

ORDINANCE 319

**AN ORDINANCE OF THE COMMON COUNCIL OF ELKINS, WEST VIRGINIA
AMENDING AND RE-ENACTING CITY CODE CHAPTER 30.20 *ET SEQ.*
COMPETITIVE BIDDING**

WHEREAS, the Common Council of the City of Elkins, West Virginia previously adopted ordinances, which are codified and reflected in City Code, Chapter § 30.20 *et seq.*, Competitive Bidding.

WHEREAS, subsequent to the passages of the ordinances, it has become apparent that certain provisions of the City Code , Chapter § 30.20 *et seq.* Competitive Bidding needed to be changed and amended to reflect changes in State law , for clarity and for enforceability issues; and

WHEREAS the Common Council has determined that by making these amendments to said Chapter it is in the best interests of the citizens of the City.

NOW THEREFORE BE IT ORDAINED and ENACTED by the Common Council that City Code, Chapter 30.20 *et seq.*, Competitive Bidding, be amended as follows:

COMPETITIVE BIDDING

§ 30.20 WHEN REQUIRED; PUBLICATION OF NOTICE.

(A) Every contract for the procurement of materials, supplies, equipment, or services by the city, except as hereinafter provided, shall be by competitive bidding and shall not be approved and let until after at least fourteen days public notice made as 1) the public posting at City Hall of the notice for bids, request for proposal, or other written solicitation by the City, 2) the public posting of such notice, request, or solicitation on the City's website and social media accounts, and 3) a Class I legal advertisement in compliance with the provisions of article three [§§ 59-3-1, et seq.] Chapter fifty-nine of the Code of West Virginia, and after a public opening for bids. Provided that the Council, or the Administrative Officer having issued such request for competitive bidding, may reject all bids and advertise again; further provided, that the above requirements shall not apply to

any contract for a gross amount of less than \$25,000; further provided, that purchases of materials, supplies, equipment, or services costing \$25,000 or more shall in all cases be memorialized by a contract, or other writing, authorized by City Council prior to execution, even in the event that the above requirements concerning competitive bidding are waived under the provisions of division (B), below; further provided that the City Council may by motion subsequently ratify purchases made by its employees or agents in the event of a mistake of law or fact. Nothing in this section shall preclude the use by the city of or be applicable to the purchasing of goods or services through the State Director of the Purchasing Division of the State Department of Finance and Administration as provided by the W.Va. Code § 5A-3-9.

(B) (1) The provision of division (A) above, concerning competitive bidding, shall not be applicable when the Council, by vote, finds that:

(a) Compliance therewith would be inimical to the public welfare;

(b) Procurement of the contemplated goods or services is of such urgency as to brook no delay;

(c) Other circumstances exist which would render the interests of the city better served by noncompliance than by compliance with division (A) above;

(d) As a practical matter it is determined that there exists only one supplier of the goods or services sought to be obtained;

(e) The goods or services sought to be obtained are for the purpose of maintenance or repair of existing city goods or equipment; or

(f) No suppliers of goods or services sought to be obtained are located within the general circulation area of any of the city newspapers.

(2) When the Council determines that the provisions of division (A) above, concerning competitive bidding, are not applicable, the Council shall, at the time of the approval of the contract for the procurement of goods and services, refer to the applicable provision of this division (B) which is relied upon for the waiver of the bidding process.

(C) (1) Notwithstanding other provisions of this subchapter, in any instance that a purchase of goods or services by the city is required under the provisions of this subchapter to be made upon competitive bids, such purchase shall be made from a vendor resident in the city if such bid does not exceed the lowest qualified bid from a nonresident vendor by more than 2% of the latter bid, and if such resident vendor has made written claim for such preference at the time the bid was submitted.

(2) A vendor shall be deemed to be a resident of the city if such vendor is an individual, partnership, association or corporation that maintains an active, bona fide place of business within the city and maintains therein a representative inventory of the commodities on which the bid is submitted and, in the case of a corporation, is duly

qualified to do business in the state as is in good standing under the laws of the state and under the ordinances of the city.

(1991 Code, § 2-3) (Ord. passed 11-1-1979; Ord. 175, passed 3-20-2014)

Statutory reference:

Authority of city to require competitive bidding for purchases of supplies and the like, see W.Va. Code § 8-12-10

Availability to municipalities of facilities of state division of purchases, see W.Va. Code § 5A-3-9

Applicable state requirements concerning bid bonds and other details, see W.Va. Code §5-22-1

§ 30.21 TRANSMITTING AND RECEIVING BIDS; BONDS; SPECIFICATIONS AND THE LIKE.

The form and manner of transmitting and receiving bids under the provisions of § 30.20, the amount of deposit or performance bond, if any, to accompany such bids, the terms, specifications, reservation of right to reject bids or waive irregularities therein shall be determined by the Council prior to each respective advertisement for bids and, insofar as is practical, be stated in the published notice.

(1991 Code, § 2-4)

If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that it would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective upon passage.

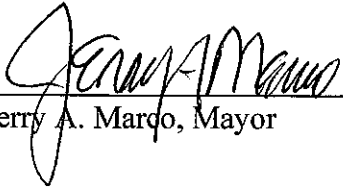
PASSED AND APPROVED ON THE FIRST READING: December 21, 2023.

PASSED AND APPROVED ON THE SECOND AND FINAL READING: January 18, 2024.

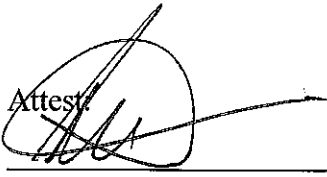
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CITY OF ELKINS, WEST VIRGINIA



Jerry A. Marqo, Mayor

Attest


Sutton Stokes, City Clerk

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