

# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**RESOLUTION NO. 559**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, DECLARING THAT CERTAIN DOCUMENT ENTITLED "ARTICLE 3-4 CITY PROCUREMENT" A PUBLIC RECORD; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS:

Section 1: That the certain document entitled "Article 3-4, City Procurement," three (3) copies of which are on file with the City Clerk of the City of San Luis, is hereby made and declared a public record of the City of San Luis, Arizona, and made a part hereof as though fully set forth again in full.

Section 2: Chapter 3, Article 3-4 Purchasing, of the City Code as adopted by Ordinance No. 88 is hereby repealed, superceded, and replaced.

Section 3: In the event of a conflict between the provisions of this resolution and any other ordinance, resolution, regulation, or policy regarding purchasing policies of the City of San Luis, the conflicting provisions are hereby repealed, superceded, and replaced, and the provisions of this resolution shall govern.

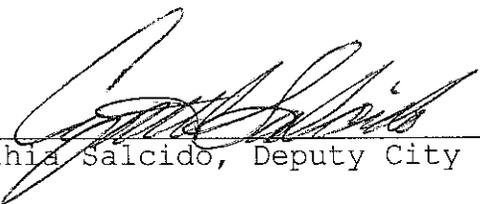
Section 4: If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution.

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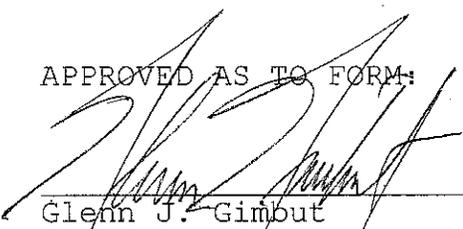
PASSED AND ADOPTED by the Mayor and Council of the City of  
San Luis, Arizona, this 26<sup>th</sup> day of May, 2004.

  
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Guillermina Fuentes, Mayor

ATTEST:

  
\_\_\_\_\_  
Cynthia Salcido, Deputy City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Glenn J. Gimbut  
Asst. City Attorney

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**General Provisions**

**§ 3-4-01 Definitions.**

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BLIND TRUST.** An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other dispositions of the property subject to the trust.

**BUSINESS.** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

**CITY.** The City of San Luis and shall include the City Council and any department, commission, council, board, bureau, committee, institution, authority, agency, government corporation, or other establishment or official of the government of this city.

**CONFIDENTIAL INFORMATION.** Any information which is available to an employee only because of the employee's status as an employee of this city and is not a matter of public knowledge or available to the public on request.

**CONSTRUCTION.** The process of building, altering, repairing, improving or demolishing any structure or building, or other improvements of any kind to any real

property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

**CONTRACT.** Any type of city agreement, regardless of what it may be called, for the purchase or disposal of supplies, services or construction. It includes contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

**CONTRACTOR.** Any person or business having a contract with the governmental body.

**COOPERATIVE PURCHASING.** Procurement conducted by, or on behalf of, more than one public procurement unit.

**DEBARMENT.** The disqualification of a person or business to receive invitations for bids or requests for proposals or the award of a contract by the city, for a specified period of time commensurate with the seriousness of the offense or the failure or the inadequacy of performance.

**DESIGNEE.** A duly authorized representative or of a person holding a superior position.

**EMPLOYEE.** An individual drawing a salary from the city, whether elected or not, and any city board or commission member.

**EXCESS SUPPLIES.** Supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.

**FINANCIAL INTEREST.** A substantial interest as defined in A.R.S. § 38-502.

**GRATUITY.** A payment, loan, subscription, advance, deposit of money, service, or anything of any monetary value, present or promised, unless consideration of substantially equal or greater value is received.

**IMMEDIATE FAMILY.** A spouse, children, parents, brothers and sisters, and grandparents or in-laws of same degree of relation.

**INVITATION FOR BIDS.** All documents, including those attached or incorporated by reference, utilized for soliciting bids.

**PROCUREMENT.** The buying, purchasing, renting, leasing or otherwise obtaining any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

**PURCHASING AGENT.** The City Manager is the Purchasing Agent until such time as the City hires a Purchasing Agent or similar position with responsibility for purchasing activities, whereupon that person shall be the Purchasing Agent.

**REQUEST FOR PROPOSALS (RFP).** All documents, including those attached or incorporated by reference, utilized for soliciting proposals.

**RESPONSIBLE BIDDER.** A person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good-faith performance.

**RESPONSIVE BIDDER.** A person who has submitted a bid which conforms in all material respects to the invitation for bids.

**SERVICES.** The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term includes "professional services" but it does not include employment agreements or collective bargaining agreements.

**SPECIFICATIONS.** Any description of the physical or functional characteristics, or of the nature of, a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

**SUPPLIES.** All property, including but not limited to equipment, parts, materials, printing, insurance and leases on real and personal property, excluding land or a permanent interest in land.

**SURPLUS SUPPLIES.** Any supplies no longer having any use to the city. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

**SUSPENSION.** The disqualification of a person to receive invitations for bids or requests for proposals or the award of a contract by the city, for a temporary period pending the completion of an investigation, or during any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

**USING DEPARTMENT.** Any department, commission, council, board, bureau, committee, institution, authority, agency, government corporation, or other establishment or official of the government of this city, which utilizes any supplies, services or construction purchased under this Ordinance.

§ 3-4-02 Purpose; Rules of Construction.

(A) Interpretation. This Ordinance shall be construed and applied to promote its underlying purposes and policies.

(B) Purposes. The underlying purposes and policies of this Ordinance are:

- (1) To simplify, clarify and modernize the law governing procurement by this city;
  - (2) To permit the continued development of procurement policies and practices;
  - (3) To make as consistent as possible the procurement laws among the various governmental bodies;
  - (4) To provide for increased public confidence in the procedures used in public procurement;
  - (5) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this city;
  - (6) To provide increased economy in city procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the city;
  - (7) To foster effective broad-based competition within the free enterprise system;
- and
- (8) To provide safeguards for the maintenance of a procurement system of quality and integrity.

**§ 3-4-03 Applicability.**

(A) General applicability. This Ordinance applies only to contracts solicited or entered into after the effective date of this Ordinance unless the parties agree to its application to a contract entered into prior to the effective date. Renewal of existing contracts would be subject to the Ordinance unless current contract terms provide otherwise.

(B) Application to city procurement. This Ordinance shall apply to every expenditure of public funds regardless of source, including state and federal assistance monies, by this city, under any contract, except that nothing in this Ordinance shall prevent the city from complying with the terms and conditions of any grant, gift or bequest or cooperative agreement. This Ordinance shall also apply to the disposal of city supplies.

(C) Effect of state or federal assistance requirements. In the event state or federal assistance requirements conflict with the provisions of this Ordinance, nothing in this Ordinance shall prevent the city from complying with the terms and conditions of the federal assistance requirements and the Purchasing Agent shall have authority to adopt regulations governing city compliance with federal assistance requirements on any given project.

**§ 3-4-04 Requirement of Good Faith.**

This Ordinance requires all parties involved in the negotiation, performance or administration of city contracts to act in good faith.

**§ 3-4-05 Determinations to be Maintained on File.**

Written determinations and findings required by this Ordinance shall be retained in an appropriate official contract file in the office of the Purchasing Agent.

**Procurement and Supply Management**

**§ 3-4-15 Creation of Procurement Policy.**

Except as otherwise provided in this Ordinance, the City Manager shall have the authority and responsibility to promulgate and approve the procurement policy of the city in conformance with this Ordinance and subdivision E 9 of section 3-2-1 of the City Code, but the City Manager shall not exercise authority over the award of a particular contract or any dispute, claim or litigation pertaining thereto unless otherwise provided herein.

**§ 3-4-16 Centralization of Procurement Authority.**

(A) Transfer of functions. All rights, power, duties and authority relating to the procurement of supplies, services and construction, and the management, control, warehousing, sale and disposal of supplies, services and construction now vested in or exercised by any using department, regardless of source of funding, are hereby transferred to the City Manager and the Purchasing Agent.

(B) Relationship with using departments. The Purchasing Agent shall obtain expert advice and assistance from personnel of using departments in the development of specifications and may delegate in writing to a using department the approval and authority to prepare and utilize its own specifications.

(C) Collection of data concerning procurement. The Purchasing Agent shall cooperate with the head of financial services in the preparation of statistical data concerning the procurement, usage and disposal of all supplies, services and construction. All using departments shall furnish such reports as the Purchasing Agent may require concerning usage, needs and stocks on hand, and the Purchasing Agent shall have authority to prescribe forms to be used by the using departments in requisitioning, ordering and reporting of supplies, services and construction.

(D) The City Manager may delegate procurement authority authorized under this article to a Purchasing Agent or other designee.

**§ 3-4-17 Promulgation of Supply Management Operational Procedures.**

The Purchasing Agent may promulgate, with the concurrence of the City Manager, operational procedures in conformance with this Ordinance and the City Code governing:

- (A) The management of supplies during their entire life cycle.
- (B) The sale, lease or disposal of supplies by public auction, competitive sealed bidding, or other appropriate methods excepting purchases of an interest in real property. However, no employee of the city shall be entitled to purchase any such supplies, except by public auction or competitive sealed bidding. An employee of the City or city council member shall not directly or indirectly purchase or agree with another person to purchase surplus property if said employee or council member is, or has been, directly or indirectly involved in the purchase, disposal, maintenance, or preparation for sale of the surplus supplies.
- (C) Transfer of excess supplies within the city. For the purpose of this section, surplus supplies do not include real property.

**§ 3-4-18 Cooperative Purchasing.**

- (A) Purchasing agreements. The city may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units, and open-ended state public procurement unit contracts which are made available to other public procurement units.
- (B) Sale, acquisition or use of supplies. The city may sell to, acquire from or use any supplies belonging to another public procurement unit independent of the requirements of §§ 3-4-30 and 3-4-33.
- (C) Cooperative use of supplies and services. The city may enter into an agreement, independent of the requirements of § 3-4-16, with any other public procurement unit for the cooperative use of supplies or services, under the terms agreed upon between the parties.
- (D) Joint use of facilities. The city may enter into agreements for the common use or lease of warehousing facilities, capital equipment and other facilities with another public procurement unit under the terms agreed upon between the parties.

**Contract Award Process**

**§ 3-4-30 Specifications.**

(A) Purchasing Agent's duties. The Purchasing Agent shall prepare, issue, revise, maintain and monitor the use of specifications for supplies, services and construction required by the city, in conjunction with the City Engineer where appropriate, provided that:

(1) The Purchasing Agent may delegate to using department responsibility for the preparation and maintenance of specifications generally or for specific supplies, services or construction, subject to approval of any such specifications by the Purchasing Agent; and

(2) If the Purchasing Agent does not approve a specification, the City Manager may, at his discretion, upon the request of the using department, modify or reverse such decision of the Purchasing Agent. Any determination modifying or reversing the specifications shall be in writing.

(B) Maximum practicable competition. All specifications shall seek to promote overall economy for the purposes intended and shall be drafted so as to ensure the maximum practicable competition for the city's actual requirements.

(C) Specifications prepared by architects and engineers. The requirements of this section regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including but not limited to those prepared by architects, engineers, designers and draftsmen for public contracts.

(D) Conflicting opinions on certain specifications. In the event of a conflict between the City Engineer and the Purchasing Agent in regard to specifications requiring the seal of the City Engineer, the opinion of the City Engineer shall control; subject to review by the City Manager pursuant to subdivision (A)(2) of this section.

**§ 3-4-31 Modification of Standard Contract Forms.**

The Purchasing Agent, after consultation with the City Attorney and with the approval of the City Manager, may modify or delete existing and add new contractual provisions and clauses to all standard form contracts for the procurement of supplies, services and construction contracts utilized by the city, provided that such modification, deletions or additions are supported by a written determination.

**§ 3-4-32 Advertising for Bids.**

Advertising for formal bids for the expenditure of any public money in excess of the amount as provided for in A.R.S. § 41-2535, as amended, where such amount has been appropriated in the officially adopted budget for the expenditure requested, shall be deemed authorized at the time of the adoption of the budget for each ensuing fiscal year.

**§ 3-4-33 Methods of Source Selection.**

Unless otherwise authorized by law, all city contracts shall be awarded by competitive sealed bidding, pursuant to § 3-4-34 except as provided in § 3-4-35 and §§ 3-4-38 through 3-4-40.

**§ 3-4-34 Competitive Sealed Bidding.**

- (A) Invitation for bids. Where competitive sealed bidding is utilized, an invitation for bids shall be issued which shall include a purchase description and all contractual terms and conditions applicable to the procurement.
- (B) Public notice. Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth herein for the opening of bids, as required by law, or in accordance with policy approved by the City Manager. Such notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.
- (C) Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified in the invitation for bids, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.
- (D) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, availability of follow-up service and suitability for a particular purpose. Those criteria that will affect the bid price and which will be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.
- (E) Award, generally. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, subject to the qualifications set forth herein, as determined by the City Council; and a bid may not be rejected except on the basis of criteria set forth in the invitation for bids. In the event all bids exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than five percent, the Purchasing Agent is authorized, where permitted by law, in situations where time or economic considerations preclude resolicitation of work or a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(F) Award to other than low bidder. When the agent is to recommend the award of the contract to other than the lowest bidder, a full and complete statement of the reasons for such a recommendation shall be prepared by the agent and filed with the other papers relating to the transaction.

- (G) Correction or withdrawal of bids; cancellation of awards.
- (1) After bid opening, a bid mistake based on an error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to subsections (2) through (5) of this section.
  - (2) After bid opening, the City shall either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the City.
  - (3) After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake and the intended bid are evident on the face of the bid.
  - (4) After bid opening, the City may permit a bidder to withdraw a bid if:
    - i. A nonjudgmental mistake is evident on the face of the bid but the intended bid is not evident; or
    - ii. The bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.
  - (5) Mistakes shall not be corrected after award of the contract except where the Purchasing Agent makes a written determination that it would be unconscionable not to allow the mistake to be corrected.
  - (6) If correction or withdrawal of a bid after bid opening is permitted or denied under subsections (3) or (4) of this Section, the Purchasing Agent shall prepare a written determination showing that the relief was permitted or denied under this Ordinance.
  - (7) Notwithstanding other provisions of this Section, after bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted.

(H) Multistep sealed bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(I) Change orders. Change orders exceeding ten percent of the original contract, where such amount is in excess of the amount as provided for in A.R.S. § 41-2535, as amended, require Council approval unless otherwise provided for in the original contract as approved by the City Council.

**§ 3-4-35 Competitive Acquisition of Professional Services Including Architecture and Engineering.**

(A) Applicability. Professional services shall be procured in accord with this policy except where otherwise provided in the purchasing code, exceptions to include but not be limited to small purchases (under amount set by Code for formal competitive bidding), sole source procurement, emergency procurements, and those situations where negotiation procedure is more appropriate as when only one known contractor can meet all requirements or when competitive solicitation is impractical.

(B) Policy. It is the policy of this city to publicly announce all requirements for professional services, unless excepted herein, and to negotiate contracts on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(C) Objectives.

- (1) To secure competent professional services as competitively as practicable.
- (2) To require a prohibition against contingent fees in all professional services contracts.
- (3) To establish as firmly as possible the total cost, including fee, of the service to be rendered.
- (4) To eliminate cost-plus-a-percentage-of-cost type of contracting.

(D) Criteria for selection.

- (1) Professional technical competence of contractor.
- (2) Available capacity to perform the specific work within the stipulated timeframe.
- (3) The merit of the proposed concept or methods to be used in achieving the specific desired objective or end product.
- (4) Proposed total cost, including fee, and construction and life-cycle costs, where applicable, to the client.

(E) Pre-bid activity. Based on the complexity of the project, one or more of these steps may be omitted if appropriate:

- (1) Using department to formulate statement of requirements, design or other applicable criteria, timeframe for performance, and other pertinent criteria. The estimated total cost, including construction if applicable, should also be established. The request for proposals shall also state the relative importance of the various criteria including price.

(2) When deemed appropriate in the best interest of the city, the City Manager may appoint an ad hoc advisory committee, with either in-house or outside representatives of the disciplines involved. Such committee would review the stated requirements and establish the extent of anticipated in-house participation.

(3) Formalized advertising of stated requirements.

(4) Either the Purchasing Agent in conjunction with the using department head or the ad hoc committee, if one is appointed, shall review the professional and technical competence of all responding firms and, by an analysis of prior performance, determine the capacity to render the required services within the established timeframe.

(5) Establishment of a list of prequalified bidders for the specific project or program by the ad hoc committee or the using department and procuring activity.

(6) Determination of most appropriate method of contracting based on complexity of the program and extent of in-house participation.

(7) Preparation of preliminary set of specifications and other contract documents by using department and Purchasing Agent for review and comments of prequalified bidders. Criteria to be used in the evaluation of proposals and determination of successful bidder established.

(8) Prebid conference conducted by Purchasing Agent supported by requesting department and other in-house groups as required. All prequalified firms invited to attend for review of specification requirements, predetermined method of contracting and proposed contract documents. Recommendations and questions from prospective bidders requested for consideration.

(9) Preparation of all documents required for the solicitation of proposals by Purchasing Agent and using department subject to approval of evaluation board.

(F) Award process.

(1) Single-step competitive:

(a) Solicitation from prequalified list of contractors. Bid documents to include requirements for the submission of conceptual approach, total price including fee and assurance of compliance with stated timeframe.

(b) Receipt of proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspections.

(c) Review and evaluation of conceptual proposals by ad hoc committee, or representative of requesting department and procuring activity, and all acceptable proposals

identified, with record of actions involved. Firms may also be required to have key personnel, to be used on the project, give a presentation of conceptual approaches to ad hoc committee.

(d) Award of contract to lowest bidder meeting all requirements, including budget limitations, as determined by the City Council after recommendation by the Purchasing Agent or ad hoc committee.

(2) Two-step competitive:

(a) Solicitation from prequalified list of contractors. Bid documents to include requirements for the submission of conceptual approach and methods to be utilized in achieving the specified end product or providing the desired service within the stipulated timeframe. Cost or pricing data is not required, unless in two-envelope method.

(b) Receipt of proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspections.

(c) Review and evaluation of conceptual proposals by ad hoc committee, or representative of requesting department and procuring activity, and all acceptable proposals identified, with record of actions involved. Firms may also be required to have key personnel, to be used on the project, give a presentation of conceptual approaches to ad hoc committee.

(d) Request for cost and pricing data from those firms that submitted acceptable conceptual proposals. Cost proposals must include appropriate cost elements and show all applicable percentages including fee or profit.

(e) Review of all cost elements by Purchasing Agent assisted by an audit or accounting group, if necessary, and comparison with in-house estimates. Award of contract to lowest bidder meeting all requirements, including budget limitations, as determined by the City Council after recommendation by the Purchasing Agent or ad hoc committee.

(3) Competitive negotiation:

(a) Discussion and review of requirements by ad hoc committee with prequalified firms, if possible, regarding anticipated concepts and relative value of alternate methods of approach. Technical/conceptual proposals only to be submitted as a result of discussions.

(b) Receipt of proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspections.

(c) Review and evaluation of conceptual proposals by ad hoc committee, or representative of requesting department and procuring activity, and all acceptable proposals

identified, with record of actions involved. Firms may also be required to have key personnel, to be used on the project, give a presentation of conceptual approaches to ad hoc committee.

(d) Request for cost and pricing data from those firms that submitted acceptable conceptual proposals. Cost proposals must include appropriate cost elements and show all applicable percentages including fee or profit.

(e) Review of all cost elements by Purchasing Agent assisted by an audit or accounting group, if necessary, and comparison with in-house estimates.

(f) The City shall negotiate a contract with the highest qualified firm for the required services at compensation determined in writing to be fair and reasonable to the City. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest qualified firm, the City shall notify the firm in writing of the termination of negotiations. The City shall negotiate with the next highest qualified firm in sequence until an agreement is reached or a determination is made to reject all proposals in accordance with Section 3-4-36.

(g) Award of contract, by the City Council upon recommendation of the ad hoc committee, under mutually acceptable terms and conditions at compensation that is considered to be fair and reasonable to both contractor and client.

(h) Record of all negotiations shall be made for contract file and reviewing authorities with sufficient detail to reflect significant considerations leading to finalization of contract.

#### **§ 3-4-36 Rejection of Bids.**

All bids or proposals may be rejected in whole or in part as may be specified in the solicitation, only if it is determined by the Council that such action is taken in the best interests of the city.

#### **§ 3-4-37 Bidder's Preference.**

The Council, at its discretion, may grant a monetary preference to local bidders providing such preference is in the best interest of the city and further providing that such preference is stated in the bid offer. Such preference shall not be granted where federal or state purchasing policies preclude such preference.

#### **§ 3-4-38 Small Purchases.**

Except as otherwise required by law, any procurement not in excess of the amount as provided for in A.R.S. § 41-2535, as amended, may be made in accordance with small purchase procedures approved by the City Manager; provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. If the actual price of a procurement to be obtained through such small purchases procedure exceeds the amount which may be purchased by informal bidding pursuant to the Code, the Purchasing Agent shall determine that the procurement be made using §§ 3-4-34 or 3-4-35.

**§ 3-4-39 Sole Source Procurements.**

Where permitted by law, a contract may be awarded for a supply, service or construction without competition when the Purchasing Agent or designee determines in writing that there is only one source for the required supply, service or construction.

**§ 3-4-40 Emergency Procurements.**

Where permitted by law and notwithstanding any other provision of this Ordinance, the Purchasing Agent or a designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

**§ 3-4-41 Finality of Determinations.**

The determinations required by §§ 3-4-34, 3-4-35, 3-4-39 and 3-4-40 are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

**§ 3-4-42 Contract Monitoring.**

The using department shall be responsible for monitoring contract performance unless otherwise designated by the City Manager.

**§ 3-4-43 Multiterm contracts.**

Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to 5 years, as deemed to be advantageous to the City, if the term of the contract and conditions of renewal or extensions, if any, are included in the solicitation and monies are available for the 1<sup>st</sup> fiscal period at the time of contracting. Payment and

performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

### Contractual Remedies

#### § 3-4-55 Authority to Resolve Protested Solicitations and Awards.

(A) Right to protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Council. The protest shall be submitted in writing within ten days to the City Manager after such aggrieved person knows or should have known of the facts giving rise thereto, and he, the Manager, shall place same on the next Council agenda if not resolved prior to that time.

(B) Authority to resolve protests. The City Council shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, contractor, actual or prospective, concerning the solicitation or award of a contract.

(C) Decision. If the protest is not resolved by mutual agreement, the Purchasing Agent shall issue notice in writing of the Council's decision. The notice shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protestant of right to judicial review as provided in this Ordinance.

(D) Notice of decision. A copy of the decision under this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(E) Finality of decision. A decision under this section shall be final and conclusive unless fraudulent, or unless any person adversely affected by the decision commences an action in court.

(F) Stay of procurements during protests. In the event of a timely protest under this division, the city shall not proceed further with the solicitation or with the award of the contract until the Purchasing Agent, after consultation with the head of the using department and the City Manager, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the city.

#### § 3-4-56 Authority to Debar or Suspend.

(A) Council retains authority; length of debarment or suspension. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the City Council, after a report being submitted by the Purchasing Agent after consultation with the using department and the City Attorney, shall have authority to debar a person for cause from

consideration for award of contracts. The debarment shall not be for a period of more than three years. The Council shall under the same terms have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.

(B) Causes for debarment or suspension. The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor.

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious so as to justify debarment action:

(a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(5) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any of the causes listed in this section.

(6) For violation of the ethical standards set forth in this Ordinance.

(C) Decision. The Purchasing Agent shall forward in writing notice of any decision of the Council to debar or suspend. The notice shall:

(1) State the reasons for the action taken; and

(2) Inform the debarred or suspended firm involved of right to judicial review as provided in this Ordinance.

(D) Notice of decision. A copy of the decision under this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(E) Finality of decision. A decision under this section shall be final and conclusive, unless fraudulent, or unless the debarred or suspended person commences an action in court.

**§ 3-4-57 Authority to Resolve Contract and Breach of Contract Controversies.**

(A) Applicability. This section applies to controversies between the city and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.

(B) Council retains authority. The City Council is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in this section.

(C) Decision. If such a controversy is not resolved by mutual agreement, the Purchasing Agent shall promptly issue a decision in writing setting forth the decision of the Council. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the contractor of right to judicial review as provided in this Ordinance.

(D) Notice of decision. A copy of the decision under this section shall be mailed or otherwise furnished immediately to the contractor.

(E) Finality of decision. The decision under this section shall be final and conclusive, unless fraudulent, or unless the contractor commences an action in court.

(F) Failure to render timely decision. If the Purchasing Agent does not issue the written decision required under this section within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

**§ 3-4-58 Time Limitations on Actions.**

(A) Protested solicitations and awards. Any legal action under this Ordinance shall be initiated within 30 days after the aggrieved person knows or should have known of the facts giving rise to the action.

(B) Debarments and suspensions for cause. Any action challenging a suspension or debarment shall be commenced within six months after receipt of the decision of the Purchasing Agent under this division.

(C) Actions under contracts or for breach of contract. The statutory limitations on an action between private persons on a contract shall apply to any action commenced pursuant to a contract entered into pursuant to this Ordinance.

### Ethical Standards

#### § 3-4-70 Ethics in Public Contracting.

(A) Standards of conduct; statement of policy.

(1) Public employment is a public trust. It is the policy of the city to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the city. Such policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service.

(2) Public employees must discharge their duties impartially so as to ensure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the city procurement organization.

(3) To achieve the purpose of this section, it is essential that those doing business with the city also observe the ethical standards prescribed herein.

(B) Standards for employees. General standards of ethical conduct for employees are those as set forth in A.R.S. §§ 38-501 et seq.

(C) General standards of ethical conduct for nonemployees. Any effort to influence any public employee to breach the standards of ethical conduct is also a breach of ethical standards.

#### § 3-4-71 Gratuities and Kickbacks.

(A) Gratuities.

(1) It is a breach of ethical standards 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 of any part of a purchase request, influencing the content of any specifications of 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 contract or subcontract and any solicitation or proposal therefor.

(2) This provision does not prohibit acceptance by a department head or employee of food and refreshments of insignificant value on infrequent occasions in the ordinary course of a meeting, conference or other occasion where the employee and/or department head is properly in attendance, nor the solicitation nor acceptance by an employee of loans from banks or other financial institutions on customary terms to finance proper and usual activities of the employee, nor the acceptance of unsolicited advertising or promotional material such as pens, pencils, calendars and other items of nominal intrinsic value.

(B) Kickbacks. It is a breach of ethical standards 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.

#### **§ 3-4-72 Restrictions on Employment of Present and Former Employees.**

Contemporaneous employment is prohibited. It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to be or become, while such an employee, employed by any person contracting with the governmental body or own a business which contracts with the governmental body unless such person or business does so in conformance with the City Code and state laws governing conflicts of interest. For purposes of this section, advisory recommendations by board and commission members are not considered participation either directly or indirectly in the procurement process.

#### **§ 3-4-73 Prohibition Against Contingent Fees.**

It shall be a breach of ethical standards to retain a person, or for a person to be retained, 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 maintained by the contractor for the purpose of securing business.

#### **§ 3-4-74 Use of Confidential Information.**

It shall be a breach of ethical standards 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.

**§ 3-4-75 Public Access to Procurement Information.**

Procurement information, which is not confidential, shall be a public record to the extent provided by state and federal law and shall be available to the public as provided by such laws.

**§ 3-4-76 Civil and Administrative Remedies.****(A) Against employees.**

(1) Existing remedies not impaired. Civil and administrative remedies against employees which are in existence on the effective date of this Ordinance shall not be impaired.

(2) Supplemental remedies. In addition to existing remedies for breach of ethical standards of this Ordinance, the City Manager may impose any one or more of the following, not necessarily in the order as listed, subject to the procedures set forth in the city personnel rules:

- (a) Oral or written warnings or reprimands;
- (b) Suspension with or without pay for specified periods of time; and
- (c) Termination of employment.

(3) Recovery from employee. The value of anything received by an employee in breach of the ethical standards of this Ordinance or regulations promulgated thereunder shall be recoverable by the city.

(4) Due process. All procedures under this Ordinance shall be in accordance with due process requirements and existing state law.

**(B) Against nonemployees.**

(1) Existing remedies not impaired. Civil and administrative remedies against nonemployees which are in existence on the effective date of this Ordinance shall not be impaired.

(2) Supplemental remedies. In addition to existing remedies for breach of the ethical standards of this Ordinance, the City Manager may impose any one or more of the following:

- (a) Oral or written warnings or reprimands;
- (b) Termination of a transaction; and

(c) Suspension or debarment.

(3) Recovery from nonemployee. The value of anything transferred in breach of the ethical standards of this Ordinance or regulations promulgated thereunder by a nonemployee shall be recoverable by the city.

(4) Right of city to suspend or debar.

(a) Suspension of a contractor may be imposed during an investigation of charges of a serious and compelling nature based on probable cause indicating the existence of a breach of ethical standards under this Ordinance or other irregularities of a serious and compelling nature which would affect the integrity of the contractor.

(b) Debarment of a contractor may be imposed by reason of a finding of any breach of ethical standards under this Ordinance or for a finding of other irregularities of a serious and compelling nature affecting the integrity of the contractor.

(5) Due process. All procedures under this section shall be in accordance with due process requirements.

#### **§ 3-4-77 Recovery of Value Transferred or Received.**

(A) General provisions. The value of anything transferred or received in breach of the ethical standards of this Ordinance by an employee or a nonemployee shall be recoverable by the city.

(B) Recovery of kickbacks by the city. 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, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

### **Administration**

#### **§ 3-4-91 Authority and Duties of Purchasing Agent.**

(A) Principal contracting, procurement officer. The Purchasing Agent shall serve as the principal contracting officer and central procurement officer of the city.

(B) Power to adopt internal operational procedures. Consistent with the provisions of this Ordinance, the Purchasing Agent may adopt internal operational procedures governing

City Purchasing with the approval of the City Manager. Such regulations must be consistent with this Ordinance and the City Code.

(C) Duties. Except as otherwise specifically provided in this Ordinance, the Purchasing Agent shall, in accordance with policy approved by the City Manager:

- (1) Procure or supervise the procurement of all supplies, services and construction needed by the city;
- (2) Exercise supervision and control over all inventories of supplies belonging to the city;
- (3) Sell, trade or otherwise dispose of surplus supplies belonging to the city;
- (4) Establish and maintain programs for the inspection, testing, and acceptance of supplies, services and construction; and
- (5) Act as the Manager of a risk-management program until such time as a full-time position is approved for such purpose.

§ 3-4-92 Delegation of Authority.

Subject to written policy approved by the City Manager, the Purchasing Agent may delegate authority to designees or to any department where to do so would be in the best interests of the city. Any such delegation must be in writing and set forth the reasons therefore.