

**AN ORDINANCE AMENDING SECTION 129.05 OF THE CITY CODE ESTABLISHING PURCHASING PROCEDURES**

WHEREAS, West Virginia Code section 8-12-10(b) provides that every municipality is hereby empowered and authorized to provide by ordinance whether competitive bidding is to be required in the purchase of materials, supplies and equipment and if so the type or types of purchases with respect to which the same shall be required and the method and manner in which bids shall be obtained; and

NOW, THEREFORE, The City of Morgantown hereby ordains that Section 129.05 of the City Code is amended as follows:

(a) Definitions. The following terms shall have the meanings given for purposes of this Section

Competitive Bidding means solicitation of bids based on specifications describing the Goods to be obtained in a manner that ensures adequate public notice for a period of time sufficient to give bidders notice of opportunity to submit bids, which shall include publication of a notice to bidders stating the date, time, and location of the public bid opening, and \_\_\_\_\_ indicating where specifications may be obtained, by publication as a Class I-0 legal advertisement at least ten days before bids are due, and may include additional notice by posting on the City website and other places designed to solicit public interest in the notice to bidders. Purchases \_\_\_\_\_ of Goods made by Competitive Bidding shall be awarded to the Lowest Qualified Responsible Bidder, except that all I bids may be rejected, and the City shall have discretion whether or not to rebid the purchase.

Cooperative Purchasing means acquisition of Goods pursuant to agreements with one or more other municipalities, counties or county boards of education, or any combination thereof, for centralized purchasing for all governmental units which are parties to such agreement, or any agreement with the state director of the division of purchases of the department of finance and administration.

Goods means materials, supplies, or equipment that are transferable and commonly available on the open market, but shall not include real estate including fixtures thereto, services, or any item excepted from the purchasing requirements by provision of this Section.

Government Construction Projects means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway, the cost of which will exceed \$25,000.00. Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this Section on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and

bidders are notified of the open-ended nature of the work in the solicitation: Provided, That no open-ended repair or maintenance contract may exceed \$500,000

Lowest Qualified Responsible Bidder means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder shall certify that it: (A) Is ready, able, and willing to timely furnish the Goods required to complete the contract; (B) Is in compliance with all applicable laws of the State of West Virginia; and (C) is not debarred or otherwise prohibited from entering a contract with the City. Lowest Qualified Bidders shall not include any bidder who is disqualified by the Director of Finance and Support Services or designee thereof for failing to meet such minimum requirements.

Purchasing Department means the City department for which Goods are purchased.

Requesting Department means the City department requesting the Department of Finance and Support services to pursue Competitive Bidding, engage in Cooperative Purchasing, or initiate a Government Construction Project.

(a) -

(b) Any purchases of Goods exceeding \$25,000.00 in total cost, capital improvements, or repairs costing more than \$25,000.00 or any series of purchases of Goods, capital improvements or repairs constituting essentially a single purchase and exceeding \$25,000.00 in total cost project and costing in the aggregate more than \$25,000.00, shall be accomplished by Competitive Bidding or Cooperative Purchasing, executed by a contract authorized by Council except where such improvement is authorized by Council to be obtained directly by the City Manager in conformity with detailed plans, specifications and estimates.

(b) (c) All purchases of Goods by Competitive Bidding shall be approved by Council, except as may otherwise be authorized by ordinance of City Council. such contracts shall be awarded to the lowest responsible bidder after such public notice and competition as Council may prescribe and after a public opening of bids; provided, however, that the City Manager shall have the power to reject all bids and advertise again.

(c) (d) Alterations in any contract awarded by Competitive Bidding may be made when authorized by Council upon the recommendation of the City Manager; provided, however, that Council shall not except individual contracts, purchases or sales from the requirement of competitive bidding.

(d) (f) All purchases and purchasing procedures must meet the standards set by the Council, upon recommendation of the City Manager or The Director of Finance and Support Services shall have authority to adopt rules and regulations implementing the provisions of this Section and provide interpretations and guidance with respect to the requirements and application of this Section. Any such rules and regulations shall be adopted in writing and filed with the City Clerk, who shall maintain them with the records of the City and make them available for public inspection. All departmental purchase requests will be forwarded to the Finance and Support Services Department which will have the responsibility for combining and consolidating purchases

in accordance with the requirements of this Section and the regulations adopted hereunder, under sealed bids. The Department of Finance and Support Services shall maintain all records necessary to demonstrate compliance with this Section, except that the Director of the Department of Finance and Support Services may direct that the Purchasing Department or Requesting Department maintain such records.

(e) \_\_\_\_\_  
 (g) The Director of Finance and Support Services may authorize purchases by Cooperative Purchasing in accordance with the procedures of the Department of Finance and Support Services. Any materials, supplies, or equipment including motor vehicles may be purchased pursuant to an agreement with the Director of the West Virginia Department of Finance and Administration, Division of Purchases or pursuant to an agreement with one or more other municipalities, counties or county boards of education, or any combination thereof, for centralized purchasing for all governmental units which are parties to such agreement. Purchases made under any of the agreements are not subject to the City's competitive bidding requirements provided in this section, but such purchases shall be approved by Council.

(h) Government Construction Projects may be initiated by the Director of Finance and Support Services, and the process of obtaining, reviewing, and awarding bids for such projects will be in accordance with the requirements of W. Va. Code § 5-22-1 et seq. Any award of a Government Construction Project will be made by City Council.

(i) Exceptions. Non-competitive contracts otherwise governed by this Section are allowed under the following conditions and with the written approval of the Director of Finance and Support Services:

(1) \_\_\_\_\_  
Sole Source. A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the City Council.

(2) \_\_\_\_\_  
Public Exigency. A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding. The Purchasing Department and/or Requesting Departments shall document the justification for and existence of a public exigency for the item.

(3) \_\_\_\_\_  
Inadequate Competition. A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Section does not result in a qualified winning bidder.

(4) \_\_\_\_\_  
Federal Contract. A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

(5) \_\_\_\_\_

Awarding Agency Approval.

A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-

through agency that awarded the federal funds used for the purchases so long as awarding the contract without competition is consistent with state law.

This ordinance shall be effective upon adoption.

FIRST READING: \_\_\_\_\_

\_\_\_\_\_  
Mayor

SECOND READING: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

ADOPTED: \_\_\_\_\_

FILED: \_\_\_\_\_