ORDINANCE NO. 4277

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapter 3.70 of the Kent City Code, entitled “Public Contracting and Procurement,” to: (1) create a competitive bid exception for technology contracts; (2) clarify authority concerning contract change orders and amendments; (3) remove reporting requirements for some contracts and leases; and (4) make other minor housekeeping amendments.

RECITALS

A. In 2015, the City revised its code provisions concerning competitive bidding and contract approval. In the years that have since passed, it was discovered that several provisions could benefit from clarification, particularly those concerning contract change orders and amendments. In an effort to bring equity between small dollar and multi-million dollar contracts, this ordinance clarifies the authority Council has delegated to department directors and the Mayor when a contract change order or amendment is required.

B. It is also appropriate to exempt technology purchases from current competitive bid requirements, including purchases of hardware, software, maintenance, and associated technical support, training, and licensing. When technology purchases are made, the City’s focus is on finding a product that best meets the City’s needs and can be implemented in the existing technological ecosystem and interface with existing programs and systems. Often times, a particular product from a
particular manufacturer is needed or preferred—the purchase is simply not interchangeable as it is for purchases of office supplies or furniture. While technology purchases will be exempt from competitive bidding, staff will still be required to use reasonable efforts to obtain the best price available under the circumstances. In addition, these technological purchases will still be subject to the existing contract approval process, which requires Council approval of all contracts greater than $65,000.

C. The 2015 ordinance also established two reporting requirements that required City Administration to report to Council, on a quarterly basis, all contracts the Mayor entered into that were greater than $25,000, or real property leases that were valued at $25,000 or less. Having made these reports over the past 3 years, it has been determined that the benefit the reports conferred on Council was not worth the effort expended by staff to create them. For that reason, this ordinance removes these reporting requirements.

D. Finally, other housekeeping amendments were made to clarify and more clearly distinguish between when the City is making a purchase through a purchasing cooperative and when the City is piggybacking on another agency’s competitive bid process to satisfy the City’s local competitive bid process.

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

ORDINANCE

SECTION 1. — Amendment — KCC 3.70.110. Section 3.70.110 of the Kent City Code, entitled “Exceptions to competitive bidding requirements,” is amended as follows:

Sec. 3.70.110. Exceptions to competitive bidding requirements. The competitive bidding requirements set forth in KCC
3.70.080 and 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.

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 nonexclusive 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

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training to city employees, volunteers, or elected officials, or to recruit for high level or specialized employee positions.

D. **Technology contracts.** In consultation with the City’s technology department, purchases of hardware, software, maintenance, and associated technical support, training, and licensing, may be made without regard to the bidding requirements provided for in KCC 3.70.080 and KCC 3.70.090 and may be entered into through direct negotiations. However, staff shall make reasonable efforts to obtain the best price available under the circumstances.

E.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.

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

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provided for in Chapter 39.34 RCW. While this exception waives any competitive bid process, the interlocal agreement or cooperative purchase agreement must still be authorized in accordance with Part 4 of this chapter, unless the city attorney is consulted and advises otherwise.

GF. 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(B), 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.

23. 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.

H6. 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

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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 twenty-five thousand dollars ($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.

IH. Pass-through grant agreements. Contracts the city enters into with community-based social and human service providers, including subrecipients 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

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city, or in accordance with any competitive process required under federal or state law as a condition of the grant.

¶. **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.

K3. **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 (1) year under this competitive bid exception

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does not exceed two dollars ($2) per resident or twenty-five thousand dollars ($25,000), whichever amount is greater.

LK. *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.

ML. *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.

**SECTION 2.** - *Amendment – KCC 3.70.210.* Section 3.70.210 of the Kent City Code, entitled “Contract required and approval necessary,” is amended as follows:

**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 twenty-five thousand dollars ($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 twenty-five thousand dollars ($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.

**SECTION 3.** - **Amendment – KCC 3.70.220.** Section 3.70.220 of the Kent City Code, entitled “Director approval,” is amended as follows:

**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 $20,000 or less should be memorialized in a written contract. Any contract or procurement in the amount of $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 no increase in the contract amount, such as 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 $20,000.
orders or contract amendments that collectively cumulatively do not exceed are within 10 percent or $65,000 of the original contract amount, including any applicable taxes, whichever amount is greater. If:

This change order approval authority may only be exercised 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 $25,000 or less, and is authorized to approve and 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 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 $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.

1. Grant reimbursement requests. Once a grant agreement is approved as provided for in this chapter, the director or designee is authorized to sign any grant reimbursement request or voucher, annual or final fiscal report, or any certification statement that may be required by the federal, state, or other local agency awarding or administering the grant. This delegation of authority specifically includes without limitation the certification required by 2 CFR 200.415, as currently enacted or hereafter amended or recodified.
D. **Collective bargaining agreements.** Unless the terms of a collective bargaining agreement provide otherwise, the director of Human Resources or the director’s designee is authorized to sign all agreements, or subsequent amendments to those agreements, with the City’s bargaining units if the financial impact of the agreement or amendment is valued at $65,000 or less, and sufficient funds remain in the budget to cover that financial impact.

**SECTION 4. - Amendment – KCC 3.70.230.** Section 3.70.230 of the Kent City Code, entitled “Mayor Approval,” is amended as follows:

**Sec. 3.70.230. Mayor Approval.** The mayor has signatory authority and may approve the following:

A. **Contracts – Over $20,000.** All purchases or work valued at an amount in excess of $20,000 must be memorialized in a written contract and signed by the mayor. Any contract valued at an amount of $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 $65,000, and (2) cumulatively, collectively, are within 20 percent or $130,000 of the original contract amount, including any applicable taxes, whichever amount is greater, if sufficient funds remain within the existing project or City 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 $65,000 or less, and is authorized to sign all

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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 as provided in this section, 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. All reimbursement requests, vouchers, reports, or certification statements are to be signed by the director or designee in accordance with KCC 3.70.220(C)(1).

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 $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:

1. To acquire and convey rights-of-way 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

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property interest conferred, is $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 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
$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.

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.

I. **Collective bargaining agreements.** Unless the terms of a collective bargaining agreement provide otherwise, the Mayor is authorized to sign all agreements, or subsequent amendments to those agreements, with the City’s bargaining units if the financial impact of the agreement or amendment is valued at $130,000 or less, and sufficient funds remain in the City’s budget to cover that financial impact. If the financial impact is greater than $130,000, or if sufficient funds do not exist within the budget to cover the financial impact, Council authorization must first be obtained before the Mayor is authorized to sign the agreement or amendment.

**SECTION 5.** – Amendment – KCC 3.70.240. Section 3.70.240 of the Kent City Code, entitled “Council approval,” is amended as follows:

**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 $65,000 must be memorialized in a written contract. If a contract’s estimated cost is over $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 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. Once a change order or contract amendment is approved by Council, the revised contract amount becomes the amount applicable for calculating future approval authority for subsequent change orders or amendments.

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 $65,000, the city council first must authorize acceptance of the funds and the mayor’s execution of any resulting agreement. All reimbursement requests, vouchers, reports, or certification statements are to be signed by the director or designee in accordance with KCC 3.70.220(C)(1).

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 $65,000, including
agreements entered into under the Interlocal Cooperation Act of Chapter 39.34 RCW, or that involves 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 $25,000 or for a term greater than two years, including all options to renew.

**SECTION 6. - 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; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

**SECTION 7. - Effective Date.** This ordinance shall take effect and be in force thirty days from and after its passage as provided by law.

**DANA RALPH, MAYOR**

**Date Approved**
ATTEST:

KIMBERLEY A. KOMOTO, CITY CLERK

Date Adopted 6/5/18
Date Published 6/8/18

APPROVED AS TO FORM:

ARTHUR "PAT" FITZPATRICK, CITY ATTORNEY