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Title: Amending Chapter 5, Article 5, Of The Revised Ordinances Of Albuquerque, The “Public Purchases Ordinance” Relating To Exemptions From The Competitive Requirements Of The Code (Benton, Grout by request)
Sponsors: Isaac Benton (By Request), Renee Grout (By Request)
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12/27/2022	2	City Clerk	Published	
12/19/2022	2	Mayor	Signed by the Mayor	
12/9/2022	1	City Council	Sent to Mayor for Signature	
12/5/2022	1	City Council	Passed	Pass
11/21/2022	1	City Council	Accepted with a recommendation Do Pass, As Amended	
11/14/2022	1	Finance & Government Operations Committee	Amended	Pass
11/14/2022	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass, as Amended	Pass
10/17/2022	1	President	Referred	
10/17/2022	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

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

SPONSORED BY: Isaac Benton and Renee Grout by request

ORDINANCE

Amending Chapter 5, Article 5, Of The Revised Ordinances Of Albuquerque, The “Public Purchases Ordinance” Relating To Exemptions From The Competitive Requirements Of The

Code (Benton, Grout by request)

AMENDING CHAPTER 5, ARTICLE 5, OF THE REVISED ORDINANCES OF ALBUQUERQUE, THE "PUBLIC PURCHASES ORDINANCE" RELATING TO EXEMPTIONS FROM THE COMPETITIVE REQUIREMENTS OF THE CODE.

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.

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. 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.

DESTINATION MARKETING ORGANIZATION (DMO). An organization which promotes a location as an attractive travel destination and exists to provide information to leisure travelers and to encourage event organizers to choose their location for meetings, incentives, conferences and exhibitions; and is accredited as a DMO through a globally recognized Destination Marketing Accreditation Program.

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 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 NMSA1978).”

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;
- (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;

(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; and

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

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

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

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