ORDINANCE NO. 4352

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) incorporate recent changes in state law concerning dollar thresholds applicable to public works projects and the utilization of a small works roster; (2) amend KCC 3.70.110 to exempt the use of lodging tax grants awarded to the City from competitive bidding requirements with exceptions; (3) strike KCC 3.70.230(F) related to the surplus of property under specified circumstances; (4) provide the city attorney with authority to retain attorneys and expert witnesses for the provision of specialized attorney services; (5) permit the mayor to approve contracts with a value of up to $100,000 instead of $65,000, and change orders or amendments with a value of up to $200,000 instead of $130,000; and (6) permit the mayor to approve contracts with temporary staffing firms for the provision of contractors for up to 18 months and at a value of $200,000 or less.

RECITALS

A. Kent's Public Contracting and Procurement Code is set forth in Chapter 3.70 of the Kent City Code. This chapter is amended from time-to-time to account for changes in state law related to public works contracts, and to establish efficiencies in the provision of government services. With the exception of public works contracts, the City Council has the authority to establish contracting regulations which are not dictated by state laws.

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B. In 2019, the Washington State Legislature passed ESSB 5418 related to the modernizing and efficiency of local government procurement. ESSB 5418 went into effect on July 28, 2019. Mainly, ESSB 5418 increased the dollar thresholds on public works projects requiring advertised bids. Specifically, for public works involving a single craft or trade, advertised bids are now required for projects estimated to exceed $75,500, up from the previous limit of $40,000. The limit for public works involving more than a single trade or craft has been raised from $65,000 to $116,155. For public works projects estimated to fall below these dollar thresholds, the director may determine what competitive bidding process will be used.

C. ESSB 5418 also raised the dollar thresholds associated with the public works small works roster process. The small works roster allows the City to solicit quotations for public works from a roster in lieu of using other procedures, such as advertised bids, to award projects. Previously, the small works roster could only be used for public works estimated to cost $300,000 or less. This limit has now been raised to $350,000. Within the small works roster process, special notice requirements are imposed upon the projects estimated to cost higher amounts. These dollar limits have also been raised.

D. In addition to the changes resulting from the passage of ESSB 5418, this ordinance will add an exception to bidding requirements for expenditures of lodging tax grant awards received by the City. Staff often applies to the Lodging Tax Advisory Committee for grant funding. These grant applications are often for the purpose of obtaining consultant services to explore specific projects or obtain specialized information in order to further the City's goal of attracting people and business to Kent. If the City Council awards lodging tax grant funding to the City, this amendment to KCC 3.70.110 will allow City staff to directly negotiate the purchase of goods.
and services related to that specific lodging tax grant award without going through the bidding process.

E. This ordinance will also permit the city attorney, with approval of the Mayor, to retain specialized attorney services and expert witnesses to assist with litigation or anticipated litigation, or specialized areas of the law in order to protect the legal interests of the City. This has been the practice of the City in the past, and this ordinance simply memorializes this current practice.

F. In order to bring Kent’s approval levels in line with larger cities, such as Everett, Bellevue, Tacoma, and Vancouver, this ordinance changes the Mayor’s contract approval authority from $65,000 to $100,000 and change order or amendment authority from a maximum of $130,000 to $200,000. This amendment will achieve more efficiencies for staff in terms of resources dedicated to contracting as well as the timing of entering contracts.

G. This ordinance also strikes KCC 3.70.230(F), which concerns the Mayor’s authority to surplus non-utility personal property. A separate ordinance updating the surplus code in Chapter 3.12 KCC will include a provision specifically addressing the surplus of personal property, making KCC 3.70.230(F) unnecessary.

H. Finally, this ordinance contains a new section that provides the Mayor with authority to enter contracts with temporary staffing firms. Temporary staffing firms are utilized when departments are unable to directly hire qualified temporary employees due to a lack of availability of candidates or adverse market conditions. In addition, in some sectors of the workforce, such as the Information Technology sector, it is common.
practice for individuals who are available on a temporary basis to be available through temporary firms. While the Mayor has authority to permit the retention of temporary employees, the Mayor's current authority to achieve the same outcome by utilizing a temporary staffing firm is limited by the code’s contract limits. This new code section will permit the Mayor to approve a contract with a temporary staffing firm to retain an individual for a period of up to 18 months at a total cost of up to $200,000, and the funds must be available in the department’s established budget.

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

ORDINANCE

SECTION 1. – Amendment – KCC 3.70.090. Section 3.70.090 of the Kent City Code, entitled “Procurements for the performance of public works” is hereby amended as follows:

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. For the purposes of this section, RCW 35A.40.210 and RCW 35.23.352 are hereby adopted by reference, as now enacted or hereafter amended, in order to establish the thresholds for required bids for public
works. The amendment or recodification of RCW 35A.40.210 or RCW 35.23.352 shall be given its full force and effect in the city upon the effective date of its amendment or recodification. As of December 2019, the bid threshold set forth in RCW 35.23.352 is $75,500 if the work involves only one craft or trade or the public works project is street signalization or street lighting, and $116,155 if the work involves more than one craft or trade.

A. **Public work of forty thousand dollars ($40,000)/sixty-five thousand dollars ($65,000) or less—Director discretion.** For a public work where the complete project involves only one (1) craft or trade and the cost is estimated at forty thousand dollars ($40,000) or less, or involves more than one (1) 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. **Public work where the cost of the complete contract is estimated to be less than the bid threshold set forth in RCW 35A.40.210 and RCW 35.23.352.** For a public work where the cost of the complete project is estimated to be less than the bid threshold set forth in RCW 35A.40.210 and RCW 35.23.352, the director shall determine what competitive 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 forty thousand dollars ($40,000) for single craft or trade, or greater than sixty-five thousand dollars ($65,000) for more than one (1) craft or trade—Advertised bids.** **Public work where the cost of the complete contract is estimated to be greater than the bid threshold set forth in RCW 35A.40.210 and RCW 35.23.352.**
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 (1) 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: (a) generally state the nature of the contemplated public work, (b) state that a description, plans, and specifications will be on file with the city, and (c) 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, and/or award the contract as otherwise provided for in this chapter.

2. **Lowest 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.

   a. **Supplemental responsibility criteria.** 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 and will help fulfill the city’s obligation to administer its budgets and complete its projects in a businesslike manner. Indicia of bidder responsibility inherently involve subjective determinations as to a bidder's

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

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

c-iii. Ability to perform the work within the time specified;

d-iv. Quality of performance of previous work or services;

e-v. Previous and existing compliance with laws relating to the work or services;

f-vi. Access to sufficient tools and equipment to perform the work, and the expertise to operate the tools and equipment;

g-vii. Total bonded capacity;

h-viii. Bidder's conduct under previous contracts;

i-x. Quality of work previously performed by bidder;

j-x. References from other public and private entities that have hired the bidder to perform work; or

k-xi. Other information as may be secured having a bearing on the decision to award the work.

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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.

b. **Option to choose the second lowest responsible bidder.** Pursuant to RCW 35.23.352, if the city issues a written finding that the lowest responsible bidder has delivered a project to the city within the last three years which was late, over budget, or did not meet specifications, and the city does not find in writing that such bidder has shown how they would improve performance to be likely to meet project specifications, then the city may choose the second lowest responsible bidder whose bid is within five percent of the lowest bid and meets the same criteria as the lowest responsible bidder.

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 subsection (B) of this section, that work may be performed by city staff. A complete public work that will exceed the bid threshold provided in subsection (B) of this section is subject to competitive bids, either through the small works roster process provided for in Part 3 or formal advertised bids as provided in subsection (B) of this section.

**SECTION 2.** - **Amendment – KCC 3.70.110.** Section 3.70.110 of the Kent City Code, entitled "Exceptions to competitive bidding requirements" is hereby 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 weeks after the contract is awarded. If an emergency procurement or contract exceeds $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 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 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. **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. **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 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.

G. **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. **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.

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

J. *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.

K. *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 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 $2 per resident or $25,000, whichever amount is greater.

L. **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.

M. **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.

N. **Lodging Tax Grant Awards.** If the City is awarded a grant by City Council through the Lodging Tax Advisory Committee process for the purchase of goods, materials, equipment, or services, not included within a public work, that purchase is not required to follow the competitive bidding requirements provided in KCC 3.70.080, and a contract for such purchase may be entered into through direct negotiations. The procurement of architectural, engineering, and land surveying services, however, remains subject to the requirements provided in KCC 3.70.070.

**SECTION 3. – Amendment – KCC 3.70.130.** Section 3.70.130 of the Kent City Code, entitled “Contract cost of three hundred thousand dollars ($300,000) or less” is hereby amended as follows:

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Sec. 3.70.130. **Contract cost of three hundred fifty thousand dollars ($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 fifty 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 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) through (C).

**SECTION 4. – Amendment – KCC 3.70.180.** Section 3.70.180 of the Kent City Code, entitled “Telephone or written quotations” is hereby amended as follows:

**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 39.04.350, as follows:
A. **Content of invitation for bid/quote.** Work awarded to a contractor off from 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 one-two hundred fifty thousand dollars ($150,000-250,000) to three hundred fifty thousand dollars ($300,000-350,000).** In addition to the requirement of subsection (B)(1) of this section, if the estimated cost of the work is from one-two hundred fifty thousand dollars ($150,000-250,000) to three hundred fifty thousand dollars ($300,000-350,000) 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

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 at least one of the following: telephone or electronic request. Nothing in this section is intended to supplant the city’s duties and obligations under the Public Records Act.
SECTION 5. – Amendment – KCC 3.70.210. Section 3.70.210 of the Kent City Code, entitled “Contract required and approval necessary” is hereby 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 $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.

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(G); (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.

C. Estimated procurement costs. When determining whether director, mayoral, or council approval is required for any contract, and the total cost of the contract is unknown because a definite term or unit amount cannot

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be reasonably determined, the procurement cost, for the purpose of establishing appropriate contract approval procedure, is the estimated annual cost of the procurement, including any estimated sales tax.

SECTION 6. - Amendment – KCC 3.70.220. Section 3.70.220 of the Kent City Code, entitled “Director approval” is hereby 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 an extension of time for the contractor to perform.

2. Change orders or contract amendments that collectively do not exceed 10 percent or $65,000 of the original contract amount, including any applicable taxes, whichever amount is greater.

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.

E. **Contracts for specialized attorney services.** The city attorney, with approval of the mayor, shall have authority to retain attorneys and expert witnesses to assist with litigation or anticipated litigation, or help with areas in which specialized attorney services are necessary for the protection of the city’s legal interests; provided, the retention of attorneys pursuant to this subsection shall be within established budgets.

**SECTION 7. – Amendment – KCC 3.70.230.** Section 3.70.230 of the Kent City Code, entitled “Mayor approval” is hereby 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 change orders or contract amendments that 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 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 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.

3. To accept land, attachments, fixtures, improvements, appurtenances, and other real or personal 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.E. 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.G. 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.

H. 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.

I. Contracts with temporary staffing firms. Temporary staff may be retained through staffing firms that provide temporary employees to work for the city. The mayor is authorized to sign contracts with staffing firms for temporary employees for technical, programming, and project support professionals, as well as architects, engineers, and other professionals when the contract term does not exceed 18 months and the contract value does not exceed $200,000. Funding for contracts approved by the mayor under this section shall be within the contracting department’s established budget. In the event a contract was signed by the mayor under this section, and it is later determined that the length or cost of the contract will exceed the time or amount provided in this section, the mayor’s change order or amendment authority shall not apply and the department director shall bring the matter before the city council for consideration of ratification. Nothing in this section shall limit the authority of department directors or the mayor as provided in other sections of this chapter.
SECTION 8. – Amendment – KCC 3.70.240. Section 3.70.240 of the Kent City Code, entitled “Council approval” is hereby 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 $65,000100,000. All purchases or work valued at an amount in excess of $65,000100,000 must be memorialized in a written contract. If a contract’s estimated cost is over $65,000100,000, 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(H).

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 $65,000,000, 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 $65,000,000, 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 9.** – **Severability.** If any one or more section, subsection, or sentence of this ordinance is 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.** – **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 11.** – **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

December 10, 2019
Date Approved

ATTEST:

KIMBERLEY A. KOMOTO, CITY CLERK

December 10, 2019
Date Adopted

December 13, 2019
Date Published

ARTHUR “PAT” FITZPATRICK, CITY ATTORNEY

Amend Chapter 3.70 KCC - Public Contracting and Procurement