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Title: Amending Chapter 5, Article 5, Of The Revised Ordinances Of Albuquerque, The “Public Purchases Ordinance” Relating To Council Approval Requirements And Procurement Thresholds Of The Code (Bassan by request)

Sponsors: Brook Bassan (By Request)

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Date	Ver.	Action By	Action	Result
3/20/2023	1	City Council	Withdrawn	
3/13/2023	1	Finance & Government Operations Committee	Withdrawn by Sponsor	Pass
2/13/2023	1	Finance & Government Operations Committee	Amended	Fail
2/13/2023	1	Finance & Government Operations Committee	Postponed	Pass
1/23/2023	1	Finance & Government Operations Committee	Postponed	Pass
1/4/2023	1	President	Referred	
1/4/2023	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-65 ENACTMENT NO. _____

SPONSORED BY: Brook Bassan by request

ORDINANCE

Amending Chapter 5, Article 5, Of The Revised Ordinances Of Albuquerque, The “Public Purchases Ordinance” Relating To Council Approval Requirements And Procurement Thresholds Of The Code (Bassan by request)

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

SECTION 1. The Public Purchases Ordinance, Chapter 5, Article 5, Section 19, ROA 1994, is hereby amended as follows:

“§ 5-5-19 APPROVAL OF CONTRACTS.

(A) The following contracts must be approved by the City Council:

(1) All special assessment district construction contracts in accordance with §§ 6-8-1-1 et seq., Albuquerque Special Assessment District Policy Ordinance;

(2) Contracts for ambulance services and other emergency rescue services;

(3) Contracts for professional/technical services, as follows:

(a) Any contract for professional/ technical services in an amount exceeding ~~[\$100,000]~~ [\$150,000], including, but not limited to, legal services contracts and contracts entered into by the City Council to facilitate its legislative function; and

(b) Any amendment to a professional/ technical services contract which causes the amount of that contract to exceed ~~[\$100,000]~~ [\$150,000], or changes the scope of services related to the management or operations of a city facility.

(c) The application of this § 5-5-19(A)(3) shall be determined by the Chief Procurement Officer in the Standard Operating Procedure interpreting § 5-5-9(C) Purchase Splitting Prohibited, as may be amended.

[(d) The requirements of this section (A)(3) are not applicable to contracts awarded under the City's RFP process, which are instead subject to the approval provisions of §5-5-30 ROA 1994.]

(4) Social services contracts as follows:

(a) Any social services contract in an amount exceeding \$150,000; and

(b) An amendment to a social services contract causes the amount of that contract to exceed \$150,000; or any amendment to a social services contract exceeding \$150,000 that increases the amount of the contract by 20% or more; and

(c) Any social services with a single organization or agency where the total amount in a single fiscal year for social services contracts with the organization or agency exceeds \$150,000; and

(d) Except that City Council approval shall not be required if the goal, amount and contractor of any such contract or amendment is included in the City of Albuquerque annual

performance plan or has been previously approved by the Council in an appropriating resolution; and

(e) The exception contained in § 5-5-19(A)(4)(d) shall not apply if a Councilor has requested a special report on a particular contract from the Mayor, which report shall be due within 30 days of the request, and a Councilor has requested approval of said contract by the full Council.

(5) Concession contracts expected to generate revenues to the contractor in excess of ~~[\$75,000]~~ [\$150,000], over a 12-month period. [The requirements of this section (A)(5) are not applicable to contracts awarded under the City's RFP process, which are instead subject to the approval provisions of §5-5-30 ROA 1994.]

(6) Sole source contracts for goods, services, or construction in excess of ~~[\$75,000]~~ [\$150,000] for a single project.

(7) If the City Council has previously approved a contract by approving the selection of the contractor, the contract amount and the services or subject matter of the contract, either through approval of a Performance Plan, a recommendation of award, or other similar approval process, the final contract will not require an additional approval pursuant to this section.

(8) Any supplement to a contract previously approved by the City Council shall require additional approval by the City Council if the contract is increased by over 20% of the amount previously identified, or the supplement changes the scope of services related to the management or operations of a city facility.

(B) The following purchases must be approved by the Mayor rather than City Council:

(1) When the Mayor determines that urgent and compelling reasons require an emergency procurement of professional/technical services exceeding ~~[\$100,000]~~ [\$150,000], or social services exceeding \$150,000, the Mayor shall notify the City Council, at its next regularly scheduled meeting, of the action and shall give a full description of the urgent and compelling reasons, the scope of work, the contract amount, and the name of the contractor;

(2) Award or rejection of offers and the execution of contracts for the construction, demolition, alteration, improvement, or repair of public works; and

(3) Contracts with the New Mexico State Auditor, or other contracts required by law.

(C) All other purchases shall be approved by the Chief Procurement Officer or designee, or as otherwise provided by ordinance.

(D) For all procurements and approval of contracts and purchases by or for the Water Utility

Authority pursuant to this article, approval by the Executive Director of the Water Utility Authority shall substitute for approval by the Mayor and approval by the Water Utility Authority Board shall substitute for approval by the City Council.”

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

§ 5-5-20 EXEMPTIONS.

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

- (A) Agreements for services of professionals selected pursuant to §§ 14-7-2-1 et seq., Selection Advisory Committee ordinance;
- (B) [Reserved.]
- (C) Leases, licenses, permits, exchanges, or purchases of real property and all other real property transactions;
- (D) Purchases from regulated utilities such as gas, electricity, water, telephone, cable TV, sewer and refuse collection service, unless competition is available and the annual cost will exceed ~~[\$100,000]~~ [\$150,000];
- (E) Purchases of books, periodicals, films, training materials, subscriptions, on-line information services, or advertising from the publishers and distributors or agents thereof;
- (F) Purchases of travel by common carrier or by private conveyance and related travel expenditures such as meals and lodging;
- (G) Purchases, exchanges, sales, or transportation of animals or purchases of food for BioPark/Zoo animals and prescription animal food and medical testing supplies for use by the Animal Welfare Department;
- (H) Purchases of surety bonds;
- (I) Purchases of exotic plants which will be accessioned into a permanent collection maintained by the city;
- (J) Purchases of parts and labor for equipment or machinery where a breakdown of this equipment or machinery could cause an emergency or costly condition to exist and where the machinery or equipment is in immediate danger of failure;
- (K) Purchases of parts and labor or maintenance agreements to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop;

- (L) Purchases of chemicals, drugs, and other controlled substances, the distribution and use of which is controlled by law or requires licensing;
- (M) Concession contracts, unless such contracts are expected to generate revenues to the contractor in excess of ~~[\$75,000]~~ [\$150,000], over a 12-month period;
- (N) Purchases of computer software and ancillary services required to match other software in use is required to be used in the public interest. This includes licensing fees and services to modify or maintain proprietary software, if such services are available from only a single provider;
- (O) Purchase, lease, rental or any other financial arrangement for the acquisition of works of art, artifacts, or other items for the purpose of exhibition in a public facility or area;
- (P) Payments for conference registrations, membership dues, offsite training courses, or similar minor purchases where prepayments are required or which are administrative in nature and non-competitive as determined by the Chief Procurement Officer;
- (Q) Purchases necessary for the investigation of criminal activities, which, if purchased competitively, would compromise an investigation as determined by the Chief of Police in writing. All funds expended for this type of activity will be properly receipted and accounted for with supporting documentation maintained by the Police Department and subject to internal audit;
- (R) Purchases of specialty goods, as defined by the Chief Procurement Officer, for resale to the general public at a retail business operated by the city;
- (S) Agreements for the services of medical practitioners such as dentists, doctors, psychiatrists, psychologists, veterinarians, nurses, technicians, and the like, except that medical and mental health services for the Employee Health Center, and similar group medical services, shall be competitively obtained;
- (T) Agreements for the services of attorneys, other than bond attorneys, and for legal assistants, except as otherwise provided in this article;
- (U) Contracts and expenditures in connection with court or administrative proceedings, including, but not limited to, experts, mediators, interpreters, translators, court reporters, process servers, witness fees, and printing and duplicating of materials for filing;
- (V) Agreements for the services of lobbyists;
- (W) Agreements with a sports professional or team;
- (X) Contracts with private, nonprofit, independent contractors whose primary purpose is to provide services to persons with disabilities, and which contracts provide employment

opportunities for persons with disabilities;

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

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

(AA) Contracts with professional entertainers and associated expenditures;

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

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

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

SECTION 3. The Public Purchases Ordinance, Chapter 5, Article 5, Section 23, ROA 1994, is hereby amended as follows:

“§ 5-5-23 PROTEST.

(A) Right to protest competitive solicitation. Any business may protest the specifications of a competitive solicitation issued by the Central Purchasing Office and any offeror may protest a recommendation of award resulting from a competitive solicitation. Such protests must be submitted within the time frame specified in the competitive solicitation or recommendation of award, but in no event more than 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Protests shall be made to the Chief Procurement Officer.

(B) Right to protest sole source exceeding ~~[\$75,000]~~ [\$150,000] or above. Any qualified potential contractor may protest an intent to award a sole source procurement exceeding ~~[\$75,000]~~ [\$150,000] within 30 calendar days after the sole source procurement is posted to the

ABQ View Website. Protests shall be made to the Chief Procurement Officer.

(C) Actions pending protest. In the event of a timely protest the Central Purchasing Office shall not proceed further with the procurement unless the Chief Procurement Officer makes a determination that the award of the contract is necessary to protect substantial interests of the city.

(D) Protest authority. The Chief Procurement Officer shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved offeror. This authority shall be exercised in accordance with regulations promulgated by the Chief Procurement Officer pursuant to its authority granted in § 5-5-6 of this article.

(E) Applicability. This section shall not apply to the procurements made pursuant to § 5-5-11, Capital Projects.”

SECTION 4. The Public Purchases Ordinance, Chapter 5, Article 5, Section 27, ROA 1994, is hereby amended as follows:

“§ 5-5-27 REQUEST FOR QUOTES.

Purchases of goods, services and construction may be made by the Central Purchasing Office by request for quotes in accordance with the following provisions:

(A) A single purchase involving the expenditure of more than the small purchase limit, but not more than ~~[\$100,000]~~ [\$150,000] may be made after requesting quotes. Such quotes shall be obtained first from local businesses as defined in this article.

(1) If fewer than three responsive quotes are obtainable from local businesses, additional quotes from nonlocal businesses shall be considered.

(2) If fewer than three responsive quotes are obtainable from any source, the purchase may be made at the best documented obtainable price and a memo shall be written to the Chief Procurement Officer for his approval describing the steps taken to obtain the quotes and determine the best price.

(B) Award may be made only to the responsible offeror(s) submitting the lowest responsive offer(s).”

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

“§ 5-5-28 COMPETITIVE SEALED BIDS.

(A) All purchases of goods, services, and construction in excess of ~~[\$100,000]~~ [\$150,000] and the establishment of concession contracts expected to exceed ~~[\$75,000]~~ [\$150,000] in

revenues to the contractor shall be made by competitive sealed bid except as otherwise authorized by this article.

(B) Purchases by competitive sealed bid shall be made by a request for bids. The following provisions shall apply.

(1) Offers shall be opened according to such procedures as may be adopted by the Central Purchasing Office or CIP to ensure confidentiality of offers prior to opening.

(2) Offers shall be evaluated based on the requirements set forth in the request for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose.

(3) A contract may be awarded only to the responsible offeror(s) with the lowest cost or highest revenues or other best cost-related offer, as established in the solicitation, considering all applicable preferences.

(4) The Central Purchasing Office or CIP may accept an improved total offer from the awarded offeror to a request for bids, if said offer has otherwise qualified, and if there is no change in the original terms and conditions of the request for bids.”

SECTION 6. The Public Purchases Ordinance, Chapter 5, Article 5, Section 29, ROA 1994, is hereby amended as follows:

“§ 5-5-29 PURCHASES OF PROFESSIONAL/TECHNICAL SERVICES.

Purchases of professional/technical services of ~~[\$100,000]~~ [\$150,000] or less may be made by negotiation and execution of a contract signed by the Chief Procurement Officer, and processed through the Central Purchasing Office; signed by the CIP Official for such contracts processed through CIP; or signed by the Director of Council Services for such contracts entered into by the City Council pursuant to its legislative function. All contracts shall be reviewed for legal sufficiency. The provisions in this article applicable to professional/technical services do not apply to intergovernmental or social services agreements. The application of this § 5-5-29 shall be determined by the Chief Procurement Officer in the Standard Operating Procedure interpreting § 5-5-9(C) Purchase Splitting Prohibited, as may be amended.”

SECTION 7. The Public Purchases Ordinance, Chapter 5, Article 5, Section 30, ROA 1994, is hereby amended as follows:

“§ 5-5-30 COMPETITIVE SEALED PROPOSALS.

(A) Competitive sealed proposals may be used for the purchase of goods, services or construction, or to obtain concession contracts, particularly where specifications cannot be

adequately prepared that permit the award on the basis of the lowest evaluated bid price; the use of proposals would promote innovation, state of the art technology and overall efficiencies to the benefit of the city; or the evaluation of responsive offers depends on levels of performance, expertise, financial capability or other criteria and not price alone.

(B) Purchases by competitive sealed proposals shall be made by a request for proposals (RFP). The following provisions shall apply:

(1) The RFP shall include a weighted scale to indicate the relative importance of evaluation factors to be used in the scoring of proposals.

(2) Pricing, revenues or other cost-related items will be a weighted factor in scoring the proposals, unless the Chief Procurement Officer makes a written determination that a cost factor is inappropriate.

(3) Evaluation factors shall be developed by the user departments according to their needs in conjunction with the Central Purchasing Office or CIP.

(4) The Mayor shall name an ad hoc advisory committee to evaluate proposals. The committee shall include as one of its members a representative from the department requesting the purchase.

(5) The contents of proposals may not be disclosed to any persons other than the members of the ad hoc advisory committee or its advisors until approval of the recommendation of award. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first RFP may not be disclosed until after approval of the recommendation of award for the second RFP, cancellation of the second RFP, expiration of the six month period, or a written determination of the Chief Procurement Officer that disclosure will not be detrimental to the interests of the city and offerors.

(6) Additional information may be requested from and interviews may be conducted with all offerors determined in writing by the ad hoc advisory committee to be among the finalists considered for award. Revisions to proposals may be permitted after the submission of proposals and prior to approval of the ROA for the purpose of obtaining best and final offers. Any discussions with finalists may not disclose any information derived from proposals submitted by competing offerors.

(7) The committee shall submit to the Mayor the ROA containing a list of the top three or more proposals in the order in which they are recommended by the committee. The Central Purchasing Office shall retain as a public record any committee notes which contain an

explanation of the reasons for selection.

(8) The committee's list of recommended proposals shall be approved or disapproved or revised by the Mayor. If the Mayor has disapproved the list, he or she shall provide the committee with his or her reasons for revision or disapproval of the list, in writing.

~~[(9) If City Council approval is required, the Mayor shall submit the ROA and an executive communication containing the term and dollar amount of the contract, and a copy of the RFP to the City Council for approval. The executive communication shall be approved or disapproved by Council. In the event of disapproval, the City Council shall give its reasons therefor. The Mayor may submit a revised ROA to the City Council if an ROA is not approved.]~~

~~[(10) If the ROA for an RFP has been approved by the City Council, the contract resulting from that RFP and any supplements to that contract will not require an additional approval by the City Council on the condition that the amounts of the contract and contract scope were identified in the executive communication or any related documents presented to City Council for approval. Any supplement to a contract resulting from an RFP previously approved by the City Council shall require additional approval by the City Council if the contract is increased by over 20% of the amount previously identified, or the supplement changes the scope of services related to the management or operations of a city facility.]~~

~~[(11)[9] Prior to City Council approval, but a][A]fter the ROA has been initially approved, negotiations may be conducted with the recommended offeror, or offerors, if multiple contracts will be awarded. If negotiations are unsuccessful, as determined by the Chief Procurement Officer, negotiations may be conducted with the next offeror or offerors identified in the ROA.]~~

~~[(12)[10] An RFP for the City Council shall be subject to the provisions of this article, with the exception that proposals submitted shall be evaluated and recommended for award by an ad hoc advisory committee appointed by the Director of Council Services[, and the ROA shall be approved by the City Council without the Mayor's approval].~~

[(11) The Chief Procurement Officer shall submit in writing to the Council a quarterly report listing the RFPs awarded during the preceding quarter. The quarterly report shall list the RFP name and number, a description of the services, the awarded contractor, the term, and the contract amount.]”

SECTION 8. The Public Purchases Ordinance, Chapter 5, Article 5, Section 32, ROA 1994, is hereby amended as follows:

“§ 5-5-32 SOLE SOURCE PURCHASES.

A contract may be awarded without a competitive solicitation regardless of the estimated cost when the Chief Procurement Officer makes a determination, after conducting a good faith review of available sources and consulting the user department, that there is only one source for the required goods, services, or construction. The Chief Procurement Officer or designee shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to the city. Any qualified potential contractor may protest an intent to award a sole source procurement exceeding ~~[\$75,000]~~ [\$150,000] within 30 calendar days after the sole source procurement is posted to the ABQ View Website. Any sole source contract that exceeds ~~[\$75,000]~~ [\$150,000] shall be subject to City Council approval.”

SECTION 9. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 10. COMPILATION. The amendments set forth in Section 1 above shall amend, be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 11. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.