AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapters 3.70 and 6.01 of the Kent City Code to revise the City's contracting and procurement procedures, repealing Ordinance No. 2961 and Resolution No. 1560 upon the effective date of this ordinance because the substance of those legislative acts is incorporated into this ordinance, and establishing a small works roster process for eligible public works projects.

RECITALS

A. The City of Kent has not revised its procurement requirements and other public contracting provisions for more than ten years.

B. Based on changes in law, regulatory efficiencies, and inflationary trends, it is appropriate to completely update and revise these requirements.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Repeal Existing Procurement Provisions. Chapter 3.70 of the Kent City Code, entitled "Procurement Contracts," is repealed in its entirety.

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SECTION 2. - Enact New Contracting and Procurement Provisions. The Kent City Code is amended to add a new chapter, Chapter 3.70 of the Kent City Code, entitled "Public Contracting and Procurement," as follows:

CHAPTER 3.70
PUBLIC CONTRACTING AND PROCUREMENT

PART 1. GENERALLY

Sec. 3.70.010. Purpose. It is the purpose of this chapter to outline the procedures for the purchase and acquisition of goods, materials, equipment, and services, and the performance of public works and improvement contracts in order to maintain an accountable public contracting and procurement process, and to provide other general contracting procedures. It is also the purpose of this chapter to allow for the flexible application of these procedures for more efficient and cost effective procurement and contracting where strict application would not be in the City’s best interest.

Sec. 3.70.020. Applicability. City procurements and contracts must be evaluated through a two-step process. The first step is to determine what competitive bidding requirements, if any, are required under either Part 2 or Part 3 of this chapter. The second step is to determine, under Part 4, who within the City has the appropriate authority to approve any procurement and to sign any contract on behalf of the City. Each procurement first must be evaluated under Parts 2 or 3 and then under Part 4 separately. When an existing contract requires a change, either in product, scope, or time of completion, an amendment or change order to that contract must be in writing and evaluated under Part 4.
Sec. 3.70.030. Definitions. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

A. Contract shall mean a formal written contract, purchase order, lease, verbal agreement, or cash or credit purchase from a wholesaler, retailer, dealer, vendor, consultant, contractor, or other similar transaction. Grants, bequests, and other donations or gifts that generate revenue or that represent or are conditioned on the pledge, use, or other impairment of a City asset or dedication of City resources are also contacts and are subject to the specific provisions of this chapter. Purchases or work shall not be split into smaller, separate contracts to avoid either the competitive bidding or authorization requirements set forth in this chapter.

B. Director shall mean any director of a City of Kent department and shall include the position of Chief Administrative Officer.

C. Public work shall have the same meaning as provided in RCW 39.04.010, as the same may later be amended. Generally, a public work is any work, construction, alteration, repair, or improvement to a public facility that is performed at the City’s expense, other than ordinary maintenance. This definition applies to all City departments, not just the City’s public works department. Ordinary maintenance when performed by contract, while not a public work, may be subject to prevailing wages.

D. Purchase refers to materials, supplies, equipment, or services procured by the City, either for ownership or lease, that will not be part of a public work.

Sec. 3.70.040. Designee. When any City staff member is designated in this chapter by his or her title, including without limitation a
“director” or the “Mayor,” that reference is intended to refer to the employee who holds that title or his or her designee.

Sec. 3.70.050. Contracts maintained by the City Clerk’s Office. Staff shall forward to the City Clerk’s Office an original, or a complete copy if an original cannot be obtained, of all contracts, change orders, or amendments entered into under this chapter, whether those contracts are signed by a director or the Mayor, to be maintained in accordance with the records retention schedule applicable to the City and its records.

PART 2. COMPETITIVE BIDDING

Sec. 3.70.060. Applicability of competitive bidding provisions. Before the City purchases any goods, materials, equipment, or services, or arranges for the performance of any public work, the competitive bidding process established in this Part 2 must be reviewed and satisfied based upon the total cost of the goods, materials, equipment, or services to be purchased or any work performed, including any applicable sales tax.

A. When the total cost of the work or item is unknown because a definite term or unit amount cannot be reasonably determined, the procurement cost, for the purpose of establishing the appropriate competitive bidding procedure, is the estimated annual cost of the work or item, including any estimated sales tax.

B. In lieu of requesting bids for specific purchases, the City may solicit bids or proposals for products on an as-needed basis for a specified term, e.g. one year, in those instances where the specific services or products are undetermined, such as for the ongoing purchase of office supplies or uniforms.
Sec. 3.70.070. Architectural, landscape architectural, engineering, and land surveyor services. Chapter 39.80 RCW establishes a process through which governmental agencies are required to publicly announce their requirements for architectural and engineering services, including landscape architects and land surveyors. The Kent City Council has adopted the following procedures to comply with these statutory requirements:

A. Applicability. This section shall apply to architects, landscape architects, engineers, and land surveyors performing activities within the scope of the general definition of professional practice in Chapter 18.08 RCW (architects), Chapter 18.43 RCW (engineers and land surveyors), or Chapter 18.96 RCW (landscape architects), as the same may later be amended.

B. Publication or public announcement of needed architectural, landscape architectural, engineering, and land surveying services.

1. The City must publish or otherwise announce to the general public the City's requirement for architectural, landscape architectural, engineering, and land surveying services. City staff may comply with this requirement by:

   a. Publishing notice for such architectural, engineering, or land surveying services for a specific project or projects; or

   b. Annually announcing to the public generally the City's projected requirements for any category or type of architectural, engineering, or land surveying services, and requesting that interested consultants submit statements of qualifications and performance data. At its discretion, the City may add architectural, engineering, or other consultants to its annual roster throughout the year so long as those
consultants have submitted all required statements of qualifications and performance data.

2. The public notice the City provides under KCC 3.70.070.B must comply with Chapter 39.80 RCW and contain the following minimum information:
   a. The general scope and nature of the project or work;
   and
   b. An address of the City representative who can provide further details of the project or work.

3. In addition, the City may elect to contract with other agencies, including Municipal Research and Services Center ("MRSC"), and utilize rosters developed and maintained by them to carry out the requirements of this section and Chapter 39.80 RCW.

C. **Contract negotiations.** City staff must first determine which architect or engineer is most qualified, based on the City’s criteria, to provide the services needed. Once an architect or engineer is selected, City staff may negotiate the cost of those services at a price the City determines fair and reasonable. State law prohibits the City from discussing project cost with a prospective engineer or architect until the City has first selected an architect or engineer to perform the work. If the City and the selected architect or engineer are unable to agree on a price that the City believes is fair and reasonable, the City may terminate those negotiations, select a new architect or engineer, and commence negotiations with the new architect or engineer.

**Sec. 3.70.080. Purchases of goods, materials, equipment, or services.** This section establishes the competitive bidding procedures that apply to purchases of goods, materials, equipment, or services, not included within a public work.
A. **Purchases of $20,000 or less – Director discretion.** For purchases where the estimated cost is twenty thousand dollars ($20,000) or less, the director shall determine what competitive bidding process the department will utilize, if any, with direct negotiation being an acceptable option. It is incumbent on the director to seek the best price available under the circumstances, acting not only under existing market conditions, but also as a cautious steward of City resources.

B. **Purchases greater than $20,000, but $35,000 or less – Telephone bids or quotations.** For purchases where the estimated cost is greater than twenty thousand dollars ($20,000), but thirty-five thousand dollars ($35,000) or less, the director shall attempt to solicit and document at least three (3) telephone bids or quotations for the purchase. Bids or quotations received by email, facsimile, regular mail, or personal delivery are also acceptable in lieu of telephone bids. For purchases made regularly and repeatedly, such as paper or other office supplies, a list of comparable bids or quotations may be maintained and updated at least annually, and purchases can be made from that list without soliciting bids or quotations for each purchase. The provisions of KCC 3.70.080.D for advertised bids, or KCC 3.70.080.E for requests for proposals, may be used in lieu of the provisions of this section.

C. **Purchases greater than $35,000, but $65,000 or less – Written bids or quotations.** For purchases where the estimated cost exceeds thirty-five thousand dollars ($35,000), but is sixty-five thousand dollars ($65,000) or less, the director shall attempt to solicit and document at least three (3) written bids or quotations for the purchase. Written bids or quotations received by email, facsimile, regular mail, or personal delivery are acceptable. For purchases made regularly and repeatedly, such as paper or other office supplies, a list of comparable bids or quotations may be maintained and updated at least annually, and purchases can be made
from that list without soliciting bids or quotations for each purchase. The provisions of KCC 3.70.080.D for advertised bids, or KCC 3.70.080.E for requests for proposals, may be used in lieu of the provisions of this section.

D. **Purchases greater than $65,000 – Advertised bids.** For purchases where the estimated cost exceeds sixty-five thousand dollars ($65,000), the City shall publish notice calling for sealed bids at least one (1) time, and at least seven calendar (7) days prior to the last date upon which bids will be received, or such other reasonable time as the director may deem appropriate under the circumstances. Publication of this notice may be in any manner determined by the City most likely to provide notice to the contracting community that will result in the City’s receipt of responsive bids, including without limitation, a newspaper of general circulation, a trade publication or website, a posting on the City’s website, or a posting on another agency or service provider’s website. The notice shall generally state the nature of the contemplated purchase, including a description or specifications, and it may require that the bids be sealed and filed with the City Clerk within the time for submittal specified in the notice. The City shall, in its sole discretion, award the contract to the lowest responsive and responsible bidder, may waive any informalities in the bids received, and/or may reject any or all bids or proposals.

E. **Purchases greater than $65,000 – Request for proposals.** In lieu of advertised bids as may be required under KCC 3.70.080.D, the director, at his or her option, may choose to use a request for proposals, request for quotations, or other similar process to determine the availability of needed products or services. This decision may be utilized when the director deems it appropriate under those terms and conditions suitable to meet the needs and requirements of the particular process.

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Sec. 3.70.090. Procurements for the performance of public works. This section establishes the competitive bidding procedures that apply to procurements for the performance of public works and improvement projects when the small works roster provided for in Part 3 is not utilized. The thresholds provided in this section are to be evaluated based upon the complete public work, including the total cost for all materials, supplies, equipment, and labor. If the public work is for street signalization or street lighting, it is treated as a single craft or trade project for competitive bidding purposes.

A. Public work of $40,000/$65,000 or less – Director discretion. For a public work where the complete project involves only one craft or trade and the cost is estimated at forty thousand dollars ($40,000) or less, or involves more than one craft or trade and the cost is estimated at sixty-five thousand dollars ($65,000) or less, the director shall determine what competitive bidding process the department will utilize, if any, with direct negotiation being an acceptable option. It is incumbent on the director to seek the best price available under the circumstances, acting not only under existing market conditions, but also as a cautious steward of City resources.

B. Public work greater than $40,000 for single craft or trade, or greater than $65,000 for more than one craft or trade – Advertised bids.

1. Advertised bids. For a public work where the estimated cost of the complete project exceeds forty thousand dollars ($40,000) for a single craft or trade, or exceeds sixty-five thousand dollars ($65,000) for more than one craft or trade, the City shall publish notice, at least one (1) time, and at least thirteen (13) days prior to the last date upon which bids will be received, calling for sealed bids. Publication of this notice should be in either the City’s designated official newspaper or another newspaper of general circulation that the City determines is most likely to bring
responsive bids. The notice shall: (1) generally state the nature of the contemplated public work, (2) state that a description, plans, and specifications will be on file with the City, and (3) state that the bids are required to be sealed and filed with the City Clerk within the time for submittal specified in the notice. The City shall, in its sole discretion, award the contract to the lowest responsive and responsible bidder, may waive any informalities in the bids received, and/or may reject any or all bids.

2. **Responsible bidder determination.** For bid awards on a public work subject to the provisions of Chapter 39.04 RCW, and subject to available funding, the City may award the bid to the lowest responsive and responsible bidder. In evaluating lowest responsible bidder qualifications, the City shall not only evaluate the responsibility requirements provided within RCW 39.04.350, as the same may be later amended, but also all other supplemental responsibility criteria that the originating department director may determine is applicable to a particular project. Indicia of bidder responsibility inherently involve subjective determinations as to a bidder’s ability to perform and complete the contract work responsibly and to the City’s satisfaction. The City has an obligation and a duty to its citizens and its taxpayers to administer its budgets and complete its projects in a businesslike manner. Accordingly, it has a duty to exercise the type of inquiry and discretion a business would conduct when selecting a contractor who will be responsible to perform the public work.

In adopting supplemental responsibility criteria, examples of qualifications the director may seek include, without limitation, those that may indicate the bidder’s:

a. Ability, capacity, and skill to perform the work or provide the service required;

b. Reputation, character, integrity, judgment, experience, and efficiency;

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c. Ability to perform the work within the time specified;
d. Quality of performance of previous work or services;
e. Previous and existing compliance with laws relating to the work or services;
f. Access to sufficient tools and equipment to perform the work, and the expertise to operate the tools and equipment;
g. Total bonded capacity;
h. Bidder’s conduct under previous contracts;
i. Quality of work previously performed by bidder;
j. References from other public and private entities that have hired the bidder to perform work; or
k. Other information as may be secured having a bearing on the decision to award the work.

However, as provided for in RCW 39.04.350, as amended, all supplemental criteria that may be considered, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided by the originating department in the invitation to bid or in the bidding documents, and the director of the originating department is authorized to determine the specific responsibility criteria for each contract or public works project.

C. Public work performed by City staff. For a public work where the complete project, including goods, materials, or equipment procured for inclusion, is below the bid threshold provided in KCC 3.70.090.B., that work may be performed by City staff. A complete public work that will exceed the bid threshold provided in KCC 3.70.090.B is subject to competitive bids, either through the small works roster process provided for in Part 3 or formal advertised bids as provided in KCC 3.70.090.B.
Sec. 3.70.095. Acquisition of electronic data processing and telecommunications systems—Alternative. As an alternative to the competitive process provided for under KCC 3.70.080 and KCC 3.70.090, electronic data processing or telecommunications systems, which systems may include equipment, software, or services, may be obtained as provided for in this section and RCW 39.04.270, as the same may be later amended.

A. Request for proposals. A request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined in the City’s discretion, to permit reasonable competition consistent with the requirements of the procurement. The request for proposals shall identify significant evaluation factors, including price, and their relative importance. Notice of the request for proposals must be published in a newspaper of general circulation at least thirteen (13) days before the last date on which the proposals will be received.

B. Procedures for evaluation. The City shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract.

C. Award. The award shall be made to the qualified bidder whose proposal is most advantageous to the City with price and other factors considered. However, the City may reject any and all proposals for good cause and request new proposals.

Sec. 3.70.100. Local business preference.

A. Findings and intent. The City of Kent annually spends significant amounts on purchasing personal property, materials, and contractual services as part of its ongoing operation and management of the City and its infrastructure. The money used in making procurements of goods and
services is derived, in large part, from taxes, fees, and utility revenues derived from local businesses and local residents, many of whom work for these local businesses. The City Council finds that funds expended by the City should, to the extent possible and as allowed by law, be placed back in the City to support its local economy.

B. **Local business defined.** The term *local business* means any corporation, partnership, sole proprietor, limited liability company, or other business entity that has a City of Kent business license, maintains a physical business address within the City's corporate limits in an area zoned or otherwise approved under the Kent City Code for the operation of that business, and has at least one (1) employee who reports to work at that address on a daily basis to operate or perform work at that business. Post office boxes shall not be used for the purpose of establishing a physical address of a local business.

C. **Local preference in purchasing and contracting.** When procuring contracts as provided for in this chapter, the City shall make every effort to purchase from or contract with local businesses. When other product models that meet the same specifications are locally available (i.e., GE one hundred (100) watt light bulb vs. Sylvania one hundred (100) watt light bulb), thoughtful consideration should be given to purchasing the model that is offered by a local business. When a local business offers functionally equivalent products for the goods or services sought by the City (i.e., one hundred (100) watt incandescent light bulb vs. a functionally equivalent fluorescent or LED light bulb), thoughtful consideration should be given to purchasing the product that is offered by a local business. When selecting a business in response to a request for proposal, or when selecting a business that provides consulting services or other services that provide unique expertise, thoughtful consideration should be given to selecting a local business that can provide those

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products or services. However, the preference established in this section shall not prohibit the ability to compare quality or fitness for use of supplies, materials, equipment, or services proposed for procurement and shall not prohibit the ability to select the best business when comparing the qualifications, character, responsibility, or fitness of the businesses under consideration.

D. **Written record required when nonlocal business selected.** Whenever City staff decide to procure goods or services valued at an amount greater than five thousand dollars ($5,000) from a nonlocal business when a local business also provides the same goods or services, the manager in charge of making that procurement shall provide an explanation in a suitable format, electronic or otherwise, which will be retained. This provision does not apply to those procurements that are exempt from competitive bidding under KCC 3.70.110.

E. **Exceptions to local business preference.** The procurement preference set forth in this section shall not apply to any of the following:

1. Goods, materials, equipment or services provided under a cooperative purchasing agreement or interlocal agreement.
2. Procurements or contracts that are funded, in whole or in part, by a separate governmental entity and the laws, regulations, or policies of that separate governmental entity prohibit application of this local business preference.
3. Procurements or contracts identified in KCC 3.70.110 for which competitive bidding does not apply.
4. Procurements or contracts made under emergency situations.
5. Procurements made by a third-party under purchasing authority delegated to the third-party by a contract approved by the City Council.
Sec. 3.70.110. Exceptions to competitive bidding requirements. The competitive bidding requirements set forth in KCC 3.70.080 and KCC 3.70.090 shall not apply to those instances set forth in this section. Nothing in this section can act to waive the authorization requirements established in Part 4 of this chapter, KCC 3.70.210 through 3.70.240.

A. Waiver for purchases. The Mayor may waive the bidding requirements for the purchase of goods, materials, equipment, or services that are not part of a public work upon a finding that:

1. The purchase is clearly and legitimately limited to a single source of supply within the near vicinity; or
2. The purchase is subject to special market conditions, or involves special facilities or services; or
3. The bidding requirements would otherwise not be practicable or in the City's best interests under the circumstances.

If a waiver is appropriate, the director shall prepare a memo to the Mayor outlining the reasons for the requested waiver. If the Mayor authorizes the waiver, the purchase may be completed by direct negotiation. The document evidencing the waiver granted by the Mayor shall be maintained with the contract on file with the City Clerk's Office in accordance with KCC 3.70.050.

B. Waiver in emergency. When any emergency, including a public work emergency, requires the immediate execution of any contract, or authorization of any purchase, work, or change order or amendment to an existing contract, the Mayor shall have the power to waive competitive bidding requirements and award all contracts necessary to address the emergency situation.

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1. **Emergency defined.** An emergency, as that term is used in this section, shall have the same meaning as provided in RCW 39.04.280(3), as the same may be later amended.

2. **Emergency declared.** If the competitive bidding requirements of this chapter are waived due to an emergency, the Mayor shall issue a written finding of the existence of an emergency. This written finding, along with the resulting contract, shall be on file with the City Clerk’s Office and available for public inspection no later than two (2) weeks after the contract is awarded. If an emergency procurement or contract exceeds sixty-five thousand dollars ($65,000), the City Council shall be subsequently notified, but formal Council ratification is not required.

C. **Professional and technical consultant contracts.** Contracts entered into with professional or technical service consultants are not required to follow the competitive bidding requirements provided for in KCC 3.70.080, but may be entered into through direct negotiations. In contracting with professional or technical service consultants, it is incumbent on staff to seek the best price available under the circumstances, acting not only under existing market conditions, but also as a cautious steward of City resources. The following is a non-exclusive list of the type of professional or technical service consultants to which this subsection is intended to apply:

   1. **Licensed consultants** - Consultants whose practice is certified or licensed by the state Department of Licensing, other state board, or similar agency, including without limitation, real estate appraisers and brokers, attorneys, and accountants. This exception, however, does not apply to consultants who perform architectural, engineering, and land surveying services, which are subject to the provisions of KCC 3.70.070.

   2. **Health care and investment contracts** - Contracts entered into by the City to provide employee health care insurance coverage, or to provide employee investment services.
3. **Administration services for liability claims and workers’ compensation claims** - Contracts entered into by the City for insurance brokerage services, third-party administrator services for liability claims, and third-party administrator services for workers’ compensation claims.

4. **Professional training and employee recruitment** - Contracts entered into by the City to provide professional development or other training to City employees, volunteers, or elected officials, or to recruit for high level or specialized employee positions.

D. **Cultural performances, events, and public art.** The performers and artists selected by the Cultural Programs Division of the City’s Parks, Recreation, and Human Services Department to perform at various events, to create public art for the City, or the contractors and vendors hired to provide services and equipment related to those performances, events, and art are solicited based on artistic quality, balance of genres, prominence, marketability, technical requirements, and ability to coordinate those events with minimum City staff involvement. Given the unique nature of these performers and artists and the need for multiple individuals and contractors to work together to successfully coordinate and conduct each performance or event, contracts to retain performance or artistic services or to conduct a performance or other cultural event, including without limitation support services provided by sound technicians, caterers, or other similar trades, are not required to follow the competitive bidding requirements provided for in KCC 3.70.080, but may be entered into through direct negotiations with the City.

E. **Interlocal agreements.** The bidding procedures for purchases established under this chapter need not apply to interlocal agreements with another public agency or agencies for joint or cooperative action. Interlocal agreements should, however, include the minimum standards provided for in Chapter 39.34 RCW.

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F. **Use of another public agency’s bidding procedures.** The competitive bidding procedures established in this chapter shall not apply to purchases made from a contractor or vendor who was awarded a contract using another public agency’s established procurement process for substantially the same purchase. The City’s reliance on the other public agency’s process shall constitute compliance with the bid requirements of this chapter.

1. **Public works exclusion.** Another public agency’s bidding process cannot be relied upon for public works projects above the bid threshold provided in KCC 3.70.090.D., including goods, materials, or equipment procured for inclusion in a public work.

2. **Interlocal agreement recommended.** The City and the public agency upon whose bid the City intends to rely should enter into an interlocal agreement that allows the City to piggyback or buy off of the other public agency’s awarded contract.

3. **Contract and authorization required.** Once any competitive bid process is satisfied under this section, a contract between the City and the awarded contractor or vendor is required and must be authorized in accordance with Part 4 of this chapter, unless the City Attorney is consulted and advises otherwise.

G. **Delegated purchasing authority.**

1. **Purchases.** Purchases made by a third-party under purchasing authority delegated to it through a contract approved by the City Council are not required to follow the competitive bidding requirements provided for in KCC 3.70.080. As an example, this waiver would apply to an operator the City has entered into a contract with to operate and maintain a public facility. Under this waiver, if the operator’s contract provided the operator was to purchase all paper or catering...
supplies, that purchase would not be subject to the competitive bid process set forth in KCC 3.70.080.

2. Kent Special Events Center (ShoWare Center). Management and operation of the ShoWare Center is unique to City operations. Efficient management requires flexibility to move quickly to respond to market requirements for concerts, sporting events, and other offerings. The ShoWare Center operator, a national company that operates similar venues throughout the United States, also has access to special pricing and conditions that otherwise might not be available if the City operated as a stand-alone enterprise. Based on this unique venue and with the continuing obligation that the operator always obtain the best available pricing on all purchases of goods or services, the ShoWare Center operator is authorized to purchase goods or services as needed so long as the operator does not exceed the established budget and so long as purchases over $25,000 are first approved by the chief administrative officer or his or her designee. In addition to any contract obligation, the operator will also provide the Mayor and Council with a monthly audit report documenting financial activities at the ShoWare Center.

3. Public works. While Council may delegate in a contract the authority for a third-party to procure a public work, the third-party shall comply with any required competitive bid process applicable to the City for the public work.

H. Pass-through grant agreements. Contracts the City enters into with community-based social and human service providers, including sub-recipients of grant funds received from the Community Development and Block Grant (CDBG) Program, are not required to follow the competitive bidding requirements provided for in KCC 3.70.080 for purchases, but may be entered into through direct negotiations with the City, or in accordance with any competitive process required under federal or state law as a condition of the grant.
I. **Pass-through fee contracts - No financial impact to City.** Service contracts entered into at no or a nominal cost to the City, but result in any associated fee or charge being passed through to a party other than the City, including but not limited to an agreement with a collection company, need not comply with the competitive bidding requirements provided for in KCC 3.70.080 and may be entered into through direct negotiations with the City.

J. **Community service organizations.** The City may enter into contracts with community service organizations without regard to the bidding requirements provided for in KCC 3.70.080. If the community service organization will perform a public work or improvement project, the value of the community service organization’s contribution will not be included within the public work’s bidding threshold under KCC 3.70.090 only if the requirements of RCW 35.21.278, as the same may be later amended, are met, including:

1. The organization is a chamber of commerce; a service organization; a community, youth, or athletic association; or other similar association located and providing service in the immediate neighborhood;

2. The work the organization will perform involves drawing design plans, making improvements to a park or public square, installing equipment or artwork, or providing facility maintenance services as a community or neighborhood project;

3. The value of the benefit the City receives from the public work or improvement is at least equal to three (3) times that of the City’s payment to the organization to reimburse the organization for its expenses; and

4. All payments made by the City to qualifying service organizations in any one year under this competitive bid exception does...
not exceed two dollars ($2.00) per resident or twenty-five thousand dollars ($25,000), whichever amount is greater.

K. **Auctions.** The City may purchase supplies, equipment, or materials at auctions conducted by the United States government or any of its agencies, or by the State of Washington and any of its political subdivisions, without being subject to the bidding requirements of this chapter.

L. **Recycled products.** Nothing in this chapter shall prohibit the City from preferentially purchasing products made from recycled materials or products that may be recycled or reused, pursuant to Chapter 3.80 KCC or Chapter 43.19A RCW.

**PART 3. SMALL WORKS ROSTER**

**Sec. 3.70.120. Small works roster – Finding and authorization for establishment.** The City Council finds that the small works roster provisions provided for in RCW 39.04.155 would provide an efficient process for the award and construction of small public works projects within the City of Kent. Toward that end, this Part 3 authorizes staff to establish a small works roster procedure for public works pursuant to RCWs 35A.40.210, 35.23.352, and 39.04.155, as the same may be later amended.

**Sec. 3.70.130. Contract cost of $300,000 or less.** For those public works that would otherwise require advertised bids, but the estimated cost of the complete work, including any applicable sales tax, is three hundred thousand dollars ($300,000) or less, or the current statutory limit provided for in RCW 39.04.155, the City need not comply with formal sealed bidding procedures for the construction, building, renovation, remodeling, alteration, repair, or improvement of real

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property. Instead, the City may use the small works roster procedure for public works as set forth in this Part 3. The splitting of any public work into units or accomplishing any public work by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process. The small works roster process provided for in this Part 3 is an option available to City staff at the discretion of the director. For any qualified public work, advertised bids in accordance with KCC 3.70.090.B. may always be utilized. Similarly, the small works roster process may also be utilized, at the discretion of the director, in lieu of the process set forth in KCC 3.70.090.A. – KCC 3.70.090.C.

Sec. 3.70.140. Number of rosters. City staff may create a single general small works roster, or may create multiple small works rosters for different specialties or categories of anticipated work. Those small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. Should the City not contract with another entity to establish and maintain the rosters as provided for in KCC 3.70.170, City small works rosters will be maintained by the Public Works Department’s Contract Specialist, or such other position as the City may administratively designate.

Sec. 3.70.150. Contractors listed on small works roster. A small works roster shall consist of all responsible contractors who have requested to be on the roster and, where required by law, are properly licensed or registered to perform such work in this state. As may be requested by City staff, contractors desiring to be placed on a roster must keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the City as may be made a condition of being placed on a roster.
Sec. 3.70.160. Publication. At least once a year, the City shall publish a notice of the existence of the roster and solicit the names of contractors for the roster. This solicitation shall be published in either the City’s designated official newspaper, or in another newspaper of general circulation that the City determines is most likely to result in contractor responses. Responsible contractors shall be added to the appropriate roster at any time that they submit a written request and any necessary records. The City may require master contracts to be signed that become effective when a specific award is made using a small works roster.

Sec. 3.70.170. Electronic rosters. In addition to paper and/or electronic rosters kept on file with the City, the City may also use the state-wide electronic small works roster database developed and maintained by MRSC, or the City may contract with another public agency to maintain a shared small works roster that conforms to the requirements of RCW 39.04.155.

Sec. 3.70.180. Telephone or written quotations. For those public works projects where the small works roster is utilized, the City shall obtain telephone, written, or electronic quotations for public works projects from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010 and RCW 39.04.350, as follows:

A. Content of invitation for bid/quote. Work awarded to a contractor off of a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This section does not eliminate other requirements for
architectural, engineering, or land surveying approvals as to quality and compliance with building codes, or any statutory bonding, retainage, and prevailing wage provisions.

B. **Number of required invitations.**

1. **All small works projects.** If quotations are invited from less than all contractors on the appropriate small works roster, at least five (5) contractors from the roster who have indicated the capability of performing the kind of work being contracted must be invited to submit a bid or quote in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. If there are less than five (5) contractors on the appropriate small works roster, quotations must be invited from all contractors.

   a. For purposes of the small works roster, "equitably distribute" means that the City may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the City representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

2. **Small works projects from $150,000 to $300,000.** In addition to the requirement of KCC 3.70.180.B.1. above, if the estimated cost of the work is from one hundred fifty thousand dollars ($150,000) to three hundred thousand dollars ($300,000) and the City invites bids or quotes from less than all contractors on the appropriate roster, the City must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The City has the sole option of determining whether this notice is made to the remaining contractors by:

   a. Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
   
   b. Mailing a notice to these contractors; or

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c. Sending a notice to these contractors by facsimile or other electronic means.

C. **Response to invitation for bid/quote.** Invited contractors who are interested in the solicited work should respond within the time and by the manner declared by the City in the invitation. Failure to timely or properly respond may result in the contractor’s bid being rejected.

D. **Bid bond – Optional at director’s discretion.** A contractor’s bid, solicited under the small works roster process provided for in this Part 3, need not include, at the discretion of the director, a bid bond as required by RCW 35.23.352. All other bonding, retainage, and prevailing wage provisions applicable to public works projects apply to contracts entered into under the small works roster process.

E. **Written record.** The City shall maintain a written record of each contractor’s bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. Nothing in this section is intended to supplant the City’s duties and obligations under the Public Records Act.

**Sec. 3.70.190. Determining lowest responsible bidder.** The City shall award the contract for the public works project to the lowest responsible bidder on the small works roster; provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the City may call for new bids under the small works roster. A responsible bidder will be a contractor who meets the mandatory requirements of RCW 39.04.350(1) and any supplemental bidder responsibility criteria established for the project under RCW 39.04.350(2) and KCC 3.70.090.D.2, as amended.
Sec. 3.70.200. Award. The City shall collect all bids or quotations and consider them at the same time to determine the lowest responsible bidder and determine which contractor, if any, should be awarded the contract.

PART 4. CONTRACT EXECUTION - AUTHORIZATION

Sec. 3.70.210. Contract required and approval necessary. After complying with the competitive bidding process provided for within Part 2 or Part 3 of this chapter, all work or any purchase authorized with a particular vendor, consultant, or contractor that cumulatively is expected on a particular project to exceed an annual amount of twenty thousand dollars ($20,000) must be in writing, and approved according to the authority provided for within this Part 4. The thresholds provided in this section are to be evaluated based upon the total cost of the purchase or work, including applicable sales tax.

A. Contract log. The City Clerk will maintain a log of all new contracts executed by the City and delivered to the City Clerk’s Office in accordance with KCC 3.70.050. Each department must confirm that all contracts are routed to the City Clerk’s Office. The operator of the Kent Special Events Center (ShoWare Center) will also maintain a record of all contracts entered into over $25,000 and report those contracts to the City Clerk. The City Clerk will provide a quarterly report of all new contracts executed by the City during the prior quarter that are greater than $25,000 and not previously approved by Council.

B. Exception to contract requirement. If sufficient funds exist in the approved budget, a written contract may not be required if: (1) another agency’s bid process was relied upon as authorized under KCC 3.70.110.F.; (2) contracts bid or negotiated by another agency allow the City to receive under that contract on substantially the same terms; and
(3) the City Attorney has determined the contract between the bidding agency and the awarded contractor or vendor sufficiently protects the interests of the City.

**Sec. 3.70.220. Director approval.** Directors may approve work or purchases, and have signatory authority to execute any requisite contract, for the following:

A. **Contracts - $20,000 or less.** All purchases or work authorized by a director and valued at twenty thousand dollars ($20,000) or less should be memorialized in a written contract. Any contract or procurement in the amount of twenty thousand dollars ($20,000) or less, which can be paid from the originating department’s existing annual budget, may be approved and signed by the director.

B. **Change orders or contract amendments.** The director is authorized to approve and sign the following contract change orders or amendments:
   1. Change orders or contract amendments that involve only an extension of time for the contractor to perform.
   2. Individual change orders or contract amendments that do not exceed the original contract amount by more than twenty thousand dollars ($20,000), or cumulatively are within ten percent (10%) or sixty-five thousand dollars ($65,000) of the original contract amount, whichever amount is greater, if: sufficient funds remain in the approved project or department budget to pay the change order or amendment amount.

C. **Grant applications, award agreements, bequests, donations, or other gifts - $25,000 or less.** The director may approve and sign all grant applications, unless the application itself requires otherwise. The director may also accept any grant, bequest, donation, or other gift in the total amount of twenty-five thousand dollars ($25,000) or less, and is authorized to approve and sign all documents necessary to receive the

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grant, bequest, donation, or other gift. In determining the total grant, bequest, donation, or gift amount for application of this section, the cost of any matching funds and the cost of fulfilling all conditions placed on the City’s acceptance of the grant, bequest, donation, or gift must be included in the calculation. In order for the director to have the authority granted by this section, any matching funds required to obtain the grant, bequest, donation, or gift must be available within the director’s existing budget. Upon the City’s receipt of the grant, bequest, donation, or gift funds in the total amount of twenty-five thousand dollars ($25,000) or less, the Finance Director is authorized to amend the department director’s budget and authorize expenditure of the funds. The Finance Director may then include these funds in the budget adjustment ordinance.

Sec. 3.70.230. Mayor approval. The Mayor has signatory authority and may approve the following:

A. **Contracts - $20,000 or more.** All purchases or work valued at an amount in excess of twenty thousand dollars ($20,000) must be memorialized in a written contract and signed by the Mayor. Any contract valued at an amount of sixty-five thousand dollars ($65,000) or less may be signed by the Mayor without City Council approval if funds are available within the existing budget to pay the associated contract costs.

B. **Change orders or contract amendments.** The Mayor is authorized to approve and sign: (1) individual change orders or contract amendments that do not exceed the original contract amount by more than sixty-five thousand dollars ($65,000), or (2) cumulatively are within twenty percent (20%) or one hundred thirty thousand dollars ($130,000) of the original contract amount, whichever amount is greater, if sufficient funds remain within the existing budget.
C. **Grant acceptance, award agreements, bequests, donations, or other gifts.** The Mayor is authorized to approve and sign any application requesting grant funds for various City purposes if the grant application requires. The Mayor may also accept any grant, bequest, donation, or other gift in the amount of sixty-five thousand dollars ($65,000) or less, and is authorized to sign all documents necessary to receive the grant, bequest, donation, or other gift. In determining the total grant, bequest, donation, or gift amount for application of this section, the cost of any matching funds and the cost of fulfilling all conditions placed on the City’s acceptance of the grant, bequest, donation, or gift must be included in the calculation. In order for the Mayor to have the authority granted by this section, any matching funds required to obtain the grant, bequest, donation, or gift must be available within the existing budget. Upon the City’s receipt of the grant, bequest, donation, or other gift funds in the amount of sixty-five thousand dollars ($65,000) or less, the Finance Director is authorized to amend the budget and authorize expenditure of the funds. The Finance Director may then include these funds in the budget adjustment ordinance.

D. **Interlocal agreements.** The Mayor may approve and sign any agreement between the City and another public agency, including those entered into under the Interlocal Cooperation Act, Chapter 39.34 RCW, without Council approval, so long as any money that may be paid or received by the City under the terms of the agreement, or any resources dedicated by the City to the cooperative effort, does not exceed sixty-five thousand dollars ($65,000), and any payment or dedicated resource obligation under the agreement may be paid through the existing budget.

E. **Real property interests.** The Mayor is specifically authorized to do the following:

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1. To acquire and convey right-of-ways and other property interests by lease or purchase when the City Council has dedicated sufficient funds for the lease or purchase within the existing annual budget or project budget.

2. To enter into any lease or other agreement conveying an interest in real property where the total annual amount paid or received under the agreement, or the total annual fair market value of the real property interest conferred, is twenty-five thousand dollars ($25,000) or less. However, no authority delegated under this section shall authorize approval of a lease or other agreement conveying an interest in real property for a term greater than two (2) years, including all options to renew, without express approval of the City Council. The Mayor, Chief Administrative Officer, or appropriate department director will report to the applicable Council committee or to the full Council, at least quarterly, a record of any lease or other agreement entered into pursuant to this subsection.

3. To accept land, appurtenances, and other real property interests that are dedicated to the City as a condition of a private developer’s development permit or regulatory approval, or to release the same as part of such development approval, subject to prior review and approval by the City Attorney.

F. **Surplus.** Except for real property, or utility equipment and property as provided for in RCW 35.94.040, as the same may be later amended, or property that is sold to another governmental entity that is valued over fifty thousand dollars ($50,000) as provided for in RCW 39.33.020, as the same may be later amended, the Mayor, upon a director’s recommendation, is authorized to surplus equipment or property the Mayor determines is surplus to the City’s needs, and the Mayor may sell or otherwise dispose of such surplused equipment or property for fair market value or as otherwise allowed by law.

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G. **Pass-through fee contracts.** Service contracts entered into at no or a nominal cost to the City, but that result in any associated fee or charge being passed through to a party other than the City, such as an agreement with a collection company, may be approved and signed by the Mayor, subject to prior review by the City Attorney.

H. **Emergency.** If an emergency exists as provided for in KCC 3.70.110.B, the Mayor may sign all documents and take all actions necessary to address the emergency. If Council approval would have been required by KCC 3.70.240, the City Council shall be subsequently notified, but formal ratification is not required.

**Sec. 3.70.240. Council approval.** Council authorization is required before the Mayor is authorized to purchase or sign the items identified below. Upon Council approval, all attachments and documents pertinent to the authorized act are impliedly approved even if they are not expressly stated or identified. Further, minor adjustments may be made to any documents or additional action taken if such changes are consistent with Council’s approval and do not result in additional costs being paid by the City in excess of the amounts provided in KCC 3.70.230.B., if those additional costs are within established budgets.

A. **Contracts – Over $65,000.** All purchases or work valued at an amount in excess of sixty-five thousand dollars ($65,000) must be memorialized in a written contract. If a contract’s estimated cost is over sixty-five thousand dollars ($65,000), or if there are not sufficient funds in the existing budget to pay the full contract amount, the City Council must first authorize the contract before the Mayor may sign the contract to make it effective and binding upon the City.

1. When the City Council has specifically considered and approved a project with a line item in the budget that identifies: (a) the
contracting party, if known, (b) specific information as to the purchase or scope of the contract, (c) the estimated total cost of the purchase or contract, and (d) the term of the anticipated contract does not exceed two (2) years, that budget line item allocation shall constitute Council authorization for the purposes of this section if the actual cost does not exceed the amount budgeted for that expense.

2. The City Council may delegate to a third-party procurement authority on the City’s behalf. If such a delegation is made, no further Council approval is required. Any delegated procurement authority must be exercised in accordance with KCC 3.70.110.G.

B. Change orders or contract amendments. All change orders or amendments that exceed the Mayor’s authority under KCC 3.70.230.B. must be authorized by the City Council and signed by the Mayor before becoming effective and binding upon the City.

C. Agreements for receipt of grants, bequests, donations, or other gifts. If the City is awarded any grant, bequest, donation, or other gift in excess of sixty-five thousand dollars ($65,000), the City Council first must authorize acceptance of the funds and the Mayor’s execution of any resulting agreement.

D. Interlocal agreements. Any agreement between the City and another public agency that involves the payment or receipt of money, or the dedication of City resources, in excess of sixty-five thousand dollars ($65,000), including agreements entered into under the Interlocal Cooperation Act of Chapter 39.34 RCW, or that involve a payment obligation the City is unable to meet under the existing budget, must be authorized by the City Council and signed by the Mayor before becoming effective and binding upon the City.
E. **Real property interests.** Except for the limited authority codified in KCC 3.70.230.E, Council approval is required for all real property leases, sales, or purchases that are not incidental to implementation of a prior project or program approved by Council. Council approval is also required before the Mayor may sign any lease or other agreement conveying an interest in real property where the total annual rental value of the lease or other real property interest conferred is more than twenty-five thousand dollars ($25,000) or for a term greater than two (2) years, including all options to renew.

**SECTION 3. – Amendment to Public Works Contract Requirements.**
Chapter 6.01 of the Kent City Code, entitled “Public Works Contract Requirements,” is amended as follows:

**Chapter 6.01**

**PUBLIC WORKS CONTRACT REQUIREMENTS**

Sec. 6.01.010. **State law contract requirements.** All public works and improvements contracts entered into by the City shall be in conformance with, and subject to, the following minimum provisions of the Revised Code of Washington, which are not exclusive:

1. Chapter 39.04 RCW relating to public works.
2. RCWs 35A.40.210, —and—35.22.620, 35.23.352, and 39.04.155 relating to competitive bidding for public works, and purchases of goods, materials, equipment, and supplies.
3. RCWs 9.18.120 and 9.18.150 relating to the suppression of competitive bidding.
4. Chapter 60.28 RCW relating to liens for materials and labor performed.
5. Chapter 39.08 RCW relating to contractor’s bonds.
6. Chapters 39.12, 39.16, and 43.03 RCW relating to prevailing wages.
7. Chapter 49.12 RCW relating to hours of labor.
8. Chapter 51.12 RCW relating to worker’s compensation.
9. Chapter 39.20 RCW relating to employment of certain aliens.
10. Chapter 49.60 RCW relating to antidiscrimination in employment.
11. Chapter 39.28 RCW relating to emergency public works.

Sec. 6.01.020. Surety bond required.
A. A surety bond will be required in all public works and other contracts where compliance with RCWS 39.08.010 and 39.08.030 is required or in other contracts where the City Council deems a bond to be appropriate.
B. The surety bond shall have as a surety two (2) or more good and sufficient private parties or one (1) surety company. Such bond shall be conditioned upon the faithful performance by the contractor of all contract provisions and the payment of all laborers, mechanics, subcontractors, materialmen, and all others who supply the contract or with any material or labor in the performance of the contract provisions.
C. The surety bond shall be equal to at least one hundred (100) percent of the contract price and shall run to the City and be filed with the City Clerk.

Sec. 6.01.020. Contracting and Procurement Process. All public works and improvement contracts entered into by the City shall also be in conformance with and subject to the contracting and procurement process provided for in Chapter 3.70 of the Kent City Code, unless otherwise provided.

SECTION 5. - Repeal Ordinance No. 2961. By its adoption of this ordinance, the City Council incorporates the provisions of Ordinance No. 2961, originally adopted by Council on January 15, 1991. Therefore, upon
the effective date of this ordinance, Ordinance No. 2961 is hereby repealed in its entirety.

**SECTION 6.** – **Repeal of Resolution No. 1560.** By its adoption of this ordinance, the City Council incorporates the provisions of Resolution No. 1560, originally adopted by Council on January 4, 2000. Therefore, upon the effective date of this ordinance, Resolution No. 1560 is hereby repealed in its entirety. Any act consistent with and prior to the effective date of the repeal of Resolution No. 1560 is hereby ratified and affirmed.

**SECTION 7.** – **Savings.** The existing Chapter 3.70 of the Kent City Code, Ordinance No. 2961, and Resolution No. 1560, which are repealed and replaced by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

**SECTION 8.** – **Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**SECTION 9.** – **Severability.** If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 10.** – **Effective Date.** This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

[Signature]

SUZETTE COOKE, MAYOR

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Contracting & Procurement Process—Amend Chapters 3.70 and 6.01 of the Kent City Code
I hereby certify that this is a true copy of Ordinance No. 4150 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.