

SPONSORED BY: Brad Winter

ORDINANCE

F/S Amending The Public Purchases Ordinance; Requiring City Council Approval Of Supplements For Professional/Technical Services And Supplements To Contracts Awarded Through The Competitive Sealed Proposal Process (Winter)

AMENDING THE PUBLIC PURCHASES ORDINANCE; REQUIRING CITY COUNCIL APPROVAL OF SUPPLEMENTS FOR PROFESSIONAL/TECHNICAL SERVICES AND SUPPLEMENTS TO CONTRACTS AWARDED THROUGH THE COMPETITIVE SEALED PROPOSAL PROCESS.

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

SECTION 1. Section 5-5-3 of the Public Purchases Ordinance is hereby amended as follows to update Ordinance definitions:

“§ 5-5-3 DEFINITIONS. For the purpose of this article, the following definitions shall apply unless the Chief Procurement Officer determines that the context clearly indicates or requires a different meaning.

AWARD. The issuance of a purchase order or other validly executed contract. BUSINESS. A seller of goods and/or services and/or a provider of construction services and materials; or a concessionaire. This term may refer to an individual, partnership, corporation, trust or other legal entity and does not include the subsidiaries, affiliates, parent companies, shareholders or principals thereof.

CAPITAL PROJECT. A construction or public works project.

CENTRAL PURCHASING OFFICE. The Purchasing Division of the Department of Finance and Administrative Services of the city, or any department or division of the city subsequently charged with the duty of purchasing.

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

CHIEF PROCUREMENT OFFICER. That person charged with the responsibility of administering the Central Purchasing Office.

COMPETITIVE SOLICITATION. A request to businesses to respond to contractual requirements established by the Central Purchasing Office for the purchase, sale, lease, rental of goods, services or construction; or other transactions by submitting an offer. A competitive solicitation

may take the form of a request for bids (RFB), a request for proposals (RFP), a request for quotes (RFQ), or other procurement methodology established by the Chief Procurement Officer.

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

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

CONTRACT or AGREEMENT. Any written agreement for the procurement of goods, services or construction, or for the establishment of a concession, including, but not limited to, a purchase order and incorporated documents. **CONTRACTOR.** An offeror who has been awarded a contract.

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

GOODS. Items of tangible personal property.

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

INTERGOVERNMENTAL AGREEMENT. An agreement between two or more public agencies.

MANAGEMENT or OPERATION of a CITY OWNED FACILITY. Services provided under an approved professional/technical contract, Concessions Contract, or other operating agreement with the City in which a contractor is responsible for the daily management or operation of a City owned facility, including, but not limited to, the scheduling of facility events and maintenance of a facility event schedule.

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

OFFER. A response to a competitive solicitation.

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

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

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

government.

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

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

RESPONSIBLE OFFEROR. A business which has the capability in all respects to

To perform fully the contract requirements set out in the competitive solicitation or existing contract, and the integrity and reliability which will assure good faith performance, and who has not violated or attempted to violate any provisions of law or ethical conduct. Factors which may be considered in determining the offeror's capability to perform, among others, are its financial resources, production or service facilities, service reputation, response time, quality of services or goods, and experience.

RESPONSIVE OFFER. A written offer to furnish goods, services or

construction in conformity with standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.

SERVICES. Labor, time or effort.

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

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

WATER UTILITY AUTHORITY. The Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico created by Laws 2003, Chapter 437 (Section 72-1-10 NMSA 1978)."

SECTION 2. Section 5-5-6 of the Public Purchases Ordinance is hereby

amended as follows:

"§ 5-5-6 RULES AND REGULATIONS GOVERNING CENTRAL PURCHASING.

(A) The Chief Procurement Officer shall have the authority and responsibility to draft regulations related to administration of the Central Purchasing Office and interpreting and implementing this article. Such regulations shall be promulgated by the Mayor after providing notice through a newspaper of general circulation to the general public

requesting comments and informing businesses of the regulations in a manner determined by the Chief Procurement Officer.

(B) For administration of the Central Purchasing Office, regulations may be promulgated to govern the issuance of purchase orders; receipt, inspection, and acceptance of goods and services; payment for purchases; and the maintenance and disclosure of records.

(C) Additional regulations may be promulgated to establish procedures for the receipt of requisitions for goods and services from users, for creation of specifications; for the issuing of solicitations; for the maintenance of vendor lists; for the handling and opening of sealed offers; for determining the responsibility and responsiveness of offerors; for determining and issuing a recommendation of award; for review of procurement decisions; and for the debarment and suspension of businesses.

(D) Regulations may also be promulgated on such other matters as the Chief Procurement Officer deems desirable for the most efficient operation of the purchasing function.

(E) Unless the regulations promulgated pursuant to this section provide otherwise, they shall not apply to capital projects which are subject to the regulations promulgated pursuant to § 5-5-11.”

SECTION 3. Section 5-5-7 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-7 RESPONSIBILITIES OF THE CENTRAL PURCHASING OFFICE.

(A) It shall be the responsibility of the Central Purchasing Office:

(1) To reduce, to the maximum extent possible, the number of purchase transactions by combining into bulk orders and contracts the requirements of users for common-use items or items repetitively purchased.

(2) To develop, when possible, continuing contracts with vendors for specific, standardized capital items and, when appropriate, direct City Departments to purchase through these contracts. Such procedures should be designed to reduce acquisition and maintenance costs for the city.

(3) To develop and use those types of contracts, procurement methodologies and purchase orders which will reduce to the minimum the accompanying paper work and which in other respects will be most advantageous to the city.

(4) To make contract awards for the acquisition of city equipment and machinery to offerors which maintain an adequate supply and/or availability of repair parts and qualified service personnel and facilities located in the Greater Albuquerque Metropolitan Area, capable of providing timely and responsive, major and minor service of the equipment and/or machinery being purchased. This subsection is applicable in circumstances where a lack of such capability could be detrimental to city service delivery.

(5) Participate as appropriate in an inter-departmental committee which addresses problems related to the overall procurement process, departmental requirements, awards, and payment process and make recommendations to the Mayor and City Council.

(B) The Central Purchasing Office is authorized to prescribe by regulation the use of various types of contracts and orders, including but not limited to the following:

(1) Definite-quantity contracts, whereby the contractor agrees to furnish a specified quantity of materials or services at a specified time or times at specified unit prices;

(2) Indefinite-quantity contracts/price agreements, whereby the Central Purchasing Office or the user agrees to obtain from the contractor part or all of its requirements for specified materials or services in an estimated but indeterminate

amount during a prescribed period of time at a definite unit price or at a specified discount from list or posted prices.

(C) The Central Purchasing Office may cooperate by agreement with any cooperative procurement agency or any public agency in obtaining contracts or price agreements and such contracts or agreed prices shall apply to purchase orders subsequently issued under the agreement.

(D) The Chief Procurement Officer may annually adjust the monetary limits contained in this article, other than the limits set out in § 5-5-19, if the changes are approved by the Chief Administrative Officer, as confirmed by the issuing of an Administrative Instruction, and notification is provided to City Council. The adjustments shall be determined using best practices, including, but not limited to, comparisons to equivalent limits established for municipalities and public agencies similar to Albuquerque, and/or economic indicators such as changes in the Consumer Price Index.

(E) The Central Purchasing Office shall, upon request provide information to the City Council summarizing all transactions processed through the Central Purchasing Office which are in excess of the limit currently established for purchases by quotation. Information shall be provided through online reporting and quarterly written reports.”

SECTION 4. Section 5-5-8 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-8 RESERVED.”

SECTION 5. Section 5-5-9 of the Public Purchases Ordinance is hereby amended as follows to correct citations from previous Ordinance amendments:

“§ 5-5-9 PROCUREMENT REQUIREMENTS.

(A) General. All city purchasing shall be made by competitive sealed bids as provided in § 5-5-28 of this article, except purchases made through the following procurement methodologies or methodologies approved by the Chief Procurement Officer and determined in writing to be in the best interest of the city.

- (1) § 5-5-11, Capital Projects;**
- (2) § 5-5-26, Small Purchases;**
- (3) § 5-5-27, Request for Quotes;**
- (4) § 5-5-29, Purchases of Professional/Technical Services;**
- (5) § 5-5-30, Competitive Sealed Proposals;**
- (6) § 5-5-32, Sole Source Purchases;**
- (7) § 5-5-33, Purchasing from Government Contracts;**
- (8) § 5-5-34, Rapid Procurement;**
- (9) § 5-5-35, Emergency Purchases;**
- (10) § 5-5-36, Insurance Related Purchases;**
- (11) § 5-5-37, Purchases of Appraisal Services;**
- (12) § 5-5-38, Purchases of Attorney Services;**
- (13) § 5-5-39, Purchases of Social Services;**
- (14) § 5-5-40, Intergovernmental Agreements.**

(B) Cost plus contracts. The city shall not enter into any contract which is a cost-plus-percentage of cost contract, unless the contract meets the requirements in this article for an emergency purchase.

(C) Purchase splitting prohibited. Separate purchases of the same or similar goods, services or construction, whether from the same or different businesses, within a time frame established by the Chief Procurement Officer, shall be considered a single purchase for purposes of this article.

(D) Federal funding. When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of this article, the City shall comply with the most restrictive requirement.”

SECTION 6. Section 5-5-10 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-10 REJECTION OF OFFERS; NO RESPONSIVE OFFERS RECEIVED.

(A) The Central Purchasing Office or CIP may reject any or all offers received in response to a competitive solicitation, but the rejection shall be accompanied by a written statement declaring the reasons for the rejection, which shall be made part of the procurement file.

(B) If no responsive offers are received, then the Central Purchasing Office or CIP may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the Chief Procurement Officer or CIP Official, a purchase in the open market shall not be permitted and the competitive solicitation may be reissued.”

SECTION 7. Section 5-5-12 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-12 NOTICE OF SOLICITATIONS.

All competitive sealed bids or proposals issued by the Central Purchasing Office shall be made in accordance with the following provisions:

(A) Notice that sealed offers shall be received is furnished to the public by means of publication on the City’s public facing website or, if otherwise required by law in a newspaper of at least weekly general and/or business circulation, as established by the Chief Procurement Officer by regulation. The notice shall specify the closing date and time for receipt of offers, and Notice shall be published not less than ten days before the deadline for receipt of offers.

(B) This requirement of notice is in addition to any other procedure which may be adopted by the Central Purchasing Office to notify prospective offerors that offers are requested, such as direct mailing, electronic mailing and posting through an electronic medium which is accessible by the general public.”

SECTION 8. Section 5-5-16 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-16 DISPOSITION OF CITY-OWNED SURPLUS, SALVAGE, SCRAP, AND UNCLAIMED PROPERTY.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY ASSET. Tangible personal property which is required pursuant to Administrative Instruction to be recorded on the city’s inventory of fixed assets.

IT EQUIPMENT. Computers, peripheral equipment, printers, radios, telephones and the like.

LIBRARY MATERIALS. Books, magazines, compact discs, videotapes, tapes and the like purchased by the Library Division of the city, or any successor agency, for lending to the public.

SALVAGE PROPERTY. Tangible personal property of the city of any value which has been determined, pursuant to Administrative Instruction 6-2, as amended to no longer be functional in the state of its original intent, but retains a value in the market place in its marginal use, by repair, resale, scrap value in recyclable materials or other reasons that make it of value in the proper market setting.

SCRAP PROPERTY. Tangible personal property of the city which has been determined, pursuant to Administrative

Instruction 6-2, as amended to be surplus property, but which has also been determined to be of no value or where the cost to repair or maintain such property would exceed its value. SCRAP PROPERTY does not include salvage property, including but not limited to any material or equipment which retains a salvage value such as copper, aluminum or other recyclable materials, as determined by the Chief Procurement Officer.

SURPLUS PROPERTY. Tangible personal property of the city of any value which has been determined, pursuant to Administrative Instruction 6-2, as amended to be functional, but is no longer required or needed for use within or by the user department or other city department and whose cost to retain may be adverse to city interests based on space allocation, obsolescence or depreciating market value.

UNCLAIMED PROPERTY. Tangible personal property which has been left in the possession of the city, as defined in § 5-4-1 ROA 1994.

(B) Disposition of surplus, scrap, or salvage property. Surplus, scrap, or salvage property shall be disposed of in accordance with procedures established in Administrative Instruction 6-2, as amended.

(C) Unclaimed property shall be disposed of in accordance with the provisions of § 5-4-1 et seq., ROA 1994.”

SECTION 9. Section 5-5-17 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-17 RESIDENT, LOCAL AND SMALL BUSINESS PREFERENCES.

(A) Application of Preferences. Prior to making a recommendation of award, the Central Purchasing Office shall apply the following preferences by applying the 5% preference for each to the amount bid or the proposal score of all eligible offers. The preferences set forth in this section apply to bids and proposals only. This is in contrast to the Request for Quotes procurement methodology, in which quotes are requested initially from local businesses only. If all the quotes are obtained exclusively from local businesses, the application of a local preference is moot.

(1) A local business preference shall be applied to a qualified bid or proposal submitted in response to a competitive solicitation for the purchase of goods or services or for the award of a concession contract by a local business, as defined in this section.

(2) A small business preference shall be applied to a qualified bid or proposal submitted in response to a competitive solicitation for the purchase of goods or services or for the award of a concession contract by a small business, as defined in this section.

(3) The state's resident business and resident veteran business preferences shall be applied to a qualified bid or proposal submitted in response to a competitive solicitation for the purchase of goods or services, in accordance with state law.

(4) The state's resident contractor business and resident veteran contractor business preference shall be applied to a qualified bid or proposal submitted in response to a competitive solicitation for the purchase of construction, in accordance with state law.

(5) The pay equity preference shall be applied to a qualified bid or proposal in accordance with this Ordinance.

(B) Definitions.

(1) LOCAL BUSINESS shall mean a business that is headquartered in and maintains its principal office and place of business in the Greater Albuquerque Metropolitan Area, as defined in Section 3 of this Article. Local Business shall be verified on request by submittal of the business's quarterly IRS Form 941 or other documentation acceptable to the city.

(2) PLACE OF BUSINESS shall mean a business's location in the Greater Albuquerque Metropolitan Area which is

staffed and open to the public on a regular basis.

(3) RESIDENT BUSINESS, RESIDENT VETERAN BUSINESS, RESIDENT CONTRACTOR, AND RESIDENT VETERAN CONTRACTOR PREFERENCE shall mean the preference described in Section 13-1-21 NMSA 1978 and Section 13-4-2 NMSA 1978, as currently enacted or hereafter amended.

(4) SMALL BUSINESS shall mean a Local Business which employs an average of fewer than 50 full-time employees in a calendar year, which number can be verified on request by submittal of the business's quarterly IRS Form 941 or other documentation acceptable to the city.

(C) Eligibility for Preferences.

(1) To qualify for a local business or small business preference, the offeror must submit verifiable information in accordance with procedures established by the Chief Procurement Officer.

(2) To qualify for the state's resident contractor or state resident veteran contractor preference, an offeror must submit with its offer the certification of resident contractor or resident veteran contractor issued by the State of New Mexico.

(3) To qualify for the state's resident business or resident veterans business preference, the offeror must submit with its offer the certification of resident business or resident veterans business issued by the State of New Mexico.

(4) If necessary the Central Purchasing Office may seek additional information or proof to verify the offeror's eligibility.

(5) Only the principal offeror or one of the principal offerors, not a subcontractor, may qualify an offer for a preference.

(D) Small Business Goal. Each fiscal year the Central Purchasing Office shall strive to award to small businesses competed city purchases for goods and services processed through that office equivalent to 10% of the total value of such purchases for the prior fiscal year.

(E) Limitation. The total amount of all preferences awarded under this section for the purchase of goods and services in any single award shall not exceed 10%.

(F) Applicability. This section shall not apply to competitive solicitations where the cost to the city or revenues to the business will exceed \$5,000,000."

SECTION 10. Section 5-5-19 of the Public Purchases Ordinance 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, 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, or changes the scope of services related to the management or operations of a City facility.

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

amended.

(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, over a 12-month period.

(6) Sole source contracts for goods, services, or construction in excess of \$75,000 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, 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 11. Section 5-5-20 of the Public Purchases Ordinance 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;

(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, 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 12. Section 5-5-22 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-22 ETHICAL CONDUCT.

In the procurement of goods, services and construction for the city, all City employees shall comply with the rules of ethical conduct set out in §§ 3-3-1 et seq., Conflict of Interest. In addition, the following ethical provisions shall also apply to all city procurements:

(A) Employee conflict of interest. It shall be unlawful for any city employee to participate directly or indirectly in a procurement when the employee knows that:

(1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or

(2) Any other person, business, or organization with whom the employee or any member of an employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(B) **Business conflict of interest.** It shall be unlawful for any business which knowingly has a conflict of interest or an employee with a conflict of interest, which conflict of interest would allow it an unfair advantage in a competitive process, or would prevent its being able to perform fully and objectively under a contract with the city, to make an offer to the city or enter into a contract with the city.

(C) **Prohibition of unfair advancement of private financial interest by any Person, Organization, Board, Committee, or Business.** It shall be unlawful for any member of a City board or commission; any director, officer, or employee of a business; or any other individual or business by virtue of a personal or corporate relationship with the city to use confidential or insider information concerning the property, government, or affairs of the governmental body by which that person or corporation entity possesses a confidential relationship, for the purpose of real or potential advancement of private interest.

(1) **Disclosure.** Every member of a City Board or commission; every business, the directors, officers, and key employees of that business; and any other individual who has an existing or potential financial interest or who has an immediate family member who has a presently existing or potential financial interest in any contract or other matter existing or pending before or within the governmental body of which that person or business is affiliated with, shall disclose that interest in writing to the City Clerk and to the City Department Head with whom that person or business is negotiating, immediately upon knowing that such a conflict exists or upon having knowledge that a conflict may potentially come into being.

(2) The city shall not enter into any contract with a business in which an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or the Chief Administrative Officer has made a written waiver of this prohibition; provided that this subsection does not apply to a contract of employment with the city.

(3) Any purchase order or contract entered into by the city with a business in which an employee of the city has a controlling interest is void if the employee failed to comply with the provisions of this Section prior to the city entering into such contract or purchase order.

(4) **Enforcement.** In each instance in which an individual member of a board or committee, a business, or any other person knowingly uses confidential or inside information for unfair advancement of private interest, or fails to disclose real or potential financial conflict with the City, the City shall, if the offending party is a business or person affiliated with that business, cease all negotiations and contractual relationships with the offending party. If the offending party is a member of a board or committee, that person shall not be permitted to participate in continued negotiations or receive further information regarding the matter in question. Nothing in this subsection (C) shall preclude the implementation of any other remedy provided by law.

(5) **Definitions.** For the purposes of this subsection (C), the following definitions apply:

(a) **BUSINESS.** Any corporation, LLC, partnership, sole proprietorship, firm, enterprise, company, franchise,

association, organization, self-employed individual, holding company, joint-stock company, receivership, trust, whether or not organized for profit.

(b) **UNFAIR ADVANCEMENT OF PRIVATE INTEREST.** Any real or potential financial gain sought or realized by use of confidential or inside information that would not be readily available to individuals and or businesses not involved in negotiations, contracts, or other direct or indirect transactions with the governmental entity.

(c) **IMMEDIATE FAMILY.** A person and his or her spouse, their children; grandchildren; parents; siblings including step or half brothers and sisters; aunts, uncles; or any natural person residing in the same household.

(D) **Gratuities and kickbacks.**

(1) It shall be unlawful for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) It shall be unlawful for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(E) **Prohibition against contingent fees.** It shall be unlawful for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(F) **Contemporaneous employment prohibited.** It shall be unlawful for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(G) **Waiver from contemporaneous employment prohibition and other conflicts of interest.** The City Council may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- (1) The contemporaneous employment or financial interest of the employee has been publicly disclosed;
- (2) The city employee will be able to perform his or her procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interests of the city.

(H) **Use of confidential information.** It shall be unlawful for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

(I) **Recovery of value transferred or received in breach of ethical standards.**

- (1) The value of anything transferred or received in breach of the ethical standards of this section by an

employee or a nonemployee may be recovered from both employee and nonemployee.

(2) Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(J) Disclosure of travel expenses. Officials using taxpayer funded travel in excess of \$1,000 for any trip shall disclose that trip to the City Clerk within one week after completion of the trip. All such travel expenses shall be immediately posted on the city's website and shall itemize all expected expense as well as the purpose of the trip.

(K) Penalties. To the extent that violation of the ethical standards of conduct set forth in this section constitute violations of a city ordinance or state statute, they shall be punishable as provided therein. The civil penalties set forth in this section and available for the violation of provisions of this article shall be in addition to such criminal penalties.”

SECTION 13. Section 5-5-23 of the Public Purchases Ordinance 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 or above. Any qualified potential contractor may protest an intent to award a sole source procurement exceeding \$75,000 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 14. Section 5-5-24 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-24 DEBARMENT.

The Chief Procurement Officer, after reasonable notice to the business involved, shall have authority to

recommend to the Mayor the suspension or debarment of a business for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years, and a suspension shall not exceed three months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the Chief Procurement Officer. This is just an update, the title has changed to Chief Procurement Officer pursuant to its authority granted in § 5-5-6 of this article and such regulations shall provide for reasonable notice and an opportunity to be heard prior to suspension or debarment.”

SECTION 16. Section 5-5-26 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-26 SMALL PURCHASES.

(A) The Chief Procurement Officer shall establish regulations for the purchase of goods, services and construction which shall be considered "small purchases," allowable without prior authorization from the Central Purchasing Office. The monetary limit of small purchases (the "small purchase limit") shall be set by the Chief Procurement Officer by written notice to the user departments. The small purchase limit shall not exceed \$10,000.

(B) Petty cash purchases of \$100 or less may be made without a purchase order at the best obtainable price by authorized individuals in accordance with regulations established by the City Treasurer.”

SECTION 17. Section 5-5-27 of the Public Purchases Ordinance 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 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 18. Section 5-5-28 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-28 COMPETITIVE SEALED BIDS.

(A) All purchases of goods, services, and construction in excess of \$100,000 and the establishment of concession contracts expected to exceed \$75,000 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 19. Section 5-5-29 of the Public Purchases Ordinance is hereby amended as follows:

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

Purchases of professional/technical services of \$100,000 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 Section 5-5-29 shall be determined by the Chief Procurement Officer in the Standard Operating Procedure interpreting Section 5-5-9(C) Purchase Splitting Prohibited, as may be amended.”

SECTION 20. Section 5-5-30 of the Public Purchases Ordinance 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 shall provide the committee with his 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) Prior to City Council approval, but after 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) 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.”

SECTION 21. Section 5-5-32 of the Public Purchases Ordinance 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 within 30 calendar days after the sole source procurement is posted to the ABQ View Website. Any sole source contract that exceeds \$75,000 shall be subject to City Council approval.”

SECTION 22. Section 5-5-33 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-33 PURCHASING FROM GOVERNMENT CONTRACTS.

Goods, services, including professional or technical services, or construction may be purchased from a business, or its authorized representative, under contract with a public agency or cooperative procurement agency at prices which are equal to or less than the prices of goods, services or construction meeting the same specifications or standards of those purchases, if the following conditions are met:

(A) Prices are from:

(1) A nationally published federal price schedule or a "federal government price schedule" published by the business under contract with the federal government;

(2) A current contract which has been awarded after notice and publication and in accordance with the requirements of the New Mexico Procurement Code, §§ 13-1-28 et seq. NMSA 1978; or

(3) A valid contract which has been awarded by any public agency or cooperative procurement agency after notice and publication and in accordance with the requirements of the procurement laws and regulations applicable to that agency.

(B) The quantity purchased shall not exceed the quantity which may be purchased under the applicable contract.

(C) The goods, services or construction shall be purchased at the best obtainable price.

(D) The terms and conditions of the contract shall not be modified for the city purchase, unless the change is agreed to by the contracting business and is more favorable to the city than the original terms and conditions.

(E) The purchase order for the goods, services or construction purchased shall adequately identify the contract relied upon.

(F) The Central Purchasing Office or CIP shall retain for public inspection and internal use, official documentation, as required by the Chief Procurement Officer or CIP Official, whichever applies.”

SECTION 23. Section 5-5-36 of the Public Purchases Ordinance is hereby amended as follows:

“5-5-36 INSURANCE RELATED PURCHASES.

(A) Insurance coverage for the city, other than employee health care, shall be remarketed by a controlled bidding process through an agent of record under the direction of the city department responsible for risk management. Rules of procedure for the controlled bidding process shall be established by the Mayor and published in the appropriate internal procedure manual.

(B) Employee health care insurance will be obtained in accordance with the procurement methods described in this article or otherwise approved by the Chief Procurement Officer.

(C) The selection of the city's agent of record responsible for the negotiation of insurance coverages for the city and who shall work with and under the direction of the city department responsible for risk management will be obtained in accordance with the procurement methods described in this article or otherwise approved by the Chief Procurement Officer.”

SECTION 24. Section 5-5-37 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-37 PURCHASES OF APPRAISAL SERVICES.

Contracts for the services of appraisers of real property shall be entered into, as needed, following selection of a list of appraisers by competitive solicitation. For each appraisal project, oral or written quotes must be obtained from three or more of the appraisers, if possible, listed and the project shall be awarded to the appraiser with the best quote as determined by the user department in conjunction with the city's Real Property Division, or its successor, in accordance with a procedure approved by the Chief Procurement Officer. Oral quotes must be documented in writing and maintained by the Real Property Division. The Real Property Division shall establish maximum hourly charges for appraisal services. The quote process shall apply to updates for an appraisal.”

SECTION 25. Section 5-5-38 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-38 PURCHASES OF ATTORNEY SERVICES.

The Legal Department and the Risk Management Division, or their successors, shall each use their best efforts to issue a request for letters of interest every four years to select a list of attorneys available and qualified to provide legal services in particular areas of law utilized by the city. Attorneys may be added to the list at any time if they submit a proposal which meets the minimum requirements of the most current request for letters of interest and are approved by the City Attorney and the Risk Manager.”

SECTION 26. Section 5-5-39 of the Public Purchases Ordinance is hereby amended as follows:

“§ 5-5-39 PURCHASES OF SOCIAL SERVICES.

Social services contracts shall be procured in accordance with written regulations promulgated by the Family and Community Services Department, or a successor department, and approved by the Chief Administrative Officer and the Chief Procurement Officer. At a minimum, these department regulations shall require social services contracts to include service performance standards which shall be reviewed and revised on a regular basis. If these performance standards are not met for two consecutive years, a request for proposals pursuant to the department regulations shall be required. Contracts which meet the definition of social services contracts shall not be subject to the provisions in this article applicable to those professional/technical services contracts and intergovernmental agreements, but shall be subject only to the provisions in this article applicable to social services agreements. City Council approval of social services contracts is required as set out in § 5-5-19 of this article.”

SECTION 27. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, 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 provisions being declared unconstitutional or otherwise invalid.

SECTION 28. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 29. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general

summary.

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