

ORDINANCE 27-2019

AN ORDINANCE AMENDING AND UPDATING SECTIONS OF CHAPTER 2, ARTICLE IV, DIVISION 3 OF THE OWENSBORO MUNICIPAL CODE; AND FURTHER REPEALING CHAPTER 2, ARTICLE IV, DIVISION 3, SECTION 2-161.

WHEREAS, the City procurement code is codified in Chapter 2, Article IV, Division 3 of the Owensboro Municipal Code; and

WHEREAS, the Kentucky General Assembly enacted 2019 House Bill 26, which increased from:

- (a) \$20,000.00 to \$30,000.00 the amount for which a local public agency could use small purchase procedures;
- (b) \$25,000.00 to \$100,000.00 the amount for which construction contracts required bidder security; and
- (c) \$20,000.00 to \$30,000.00 the amount for which a city is required to make newspaper advertisements for bids; and

WHEREAS, the City desires to adopt the changes contained in 2019 House Bill 26 and to update certain sections of the City procurement code, and repeal Section 2-161 which is no longer required by statute.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. Section 2-146 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

- (a) The city manager is responsible for administration of the procurement function of the city.

- (1) The city manager may delegate to a [chief] purchasing officer and to department heads such authority as may be appropriate and necessary for the proper performance of the procurement function.
- (2) No delegation of authority shall be made to a [chief] purchasing officer to award any contract in excess of the amount specified in KRS 45A.385, or to a department to award any contract which in the aggregate equals or exceeds five [one] thousand dollars (\$5,000.00). [~~(\$1,000.00)-~~]
- (3) Any delegation of purchasing authority shall be in writing and shall be included in policies and procedures issued pursuant to these regulations.
- (b) No contract shall be awarded for an amount which exceeds the sum budgeted and appropriated for the procurement by the legislative body.
- (c) The city manager or designee shall establish procedures to perform the procurement function as established in KRS 45A.345 through 45A.455 and these regulations.
- (d) The city manager or designee shall provide, upon the request of the legislative body, information concerning any [~~with a written summary of all~~] procurement activities.
- ~~[(1) A written summary of procurement activities shall be furnished quarterly to members of the legislative body.~~
- ~~a. Identification of all contracts resulting from sealed bids, including number of bids received, range of bid prices, vendor to whom award was made;~~
- ~~b. Identification of all contracts resulting from competitive negotiation, along with a copy of the written determination to use that form of procurement;~~
- ~~c. Identification of all contracts resulting from noncompetitive negotiations along with a copy of the written determination to use that form of procurement.~~
- ~~(2) The city manager shall provide, upon request of the legislative body, full information concerning any purchasing activity.]~~

Section 2. Section 2-147 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

- (a) Every determination by an employee or official of the city engaged in or responsible for the performance of any procurement activity or function and constituting a final procurement action, or which is required by the Kentucky Model Procurement Code or this division, shall be made in writing if cost equals or exceeds five thousand dollars (\$5,000.00). [~~fifty dollars (\$50.00)-~~]
- (b) Each determination shall be based on written findings that support the determination and shall be signed by the employee making the determination. These determinations and written findings shall be retained in the official contract file.

Section 3. Section 2-148 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

- (a) Any person desiring to receive [written] notice of procurement requirements of the city may make application to have his name placed on a bidders' list for the types or kinds of

goods or services he wishes to supply or provide. The city manager or designee may specify the form to be used and the procedure to be followed by the prospective vendor to make application for inclusion on the bidders' lists.

(b) The city manager or designee may establish a program for vendor prequalification. To establish a vendor prequalification system, information shall be solicited [~~the city manager shall solicit~~] from each prospective vendor sufficient [~~information~~] to permit evaluation of vendor's qualifications in terms of:

- (1) The ability and capacity to perform on a timely basis under contract for goods or services he wishes to bid on and supply.
- (2) Good character, integrity, reputation and experience.
- (3) Satisfactory performance in prior dealings with the city.
- (4) Satisfactory performance in dealings with other local government units, the state, and other state governments.

(c) The city manager or designee may refuse to list any prospective vendor if that vendor does not meet the minimum qualifications established for entry on a bidders' list. It is the responsibility of the vendor to show that he meets established qualifications for entry on the bidders' list to which he seeks to gain entry.

(d) The prospective vendor will be promptly notified if his application is disapproved and the reason(s) for disapproval will be stated.

(e) A prospective bidder may appeal the disapproval of his application by written appeal to the city manager or designee. The appeal must be filed within two (2) weeks after the date of the notice of disapproval, and must state the grounds for the appeal with reasonable particularity and must relate directly to the reason(s) for disapproval of the application.

(f) The city manager or designee may establish the time at which and the conditions under which a vendor whose application has been disapproved may reapply for placement on a bidders' list.

(g) A bid may be accepted from a bidder who has not prequalified, provided that the bidder submits all information required by the city manager or designee to make a determination of the bidder's qualifications prior to the award of a contract.

(h) No vendor shall be prequalified until vendor provides the City with a sworn statement made under penalty of perjury that vendor has not knowingly violated any provision of the campaign finance laws of Kentucky and that the award of a contract to the vendor will not violate any provision of the campaign finance laws of Kentucky.

Section 4. Section 2-149 of Chapter 2, Article IV, Division 3 is hereby amended

as follows:

(a) Advertising:

- (1) All sealed bids shall be advertised not less than seven (7) nor more than twenty-one (21) days prior to the date set for opening. The advertisement shall include the time and place the bids will be opened and the time and place where the specifications can be obtained.
- (2) The date the advertisement appears shall not be counted as advertising time.

- (3) Advertisements shall be entered in the legal notices section of the newspaper with the largest circulation within the jurisdiction area of the city.
- (4) The advertisement for bids may be placed in other publications when, in the judgment of the city manager or designee, such advertisement would best secure the interests of the city.
- (5) If it is determined during the advertising period that additional time should be allowed for the preparation of bids, the bid opening date may be extended by:
- Placing a legal notice, specifying the revised bid opening date in the local newspaper with the largest circulation; the revised bid opening date shall be not less than seven (7) nor more than twenty-one (21) days after the appearance of the legal notice; or
 - Issuing an addendum to the invitation for bids. Such an addendum must be in writing, ~~[must be mailed or]~~ delivered to all holders of the invitation for bids, and must be acknowledged on the form of proposal by each bidder submitting a bid.
- (6) Extensions of bid opening date may be permitted when:
- Changes are made in specifications after advertisement.
 - One (1) or more bidders notify the city manager or designee of discrepancies, errors or areas requiring clarification in the specifications.
 - Specifications require design work on the part of bidders, and when unforeseen conditions make completion of bid preparation prior to the bid deadline impossible.
 - Strikes, disasters or other uncontrollable factors prevent bidders from acquiring information necessary for bid preparation.
 - Other reasons as may be determined by the city manager or designee.
- (7) An invitation for bids may be rescinded when:
- Conditions leading to issuance of an invitation for bids change sufficiently to make the proposed purchase unnecessary.
 - Funds for the proposed purchase become unavailable.
 - It becomes apparent that no bids will be received because:
 - The item or service requested is currently unavailable.
 - Bid prices will apparently exceed available funds.
 - Major revisions in the specifications are necessary to ensure that responsible and reasonable bids are received.
- (b) Specifications and standard specifications:
- (1) Definitions:
- Specifications: A concise description of the physical and/or functional characteristics of a supply, service or construction item ~~[statement of a set of requirements to be satisfied by a product, material or a process,]~~ indicating, whenever appropriate, the procedure to be used to determine whether requirements given are satisfied.
 - Standard specification: A specification established through a standardization process to be used for all or most purchases of a commodity or service by the city.

(2) Maximum practicable competition: All specifications used in procurement process shall be designed to provide the maximum practicable competition consistent with the level of quality required.

(3) Format: All specifications shall be in a standard format and approved by the city manager or designee.

(4) Accuracy: Specifications shall be as open and accurate as conditions permit. Any restrictive element shall require written justification by the using agency.

(5) Type: The appropriate type of specification, as herein described, shall be used for each purchase.

a. Design specifications describe how an item is to be manufactured or built. This type of specification is particularly suitable for construction projects.

b. Performance specifications describe the capabilities of the item to be purchased. Criteria are developed to measure the ability of the item to be purchased to perform or last.

c. A combination of design and performance specifications may be used when appropriate.

d. "Brand name or equivalent" specifications may be used only when other types of specifications are inappropriate or unavailable. If "brand name or equivalent" specifications are used, the specifications must:

1. Specify more than one (1) brand name if possible.

2. Specifically state ~~[that]~~ an equivalent product may be supplied. The burden of proof of equivalency shall be on the proposing vendor.

3. Set forth all salient criteria to be met by all products proposed.

(c) Use of Forms: All bids shall be submitted on forms provided by the city. Bids submitted on other forms may be rejected as nonresponsive.

(d) Use of Bid Price or Evaluated Bid Price: The bid shall be awarded to the responsible bidder who submits the responsive bid for the lowest bid price or lowest evaluated bid price.

(1) If the bid is to be awarded on the basis of lowest bid price, the method of award shall be clearly stated in the invitation for bids.

(2) If the bid is to be awarded on the basis of lowest evaluated bid price, this shall be stated; and the evaluation criteria to be used, along with applicable formulas or computation methods, shall be clearly stated in the invitation for bids.

(e) Withdrawal of Bids. No bid, once submitted, may be withdrawn before the time allowed for acceptance stated in the invitation for bids has elapsed unless:

(1) Bids have not been opened and a written request is received from a bidder for withdrawal of his bid more than twenty-four (24) hours before the date and time set for opening.

(2) An error has been made that is obvious on the face of the bid (e.g., error in extensions, arithmetical errors, etc.).

(3) The bidder can demonstrate from worksheets or other documents that an error has been made in preparation of the bid documents.

(4) Request for withdrawal of a bid is made in writing to the city manager or designee, clearly stating the reason for the request for withdrawal. Any bid withdrawal except under the circumstances set forth herein shall require forfeiture of bid security.

(f) Waiver of Informalities: The city manager or designee may waive any informalities and may establish conditions under which such incomplete bids may be considered if it is determined that such waiver is in the best interest of the city.

(g) Opening Time for Bids:

(1) An opening time for each bid shall be stated in the advertisement and invitation for bids.

(2) The time set for opening shall be established by a clock in the office of the city manager or designee. 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 manager or designee shall, at the time set for opening bids, declare bidding to be closed and shall publicly open all bids submitted. If the structure of the invitation for bids permits, all bids submitted shall be read aloud.

(4) Bids shall not be examined, inspected or reviewed by persons present at the opening until all bids have been opened.

(5) The city manager or ~~his~~ designee shall, with reasonable promptness, prepare a tabulation of all bids received in response to an invitation for bids and shall make such tabulation available to the public upon reasonable request.

(h) Evaluation and Awards:

(1) Immediately after bids are opened, the city manager or ~~his~~ designee shall review all bids for compliance with specifications, terms and conditions.

(2) The city manager or ~~his~~ designee shall forward copies of all bids received to the head of the using agency. The head of the using agency shall submit his recommendation for acceptance of a bid or bids to the city manager or designee upon request.

(3) Every bidder shall, when requested by the purchasing official responsible for the particular procurement, clarify or explain in writing any matter contained in his bid which the purchasing official determines needs clarification or explanation. The bid of any bidder who fails to provide such written clarification or explanation of his bid when such clarification or explanation is requested shall not be considered for award. The written clarification or explanation of a bid shall be incorporated in and become part of any contract awarded on the basis of that bid.

(4) Alternate bids will be considered for award only if the invitation of bids specifically requests that alternates be submitted and establishes conditions under which alternate bids will be considered for award.

(5) After a reasonable time for evaluation, a contract shall be awarded to the responsive and responsible bidder whose bid (or alternate bid, if alternates are requested in the invitation for bids) is either the lowest bid price or the lowest evaluated bid price, as designated in the invitation for bids as the basis for award of the contract.

(6) If the city manager or designee 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, or competitive negotiations may be undertaken for the procurement. The basis for rejection of all bids and subsequent action taken with respect to the invitation for bids shall be recorded in writing and filed in the bid file relating to the particular procurement.

(i) Rejection of Bids: The city manager or designee reserves the right to reject any and all bids and to waive technicalities and minor irregularities in bids. Grounds for the rejection shall include but shall not be limited to:

- (1) Failure of a bid to conform to the essential requirements of an invitation for bids.
- (2) Failure to conform to specifications contained in or referred to in any invitation for bids unless the invitation authorized submission of alternate bids and the alternate proposal meets the requirements specified in the invitation for bids.
- (3) Failure to conform to a delivery schedule established in an invitation for bids.
- (4) Imposition of conditions which would modify the terms and conditions of the invitation for bids, or which would limit the bidder's liability to the city under terms of the contract awarded on the basis of such invitation for bids.
- (5) Failure of a bid, as determined in writing by the city manager or designee, to be reasonable in price.
- (6) Determination that a bid was submitted by a bidder determined to be not responsible.
- (7) Failure to furnish a bid guarantee when such a guarantee is required by an invitation for bids.

(j) Bid Conditions:

- (1) The city manager or designee shall adopt and revise as necessary general conditions for bidding. The general conditions for bidding shall be applicable to, included in or incorporated by references in all invitations for bids issued by the city.
- (2) The city manager or designee may, as required by a particular procurement, develop and adopt special bid conditions supplemental to the general bid conditions.
- (3) Any bidder who submits a bid in response to an invitation for bids shall be deemed to have agreed to comply with all terms, conditions and specifications of such invitation for bids.

(k) Contract Pricing: The following matters shall be applicable to all invitations for bids issued, bids submitted and contracts awarded for the purchase of commodities, supplies and equipment pursuant to KRS 45A.365 and this regulation:

- (1) Discounts shall not be considered unless stated in invitation for bids.
- (2) In case of a discrepancy in the extension of a price, the unit price shall govern over the total price.
- (3) An award may be made to the lowest aggregate bidder for all items, group of items or on an individual basis, whichever is deemed to be in the best interest of the city.

Section 5. Section 2-150 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

(a) Competitive negotiations may be used for a procurement when:

- (1) The particular procurement is of such a complex nature or includes such technical detail that specifications cannot be fairly and objectively prepared to permit competition by sealed bids.

- (2) The particular procurement is for high-technology equipment available from a limited number of sources of supply and for which specifications cannot practically be prepared except by reference to the specifications of the equipment of a single source of supply.
- (3) The city manager or designee determines [~~in writing~~] that the conditions permitted contracting by competitive negotiation pursuant to KRS 45A.370 and KRS 45A.375 exist.
- (b) When the city manager or designee determines [~~in writing~~] that competitive negotiation is necessary to carry out a particular procurement, competitive negotiations shall commence by advertisement of a request for written proposals as provided in KRS 45A.370.
- (c) A request for proposals shall indicate the factors to be considered in the evaluation and the relative importance of each factor and shall include:
- (1) A request by the local government for proposals pursuant to KRS 45A.370 and 45A.375.
 - (2) A statement of the work required.
 - (3) Desired performance schedule.
 - (4) Available government-furnished property, if any.
 - (5) Applicable provisions to be included in the contract if awarded.
 - (6) Criteria that will be used to evaluate proposals received.
 - (7) Where and how detailed specifications may be obtained.
 - (8) Required time and place for submission of offers.
- (d) All written proposals received by the city manager or designee in response to a request for proposals shall be kept secure and unopened until the date and time set for opening.
- (1) Proposals not clearly marked as such on the envelope in which proposal is submitted may be opened for identification purposes, appropriately identified and resealed until the time for opening proposals.
 - (2) Proposals shall be opened on the date and at the time set for opening.
 - (3) Proposals for competitive negotiations shall not be subject to public inspection until negotiations between the city and all offerors have been concluded and a contract awarded.
- (e) The city manager or designee shall examine each written proposal received for general conformity with the advertised terms of the procurement.
- (1) The city manager or designee shall determine in writing, based upon individual review, those proposals received from responsible offerors that constitute a reasonable basis for negotiation. Each such offeror shall be contacted informally and a meeting scheduled for discussion of the offeror's proposals.
 - (2) Discussions need not be conducted under the circumstances of or relative to the topics enumerated in KRS 45A.370, section (3) subsections (a), (b) and (c).
 - (3) Discussions with offerors shall be held individually and informally, orally, in writing, or both orally and in writing, as determined by the city manager or designee to be most advantageous to the city. Discussion shall not disclose any information derived from proposals submitted by competing offerors.
 - (4) If, after discussion with all responsible offerors have concluded, it is determined that no acceptable proposal has been submitted, any or all proposals may be rejected and, in the discretion of the city manager or designee, new proposals may

be requested as provided in this regulation on the basis of the same or revised terms, or the procurement may be abandoned.

(f) The city manager or designee shall prepare a written summary of all oral discussions in competitive negotiations setting forth the date or dates of discussion with all responsible offerors and the general substance of the discussions. Verbatim records of the discussion shall not be required.

(g) All other provisions of KRS 45A.370 pertaining to discussion and awards shall be adhered to.

Section 6. Section 2-151 of Chapter 2, Article IV, Division 3 is hereby amended

as follows:

(a) Non-competitive negotiations may be used only after a written determination by the city manager or designee that competition for the particular procurement is not feasible and that:

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

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

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

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

(5) The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, and unemployment insurance; or

(6) The contract is for the purchase of perishable items purchased on a weekly or more frequent basis; or

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

(8) ~~[(7)]~~ Services, goods or equipment from the state, its political subdivision or the government of the United States; or

(9) ~~[(8)]~~ Services, goods or equipment available under a state price contract established for all state agencies; or

(10) [(9)] The contract is for 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 that negotiations for routine or recurring contractual services for licensed professionals be initiated only after an advertisement in the local paper has been run announcing the need for such services. ~~[, and specifying the person or department to contact for further information provided that this provision]~~ This provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services. ~~[, and provided further that contracts under this provision shall require approval by~~

~~municipal order of the board of commissioners in open session, except that the city manager may hire a professional in an emergency after notice to the commissioners and may engage temporary instructors for seasonal classes offered by the parks and recreation department without special notice to the commissioners.]~~

Section 7. Section 2-152 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

(a) The city manager or designee shall establish small ~~[shall]~~ purchase procedures pursuant to KRS 45A.385. The city manager or designee shall determine the need for any item requested and whether or not the contract is for less than the amount specified in KRS 45A.385 and the expenditure is provided for in the budget.

(1) Procurement ~~[requirement]~~ shall not be parceled, split, divided or purchased over a period of time in order to avoid ~~[meet]~~ the dollar limitations for small purchases.

(2) The city manager or designee shall obtain three (3) price quotes from vendors ~~[only]~~ if the price of an item equals or exceeds five ~~[one]~~ thousand dollars (\$5,000.00) ~~(\$1,000.00)~~ and select the one most advantageous to the city.

(b) The city manager or designee shall maintain records of all small purchases.

(1) Administration. The city manager or designee is responsible for administration of the procurement function of the city.

(2) Dollar limitations.

a. No contract shall be awarded for an amount which exceeds the sum budgeted and appropriated for the procurement by the board of commissioners.

b. All contracts estimated to exceed the amount established in KRS 45A.385 shall be awarded through the sealed bids process or by other means determined in writing to satisfy the requirements of the Kentucky Model Procurement Code.

c. All procurements not exceeding the amount established in KRS 45A.385, shall be procured through the small purchases procedure. Procurement requirements shall not be parceled, split, divided or purchased over a period of time in order to meet the dollar limitations for small purchases.

d. In cases of small purchases between five ~~[one]~~ thousand dollars (\$5,000.00) ~~(\$1,000.00)~~ and the amount established in KRS 45A.385, the person authorized to make the purchase shall contact a minimum of three (3) potential suppliers and request written quotations from each of them. The requirement of written quotations may be dispensed with after the person makes a written determination that time does not permit the submission of written quotations. Should such a determination be made, the quotations requested should be subsequently verified in writing by the bidder. An award shall be made to the responsive and responsible supplier submitting the lowest acceptable quotation.

e. In cases of small purchases it [it] is mandatory that the person conducting this transaction file the written responses received at the time of or after the time the person requested the quotation, including a signed form [memo] as to who was contacted for quotations, quantity, and description of items quoted, amount quoted, who was awarded the contract and the reasons the contract was awarded. This record serves the [dual] purpose of recording in writing their efforts at obtaining the lowest and best price from the most responsive and responsible bidder, protecting the public and ensuring that proper procedures have been followed as well as [and] protecting the person from accusation of not following the proper procedure.

~~[f. In cases of small purchases over one thousand dollars (\$1,000.00), the person authorized to make the purchase shall record in writing his efforts at obtaining the lowest and best price from the most responsive and responsible bidder and shall record in reasonable detail the steps taken and the reason for expending the funds, the amount expended, and the manner in which the funds were dispensed. This again serves to protect the public and the employee.]~~

Section 8. Section 2-153 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

(a) Multiple contracts may be awarded on the basis of a single invitation for bids or after competitive negotiations when it is determined in writing by the city manager in advance of the invitation for bids or the advertisement and solicitation for proposals for competitive negotiations that the award of multiple contracts is in the best interest of the city, provided its needs are met at a reasonable cost. A determination and notice to [of] potential offerors that multiple contracts may be awarded for any procurement shall not preclude the award of a single contract for such procurement.

(b) When it is determined after evaluation of competitive bids or the close of competitive negotiations that acceptable bids or offers have been received for only part(s) of the requirements of the procurement:

(1) A contract may be awarded for the part(s) of the procurement for which acceptable bids or offers have been received.

(2) All bids or offers may be rejected and a new invitation for bids or requests for proposals based on the same or revised terms, conditions and specifications may be issued.

(3) All bids found unacceptable for part(s) of the procurement may be rejected and an invitation for bids or request for proposals, based on the same or revised terms, conditions and specifications for the part(s) of the procurement for which no acceptable bids were received, may be issued.

Section 9. Section 2-154 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

(a) The city manager or designee shall be authorized to provide, by appropriate clauses to contracts for supplies or services of all types, for changes and modifications to such contracts and providing for the method or methods of calculating the costs of any decrease, increase or other change in the contract price resulting from such change or modification.

(1) In contracts for the purchase of fixed amounts of commodities, supplies and equipment, increases in quantities in excess of fifteen (15) percent of the original quantity fixed by contract shall not be permitted unless the invitation for bids or requests for proposals for competitive negotiation informed prospective bidders or offerors that an increase in quantities might be forthcoming.

(2) Increases in unit prices shall not be permitted in such contracts for increased quantities except as provided by a price escalation formula authorized by the invitation for bids or request for proposals for competitive negotiations.

(3) All changes or modifications to contracts for the purchase of commodities, supplies, equipment and construction services shall be effected by an advise of change in order to the contract which shall be supported by a written determination documenting the reason and basis for the change or modification to the contract.

(4) A copy of the advise of change in order and the supporting documentation relative to any change or modification to a contract shall be filed and maintained in the contract file.

(b) Every contractor who accepts a contract containing clauses authorizing changes or modifications to the contract shall be deemed by acceptance of the contract to have agreed to the changes or modifications of the contract as provided therein.

(c) Any contractor who is determined in writing by the city manager or designee to be in breach of any of the terms and conditions of a contract may in the discretion of the city manager or designee be declared in default, and such contract may be terminated for any of the following:

(1) Failure to perform the contract according to its terms, conditions and specifications.

(2) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract.

(3) Late payment or nonpayment of bills for labor, materials, supplies or equipment furnished in connection with a contract for construction services as evidenced by mechanic's liens filed pursuant to the provisions of KRS chapter 376, or letters of indebtedness received from creditors.

(4) Failure to diligently prosecute the work under a contract for construction service.

(d) The city shall not be liable for any further payment to a contractor under a contract terminated for the contractor's default after the date of such default except for commodities, supplies, equipment or services delivered and accepted on or before the date of default and for which payment had not been made as of that date.

(1) The contractor and/or his surety, if a performance or payment bond has been required under the contract, shall be jointly and severally liable to the city for all loss, cost or damage sustained as a result of the contractor's default.

(2) A contractor's surety's liability shall not exceed the final sum specified in the contractor's bond.

(e) The city shall be authorized to terminate for its own convenience all contracts for the procurement of supplies and services when the city manager or designee determines in writing that such termination will be in the best interest of the city.

(1) When it has been determined that a contract should be terminated for the convenience of the city, the city manager or designee is authorized to negotiate a settlement with the contractor according to terms deemed just and equitable.

(2) Compensation to a contractor for lost profits on a contract terminated for convenience of the city shall not exceed an amount proportionate to the sum that the contractor's total expected margin of profit on the contract bore to the contract price, based on the total out-of-pocket expense incurred by the contractor as of the date of termination of the contract. The contractor shall have the burden of establishing the amount of compensation to which he believes himself to be entitled by the submission of complete and accurate cost data employed in submitting his bid or proposal for the contract, and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination.

Section 10. Section 2-156 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

(a) Each bidder responding to invitations for bids for construction contracts estimated to exceed one hundred thousand dollars (\$100,000.00) [~~twenty-five thousand dollars (\$25,000.00)~~] or to other invitations for bids wherein bid security is required shall submit required security with his bid pursuant to KRS 45A.430.

(1) The bidder's security shall be in the form of a bond, executed by a surety company authorized to do business in the commonwealth, or the equivalent in cash in a form acceptable to the city.

(2) The bidder's security shall be in an amount equal to at least five (5) percent of the amount bid. The city may require that bidder's security be furnished in an amount greater than five (5) percent of the amount bid.

(3) When a bidder fails to comply with the security requirement of an invitation for bids, his bid shall be rejected except under exceptions provided in these regulations.

(b) Every contractor to whom it is proposed to award a contract for construction services costing more than one hundred thousand dollars (\$100,000.00) [~~twenty-five thousand dollars (\$25,000.00)~~] (or less than one hundred thousand dollars (\$100,000.00) [~~twenty-five thousand dollars (\$25,000.00)~~] when such bonding is required by the invitation for bids or request for proposals) shall, prior to the award of such contract, give a bond or bonds to the city as obligee, in a form satisfactory to the city and executed by a surety company authorized to do business in the state. Pursuant to KRS 45A.435, bond or bonds shall be in a penal sum equal to one hundred (100) percent of the contract price, as it may be increased, and shall bind the contractor, as principal, and the surety to the performance of the contract according to the terms, conditions and specifications of the contract, including changes and modifications thereto, and to the payment of all costs for

labor, materials, equipment, supplies, taxes and other proper charges incurred or to be incurred in performance of the contract.

(c) Every contractor to whom it is proposed to award a contract for the purchase of commodities, supplies, equipment or services shall, when required by the terms of an invitation for bids or request for proposals, give bond with surety satisfactory to the city in a penal amount not to exceed one hundred (100) percent of the contract price. The actual amount of the bond required will be that determined by the city manager or designee as sufficient to assure faithful performance of the contract by the contractor according to its terms.

(d) A contract shall not be awarded to any contractor who fails or refuses to give bond when required as provided by KRS 45A.435 and this regulation.

(e) All bonds required by these regulations shall be in such form as is directed by or acceptable to the city manager or designee.

Section 11. Section 2-157 of Chapter 2, Article IV, Division 3 is hereby amended

as follows:

(a) The city shall not award a contract for any procurement when the contract price would exceed the funds appropriated for the procurement by the legislative body.

(b) If all bids received in response to an invitation exceed the amount appropriated for the procurement and sufficient additional funds are not authorized to permit an award to the lowest responsive and responsible bidder, the city manager or designee shall proceed with competitive negotiations in accordance with KRS 45A.375.

(c) An invitation for bids or request for proposals may be advertised in anticipation of an appropriation provided such invitation or request clearly states that funds for the procurement while anticipated have not been appropriated.

(d) The city manager or designee may award a contract for the procurement of supplies, equipment or services for a period that exceeds the fiscal year provided the contract permits cancellation without penalty in the event that funds for the contract are not appropriated for any succeeding year.

Section 12. Section 2-158 of Chapter 2, Article IV, Division 3 is hereby amended

as follows:

(a) Pursuant to KRS 45A.360(2), copies of records, specifications, procedures and regulations relating to purchasing shall be available to the public during normal business hours, upon request, and at a cost not to exceed the cost of copying.

(b) The city manager or designee may not disclose to the public or to a prospective vendor's competitors:

(1) Information furnished in response to a request from the city manager or designee for information necessary to determine a bidder's responsibility (KRS 45A.395).

(2) Information obtained from a prospective vendor during negotiations which qualifies as confidential technical information or trade secrets, and/or the disclosure of which would constitute violation of patent rights or copyrights.

Section 13. Section 2-165 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

Before selling or disposing of any real or personal property, the [The] city manager or designee shall prepare a written statement including: [which describes the property, including the date of acquisition and its intended use at the time.]

(1) A description of the property, intended use at time of acquisition, and [The statement shall include the proposed disposition of the property and the] reasons such disposition is in the public interest.

(2) [The statement shall include the present use of the property and evidence of consultation with the person having custody or control.

(3)] The statement shall include the method of disposition, whether it is to be transferred to another governmental agency or to a private concern; compensation, if any, to be received; and whether it is to be sold at public auction, by sealed bids, or through negotiations.

[(4) If the property is to be sold through negotiations, the property shall be appraised by at least two (2) competent and independent appraisers and the appraisals attached. No property shall be sold on a negotiated basis for less than the appraised value.]

Section 14. Section 2-166 of Chapter 2, Article IV, Division 3 is hereby amended as follows:

(a) All provisions of conflicts of interest under KRS 45A.455 shall be adhered to.

(b) It is a misdemeanor not to have the following prohibition on every solicitation or contract document. The penalty is a five thousand dollar (\$5,000.00) fine or one (1) year's imprisonment or both on conviction.

PROHIBITION AGAINST CONFLICTS OF
INTEREST, GRATUITIES AND KICKBACKS
(KRS 45A. 455)

"Any employee or official of the City of Owensboro, Kentucky, elective or appointive, who shall take, receive or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or other things of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, for, or to, or from any person, partnership, firm or corporation, offering bidding for, or in open market seeking to make sales to the City of Owensboro, Kentucky, shall be deemed guilty of a felony and upon conviction such person or persons shall be punished by a fine not to exceed five thousand dollars (\$5,000.00) or by imprisonment in the penitentiary for not

more than ten (10) [~~five (5)~~] years, or both so fined and imprisoned in the discretion of the jury.

"Every person, firm, or corporation offering to make, or pay, or give, any rebate, percentage of contract, money or any other thing of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, to any employee or to any official of the board of the City of Owensboro, Kentucky, elective or appointive, in his efforts to bid for, or offer for sale, or to seek in the open market, shall be deemed guilty of a felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000.00) or by imprisonment in the penitentiary for not more than ten (10) [~~five (5)~~] years, or both so fined and imprisoned in the discretion of the jury."

Section 15. Chapter 2, Article IV, Division 3, Section 2-161 of the Owensboro Municipal Code is hereby repealed in its entirety.

INTRODUCED AND PUBLICLY READ ON FIRST READING, this the 3rd day of September, 2019.

PUBLICLY READ AND APPROVED ON SECOND READING, this the 17th day of September, 2019.

Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk