

**COMMISSIONERS' ORDINANCE NO. O-24-19**

AN ORDINANCE AMENDING CHAPTER 35 OF THE COVINGTON CODE OF ORDINANCES, CITY POLICY, TO ESTABLISH PROCUREMENT POLICIES; AND AMENDING CHAPTER 30, ADMINISTRATIVE PROCEDURES TO REMOVE A DUPLICATIVE SECTION RELATING TO THE MODEL PROCUREMENT CODE.

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WHEREAS, the City of Covington Board of Commissioners identified the need for a comprehensive administrative policy outlining procurement, contract approval and management, and grant administration; and

WHEREAS, City staff researched potential solutions to: i) simplify and clarify the manner in which contracts can be approved, executed, and monitored for compliance; and ii) methods by which the City's procurement process could be easily explained and accessed; and

WHEREAS, the procurement procedures outlined throughout this ordinance detail federal and state law, and define City procurement requirements establishing clear guidelines which staff can utilize to conduct transparent procurement in the best interest of the City; and

WHEREAS, the procurement procedures will assist in establishing the role of the Procurement Officer in procurement transactions; and

WHEREAS, the grant procedures defined throughout this ordinance shall establish clear direction as to grant applications and administration; and

WHEREAS, the codified grant procedures will assist the newly created role of Grants Administrator in her obligations and duties; and

WHEREAS, the City Manager recommends that the Board of Commissioners adopt the following policies to create a standard by which all staff are accountable for their roles in procurement, contract approval and management, and overall compliance.

NOW THEREFORE,  
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY  
OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

Section 35.57, which reads as follows, is added to and amends the Covington Code of Ordinances:

**CHANGE ORDERS**

**§ 35.57 CHANGE ORDERS.**

**(A) Issuance. Change orders may be issued to authorize revised work that is required as a result of unanticipated developments that arise during the performance of a contract. A change order may be issued by the City, provided the revised work can be considered a reasonable part of the original scope and intent of the contract rather than departing from it, and where it clearly would be contrary to the public interest to halt the work and call for bids.**

**(B) Format. All change orders shall be achieved through written addendums to the applicable contract.**

**(C) Authority. Change orders that result in a final contract cost in excess of the bid amount accepted by the City may be administratively approved if the changes made are in accordance with this chapter, executed in writing, and approved by the appropriate authorized signatory.**

**(1) City Manager. The City Manager may approve and execute change orders for any contract up to an amount, in the aggregate, equal to 10 percent of the original contract price authorized by the City to complete the work contemplated, if the project was budgeted with a 10 percent contingency for potential change orders.**

**(2) Board of Commissioners. The Board of Commissioners may authorize any change order by a majority vote. The Board of Commissioners shall have sole authority to approve change orders not within the powers delegated to the City Manager above.**

**(D) Fiscal Responsibility of Department Heads. Department heads shall apprise the Finance Director of all anticipated and actual fiscal obligations of contracts and change orders, and shall verify sufficient funds are available to cover said obligations of the City prior to seeking contracts or requesting change orders.**

Section 2

Section 35.58, which reads as follows, is added to and amends the Covington Code of Ordinances:

**GRANT APPLICATIONS**

**§ 35.58 CITY MANAGER AUTHORIZED TO APPLY FOR GRANTS.**

**The City Manager is hereby authorized to sign grant applications on behalf of the City. Board of Commissioners approval shall not be required for the submission of any grant application. After notice of an award, the grant agreements shall follow the applicable contract approval and execution procedures.**

Section 3

Sections 35.60 through 35.81, which read as follows, are added to and amend the Covington Code of Ordinances:

**TITLE III: ADMINISTRATION**

**CHAPTER 35: CITY POLICY**

**LOCAL PROCUREMENT POLICY; DISPOSITION OF CITY PROPERTY; ADOPTION OF STATE AND FEDERAL LAW.**

**§ 35.60 PURPOSE.**

**The purpose of the City's Procurement Policy is to:**

- (i) Manage the procurement process in accordance with the law;**
- (ii) Ensure public funds are expensed in an efficient, transparent and ethical manner;**
- (iii) Establish a comprehensive plan for the City's purchase of goods and services; and**
- (iv) Encourage maximum engagement and competition of Vendors, and guard against bias or favoritism.**

**§ 35.61 DEFINITIONS.**

**(A) "Aggregate amount" means the total dollar amount during a fiscal year of items of alike nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.**

**(B) "Contract" means all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.**

**(C) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.**

**(D) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.**

**(E) "The legislative body or governing board" shall mean the City's Board of Commissioners.**

**(F) "May" means permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.**

**(G) "Negotiation" means contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.**

**(H) "Noncompetitive negotiation" means informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.**

**(I) "Objective measurable criteria" means sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective, such as taste and appearance, may be established when appropriate.**

**(J) "Person" means any business, individual, union, committee, club, or other organization or group of individuals.**

**(K) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining any goods, services or combination thereof. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.**

**(L) "Purchase order" means a request for payment/ approval for purchase that is entered into the City's accounting system. A purchase order is generated for every payment request within the City, exclusive of petty cash purchases.**

**(M) "Qualified purchasing exception" is a defined exception which may excuse the purchasing department from standard purchasing procedures. Qualified purchasing exceptions are defined in § 35.71(A).**

**(N) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.**

**(O) "Responsible bidder or Offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.**

**(P) "Responsive bidder" means a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.**

**(Q) "Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour, and taking place at a previously scheduled time and Internet location, during which multiple bidders, anonymous to each other, submit revised, lower bids to provide the solicited good or leased space.**

**(R) "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.**

**(S) "Shall" means imperative.**

(T) "Specifications" means any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(U) "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.

(V) "Supplies" means all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.

(W) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy, water, and wastewater conservation measures and is determined to be qualified by the local public agency. The qualified provider shall be responsible for and shall provide the local public agency with the following information regarding guaranteed energy, water, and wastewater savings contracts:

- (i) Project design and specifications;
- (ii) Construction management;
- (iii) Construction;
- (iv) Commissioning;
- (v) On-going services as required;
- (vi) Measurement and verification of savings for guaranteed energy, water, and wastewater savings contracts; and
- (vii) Annual reconciliation statements as provided in KRS 45A.352(8).

For the purpose of this subchapter, the definitions outlined above, and those defined by KRS 45A.345, shall apply unless the context clearly indicates or requires a different meaning.

#### § 35.62 ADOPTION OF STATE LAW.

Pursuant to KRS 45A. 360, the City hereby adopts the Kentucky Local Model Procurement Code and the provisions of KRS 45A.345 through 45A.460, which shall govern all procurement activities of the City, unless specifically stated otherwise throughout the context of this Ordinance. Applicable provisions of the Kentucky Local Model Procurement Code as set forth in KRS 45A.345 through 45A.460 are hereby adopted by reference as if stated in their entirety.

**§ 35.63 RESPONSIBILITY AND DELEGATION OF AUTHORITY.**

**(A) The administration and designation of authority for all City procurement is vested in the City Manager. The City Manager may delegate such authority as may be appropriate and necessary for the proper performance of the procurement function.**

**(B) Board of Commissioners approval shall not be required for the publication of any procurement solicitation.**

**§ 35.64 WRITTEN PROCUREMENT DETERMINATIONS.**

**Every determination required by the Kentucky Model Procurement Code or this Ordinance, made by an employee or official of the City, who is engaged in or responsible for the performance of procurement, shall be made in writing. Written determinations shall be maintained in the City's official contract file. For Small Purchases authorized in Section 35.66, required written determinations may be maintained in the City's accounting software when time will not permit creating a formal written determination. In such an instance, a purchase order for under \$ 30,000, (i) entered into the City's accounting software; and (ii) approved by the appropriate department head and the City Manager (or their qualified designee); and (iv) accompanied by the appropriate documentation as detailed by this Ordinance, will qualify as a sufficient written determination.**

**§ 35.65 PURCHASE TO BE WITHIN AMOUNT BUDGETED AND APPROPRIATED.**

**No purchase shall be made, or contract awarded, for an amount, which exceeds the sum-budgeted or appropriated amount awarded by the Board of Commissioners. Purchases made contrary to this provision may be considered void and not considered an obligation of the City. The person responsible the unauthorized purchase may be personally liable for the cost of the purchase or face disciplinary action up to and including termination.**

**§ 35.66 SMALL PURCHASE AUTHORITY.**

**(A) Small Purchases Generally. The City is authorized under KRS 45A.385 to use small purchase procedures for any contract for which a determination is made that the aggregate amount of the contract does not exceed \$30,000.00.**

**(B) \$5,000.00 and under.** Departments are hereby delegated the authority to make purchases of goods and services not to exceed \$5,000.00 from a vendor of choice, provided that the purchase decision is based on ethical business practices, provides the overall best value for the City, and that the aggregate amount of that purchase type (commodity/service) does not exceed \$30,000.00 in a fiscal year.

**(C) \$5,000 to \$30,000.00.** For purchases over \$5,000.00 and under \$30,000.00, department heads shall solicit three or more written quotes. Quotes must be attached, as credible documentation, to any purchase order over \$5,000 and under \$30,000. If three written quotes cannot be obtained based on a qualified purchasing exception, as defined by Covington Code of Ordinances § 35.66(D), the procuring department shall be required to complete a 'qualified purchasing exception form' to be submitted with their purchase order request. The City Manager reserves the right to permit the use of a vendor which has not provided the lowest quote.

**(D) Qualified Purchasing Exception.** A qualified purchase exception shall be aligned to the requirements of 'noncompetitive negotiation,' as defined by Covington Code of Ordinance § 35.71. In order to qualify for a purchasing exception a written determination must be made that states competition is not feasible and one or more of the requirements detailed by Covington Code of Ordinances § 35.71(A) is present.

**(i) When an exception is present, a procuring department may be exempted from standard purchasing procedures, this includes the requirement to obtain multiple quotes.**

**(ii) When a purchasing exception exists, the procuring department shall be required to complete a 'qualified purchasing exception form.' A 'qualified purchase exception form' must accompany any purchase order utilizing a purchasing exception. The City Manager, or their designee, shall review the completed form and either confirm the request and approve the purchase or deny the request and collaborate with the procuring department as to another solution.**

**(E) Good Faith.** All City procurement shall be conducted in a fair and ethical manner, and in the overall best interest of the City. Procurement requirements shall not be parceled, split, divided, or scheduled over a period of time in order to subvert the intent of this Ordinance or the Kentucky Local Model Procurement Code.

**(F) Waiver.** The City Manager reserves the right to waive any informalities which are deemed immaterial to the procurement, and which do not prejudice other offerors. The discretion as to waiver is vested in the City Manager; waiver is permissible when determined by the City Manager to be in the best interest of the City.



**§ 35.67      PROCUREMENT METHODS FOR PURCHASES OVER  
\$30,000.00.**

**In accordance with KRS 45A.365, all contracts or purchases in excess of \$30,000.00 shall be awarded via competitive sealed bidding through an Invitation for Bids (IFB) which may include the use of a reverse auction, except in the following instances:**

**(A) RFP Specifically Authorized. When competitive negotiation via a Request for Proposals (RFP) is authorized pursuant to KRS 45A.370, as defined by Covington Code of Ordinances §35.69.**

**(B) Bids Exceed Funds Available. When all bids submitted pursuant to competitive sealed bidding under KRS 45A.365 result in bid prices in excess of the funds available for the purchase. In such case, the provisions of KRS 45A.370, and Covington Code of Ordinances §35.69, relating to competitive negotiations shall be followed.**

**(C) No Bids Received. When no bids or only one bid is submitted pursuant to competitive sealed bidding. In such case, the provisions of KRS 45A.380, and Covington Code of Ordinance § 35.71, relating to noncompetitive negotiations shall be followed.**

**(D) Noncompetitive Negotiation Specifically Authorized Pursuant to KRS 45A.380. Upon a written determination that competition is not feasible, and when it is further determined that any permissible exception as detailed by Covington Code of Ordinance § 35.71(A) applies.**

**(E) Cooperative Purchasing. Pursuant to a cooperative purchasing agreement or a price agreement with the Commonwealth of Kentucky, in accordance with the KRS 45A.300 or 45A.420.**

**(F) Otherwise Permitted. When otherwise authorized by the Kentucky Local Model Procurement Code.**

**§ 35.68      COMPETITIVE SEALED BIDS – INVITATIONS FOR BIDS (IFB).**

**The following procedures shall apply to competitive sealed bids, commonly referred to as an Invitation for Bids (IFB):**

**(A) Advertising.**

**(1) All sealed bids shall be advertised not less than seven (7) days prior to the date advertised as the opening for bids.**

(2) The date the advertisement is published shall not be counted as advertising time in the seven (7) day calculation.

(3) Advertisements shall be made in the legal notices section of the local newspaper when the funding source or contract requires. Otherwise, advertisement on the internet, primarily publication to the City's website, shall be deemed a sufficient manner of notification.

(4) All IFBs shall be reviewed by the Finance Department and the City Solicitor's Office prior to advertising. City staff shall provide a minimum of one week for review.

(5) An extension of a bid opening date or any revision to a bid may be provided through written addendum, as determined by the City Manager or their designee, and issued in the same manner of the original solicitation.

(6) An IFB may be rescinded at any time by the City before the time when bids are scheduled to be publicly opened, if it is determined to be in the best interest of the City.

**(B) Specifications.**

(1) The City shall use specifications which assure the maximum practicable competition to meet the agency's needs.

(2) The City shall ensure that every IFB provides that an item equal to that named or described in the specifications may be furnished. The specifications may identify a sole brand in cases where, in the written opinion of the City Manager, documented unique and valid conditions require compatibility, continuity, or conformity with established standards. An item shall be considered equal to the item named or described if, in the opinion of the owner and the design professional responsible for the specifications:

(i) It is at least equal in quality, durability, strength, design, and other criteria deemed appropriate;

(ii) It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and

(iii) It conforms substantially to the detailed requirements for the item in the specifications.

(3) A specification which describes a product which is proprietary to one (1) company may be used only when no other kind of specification is reasonably available to describe requirements.

**(C) Use of Bid Price or Evaluated Bid Price.**

**(1) The bid shall be awarded to the responsible bidder who submits the responsive bid for the lowest bid price or lowest evaluated bid price, with the consideration of the preference for resident bidders as required by KRS 45A.494.**

**(2) If the bid is to be awarded on the basis of lowest bid price, the method of award shall be clearly stated in the IFB.**

**(3) If the bid is to be awarded on the basis of lowest evaluated bid price, the objectively measurable evaluation criteria to be used, along with applicable formulas or computation methods shall be clearly stated in the IFB.**

**(D) Withdrawal of Bids.**

**Bids, once submitted, may be withdrawn before the time set for bid opening has lapsed by submitting a request for withdrawal in writing to the City Manager at least twenty-four (24) hours before the date and time set for opening. No bid may be withdrawn after the bid opening date.**

**(E) Waiver of Irregularities.**

**The City Manager reserves the right to waive any informalities and nonconformance of any one or series of bids, which is deemed immaterial and does not prejudice other Bidders. The discretion of waiver is vested in the City Manager; waiver is permissible when determined by the City Manager to be in the best interest of the City.**

**(F) Opening Time for Bids.**

**(1) An opening time for each bid shall be stated in the advertisement of the IFB.**

**(2) It shall be the bidder's responsibility to assure that his bid is in the office before the time set for bid opening.**

**(3) The City Clerk, or their designee, shall at the time set for opening bids declare bids to be closed, and shall publicly open all bids submitted. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.**

**(F) Evaluation and Awards.**

**(1) After bids are opened they shall be reviewed for compliance with specifications, terms, and conditions by the City Manager, or their designee.**

**(2) Once evaluated, a recommendation for acceptance of a bid, or multiple bids, will be prepared by the City Manager, or their designee, who will present the recommendation to the Board of Commissioners.**

**(3) After a reasonable evaluation, a contract shall be awarded to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price, as designated in the IFB as the basis for award of the contract.**

**(4) If the City Manager determines, in writing, that no satisfactory bid has been received, all bids may be rejected and new bids may be invited on the basis of the same or revised specifications. The basis for rejection of all bids and any subsequent action taken with respect to the IFB shall be recorded in writing and maintained in the procurement file relating to the particular procurement.**

**§ 35.69 COMPETITIVE NEGOTIATION – REQUESTS FOR PROPOSALS (RFP).**

**(A) Competitive negotiations, commonly referred to as a Request for Proposals (RFP), may be used for a procurement when it is determined in writing by the City Manager, or their designee, that:**

**(1) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or**

**(2) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or**

**(3) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is**

given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.

(B) Advertising.

All RFPs shall be advertised in the same manner as sealed bids as detailed in Covington Code of Ordinance § 35.68(A).

(C) Specifications.

All RFPs shall include specifications that substantially adhere to the requirements of Covington Code of Ordinance § 35.68(B), most notably that specifications should be written in a manner which encourages the maximum amount of competition practicable.

(D) Withdrawal of Proposals.

Proposals, once submitted, may be withdrawn before the time set for opening as stated in the RFP has lapsed, by submitting a request for withdrawal in writing to the City Manager at least twenty-four (24) hours before the date and time set for opening. No proposal may be withdrawn after the bid opening date.

(E) Waiver of Irregularities.

The City Manager reserves the right to waive any informalities and nonconformance of any one or series of proposals, which is deemed immaterial and does not prejudice other offerors. The discretion of waiver is vested in the City Manager; waiver is permissible when determined by the City Manager to be in the best interest of the City.

(F) Opening Time for Proposals.

(1) All submitted proposals received by the City in response to a RFP shall be kept secure and unopened until the date and time set for final submission.

(2) All RFPs shall include detailed final submission instructions. Respondents shall be responsible for submitting their responses in a timely manner and in accordance with submission requirements outlined in the Request. Proposals shall not be opened or read publicly.

(3) Proposals shall not be eligible to be examined, inspected, or reviewed by persons of the public until all submissions have been opened, reviewed, and awarded or cancelled entirely.

**(G) Evaluation of Proposals.**

**(1) All RFPs shall indicate the factors to be considered in the evaluation of the request, including the reciprocal preference for resident bidders required by KRS 45A.494, and the relative importance of each factor; and the procedures to be followed if a reverse auction is used in the procurement.**

**(2) The City Manager, or their designee, shall examine each written proposal received for general compliance and shall provide a scored evaluation of each response. The City Manager may elect additional individuals to review and score received proposals.**

**(3) The City Manager, or their designee, shall determine in writing based upon individual review, those proposals received from responsible offerors that are reasonably susceptible of being selected for award.**

**(4) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:**

**(i) with respect to prices, where such prices are fixed by law, regulation, or reverse auction, except that consideration shall be given to competitive terms and conditions; or**

**(ii) where the time of delivery or performance will not permit discussions; or**

**(iii) where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience that acceptance of an initial offer without discussion would result in fair and reasonable prices.**

**(5) Discussions with offerors may be held privately, formally, informally, orally or in writing, or in any combination thereof, as determined by the City Manager to be in a manner most advantageous to the City.**

**(6) If, after discussion with offerors have concluded, it is determined that no acceptable proposal has been submitted, all proposals may be rejected and, in the discretion of the City Manager,**

new proposals may be requested on the basis of the same or revised terms, or the procurement may be abandoned.

(H) Awards.

(1) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City based upon the evaluation factors set forth in the RFP and the reciprocal preference for resident bidders required by KRS 45A.494.

§ 35.70 MULTIPLE AND PARTIAL AWARDS.

(A) Multiple or partial contracts may be awarded from a public solicitation when the scope of work permits services or goods to be parceled in a manner that would not create a disruption to the quality of services or the efficiency of the work.

(B) The City Manager reserves the right to award multiple or partial contracts for any public solicitation when that decision is made in the best interest of the City.

§ 35.71 NONCOMPETITIVE NEGOTIATIONS.

(A) Noncompetitive negotiations includes procurement over \$30,000.00 where no formal invitation for bids (IFB) or request for proposals (RFP) is used. Noncompetitive negotiations may be used only after a written determination is made that competition is not feasible and one or more of the following conditions exists:

(1) An emergency exists which will cause public harm as a result of the delay in competitive procedures;

(2) There is a single source within a reasonable geographical area of the product or service to be procured;

(3) The contract is for the services of a licensed professional, such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician, provided, however, that this provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services;

(4) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis, such as fresh fruits, vegetables, fish or meat;

(5) The contract is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible;

(6) The contract is for proprietary items for resale;

(7) The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency;

(8) The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids;

(9) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, workers' compensation insurance, and unemployment insurance;

(10) The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the local public agency; or

(11) The contract is with a private real estate developer and contains a requirement: (a) That the developer increase the size or otherwise improve the collection capacity of the sanitary sewer or storm water pipe serving the affected private real estate development; and (b) That the City pay only the proportional cost of increasing the size, or otherwise improving the collection capacity, of the sanitary sewer or storm water pipe over the original collection capacity.

(B) When a contract or purchase is facilitated upon noncompetitive negotiation, as listed above, the procuring department shall be required to complete a 'qualified purchase exception form,' as referenced in Covington Code of Ordinance § 35.66(D). A 'qualified purchase exception form' may be obtained through the City's Finance Department and must be completed and attached to any purchase order utilizing noncompetitive negotiation. The City Manager, or their designee, shall review the completed form and either confirm the request and approve the purchase or deny the request and collaborate with the procuring department as to a solution.

### §35.72 COOPERATIVE PURCHASING METHODS.

The City shall be permitted to engage in cooperative purchasing as defined by KRS 45A.300 or KRS 45A.420, as long as that engagement is made in the best interest of the City. When utilizing a cooperative



purchasing arrangement the procuring department shall be required to complete a 'qualified purchase exception form,' in accordance with Covington Code of Ordinance § 35.66(D).

**§ 35.73 TAX EXEMPTION.**

The City is exempt from sales and use tax. All procurement solicitations and contracts shall provide that the City is exempt from sales and use tax. Procuring departments shall ensure that all purchases made on behalf of the City do not include sales and use tax. The City's tax exempt certification may be obtained upon request through the City's Finance Department.

**§ 35.74 GOOD STANDING.**

Procuring departments shall be responsible for ensuring that all vendors selected for City procurement have an account in good standing with the City. Vendors providing commodities and services to the City should comply with the applicable provisions of Chapter 110 of the Covington Code of Ordinances regarding business licenses.

**§ 35.75 PREFERENCE FOR RESIDENT BIDDERS.**

(A) Prior to a City contract being awarded to the lowest responsible and responsive bidder, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.

(B) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding: (1) Is authorized to transact business in the Commonwealth; and (2) Has for one year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.

(C) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (b) of this section.

(D) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.

(E) This section shall apply to all contracts funded or controlled in whole or in part by the City.

(F) The Finance and Administration Cabinet of the Commonwealth of Kentucky shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by the City in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

(G) The preference for resident bidders shall not be given if the preference conflicts with federal law.

(H) Any solicitation or advertisement for bids for contracts shall incorporate KRS 45A.490 to 45A.494 as part of the solicitation or advertisement for bids.

#### §35.76 FEDERAL AWARDS.

When engaging in procurement with federal award monies, the City shall procure goods and services in conformance to the requirements of the Code of Federal Regulation, Title 2, Subtitle A, Chapter II, Part 200 (2 CFR § 200), this includes both pre and post award compliance. When engaged in federal procurement, if any portion of 2 CFR § 200 contradicts the City's procurement ordinance, 2 CFR § 200 will govern.

#### § 35.77 DISPOSITION OF SURPLUS PROPERTY.

(A) The City shall observe the requirements of KRS 45A.425 as to the disposition of any personal property.

(1) Pursuant to KRS 45A.425 the City may sell or otherwise dispose of any personal property which is not needed or has become unsuitable for public use, or which would be suitable, consistent with the public interest, for some other use.

(2) A written determination as to need of suitability of any personal property of the City shall be made; and such determination

shall fully describe the personal property; its intended use at the time of acquisition; the reasons why it is in the public interest to dispose of the item; and the method of disposition to be used.

**(3) Surplus or excess personal property as described in this section may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids in accordance with KRS 45A.365.**

**(4) In the event that the City receives no bids for surplus or excess personal property, either at public auction or by sealed bid, such property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the City Manager. In such instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of surplus or excess personal property shall be transferred to the general fund of the City, unless expressly allocated elsewhere by legislative direction or program guideline.**

**(5) Notwithstanding subsections (1) to (4) of this section, the City may also dispose of surplus property using the procedures in KRS 82.083.**

**(B) The City shall observe the requirements of KRS 82.083 as to the disposition of real property.**

**(1) Before disposing of any real property the City shall make a written determination setting forth and fully describing:**

- (i) The real property;**
- (ii) Its intended use at the time of acquisition;**
- (iii) The reasons why it is in the public interest to dispose of it;  
and**
- (iv) The method of disposition to be used.**

**(2) Real property may be disposed in any manner defined by KRS 82.083(4).**

**(3) If the City receives no bids for the real or personal property, either at public or electronic auction or by sealed bid, the property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the City. In those instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made.**

- (4) Any compensation resulting from the disposal of this real property shall be transferred to the general fund of the City, unless expressly allocated elsewhere by legislative direction or program guideline.

**§35.78 SURETIES AND BONDS.**

(A) In accordance with the provisions of KRS 45A.430, each bidder responding to an Invitation For Bid (IFB) for construction contracts estimated to exceed twenty-five thousand dollars (\$25,000.00) or to other invitations for bids wherein bid security is required shall submit required security with their bid.

(1) Bidders security shall be in the form of a bond, executed by a surety company authorized to do business in the state, or the equivalent in cash in a form acceptable to the city.

(2) Bidder's security shall be in an amount equal to at least five percent (5%) of the amount bid. The City may require that bidder's security be furnished in an amount greater than five percent (5%) of the amount bid. The five percent (5%) bid security will be construed as a minimum.

(3) When the IFB requires bid security be provided, and it is not provided as part of the bidder's response, the bid will be deemed noncompliant. Except where substantial compliance exists. The City Manager retains the authority to waive any informalities or nonconformance of any one or series of bids.

(4) After the bids are opened, they shall be irrevocable for the period specified in the IFB, provided that, if a bidder is permitted to withdraw his bid before award because of a mistake in the bid as allowed by law or regulation, no action shall be had against the bidder or the bidder's security.

(B) In accordance with the provisions of KRS 45A.435, when a construction contract is awarded in an amount in excess of twenty-five thousand dollars (\$25,000), the following bonds shall be furnished to the City, and shall become binding on the parties upon the award of the contract:

(1) A performance bond satisfactory to the local public agency executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the City, in an

amount equal to one hundred percent (100%) of the contract price as it may be increased; and

(2) A payment bond satisfactory to the local public agency, executed by a surety company authorized to do business in this Commonwealth, or otherwise supplied, satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or his subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the original contract price.

**§35.79 PUBLIC AVAILABILITY OF RECORDS.**

(A) As a public agency within the Commonwealth of Kentucky, the City is subject to the Kentucky Open Records Act, KRS 61.870, et seq. Procurement related public records, which are not exempt from disclosure under the statutory exceptions outlined in KRS 61.878, shall be open to public inspection and disclosure, upon request.

(B) Requests regarding the public availability of any procurement documentation or record shall be directed to the City Clerk, and made in accordance with the requirements of the Covington Open Records Policy, Covington Code of Ordinances, Chapter 39.

(C) In accordance with KRS 61.878(o), records of a procurement process under KRS Chapter 45A or 56 shall be exempt from public disclosure under the Kentucky Open Records Act, until:

(1) A contract is awarded; or

(2) The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited.

(D) Parties engaged in business with the City, or seeking to engage in business with the City, should take care to not disclose any confidential or proprietary information, or trade secrets, when providing information to the City, and if absolutely necessary, should mark said records as 'CONFIDENTIAL – DO NOT DISCLOSE.' The City recognizes the need for confidentiality in some records and will work to withhold confidential information exempted from disclosure, but cannot guarantee nondisclosure.

**§35.80 CONFLICT OF INTEREST.**

**The City maintains strict adherence to its Code of Ethics, in all manners, and as defined by Covington Code of Ordinances, Chapter 36. In addition to the above referenced Code of Ethics, the City shall also observe and abide by the ethical standards prescribed by KRS 45A.455, as it pertains to public procurement.**

**The provisions of KRS 45A.455 state,**

**(A) It shall be a breach of ethical standards for any City employee or official with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to their knowledge:**

**(1) They, or any member of their immediate family has a financial interest therein; or**

**(2) A business or organization in which they or any member of their immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or**

**(3) Any other person, business, or organization with whom they or any member of their immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.**

**(B) It shall be a breach of ethical standards for any person to offer, give, or agree to give any City employee, official or former employee, or for any City employee, official or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.**

(C) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(D) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every City contract and solicitation therefor.

(E) It shall be a breach of ethical standards for any City employee, official, or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

**§35.81** **EQUAL BUSINESS OPPORTUNITY.**

(A) It is the intent and desire of the City to promote full and equal business opportunities for all persons and entities. Further, it shall be considered a unlawful practice for any employee or official of the City to fail to

(i) refuse to hire; or

(ii) discourage any individual or business from the participation in; or

(iii) in any manner discriminate towards;

an individual or business desiring to participate in City procurement based on disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity. (in adherence to City of Covington Code of Ordinance § 37.08). Any individual or business claiming to be aggrieved by a violation of this provision may, within ninety (90) days of the alleged violation or within thirty (30) days of the dismissal of a charge or complaint concerning the same matter by another governmental agency or state or federal court without a final judgment on the merits, whichever last occurs, file a written complaint with the City Manager. The City Manager may designate an agent to administer, evaluate, and investigate the complaint in accordance with the provisions of Covington Code of Ordinance § 37.10.

(B) It is the obligation of the City when procuring services or goods with federal, state, or other funding which requires adherence to specified business equality standards, in addition to the requirements described herein, to abide by those standards in their entirety, and wholly disclose

them in any public solicitation which may result in the expenditure of those funds.

Section 4

Section 30.07 of the Covington Code of Ordinances, which reads as follows, is repealed:

“The provisions of the Kentucky Model Procurement Code as set forth in KRS Chapter 45A.343 through 45A.460 are hereby adopted by reference as if stated in their entirety.”

Section 5

That this ordinance shall take effect and be in full force when passed, published, and recorded according to law.

Joseph U. Meyer  
MAYOR

ATTEST:

Margaret McHughan  
CITY CLERK

Passed: 7-23-19 (Second Reading)

6-24-19 (First Reading)

ISSUED DATE	RECEIVED DATE	COMM. DATE	FILED
		CLERK	
		COMMISSIONER	



Meeting Date:					
ORD.: 1ST		2ND			
OR:					
	Bowman	Downing	Smith	Williams	Meyer
Yeas	✓	✓	✓	✓	✓
Nays					
Present, not Voting					