3.30.050.

(c) The following factors will be considered in evaluating a proposal:

1. Adequacy and completeness of proposal;
2. Compliance with terms and conditions of the request;
3. Experience in providing like services or products goods;
4. Qualified staff;
5. Methodology in accomplishing objectives;
6. Price; and
7. Any other requirements specific to the service or product goods or services.

Section 5. That section 3.30.040, Competitive bids – Public buildings and improvements, of The Code of the City of Topeka, Kansas, is hereby renumbered as 3.30.050 and amended to read as follows:

Improvements to public buildings and facilities shall be in accordance with Appx. A, Section A12-1 et seq., as may be amended; provided, however, items of routine
maintenance and repair which are authorized in the annual operating budget shall not
be deemed public improvements as set forth in Appendix A, Article XII. The Contracts
and Procurement Director or designee shall administer this chapter and may
promulgate and amend rules and regulations, subject to approval by the Director of
Finance and Administrative Services or designee, relating to any matter pertaining to
the procurement of goods and services.

Section 6. That section 3.30.050, Professional services, of The Code of the
City of Topeka, Kansas, is hereby repealed.

Professional services.

It is hereby declared to be the policy of the City that all qualified persons shall be
afforded the fullest opportunity to be considered for selection and employment as
architects, engineers and appraisers in connection with projects undertaken by the City.
Any person desiring to be considered for selection and employment as architect,
engineer or appraiser in connection with projects undertaken by the City shall place on
file with the Department of Administrative and Financial Services a statement of
availability to perform work as architects, engineers and/or appraisers.

Section 7. That section 3.30.060, Compilation of lists, of The Code of the City
of Topeka, Kansas, is hereby repealed.

Compilation of lists.

The Department of Administrative and Financial Services shall compile lists of
those persons desiring consideration for selection and employment as architects,
engineers or appraisers, such lists to include the qualifications of such persons and to
be classified by the type of services sought to be performed. The list shall be updated
annually by contacting such persons to ascertain whether they wish to continue to be considered for City work.

Section 8. That section 3.30.070, Authorization to contract, of The Code of the City of Topeka, Kansas, is hereby repealed.

If any department wishes to contract for professional services of the type referred to in this article, such department shall first obtain authorization from the Department of Administrative and Financial Services. Information regarding the request shall include a statement of the scope of the project, availability of funds and necessary qualifications and shall be submitted to the Department.

Section 9. That section 3.30.080, Notification of prospective applicants, of The Code of the City of Topeka, Kansas, is hereby repealed.

Notification of prospective applicants.

The Department of Administrative and Financial Services shall notify those persons on the appropriate list compiled pursuant to TMC 3.30.060 that a selection will be made. The notification shall include a short statement of the scope of the project, the specific qualifications required, and shall solicit further information as deemed appropriate. The notification shall be transmitted by first class mail and shall be mailed not less than one week prior to the scheduled date of the selection interviews provided for in TMC 3.30.090.

Section 10. That section 3.30.090, Interviews, of The Code of the City of Topeka, Kansas, is hereby repealed.

Interviews.

A committee, consisting of the director of the originating department, City
Engineer, and Director of Administrative and Financial Services, or their designees, shall review the proposals and interview no fewer than three firms, if possible, chosen on the basis of proposals submitted under this subdivision. At the conclusion of the interviews, the Committee shall confer and make a determination as to the best qualified person for the proposed project.

Section 11. That section 3.30.100, Waiver of notification and interview in cases of emergency, of The Code of the City of Topeka, Kansas, is hereby repealed.

Waiver of notification and interview in cases of emergency.

The Director of Administrative and Financial Services may waive the notification and interview as provided for in this article if it is determined that an emergency exists. If the notification and interview process is waived, then selection of the professional consultant will be made from the list of qualified persons by the director and relevant department head.

Section 12. That section 3.30.110, Negotiation of contract, of The Code of the City of Topeka, Kansas, is hereby repealed.

Negotiation of contract.

After a determination has been made by the interview committee, the director of the originating department, in conjunction with the City Attorney’s office, shall negotiate the terms and conditions of a professional services contract with the person selected. The proposed contract for professional services shall be submitted to the City Manager for final approval. If the contract is for engineering services, the terms of the contract shall conform to the provisions of TMC 3.30.120. If the terms of the contract cannot be successfully negotiated with the person selected, then the interview committee shall
reconvene and make an alternate selection.

Section 13. That section 3.30.120, Professional engineering contracts, of The Code of the City of Topeka, Kansas, is hereby repealed.

Professional engineering contracts.

When it has been determined to be in the best interest of the City that professional engineering services be procured for the purposes of preparing construction plans and special provisions, furnishing all other contract documents, including invitation for bids, information for bidders, performance bond, statutory bond, certificate of insurance and proposal, and performing other engineering services for the City, the City’s standard agreement for engineering services and the Design Criteria and Drafting Standards (latest edition) shall constitute the general uniform procedure governing professional engineering contracts. The City may, however, elect to alter, change, delete or make necessary changes to the standard agreement as required for a particular project.

Section 14. That section 3.30.130, Abandoned project fee, of The Code of the City of Topeka, Kansas, is hereby repealed.

Abandoned project fee.

If the City Council at any time chooses to abandon a project, the consulting engineers shall be reimbursed in accordance with the professional engineer contract provided for in TMC 3.30.120 as authorized by Charter Ordinance 17, Section 6 (Appx. A, Section A12-20). Payment for an abandoned project by the City in accordance with the provisions of the professional engineering services shall complete the City’s obligations under the contract and such contract shall be thereby terminated.
Section 15. That section 3.30.140, Arbitration, of The Code of the City of Topeka, Kansas, is hereby repealed.

Arbitration.

Questions in dispute under the professional engineering contract shall be submitted to arbitration in accordance with K.S.A. Chapter 5, Article 2 (K.S.A. 5-201 et seq.).

Section 16. That section 3.30.150, Invalid contracts and purchases, of The Code of the City of Topeka, Kansas, is hereby repealed.

Invalid contracts and purchases.

Any order of purchase which is entered contrary to or in violation of the provisions of this chapter or established purchasing procedures shall not be considered a liability of the City and the City shall not be bound thereby. If any officer or employee of the City willfully violates the provisions of this chapter, or knowingly enters an order without proper authority, such officer or employee shall be deemed guilty of malfeasance and subject to immediate discharge.

Section 17. That section 3.30.160, Notice inviting bids, of The Code of the City of Topeka, Kansas, is hereby repealed.

Notice inviting bids.

Notice inviting bids shall be published as provided by law in the official City newspaper, and the last publication shall be at least 10 days preceding the last date set for the receipt of proposals. The newspaper notice required in this section shall include a general description of the articles to be purchased or sold or public improvement project to be constructed; and shall state where bid blanks and specifications may be
Section 18. That section 3.30.170, Lists of bidders, of The Code of the City of Topeka, Kansas, is hereby repealed.

List of bidders.

The Director of Administrative and Financial Services or designee shall also solicit sealed bids from all responsible prospective suppliers or contractors who have requested that their names be added to a list of bidders by sending them a copy of such newspaper notice or such other notice as will acquaint them with— the proposed project or contract.

Section 19. That section 3.30.180, Bid bonds, of The Code of the City of Topeka, Kansas, is hereby repealed.

Bid bonds.

(a) When deemed necessary by the Director of Contracts and Procurement—or designee, bid bonds shall be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where such has been required. A successful bidder shall forfeit any required surety upon failure by the successful bidder to enter into a contract within 10 days after the award.

(b) Any person who anticipates submitting bids to provide goods or services pursuant to notices inviting bids, may secure a bond for each year in an amount that is equal to or greater than five percent of any bids the person would have under consideration by the City at any time. Such a bond obviates the necessity of providing a separate bond or other bid security each time a bid is submitted for City contracts.

Section 20. That section 3.30.190, Bids, of The Code of the City of Topeka,
Bids.

(a) Bids shall be submitted in accordance with the instructions to bidders and shall be identified as required.

(b) Whenever a bidder, having responded to an invitation to bid, claims error in the bid, the only relief shall be permission to withdraw that bid. Any bidder claiming error in the bid shall be disqualified from bidding on the same project again; and any bid bond is subject to forfeiture.

(c) Bids shall be opened in public by the Director of Contracts and Procurement or designee at the time and place stated in the public notice.

Section 21. That section 3.30.200, Tabulation, of The Code of the City of Topeka, Kansas, is hereby repealed.

Tabulation.

A tabulation of all bids received shall be compiled and referred to the originating department for review and shall also be reviewed by designated staff for compliance with applicable contract ordinances and State and Federal statutes. Recommendations shall be forwarded to the Department of Administrative and Financial Services for a final determination of the apparent lowest responsible bidder.

Section 22. That section 3.30.210, Statutory requirements, of The Code of the City of Topeka, Kansas, is hereby repealed.

Statutory requirements.

If bids do not meet statutory requirements of the laws of the State pertaining to public improvements of cities of the first class, the invitation for bids and the processing
prescribed in this article shall be repeated by the bids and contracts committee until such statutory requirements have been satisfied.

Section 23. That section 3.30.220, Limitations of powers and duties, of The Code of the City of Topeka, Kansas, is hereby repealed.

Limitations of powers and duties.

The powers and duties granted and designated in this article are administrative and managerial and shall not be interpreted as impairing or delegating the obligation or right of the City Council to approve and execute contracts for public improvements or supplies and equipment under the powers and duties granted and defined to cities of the first class under the laws of the State.

Section 24. That original § 3.30.010 through § 3.30.220 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 25. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 26. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 27. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body on ____________________.

CITY OF TOPEKA, KANSAS

______________________________
Michael A. Padilla, Mayor
ATTEST:

Brenda Younger, City Clerk