ORDINANCE NO. 17868

AN ORDINANCE introduced by Mayor Harry Felker abolishing the committee of bids and contracts by repealing City of Topeka Code § 2-426, amending City of Topeka Code §§ 2-429 and 2-430 and specifically repealing said original sections, also amending City of Topeka Code § 2-387 Competitive Bids, City of Topeka Code § 2-388. Awarding of bids and contracts and specifically repealing said original sections.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. City of Topeka Code § 2-426, Establishment of committee, is hereby repealed.

Establishment of committee.

(a) The membership of the bids and contracts committee shall be established by the director of administrative and financial services. The members of such committee shall serve without additional pay. The director of administrative and financial services or designee shall be chair of the bids and contracts committee.

(b) The duties of the bids and contracts committee shall be to carry out the procedures prescribed in this division with reference to notices inviting bids and bid opening procedures relating to the purchase of materials, supplies, equipment, and letting of contracts for the construction of public improvements.

Section 2. City of Topeka Code § 2-429, Bid bonds, is hereby amended to read as follows:

Bid bonds.

(a) When deemed necessary by the bids and contracts committee Director of Contracts and Procurement or designee, bid bonds shall be prescribed in the public notice...
inviting bids. Unsuccessful bidders shall be entitled to return of surety where such has
been required. A successful bidder shall forfeit any required surety required by the bids and
contracts committee upon failure by the successful bidder to enter into a contract within ten
days after the award.

(b) Any person who anticipates submitting bids to provide goods or services
pursuant to notices inviting bids, may secure a bond for each year in an amount that is
equal to or greater than five percent of any bids the person would have under consideration
by the city at any time. Such a bond obviates the necessity of providing a separate bond or
other bid security each time a bid is submitted for city contracts.

Section 3. City of Topeka Code § 2-430, Bids, is hereby amended to read as
follows:

Bids.

a) Bids shall be submitted in accordance with the instructions to bidders and shall be
identified as required.

(b) Whenever a bidder, having responded to an invitation to bid, claims error in the
bid, the only relief shall be permission to withdraw that bid. Any bidder claiming error in the
bid shall be disqualified from bidding on the same project again; provided, that if an error is
claimed by a bidder and the error is acknowledged by the department inviting the bids, the
erroneous bid shall be considered void and action shall be taken on the remaining bids as
if the erroneous bid had not been submitted, and any bid bond is subject to forfeiture.
c) Bids shall be opened in public before the members of the bids and contracts committee or their duly appointed and designated assistants by the Director of Contracts and Procurement or designee at the time and place stated in the public notice.

Section 4. City of Topeka Code § 2-387, Competitive bids; supplies, materials, equipment, and services, is hereby amended to read as follows:

Competitive bids; supplies, materials, equipment, and services.

In the manner as provided in this article and the rules and regulations established hereunder:

(1) All purchases of and contracts for supplies, materials, equipment, and contractual services shall be based on competitive bids. Sales of property shall be to the highest responsible bidder, after advertising for sealed bids. Sealed competitive bids shall not be required:

a. For contractual services where no competition exists;

b. For sales in an established market;

c. When an emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services; or

d. When in connection with the sale of property, it would be more advantageous to sell the property at a public auction.

(2)(1) If the amount of the purchase or sale is estimated to exceed approximately $45,000.00 $50,000.00, sealed bids shall be solicited by notice published once in the official city newspaper not less than ten days before the date stated therein for the opening of such bids. Alternate Additional newspapers or journals may be designated for such
publication. Notices shall be sent to all active prospective bidders. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice.

(3) (2) All purchases or sales estimated to exceed $5,000.00-$25,000.00, but not more than $15,000.00-$50,000.00, shall be made after receipt of sealed bids following at least three days' notice posted on a public bulletin board in the lobby of city hall and/or otherwise the City's website. Sealed bids may also be solicited as provided in subsection (2)-(1).

(4) (3) All purchases or sales estimated to be less than $5,000.00 may be made either upon competitive bids or in the open market. Every effort shall be made to solicit at least three competitive bids. The director of the department of administrative and financial services may authorize other city departments to make small purchases or sales of less than $5,000.00, either on the open market or under certain prescribed conditions and procedures: more than $5,000.00 but less than $25,000.00 may be made after receipt of three or more bid solicitations by telephone, telephone facsimile or sealed bid following at least three (3) days notice posted in a public bulletin board in City Hall and the City's website.

(4) All purchases or sales estimated to be less than $5,000.00 shall be made in accordance with written rules promulgated by the Director of Administration and Financial Services.

(5) Notwithstanding any provision to the contrary, sealed competitive bids shall not be required:

a. For contractual services where no competition exists;

b. For sales in an established market;
c. When an emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services; or

d. When in connection with the sale of property, it would be more advantageous to sell the property at a public auction.

(5) (6) Contracts and purchases shall in all cases be based on city specifications. When deemed applicable and feasible such specifications shall include either energy efficiency standards or appropriate life cycle cost formulas, or both. A contract or purchase may be rejected on the basis that a product is manufactured or assembled outside the United States. No such specification shall be fixed in a manner to effectively exclude any responsible bidder offering comparable supplies, materials, equipment or contractual services.

(6) (7) Notwithstanding anything in this section to the contrary, the director of the department of administrative and financial services, may authorize city departments to contract for services and materials with other city departments, or with state agencies, federal agencies, or other political subdivisions of the state without competitive bids if:

a. The obligations and duties imposed on, and the benefits and privileges to be received by, each city department which is a proposed party to the contract does not exceed the authority and powers delegated to such city department by the city council, including the authority to enter into the contract;

b. The obligations and duties imposed on the city department required to perform services or supply materials are within the normal scope of duties of the city department and the competence of the city department to perform the contracted
services and to deliver the prescribed materials is demonstrated to the satisfaction of the purchasing officer; and

c. Where the contract or service is financed entirely from money derived exclusively from the city general fund, the director of administrative and financial services must first determine that comparable materials or services are not reasonably available at a lower cost from responsible sources other than governmental agencies.

(7) (8) Except as otherwise specifically provided by law, no city department shall enter into any lease of real property without the prior approval of the director of the department of administrative and financial services. Such city department shall submit to the director of the department of administrative and financial services such information relating to any such proposed lease as the director may require. The director shall either approve, modify and approve or reject any such proposed lease.

(9) Notwithstanding anything in this section to the contrary, sales of retired motor vehicles, mowers, graders and other construction machinery and equipment from any department of the city shall be to the highest responsible bidder at either an advertised public auction or by sealed competitive bids or as otherwise authorized by this section.

Nothing in this subsection shall preclude a city department from trading in such vehicles and equipment when authorized.

Section 5. City of Topeka Code § 2-388. Awarding of Bids & Contracts is hereby amended to read as follows:

(a) All contracts and purchases for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration
conformity with the specifications, terms of delivery, and other conditions imposed in
the invitation for bids.

(b) The director of administrative and financial services or designee shall
have power to decide as to the lowest responsible bidder for all purchase, but in cases where the dollar amount of the bid received from the lowest responsible
bidder from within the city is identical to the dollar amount of the bid received from
the lowest responsible bidder from without the city, the contract shall be awarded to
the bidder from within the city. In cases where none of the bidders are from within
the city and where the dollar amount of the bid received from the lowest responsible
bidder from within Shawnee County is identical to the dollar amount of the bid
received from the lowest responsible bidder from without Shawnee County, the
contract shall be awarded to the bidder from within Shawnee County. If a tie bid
exists between identically domiciled bidders, a witnessed coin flip shall break the tie.

(c) Any or all bids may be rejected, and a bid shall be rejected if it
contains any material alteration or erasure. The bid of any bidder who has failed to
perform satisfactorily on a previous contract with the city may be rejected. In any
case where competitive bids are required and where all bids are rejected, new bids
shall be invited as in the first instance, unless otherwise expressly provided by law.

(d) All bids with the names of the bidders and the amounts thereof,
together with all documents pertaining to the award of a contract, shall be made a
part of a file or record and retained for five years and shall be open to public
inspection at all reasonable times.
Section 6. That original City of Topeka Code §§ 2-426, 2-429, 2-430, 2-387 and 2-388 are hereby specifically repealed.

Section 7. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council

July 14, 2002

Harry Felker, Mayor

ATTEST:

Iris E. Walker, City Clerk