

**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, a~~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.

50 (b) ~~All purchases or sales~~If the amount of the procurement is estimated to  
51 ~~exceed \$25,000, but not more than \$50,000, shall be made after receipt of sealed bids~~  
52 ~~following at least three days' notice posted on a public bulletin board in City Hall and the~~  
53 ~~City's website. Sealed bids may also be solicited as provided in subsection (a) of this~~  
54 ~~section~~\$10,000, competitive bids shall be solicited by notification on the City's web-  
55 based electronic procurement system.

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

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

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

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

67 (2) ~~For sales in an established market;~~

68 (3~~2~~) When an emergency ~~requires~~necessitates immediate delivery of  
69 ~~supplies, materials or equipment,~~goods or immediate performance of services;

70 (4) ~~When, in connection with the sale of property, it would be more~~  
71 ~~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  
~~purchase~~procurement of goods or services or products.

~~(f) Contracts and purchases~~Procurement 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:~~

94           ~~(1) The obligations and duties imposed on, and the benefits and privileges to be~~  
95           ~~received by, each City department which is a proposed party to the contract do not~~  
96           ~~exceed the authority and powers delegated to such City department by the City Council,~~  
97           ~~including the authority to enter into the contract;~~

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

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

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

113           ~~(i) Notwithstanding anything in this section to the contrary, sales of retired motor~~  
114           ~~vehicles, mowers, graders and other construction machinery and equipment from any~~  
115           ~~department of the City shall be to the highest responsible bidder at either an advertised~~  
116           ~~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~~ procurements 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~~ including a bid that 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 designees~~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~~



185 ~~maintenance and repair which are authorized in the annual operating budget shall not~~  
186 ~~be deemed public improvements as set forth in Appendix A, Article XII.~~The Contracts  
187 and Procurement Director or designee shall administer this chapter and may  
188 promulgate and amend rules and regulations, subject to approval by the Director of  
189 Finance and Administrative Services or designee, relating to any matter pertaining to  
190 the procurement of goods and services.

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

193 **Professional services.**

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

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

203 **Compilation of lists.**

204 ~~The Department of Administrative and Financial Services shall compile lists of~~  
205 ~~those persons desiring consideration for selection and employment as architects,~~  
206 ~~engineers or appraisers, such lists to include the qualifications of such persons and to~~  
207 ~~be classified by the type of services sought to be performed. The list shall be updated~~

208 ~~annually by contacting such persons to ascertain whether they wish to continue to be~~  
209 ~~considered for City work.~~

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

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

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

219 **~~Notification of prospective applicants.~~**

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

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

229 **~~Interviews.~~**

230 ~~A committee, consisting of the director of the originating department, City~~

231 ~~Engineer, and Director of Administrative and Financial Services, or their designees,~~  
232 ~~shall review the proposals and interview no fewer than three firms, if possible, chosen~~  
233 ~~on the basis of proposals submitted under this subdivision. At the conclusion of the~~  
234 ~~interviews, the Committee shall confer and make a determination as to the best~~  
235 ~~qualified person for the proposed project.~~

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

238 **~~Waiver of notification and interview in cases of emergency.~~**

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

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

246 **~~Negotiation of contract.~~**

247 ~~After a determination has been made by the interview committee, the director of~~  
248 ~~the originating department, in conjunction with the City Attorney's office, shall negotiate~~  
249 ~~the terms and conditions of a professional services contract with the person selected.~~  
250 ~~The proposed contract for professional services shall be submitted to the City Manager~~  
251 ~~for final approval. If the contract is for engineering services, the terms of the contract~~  
252 ~~shall conform to the provisions of TMC 3.30.120. If the terms of the contract cannot be~~  
253 ~~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.~~

277           Section 15. That section 3.30.140, Arbitration, of The Code of the City of  
278 Topeka, Kansas, is hereby repealed.

279           ~~**Arbitration.**~~

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

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

285           ~~**Invalid contracts and purchases.**~~

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

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

294           ~~**Notice inviting bids.**~~

295           ~~Notice inviting bids shall be published as provided by law in the official City~~  
296 ~~newspaper, and the last publication shall be at least 10 days preceding the last date set~~  
297 ~~for the receipt of proposals. The newspaper notice required in this section shall include~~  
298 ~~a general description of the articles to be purchased or sold or public improvement~~  
299 ~~project to be constructed; and shall state where bid blanks and specifications may be~~

300 ~~secured, and the time or place for opening bids.~~

301 Section 18. That section 3.30.170, Lists of bidders, of The Code of the City of  
302 Topeka, Kansas, is hereby repealed.

303 **List of bidders.**

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

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

311 **Bid bonds.**

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

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

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

Kansas, is hereby repealed.

**~~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~~

346 ~~prescribed in this article shall be repealed by the bids and contracts committee until~~  
347 ~~such statutory requirements have been satisfied.~~

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

350 **Limitations of powers and duties.**

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

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

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

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

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

365 PASSED AND APPROVED by the Governing Body on\_\_\_\_\_.

366 CITY OF TOPEKA, KANSAS  
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Michael A. Padilla, Mayor



373 ATTEST:

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Brenda Younger, City Clerk