

# CITY of ALBUQUERQUE

## TWENTY FIRST COUNCIL

COUNCIL BILL NO. O-15-47 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Diane G. Gibson, Klarissa J. Peña, Brad Winter

1 **ORDINANCE**

2 **AMENDING THE CITY’S PURCHASING ORDINANCE, SECTIONS 5-5-11**  
3 **RELATING TO CAPITAL PROJECT PURCHASES AND 5-5-31 RELATING TO**  
4 **PAY EQUITY REPORTING TO PROVIDE FOR A 5% PREFERENCE FOR**  
5 **COMPANIES THAT HAVE GENDER PAY EQUITY.**

6 **WHEREAS, equal pay between men and women is a national concern,**  
7 **affecting families and society in general; and**

8 **WHEREAS, it is the policy of the City of Albuquerque to identify and**  
9 **combat pay inequity between women and men; and**

10 **WHEREAS, the City of Albuquerque maintains pay equity in employee**  
11 **salaries; and**

12 **WHEREAS, the City Council has previously, through a City Ordinance,**  
13 **required that all competitive bids and sealed proposals include Pay Equity**  
14 **Reporting; and**

15 **WHEREAS, the City should be a leader in combating compensation**  
16 **discrimination and ending pay inequality; and**

17 **WHEREAS, the providing a preference prior to contract award will further**  
18 **the goal of pay equity; and**

19 **WHEREAS, the City Council desires to provide a Pay Equity business**  
20 **preference to City purchases and to Capital Projects, Sealed Bids and**  
21 **Proposals.**

22 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**  
23 **ALBUQUERQUE:**

24 **SECTION 1. ROA 1994 Section 5-5-11, “Capital Projects” is amended as**  
25 **follow:**

26 **“§ 5-5-11 CAPITAL PROJECTS.**

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1 (A) Unless otherwise agreed to by the Central Purchasing Office  
2 and CIP, the purchase of goods, services and construction for capital projects  
3 not procured through the Central Purchasing Office, shall be procured  
4 through CIP, in accordance with the "Regulation Governing the Award and  
5 Rejection of Bids/Offers and Debarment of Contractors for Public Works  
6 Projects of the City of Albuquerque", effective July 25, 2008, or as hereafter  
7 amended.

8 (B) Goods, services and construction projects procured through  
9 CIP must comply with the reporting and preference requirements of Section 5-  
10 5-31 of the Public Purchases Ordinance, except when the preference creates a  
11 conflict with federal laws relating to federally funded contracts.]

12 ~~(C)~~ The Mayor may promulgate additional or revised rules and  
13 regulations regarding the solicitation of offers for capital projects and the  
14 award or rejection of offers therefor, including but not limited to establishing  
15 procedures for the solicitation and consideration of offers, award or  
16 rejection of offers, determining the responsibility of offerors, and such other  
17 matters as the Mayor deems desirable for the efficient administration of capital  
18 projects.

19 ~~(C)~~(D) It is the policy of the city to require local participation in  
20 capital projects where possible. Major construction projects which can  
21 reasonably be expected to exceed \$5,000,000 in cost may require that a market  
22 analysis be conducted to determine the percentage of local participation to be  
23 required for the project. This determination of the need for a market analysis  
24 and the appropriate local participation requirement shall be made on a case by  
25 case basis by the user with advice from the city's legal department as needed.

26 ~~(D)~~(E) The purchase of goods, services or construction for  
27 capital projects for the city shall not occur as part of a contract originally  
28 procured as a concession contract or entered into as a lease unless the  
29 following applies:

- 30 (1) The capital project is included in the original
- 31 competitive solicitation for the concession contract or lease; or
- 32 (2) A city contractor is unable to complete a capital project,
- 33 which was awarded to that city contractor through a competitive bid process,

1 which will cause damage or harm to the concessionaire or lessee and the  
2 concessionaire or lessee can quickly complete the project as determined in  
3 writing by the CIP Official; or

4 (3) The purchase meets the requirements of an emergency  
5 purchase as set out in this article.

6 ~~[(E)(F)]~~ Any and all rules and regulations adopted or  
7 promulgated under this provision shall be consistent with and subject to the  
8 provisions of this article, and in the event of a conflict between such rules and  
9 regulations and this article, this article shall control.

10 SECTION 2. ROA 1994 Section 5-5-31, "Pay Equity Reporting Form" is  
11 amended as follow:

12 "§ 5-5-31 PAY EQUITY REPORTING FORM [AND PAY EQUITY  
13 PREFERENCE].

14 [(A) Reporting Form.] All competitive sealed bids and competitive  
15 sealed proposals shall require that responses include a completed [City of  
16 Albuquerque] Pay Equity Reporting Form ~~[(PE-10-249 as provided by the New~~  
17 ~~Mexico General Services Department, State Purchasing the "Form")]~~ to  
18 determine the deviation between salaries for men and women and to  
19 encourage compliance with the New Mexico State Fair Pay for Women Act.  
20 The Central Purchasing Office [and the CIP Official] shall require that bids and  
21 proposals include the Form. Any response that does not include a completed  
22 form shall be deemed nonresponsive. The Central Purchasing Office [and the  
23 CIP Official] may allow for a revised Pay Equity Reporting Form to be  
24 submitted by the respondent should, in their sole opinion, the originally  
25 submitted form requires a technical change.

26 "[(B) Pay Equity Preference. Prior to making a recommendation of  
27 award, the Central Purchasing Office or CIP Official shall apply a 5% pay  
28 equity preference to the amount bid or quoted or to the proposal score of all  
29 offers submitted by any business certified by the City's Office of Diversity and  
30 Human Rights as a pay equity business as defined in subsection 1 below.

31 (1) Pay Equity Business. For the purposes of this section, a  
32 pay equity business is any business that maintains a deviation of 10% or less  
33 between the salaries paid to men and the salaries paid to women for

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1 comparable positions, as reported in the Pay Equity Reporting form required  
2 to be submitted by each offeror as prescribed under Section 5-5-31(A) of this  
3 Article. For purposes of this section, comparable positions are those listed in  
4 the Job Classification Guide 2010 (or as may be updated and amended from  
5 time to time) published by the federal Equal Employment Opportunity  
6 Commission.

7 (C) Limitation. The total amount of all preferences, including the pay  
8 equity preference, is limited by subsection 5-5-17(E).

9 (D) Rules and Regulations. The Mayor or his designated  
10 representative, the Director of the Office of Diversity and Human Rights, or its  
11 successor agency, shall enforce this Section. The Office of Diversity and  
12 Human Rights may prescribe reasonable rules and regulations to carry out the  
13 intent and purpose of this section.]”

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

21 SECTION 4. COMPILATION. The ordinance amendment prescribed by  
22 SECTIONS 1 and 2 shall amend, be incorporated in and made part of the  
23 Revised Ordinances of Albuquerque, New Mexico, 1994.

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