

**CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL**

COUNCIL BILL NO. O-22-48 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton and Renee Grout by request

1 **ORDINANCE**
2 **AMENDING CHAPTER 5, ARTICLE 5, OF THE REVISED ORDINANCES OF**
3 **ALBUQUERQUE, THE “PUBLIC PURCHASES ORDINANCE” RELATING TO**
4 **EXEMPTIONS FROM THE COMPETITIVE REQUIREMENTS OF THE CODE.**
5 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
6 **ALBUQUERQUE:**
7 **SECTION 1. The Public Purchases Ordinance, Chapter 5, Article 5, Section**
8 **3, ROA 1994, is hereby amended as follows:**
9 **“§ 5-5-3 DEFINITIONS.**
10 **For the purpose of this article, the following definitions shall apply unless the**
11 **Chief Procurement Officer determines that the context clearly indicates or**
12 **requires a different meaning.**
13 **AWARD. The issuance of a purchase order or other validly executed**
14 **contract.**
15 **BUSINESS. A seller of goods and/or services and/or a provider of**
16 **construction services and materials; or a concessionaire. This term may refer**
17 **to an individual, partnership, corporation, trust or other legal entity and does**
18 **not include the subsidiaries, affiliates, parent companies, shareholders or**
19 **principals thereof.**
20 **CAPITAL PROJECT. A construction or public works project.**
21 **CENTRAL PURCHASING OFFICE. The Purchasing Division of the**
22 **Department of Finance and Administrative Services of the city, or any**
23 **department or division of the city subsequently charged with the duty of**
24 **purchasing.**
25 **CHIEF PROCUREMENT OFFICER. That person charged with the**
26 **responsibility of administering the Central Purchasing Office.**

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1 CIP. The Capital Improvement Program of the city, or any department or
2 division of the city subsequently charged with the oversight of capital
3 construction projects.

4 **COMPETITIVE SOLICITATION.** A request to businesses to respond to
5 contractual requirements established by the Central Purchasing Office for the
6 purchase, sale, lease, rental of goods, services or construction; or other
7 transactions by submitting an offer. A competitive solicitation may take the
8 form of a request for bids (RFB), a request for proposals (RFP), a request for
9 quotes (RFQ), or other procurement methodology established by the Chief
10 Procurement Officer.

11 **CONCESSION CONTRACTS.** Revenue-producing contracts licensing or
12 permitting the use of city property other than rights of way, of any kind, by
13 businesses for the sale of goods or services at a profit.

14 **CONSTRUCTION.** The building, alteration, repair, improvement, installation,
15 or demolition of any public structure, building, pipeline, or other public
16 improvement of any kind on public real property. Construction does not
17 include routine repair or maintenance of public buildings or other public
18 structures.

19 **CONTRACT or AGREEMENT.** Any written agreement for the procurement of
20 goods, services or construction, or for the establishment of a concession,
21 including, but not limited to, a purchase order and incorporated documents.

22 **CONTRACTOR.** An offeror who has been awarded a contract.

23 **COOPERATIVE PROCUREMENT AGENCY.** Any public or private
24 procurement cooperative established for use primarily by public agencies.

25 **DESTINATION MARKETING ORGANIZATION (DMO).** An organization which
26 **promotes a location as an attractive travel destination and exists to provide**
27 **information to leisure travelers and to encourage event organizers to choose**
28 **their location for meetings, incentives, conferences and exhibitions.**

29 **GOODS.** Items of tangible personal property.

30 **GREATER ALBUQUERQUE METROPOLITAN AREA.** All locations within the
31 city and Bernalillo County.

32 **INTERGOVERNMENTAL AGREEMENT.** An agreement between two or more
33 public agencies.

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1 **MANAGEMENT or OPERATION OF A CITY OWNED FACILITY.** Services
2 provided under an approved professional/technical contract, concessions
3 contract, or other operating agreement with the city in which a contractor is
4 responsible for the daily management or operation of a city owned facility,
5 including, but not limited to, the scheduling of facility events and maintenance
6 of a facility event schedule.

7 **MAYOR.** The Mayor of the city, which term, as used herein, shall refer to the
8 Mayor and/or the Mayor's designee(s).

9 **OFFER.** A response to a competitive solicitation.

10 **OFFEROR.** A business that submits a response to a competitive solicitation.

11 **PROFESSIONAL/TECHNICAL SERVICES.** Those services performed by or
12 under the direction of a licensed professional, other professional technician,
13 or other person with technical training, as more particularly defined by the
14 Chief Procurement Officer.

15 **PUBLIC AGENCY.** Any local public body, department, division, commission,
16 council, board, committee, institution, legislative body, agency, government
17 corporation, educational institution or official of the executive, legislative or
18 judicial branch of the United States, any state of the United States, any Indian
19 tribe or pueblo, or any foreign government.

20 **PURCHASING or PROCUREMENT.** The buying, renting, leasing, lease-
21 purchasing or otherwise obtaining of any goods, services or construction or a
22 concession contract. It includes all functions that pertain to any city
23 procurements, including, but not limited to, the preparation of specifications,
24 solicitation and selection of sources, preparation and award of contracts, and
25 contract administration unless otherwise excepted in this article.

26 **RECOMMENDATION OF AWARD or ROA.** The document approved by the
27 Chief Procurement Officer which summarizes the offers received in response
28 to a competitive solicitation and which designates the selected offeror and
29 other relevant information.

30 **RESPONSIBLE OFFEROR.** A business which has the capability in all
31 respects to perform fully the contract requirements set out in the competitive
32 solicitation or existing contract, and the integrity and reliability which will
33 assure good faith performance, and who has not violated or attempted to

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1 violate any provisions of law or ethical conduct. Factors which may be
2 considered in determining the offeror's capability to perform, among others,
3 are its financial resources, production or service facilities, service reputation,
4 response time, quality of services or goods, and experience.

5 **RESPONSIVE OFFER.** A written offer to furnish goods, services or
6 construction in conformity with standards, specifications, delivery terms and
7 conditions, and all other requirements established in a competitive
8 solicitation.

9 **SERVICES.** Labor, time or effort.

10 **SOCIAL SERVICES.** The provision, primarily to low and moderate income
11 residents of the city, of human services such as health care, substance abuse
12 treatment and prevention, day care, emergency shelters, youth services,
13 senior services, employment services, and job training; the provision of
14 housing intended primarily for low and moderate income residents of the city;
15 and economic development activities designed primarily to benefit low to
16 moderate income areas of the city or to increase employment among low and
17 moderate income residents. A social services contract is a contract with a
18 nonprofit organization or public agency for social services in return for the
19 payment by the city of costs associated with the provision of social services,
20 including, but not limited to, the costs for labor, supplies, operating expenses,
21 equipment, and the acquisition or improvement of real property.

22 **USER DEPARTMENT, USER, or DEPARTMENT.** A city department or division
23 for which procurement services are provided.

24 **WATER UTILITY AUTHORITY.** The Albuquerque Bernalillo County Water
25 Utility Authority, a political subdivision of the State of New Mexico created by
26 Laws 2003, Chapter 437 (Section 72-1-10 NMSA1978).

27 **SECTION 2.** The Public Purchases Ordinance, Chapter 5, Article 5, Section
28 20, ROA 1994, is hereby amended as follows:

29 **“§ 5-5-20 EXEMPTIONS.**

30 The following purchases shall be exempt from the competitive
31 requirements of this article, unless otherwise determined by the Chief
32 Procurement Officer:

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- 1 (A) Agreements for services of professionals selected pursuant to §§ 14-
- 2 7-2-1 et seq., Selection Advisory Committee ordinance;
- 3 (B) [Reserved.]
- 4 (C) Leases, licenses, permits, exchanges, or purchases of real property
- 5 and all other real property transactions;
- 6 (D) Purchases from regulated utilities such as gas, electricity, water,
- 7 telephone, cable TV, sewer and refuse collection service, unless competition
- 8 is available and the annual cost will exceed \$100,000;
- 9 (E) Purchases of books, periodicals, films, training materials,
- 10 subscriptions, on-line information services, or advertising from the publishers
- 11 and distributors or agents thereof;
- 12 (F) Purchases of travel by common carrier or by private conveyance and
- 13 related travel expenditures such as meals and lodging;
- 14 (G) Purchases, exchanges, sales, or transportation of animals or
- 15 purchases of food for BioPark/Zoo animals and prescription animal food and
- 16 medical testing supplies for use by the Animal Welfare Department;
- 17 (H) Purchases of surety bonds;
- 18 (I) Purchases of exotic plants which will be accessioned into a
- 19 permanent collection maintained by the city;
- 20 (J) Purchases of parts and labor for equipment or machinery where a
- 21 breakdown of this equipment or machinery could cause an emergency or
- 22 costly condition to exist and where the machinery or equipment is in
- 23 immediate danger of failure;
- 24 (K) Purchases of parts and labor or maintenance agreements to repair
- 25 disabled equipment or machinery if the equipment or machinery is repaired by
- 26 a franchised dealer or by a factory authorized repair shop;
- 27 (L) Purchases of chemicals, drugs, and other controlled substances, the
- 28 distribution and use of which is controlled by law or requires licensing;
- 29 (M) Concession contracts, unless such contracts are expected to
- 30 generate revenues to the contractor in excess of \$75,000, over a 12-month
- 31 period;
- 32 (N) Purchases of computer software and ancillary services required to
- 33 match other software in use is required to be used in the public interest. This

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- 1 includes licensing fees and services to modify or maintain proprietary
- 2 software, if such services are available from only a single provider;
- 3 (O) Purchase, lease, rental or any other financial arrangement for the
- 4 acquisition of works of art, artifacts, or other items for the purpose of
- 5 exhibition in a public facility or area;
- 6 (P) Payments for conference registrations, membership dues, offsite
- 7 training courses, or similar minor purchases where prepayments are required
- 8 or which are administrative in nature and non-competitive as determined by
- 9 the Chief Procurement Officer;
- 10 (Q) Purchases necessary for the investigation of criminal activities,
- 11 which, if purchased competitively, would compromise an investigation as
- 12 determined by the Chief of Police in writing. All funds expended for this type
- 13 of activity will be properly receipted and accounted for with supporting
- 14 documentation maintained by the Police Department and subject to internal
- 15 audit;
- 16 (R) Purchases of specialty goods, as defined by the Chief Procurement
- 17 Officer, for resale to the general public at a retail business operated by the
- 18 city;
- 19 (S) Agreements for the services of medical practitioners such as
- 20 dentists, doctors, psychiatrists, psychologists, veterinarians, nurses,
- 21 technicians, and the like, except that medical and mental health services for
- 22 the Employee Health Center, and similar group medical services, shall be
- 23 competitively obtained;
- 24 (T) Agreements for the services of attorneys, other than bond attorneys,
- 25 and for legal assistants, except as otherwise provided in this article;
- 26 (U) Contracts and expenditures in connection with court or
- 27 administrative proceedings, including, but not limited to, experts, mediators,
- 28 interpreters, translators, court reporters, process servers, witness fees, and
- 29 printing and duplicating of materials for filing;
- 30 (V) Agreements for the services of lobbyists;
- 31 (W) Agreements with a sports professional or team;

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1 (X) Contracts with private, nonprofit, independent contractors whose
2 primary purpose is to provide services to persons with disabilities, and which
3 contracts provide employment opportunities for persons with disabilities;

4 (Y) Grant funded contracts with civic groups to provide community
5 services, as required by the terms of the grant;

6 (Z) Contracts for retirement and other benefits which are paid for
7 directly by city employees, except that employee health care insurance will be
8 obtained competitively as otherwise provided in this article;

9 (AA) Contracts with professional entertainers and associated
10 expenditures;

11 (BB) Purchases of goods, and ancillary services such as installation or
12 training, where required to match equipment currently in use and where a
13 written standardization policy is in effect is required to be used in the public
14 interest. This includes applicable purchases and services to obtain, modify or
15 maintain equipment, if such services are available from only a single provider;

16 (CC) The purchase of goods or services for a reasonable trial period for
17 testing purposes as approved by the Chief Procurement Officer; on the
18 condition that if additional purchases are required after testing, such goods or
19 services shall be subject to the requirements of this article; and

20 (DD) The purchase of used items if available for a limited time, such as
21 by auction or public sale, and if determined to be at a cost advantage to the
22 city. A memo shall be written to the Chief Procurement Officer for approval
23 describing the steps taken to determine that a cost advantage to the city
24 exists.

25 [(EE) Contracts for City tourism promotion and marketing services with
26 Destination Marketing Organizations (DMOs) and associated expenditures.]”

27 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word or
28 phrase of this ordinance is for any reason held to be invalid or unenforceable
29 by any court of competent jurisdiction, such decision shall not affect the
30 validity of the remaining provisions of this ordinance. The Council hereby
31 declares that it would have passed this ordinance and each section,
32 paragraph, sentence, clause, word or phrase thereof irrespective of any
33 provision being declared unconstitutional or otherwise invalid.

1 SECTION 4. COMPILATION. The amendments set forth in Section 1 above
2 shall amend, be incorporated in and made part of the Revised Ordinances of
3 Albuquerque, New Mexico, 1994.

4 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five days
5 after publication by title and general summary.

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