

PROPOSED BY: BROWNE

INTRODUCED: _____

ORDINANCE NO. _____

**AMENDING WHATCOM COUNTY CODE TITLE 3 REVENUE AND FINANCE,
SPECIFICALLY CHAPTERS 3.06 (GRANTS) AND 3.08 (PURCHASING SYSTEM)
TO INCORPORATE NEW STATE LEGISLATION, REMOVE SUNSET CLAUSE,
AND REVISE PARAMETERS FOR COUNCIL APPROVAL**

WHEREAS, Whatcom County residents entrust the County Council and Executive to procure goods responsibly, efficiently, and with transparency; and

WHEREAS, Whatcom County Council wishes to revise the purchasing code to provide greater transparency for the public while allowing for efficient purchasing processes; and

WHEREAS, Whatcom County Council adopted Ordinance 2014-047 setting forth requirements for grant application approvals in Chapter 3.06; and

WHEREAS, Whatcom County Council adopted Ordinance 2016-032 to achieve greater administrative efficiencies through clarifying purchasing processes and delivering timely and complete procurement information; and

WHEREAS, Whatcom County Council adopted Ordinance 2018-033 to extend the sunset clause date to December 31, 2021; and

WHEREAS, Whatcom County Council wishes to update the purchasing code to include new purchasing guidance from state law regarding advertisement requirements; and

WHEREAS, Whatcom County Council experienced results from revised approval thresholds and wants to make additional revisions and remove the sunset clause.

NOW, THEREFORE, BE IT ORDAINED, that the Whatcom County Code Chapters 3.06 and 3.08 shall hereby be amended as detailed in the attached Exhibit A.

ADOPTED this _____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**

Karen Frakes (by email 10/19/2021)
Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____

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2
3 **EXHIBIT A**

4 **Chapter 3.06**

5 **GRANTS**

6 Sections:

7 3.06.010 Approval by council ~~—Exemptions.~~

8
9
10 3.06.010 Approval by council ~~—Exemptions.~~

11 A. All ~~federal and/or state~~ grants that propose county direct cost sharing in an amount
12 exceeding \$20,000, or require additional personnel, must be approved by the council.
13 ~~before the grant may be accepted.~~

14
15 B. All Grants exceeding \$40,000 must be approved by the County Council.

16
17 C. All grants that have provisions other than compliance with state and federal regulations
18 and funding and reporting on existing county programs must be approved by the council.

19
20 DB. The requirements of this section shall not apply to emergencies declared by the county
21 executive. (Ord. 2014-047 Exh. A; Ord. 84-109).

22
23
24 **Chapter 3.08**

25 **PURCHASING SYSTEM**

26 Sections:

27 3.08.010 Purpose.

28 3.08.020 Administration.

29 3.08.030 Authority and functions.

30 3.08.040 Price quotations.

31 3.08.050 Vendor lists.

32 3.08.060 Bids and proposals required.

33 3.08.070 Contractor's bond required for public works.

34 3.08.080 Labor and material claims.

35 3.08.090 Bid specifications, deposits and awards.

36 3.08.095 Small works roster contract award process.

37 3.08.100 Council approval required.

38 3.08.110 Unregistered or unlicensed contractors prohibited.

39 3.08.120 Joint purchasing.

40 3.08.125 Nondiscrimination.

41 3.08.130 Amendments to chapter.

42 ~~3.08.135 Sunset provision.~~

43 3.08.140 Severability.

44
45
46 3.08.010 Purpose.

47 It shall be the purpose of this chapter to establish a purchasing system to work with all
48 county departments, agencies, boards and commissions, and other operations of the county
49 to ensure efficiency in procurement of supplies and equipment of the necessary quality at
50 the lowest possible cost; to ensure compliance with purchasing statutes, regulations,
51 policies and procedures; to ensure efficient utilization of county property, new and used;
52 and to minimize employee time devoted to purchasing functions.
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1 In addition, it is intended that the purchasing system be as transparent as possible, deliver
2 timely and complete procurement information to prospective vendors, and report successful
3 bids, contracts and project expenditures to the public using the county's website. (Ord.
4 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord.
5 93-042 Exh. H).

6
7 3.08.020 Administration.

8 The director of the administrative services department shall have full authority and
9 responsibility for the operation and ongoing improvement of the purchasing system under
10 the direction of the county executive. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord.
11 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

12
13 3.08.030 Authority and functions.

14 A. The authority to recommend and implement administrative policies and procedures that
15 provide a comprehensive basis for purchasing functions shall fall under the purview of the
16 purchasing system.

17
18 B. The following responsibilities shall be coordinated through the purchasing system:

- 19 1. Continue to improve services to departments and agencies in the area of purchasing.
 - 20 2. Develop automated requisition and reporting systems.
 - 21 3. Improve purchasing productivity and control for all departments.
 - 22 4. Standardize high volume purchases.
 - 23 5. Develop efficient policies and procedures for acquiring goods and services.
 - 24 6. Implement inventory controls and minimize costs of goods and services.
 - 25 7. Prepare and make available to all departments standardized forms for requisitions,
26 vouchers, inventories and any other form required for county operations.
 - 27 8. Assign purchase order numbers for the acquisition of supplies, materials, equipment,
28 tools, services, rental of personal property, professional services and contracted public
29 works exceeding \$2,500.
 - 30 9. Maintain vendor list pursuant to RCW 39.04.190.
 - 31 10. Whenever practically possible, contact at least three vendors to assure competitive
32 pricing.
 - 33 11. Promote a competitive procurement environment by actively soliciting subscribers to the
34 county's web-based purchasing notification system.
 - 35 12. Review and approve bid specifications and prepare invitations to bid pursuant to
36 provisions set forth in this chapter.
 - 37 13. Check bids for accuracy and compliance with specifications and invitation to bid.
 - 38 14. Make bid recommendations on all awards to the county executive.
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1 15. Perform such other duties as may be required to further the purposes of this chapter.
2 (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A;
3 Ord. 93-042 Exh. H).

4
5 3.08.040 Price quotations.

6 Whenever practically possible, price quotations from at least three vendors shall be solicited
7 for contracted work constituting a public work and the acquisition of materials, supplies,
8 services, tools, equipment or rental of personal property involving amounts greater than
9 \$10,000 not exceeding \$40,000. Quotations for architects and engineers are subject to the
10 requirements of Chapter 39.80 RCW. Records of all quotations obtained shall be maintained
11 and shall be open to public inspection. Bids submitted periodically for the roster of rental
12 equipment with operators may be used as the source of quotations for public works projects
13 not exceeding \$40,000. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.
14 A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

15
16 3.08.050 Vendor lists.

17 Whatcom County will maintain a vendor list pursuant to RCW 39.04.190. (Ord. 2016-032
18 Exh. A; Ord. 2013-029 Exh. A).

19
20 3.08.060 Bids and proposals required.

21 Awards of contracts for the acquisition of materials, supplies, services, tools, equipment or
22 rental of personal property and professional services exceeding \$40,000 will be based upon
23 bids or proposals received in response to specifications and invitations to bid, except as
24 follows:

25
26 A. Sole source purchases shall not be required to go through competitive bidding. A
27 purchase may be determined to be sole source by the county executive or designee when
28 the bidding process would be futile because only one bidder could respond to the invitation.

29
30 B. In the event of an emergency when the public interest or property of the county would
31 suffer material injury or damage by delay, upon an order of the county executive declaring
32 the existence of such emergency and reciting the facts constituting same, the requirements
33 governing competitive bids with reference to any purchase or contract may be waived
34 pursuant to RCW 36.32.270.

35
36 C. Public works projects involving funds not exceeding the amount allowed in RCW
37 39.04.155, Small works roster contract procedures – Limited public works process, or any
38 successor statute, may be completed utilizing the small works roster contract award
39 process.

40
41 D. Acquisition is from another public entity.

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43 E. Contract does not require use of county funds.

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45 Proposals from architects and engineers are subject to the requirements of Chapter 39.80
46 RCW. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034
47 Exh. A; Ord. 93-042 Exh. H).

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49 3.08.070 Contractor's bond required for public works.

50 Whatcom County shall comply with the requirements of RCW 39.08.010. (Ord. 2016-032
51 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042
52 Exh. H).

53
54 3.08.080 Labor and material claims.

1 Labor and material claims shall be filed pursuant to RCW 39.08.030. (Ord. 2016-032 Exh.
2 A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).

3
4 3.08.090 Bid specifications, deposits and awards.

5 A. In developing specifications for bids or proposals, all reasonable efforts shall be made to
6 ensure a competitive process and that a variety of vendors shall be capable of fulfilling the
7 stated requirements of the county. Performance considerations shall be included in the
8 specifications. However, nothing in this section shall be construed to limit the county from
9 pursuing sole source procurement where adequate justification has been presented that
10 such procurement is in the best interests of county operations.

11
12 B. When the acquisition of materials, supplies, purchased services, tools, equipment, rental
13 of personal property or professional services involves amounts greater than \$40,000 for a
14 nonpublic work or public work award, the administrative services department shall be
15 responsible for the review and approval of specifications and the preparation of invitations
16 to bid pursuant to provisions set forth in this chapter.

17
18 C. All bid specifications shall be in writing and placed on file for public inspection.

19
20 D. All invitations for bids, requests for proposals, requests for qualifications and bid packets
21 will be posted on the county's website. Project announcements and bid solicitations or
22 proposals shall be published in the official county newspaper, and when in the county's best
23 interest, other regional publications. Additionally, the county will offer complimentary bid
24 packets to multiple northwest and national plan centers. Advertisements shall be published
25 at least once ~~in each week for two consecutive weeks at least 13 days~~ prior to the last date
26 upon which bids will be received. Such advertisement shall state:

- 27
28 1. The date after which bids will not be received;
29
30 2. The character of the work to be done, or the materials, equipment or service to be
31 purchased; and
32
33 3. Instruction on how to obtain additional information, including the complete bid packet.

34
35 E. No bid shall be considered for public works unless it is accompanied by a bid deposit in
36 the form of a surety bond, postal money order, cash, cashier's check, or certified check in
37 an amount equal to five percent of the amount of the bid proposed.

38
39 F. Should the bidder to whom the contract is awarded fail to enter into the contract or fail to
40 furnish the contractor's bond within 10 days (exclusive of the date of notice) after notice of
41 the award, the amount of the bid deposit shall be forfeited to the county. Thereafter, the
42 award shall be made to the next lowest responsive bidder. The bid deposit of an
43 unsuccessful bidder (if his bid deposit has not been forfeited) shall be returned after the
44 required contractor's bond of the successful bidder has been accepted.

45
46 G. Bids received shall be opened and read in public on the date named in the advertisement
47 for bids, or on a subsequent date established in a bid addendum.

48
49 H. After opening, all bids shall be reviewed and referred to the requisitioning department for
50 recommendation of award. Bids will be forwarded by the director of the administrative
51 services department or designee with a recommendation to the county executive for award.

52
53 I. After opening and award, all bids shall be filed for public inspection, and available by
54 telephone inquiry.

1
2 J. Any or all bids may be rejected for good cause. If all bids are not rejected, the award
3 shall be to the lowest responsive bidder. In determining which is the lowest responsive
4 bidder, the county may take into consideration the bidder's responsiveness to the county's
5 requirements, the quality of the articles to be purchased or leased, availability of parts and
6 service, delivery time, the tax revenue the county would receive from purchasing from a
7 supplier located within its boundaries and prior dealings with the bidder.
8

9 K. The county may issue requests for proposals for services, or for technologically complex
10 equipment including but not limited to computers, software, or telephone systems. If all
11 proposals are not rejected, the award shall be to the highest rated proposal, taking into
12 account the selection criteria published in the request for proposals.
13

14 L. The county may award to multiple bidders for the same commodity or service when the
15 bid specifications provide for special circumstances in the determination of which vendor is
16 truly the lowest price to the county. Special circumstances may include differences in ability
17 to deliver, delivery time, availability of material, special loading or unloading conditions,
18 total cost including transport or labor if not included with bid item, performance of the
19 delivered material, location of the source, and proximity to the delivery point.
20

21 M. Contracts that require county council approval per WCC 3.08.100 may be
22 administratively amended to a cumulative amount not to exceed \$10,000 or 10 percent of
23 contract amount, whichever is greater; larger amounts require council approval. No
24 administrative contract amendment may exceed authorized expenditure authority. (Ord.
25 2016-032 Exh. A; Ord. 2015-011 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A;
26 Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).
27

28 3.08.095 Small works roster contract award process.

29 This section may be utilized in the acquisition of contractual services necessary to complete
30 public works projects as allowed under RCW 36.32.250, and consistent with RCW
31 39.04.155. In order to use a small works roster contract award process in lieu of formal
32 sealed bidding, the county shall:
33

34 A. Publish at least twice each year in the official county newspaper a notice of the existence
35 of the roster and solicit the names of contractors that are qualified for the requested
36 categories of work. Notice shall be published at least once in each week for two consecutive
37 weeks prior to the last date upon which response to the notice will be received, and may be
38 published for as many additional publications as shall be considered in the county's interest.
39

40 B. In every case a certain category of work is to be accomplished under this section, all
41 contractors responding to the above notice and indicating their qualification to perform the
42 category of work proposed shall be contacted and provided an invitation to bid.
43

44 C. Include in the invitation to bid the date on which bids will be received, the scope and
45 nature of work to be performed, the materials and equipment to be furnished, and, if not
46 provided otherwise in the invitation to bid, where the detailed plans and specifications may
47 be seen and obtained.
48

49 D. Otherwise apply the provisions of WCC 3.08.090(B), (E), (F), (G), (H), (I), (J), and (M).
50

51 E. Forgo the advertisement of a contract awarded through use of the small works roster.
52 (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A).
53

54 3.08.100 Council approval required.

1 County council approval is required for the following:
2

3 A. Contracts or bid awards exceeding \$40,000 and all real property leases, except when:
4

5 1. Exercising an option contained in a contract or lease previously approved by the council.
6

7 2. Contract is for the design, construction, right-of-way acquisition, professional services, or
8 other capital costs approved by the county council in a capital budget appropriation
9 ordinance.
10

11 3. Contract or bid award is for supplies or for equipment approved in a capital budget
12 appropriation ordinance.
13

14 4. Contract is for technical support and software maintenance from the developer of
15 proprietary software which is currently being used by Whatcom County.
16

17 5. Contract is for manufacturer's technical support and hardware maintenance of electronic
18 systems.
19

20 6. Pursuant to and within the scope of a declaration of emergency made by the county
21 executive under WCC 3.08.060(B). The county executive, pursuant to a declaration of
22 emergency, shall submit the contract to the county council for informational purposes at the
23 council's next regular or special meeting.
24

25 B. All informational materials distributed to more than 20 percent of county residences for
26 the purpose of informing or educating the public on a specific capital project, levy or tax.
27 (Ord. 2016-032 Exh. A; Ord. 2015-011 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.
28 A; Ord. 2000-025; Ord. 97-034 Exh. A; Ord. 96-034; Ord. 93-042 Exh. H).
29

30 3.08.110 Unregistered or unlicensed contractors prohibited.

31 No contract shall be entered into or executed with any contractor who is not registered or
32 licensed as required by the laws of this state (except only as permitted under RCW
33 39.06.010 for highway projects for contractors who have been prequalified as required
34 under RCW 47.28.070). (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh.
35 A; Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).
36

37 3.08.120 Joint purchasing.

38 The county may enter into agreements with the state or with any agency, political
39 subdivision, or unit of local government to purchase goods or services cooperatively. Joint
40 purchasing services are hereby authorized and encouraged with any other municipal
41 corporation in Whatcom County. Assistance to the participating municipal corporation may
42 be given in any way except that a sale or contract shall be between the vendor and the
43 participating municipal corporation and not Whatcom County. Bids and quotes may be
44 obtained jointly based on volume if it is in the county's best interest to do so. (Ord. 2016-
45 032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A; Ord. 97-034 Exh. A; Ord. 93-
46 042 Exh. H).
47

48 3.08.125 Nondiscrimination.

49 Whatcom County endeavors to secure for all individuals within the county the freedom from
50 discrimination because of race, color, religion, national origin, gender, sexual orientation
51 (including gender identity), age, marital status, or disability in connection with employment,
52 and thereby to promote the interests, rights and privileges of individuals within the county.
53

1 A. All contracts proposed by county staff shall incorporate equal employment opportunity
2 clauses which shall read as follows, or as subsequently amended to be consistent with
3 existing law:

4
5 1. Nondiscrimination in Employment. The county's policy is to provide equal opportunity in
6 all terms, conditions and privileges of employment for all qualified applicants and employees
7 without regard to race, color, creed, religion, national origin, sex, sexual orientation
8 (including gender identity), age, marital status, disability, or veteran status. The contractor
9 shall comply with all laws prohibiting discrimination against any employee or applicant for
10 employment on the grounds of race, color, creed, religion, national origin, sex, sexual
11 orientation (including gender identity), age, marital status, disability, political affiliation, or
12 veteran status, except where such constitutes a bona fide occupational qualification.
13

14 Furthermore, in those cases in which the contractor is governed by such laws, the
15 contractor shall take affirmative action to ensure that applicants are employed, and treated
16 during employment, without regard to their race, color, creed, religion, national origin, sex,
17 age, marital status, sexual orientation (including gender identity), disability, or veteran
18 status, except where such constitutes a bona fide occupational qualification. Such action
19 shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations,
20 rate of pay or other forms of compensation benefits, selection for training including
21 apprenticeship, and participation in recreational and educational activities. In all solicitations
22 or advertisements for employees placed by them or on their behalf, the contractor shall
23 state that all qualified applicants will receive consideration for employment without regard
24 to race, color, religion, sex or national origin.
25

26 The foregoing provisions shall also be binding upon any subcontractor; provided, that the
27 foregoing provisions shall not apply to contracts or subcontractors for standard commercial
28 supplies or raw materials, or to sole proprietorships with no employees.
29

30 2. Nondiscrimination in Client Services. The contractor shall not discriminate on the grounds
31 of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation
32 (including gender identity), disability, or veteran status; or deny an individual or business
33 any service or benefits under this agreement unless otherwise allowed by applicable law; or
34 subject an individual or business to segregation or separate treatment in any manner
35 related to his/her/its receipt any service or services or other benefits provided under this
36 agreement unless otherwise allowed by applicable law; or deny an individual or business an
37 opportunity to participate in any program provided by this agreement unless otherwise
38 allowed by applicable law.
39

40 B. Noncompliance with the nondiscrimination in employment and client services provisions
41 will be grounds for terminating a contract and may hinder a contractor's eligibility for future
42 contracts. (Ord. 2021-016 Exh. A).
43

44 3.08.130 Amendments to chapter.

45 The county council reserves the exclusive right to alter, amend, rescind, abrogate, delete,
46 supersede or replace the provisions of this chapter, or any part thereof, in any manner not
47 inconsistent with state law. Whether or not the county council takes action, the provisions of
48 this chapter shall be deemed automatically altered, amended, or superseded to conform to
49 any mandatory state administrative ruling or statute, as of the effective date of any such
50 enactment appertaining to the matters covered in this chapter, to the effect that the
51 provisions of this chapter shall at all times conform to, and never conflict with, said state
52 laws and regulations. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A;
53 Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).
54

1 ~~3.08.135 Sunset provision:~~
2 ~~The county council must renew this chapter by December 31, 2021, or the chapter will~~
3 ~~revert to the language in place on August 1, 2016. All contracts will be administered by the~~
4 ~~purchasing ordinance in place at the time the contract was signed. (Ord. 2018-033 Exh. A;~~
5 ~~Ord. 2016-032 Exh. A):~~
6
7 3.08.140 Severability.
8 If any provision of this chapter is held to be invalid, the remainder of the chapter shall
9 remain in effect. (Ord. 2016-032 Exh. A; Ord. 2013-029 Exh. A; Ord. 2007-004 Exh. A;
10 Ord. 97-034 Exh. A; Ord. 93-042 Exh. H).
11