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Title: Amending Chapter 5, Article 5, Of The Revised Ordinances Of Albuquerque, The “Public Purchases Ordinance” Relating To Definitions, Preferences, Exemptions, Pay Equity And Purchases Of Software (Bassan by request)
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1/4/2023	1	City Council	Introduced	

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-64 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 Definitions, Preferences, Exemptions, Pay Equity And Purchases Of Software (Bassan by request)

AMENDING CHAPTER 5, ARTICLE 5, OF THE REVISED ORDINANCES OF ALBUQUERQUE, THE “PUBLIC PURCHASES ORDINANCE” RELATING TO DEFINITIONS, PREFERENCES,

EXEMPTIONS, PAY EQUITY AND PURCHASES OF SOFTWARE.

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 3, ROA 1994, is hereby amended as follows:

“§ 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.

CHIEF PROCUREMENT OFFICER. That person charged with the responsibility of administering the Central Purchasing Office, or its designee.

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.

COMPETITIVE SOLICITATION. The procurement process the City uses to request offers for the purchase, sale, lease, rental of goods, services or construction; or another transaction. The request may be in the form of a request for bids (RFB), a request for proposals (RFP), a request for quotes (RFQ), or another procurement methodology established by the Chief Procurement Officer.

CONCESSION CONTRACT. A revenue-producing contract that licenses or permits the use of City property except any kind of rights of way, by a business 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 entities.

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 § 5-5-3. Local business shall be verified on request by submittal of the business's quarterly IRS Form 941 or other documentation acceptable to the city.

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 or the Mayor's designee(s).

OFFER. A response to a competitive solicitation.

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

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.

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

PUBLIC AGENCY. Any 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, any local government, 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 perform fully the contract requirements set out in the competitive solicitation or existing contract as set forth in the Purchasing Rules and Regulations.

RESPONSIVE OFFER. A written offer in response to a competitive solicitation to furnish goods, services or construction in conformity with the standards, specifications, terms and conditions, and all other requirements established in the competitive solicitation. Responsiveness of offers shall be as more fully set forth in the Purchasing Rules and Regulations.

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 shelter, youth services, senior services, employment services, and job training; 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 City's payment 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.

SOFTWARE LICENSE or SOFTWARE SUBSCRIPTION. Software or technology services hosted remotely by a third party.

USER DEPARTMENT, USER, or DEPARTMENT. A City department, office, 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. The Public Purchases Ordinance, Chapter 5, Article 5, Section 17, ROA 1994, is hereby amended as follows:

“§ 5-5-17 PREFERENCES.

(A) Application of Preferences. Prior to making a recommendation of award of a contract pursuant to a request for bids or request for proposals, the Central Purchasing Office shall apply to any applicable procurement preferences provided under state law to the amount of the bid or to the proposal score in accordance with the applicable state law.

(B) Eligibility for Preferences.

(1) To qualify for any state procurement preference, an offeror shall meet any eligibility requirements provided in the relevant state law, and shall submit with its bid or proposal, the certification issued by the State of New Mexico that relates to the preference sought.”

SECTION 3. 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) Purchase of a software license or software subscription that does not exceed \$10,000 per fiscal year, including services required to build, install, maintain or support the software, or that are otherwise associated with the acquisition of the license or subscription;

(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 (excluding software 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:

(1) animals for the BioPark/Zoo, APD, and AFR;

(2) food, medications, medical testing, or medical supplies for BioPark/Zoo animals;

and

(3) 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) Short-term contracts for purchases of parts and labor for equipment or machinery if the machinery or equipment is in immediate danger of failure and such a breakdown of this equipment or machinery could cause an emergency or costly condition to exist;

(K) Purchases of parts and labor or maintenance agreements to repair disabled equipment or machinery if the equipment or machinery is required to be repaired by a franchised dealer or by a factory authorized repair shop to retain warranty;

(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 expected to generate revenues to the contractor in an amount of \$75,000 or less, over a 12-month period;

(N) Purchases of software and ancillary services required to match other software previously procured and in use. This includes licensing fees, maintenance fees, and services required to update, modify or maintain proprietary software;

(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;

(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 as described in this paragraph Q shall be properly receipted and accounted for with supporting documentation maintained by the Albuquerque Police Department and are 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 expenditures associated with those contracts;

(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 has been developed for such goods or ancillary services. This includes applicable purchases and services to obtain, modify, or maintain equipment;

(CC) The purchase of goods or services for a reasonable trial period for testing purposes as approved by the Chief Procurement Officer; provided that if additional purchases are required after the trial period and testing, the subsequent purchase of 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 memorandum shall be submitted

to the Chief Procurement Officer describing the steps taken to determine that a cost advantage to the City exists, and the Chief Procurement Officer's approval of the purchase is required."

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, may be made after requesting quotes. Departments are encouraged to obtain quotes first from local businesses as defined in this article.

(B) Award of a contract 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 29, ROA 1994, 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. All contracts shall be reviewed for legal sufficiency. The provisions in this article applicable to professional/technical services do not apply to: intergovernmental agreements; social services agreements; or agreements for services that relate directly to a particular purchase of a software license or software subscription. 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 6. The Public Purchases Ordinance, Chapter 5, Article 5, Section 31, ROA 1994, is hereby amended as follows:

"§ 5-5-31 PAY EQUITY REPORTING FORM AND PAY EQUITY PREFERENCE.

(A) Reporting Form. The city requires that all responses to requests for bids or requests for proposals include a completed City of Albuquerque Pay Equity Reporting Form. The form calculates the deviation between salaries for men and women and is designed to encourage compliance with the New Mexico State Fair Pay for Women Act and federal gender pay equity laws. The Central Purchasing Office or the CIP Official shall review all responses to bids and proposals to determine whether the form is included. Any response that does not include a

completed form shall be deemed nonresponsive unless the form is submitted within 24 hours of the response deadline. The Central Purchasing Office and the CIP Official may allow the respondent to submit a revised Pay Equity Reporting Form should, in their sole opinion, the originally submitted form require a technical change.

(B) Pay Equity Preference. Prior to making a recommendation of award, the Central Purchasing Office or CIP Official shall apply a 5% pay equity preference to the amount bid or to the total score of any business that includes with its response a valid form.

(1) Pay Equity Business. A business is eligible for a pay equity preference if it maintains an overall deviation and position-specific deviations between the salaries paid to men and the salaries paid to women for comparable positions at the percentages provided by Administrative Instruction. The Chief Administrative Officer may annually adjust the average and position-specific deviations contained in this article by issuing an Administrative Instruction and a notification to City Council. For purposes of this section, comparable positions are those listed in the Job Classification Guide 2019 (or as may be updated and amended from time to time) published by the federal Equal Employment Opportunity Commission.

(2) Certification. The City shall certify any business that demonstrates that it has satisfied the requirements of subsection (1) above as a Pay Equity Business. The certification process shall be as provided by Administrative Instruction. Certificates shall be valid for one year from the date of issuance. The city will continue to honor existing certificates until their dates of expiration.

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

(D) Rules and Regulations. The Mayor or the Mayor's designated representative may prescribe reasonable rules and regulations to carry out the intent and purpose of this section."

SECTION 7. The Public Purchases Ordinance, Chapter 5, Article 5, Section 41, ROA 1994, is hereby added as follows:

"§ 5-5-41 PURCHASES OF SOFTWARE LICENSES AND SOFTWARE SUBSCRIPTIONS.

Purchases of software licenses and software subscriptions of \$100,000 or less may be made by request for demonstrations. Each request for demonstrations shall include a detailed specification and a weighted scale to indicate the relative importance of evaluation factors in the scoring of proposals. The process for procuring software licenses and software subscriptions under this § 5-5-41 shall be determined by the Chief Procurement Officer in the Standard Operating Procedure interpreting § 5-5-41, as may be amended."

SECTION 8. 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 9. COMPILATION. The amendments set forth in Sections 1 through 7 above shall amend, be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 10. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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