

ORDINANCE NO. 5019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA,
MARICOPA COUNTY, ARIZONA, RELATING TO CITY PURCHASE
OF TANGIBLE PERSONAL PROPERTY TITLE 1, CHAPTER 21.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. The existing Title 1, Chapter 21, Sections 1 through 8 of the Mesa City
Code are hereby repealed in their entirety.

SECTION 2. Title 1, Chapter 21 of the Mesa City Code is hereby amended to read:

CITY PURCHASE OF TANGIBLE PERSONAL PROPERTY

SECTION:

- 1-21-1: Application**
- 1-21-2: Definitions**
- 1-21-3: Alternative Procedures for Capital Improvements**
- 1-21-4: Procedures for Procurements**
- 1-21-4.1: Competitive Selection**
- 1-21-4.2: Sole Source Procurements**
- 1-21-4.3: Cooperative Procurements**
- 1-21-5: Emergency Procurements**
- 1-21-6: Approval of City Council**
- 1-21-7: Debarment**
- 1-21-8: Protests and Appeals**
- 1-21-9: Conflicts of Interest**

1-21-1: APPLICATION:

- (A) Except as provided herein, the provisions of Title 1, Chapter 21 of the Mesa City Code shall apply to all Procurements of Materials, insurance and Capital Improvements by the City using public monies, including state and federal assistance monies.
- (B) The provisions of this Chapter are not applicable to:
 - 1. Contracts between the City and the State, its political subdivisions or other Governmental Agencies or Governmental Organizations.
 - 2. Agreements negotiated by legal counsel representing the City in settlement of litigation or threatened litigation.
 - 3. Sale, lease, purchase or acquisition or disposition by the City of any other interest in real property or space.
- (C) Nothing in this Chapter shall prevent the City from complying with the terms and conditions of any grant, gift, bequest or agreement.

- (D) Except by mutual consent of the parties to the contract, this Chapter may not change any commitment, right or obligation of the City or of a contractor under a contract in existence on the effective date of this Chapter or any amendment thereto.

1-21-2: DEFINITIONS:

- (A) **COMPETITIVE SELECTION:** A process whereby one or more providers are selected using a Solicitation in the form of an Invitation for Bids, Request for Proposals or Request for Qualifications.
- (B) **CAPITAL IMPROVEMENTS:** The construction of a building or structure, or additions to or alterations of existing buildings or structures. The term structure shall include without limitation paving, concrete, or other mortar work, streetlights, traffic signals, drainage facilities, pipes, grading, major improvements to landscaping, and other construction work.
- (C) **GOVERNMENTAL AGENCY:** The State of Arizona or a political subdivision thereof, any other state of the United States, or a political subdivision thereof, or any department of the federal government.
- (D) **GOVERNMENTAL ORGANIZATION:** An organization, the members of which are Governmental Agencies.
- (E) **MATERIALS:** All items of personal property, including without limitation materials, supplies, commodities, equipment. Materials do not include land or an interest in real property.
- (F) **PERSON:** Any individual, corporation or business entity of whatever legal form, union, committee, club, other organization or group of individuals or subsidiary thereof, their representatives or affiliates.
- (G) **PROCUREMENT:** The purchase of Materials, insurance or the contracting for Capital Improvements. Procurement includes development of requirements, Solicitation and selection of sources and contract administration. Procurement shall include the entering into contracts or agreements, whether the same are oral or written.
- (H) **RESPONSE:** A bid or proposal submitted in response to an Invitation for Bids or Request for Proposals or a response to a Request for Information or Request for Qualifications.
- (I) **SOLICITATION:** An Invitation for Bids, Request for Proposals or Request for Qualifications.

1-21-3: ALTERNATIVE PROCEDURES FOR CAPITAL IMPROVEMENTS:

All procurements for Capital Improvements, as defined herein, shall be awarded in accordance with the requirements of state law. Procurements for public improvements that exceed the amounts established in accordance with A.R.S. §34-201(c) shall be awarded in accordance with the procedures established in A.R.S. Title 34, including the procedures for alternative contracting. Procurements for public improvements that do not exceed the amounts established in accordance with A.R.S. 34-201(c) may be awarded in accordance with the requirements of Section 1-21-4 of the Mesa City Code or in accordance with the procedures established in A.R.S. Title 34 for alternative contracting.

1-21-4: PROCEDURES FOR PROCUREMENTS:

- (A) Procurements that do not exceed five thousand dollars (\$5,000) shall be made in accordance with procedures established by the City Manager or Designee.
- (B) Procurements that exceed five thousand dollars (\$5,000) but do not exceed twenty-five thousand dollars (\$25,000) shall be made in accordance with procedures established by the City Manager or Designee. At a minimum, the City shall obtain three (3) written quotes prior to approving the Procurement. In the event three (3) written quotes are not available, the City shall obtain as many written quotes as are reasonably available.
- (C) Except as exempted or as otherwise provided in this Chapter, Procurements for Materials or insurance that exceed twenty-five thousand dollars (\$25,000) shall be made by Competitive Selection, Sole Source Procurement, Cooperative Procurement or Emergency Procurement herein.

Competitive Selection is not required for:

1. Liability insurance competitively marketed by a broker contracted to represent the City.
2. Materials for resale in concession operations.
3. Procurement of natural gas through a joint or cooperative action authority, non-profit corporation, or other such instrumentality formed by public agencies pursuant to the laws of any state, specifically for the purpose of financing and prepaying the acquisition of natural gas supplies and providing such gas at a discount from the Market Index to municipal and other similarly qualified gas distributors. The City shall negotiate to the extent practical, advantageous terms for the procurement of natural gas under this section.

1-21-4.1: COMPETITIVE SELECTION:

Competitive Selection shall, at a minimum include:

- (A) A Solicitation that includes a purchase description and major contractual terms and conditions applicable to the Procurement.
- (B) Public notice given not less than fourteen (14) calendar days before the due date set forth in Solicitation. Public notice shall include:
 1. Direct mailing or electronic notification of interested parties registered with the City, and;
 2. Publication on the City's website, or;
 3. Publication at least one (1) time in one (1) or more newspapers of general circulation in the City within the first seven (7) days of the public notice period.

The failure of any Person to receive notice shall not constitute grounds for a protest or to invalidate the actions of the City as to the Procurement for which the notice was given.

- (C) Solicitations shall be available for public inspection at the City and copies shall be available to all who request them.
- (D) Responses shall be received publicly at the time and place designated in the Solicitation. The results of the public opening shall be recorded on an abstract and the abstract shall be open to public inspection.

- (E) Any Response that is conditioned upon award to the respondent of both the particular contract being solicited and another contract shall be deemed non-responsive or unacceptable.
- (F) Criteria shall be set forth in the solicitation to evaluate Responses.
- (G) The City may accept the Response(s), or the City Manager or Designee may reject all Responses.

1-21-4.2: SOLE SOURCE PROCUREMENTS:

A contract may be awarded without Competitive Selection if the City Manager or Designee determines that there is only one source for the required Material and that no other type of Material will satisfy the requirements of the City. The City shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the City.

Public notice inviting comment on the City's determination for a sole source procurement shall be given not less than seven (7) calendar days before the award, and shall include:

1. Direct mailing or electronic notification of interested parties registered with the City, and;
2. Publication on the City's website, or;
3. Publication at least one (1) time in one (1) or more newspapers of general circulation in the City.

The failure of any Person to receive notice shall not constitute grounds for a protest or to invalidate the actions of the City as to the Procurement for which the notice was given.

1-21-4.3: COOPERATIVE PROCUREMENTS:

The City Manager or Designee is authorized to Procure Materials, insurance, or contract for Capital Improvements, without performing the requirements of Sections 1-21-3 and 1-21-4.1, through a contract established by any Governmental Agency or Governmental Organization, provided:

- (A) The underlying contract was established with the intent to be used for cooperative Procurements; and
- (B) Procedures were used in the applicable Procurement which are similar to the requirements of Sections 1-21-3 or 1-21-4.1; and
- (C) There is a written agreement with the Governmental Agency or Governmental Organization executed by the City Manager or Designee establishing the cooperative procurement relationship

1-21-5: EMERGENCY PROCUREMENTS:

In the event the City Manager or Designee determines that:

- (A) Any individual Procurement of Materials, insurance, or Capital Improvements is necessary for the immediate preservation of the public peace, health, or safety, and
- (B) Compliance with the requirements of this Chapter is impracticable or contrary to the public interest, the City Manager or Designee may authorize the Procurement, provided that the Procurement is limited to the Materials, insurance, or Capital Improvements necessary to preserve the public peace, health, or safety.

Any Procurement authorized under this Section shall meet the requirements of Sections 1-21-3 and 1-21-4.1 to the extent practicable or not contrary to the public interest. Any Procurement authorized under this Section that exceeds twenty-five thousand dollars (\$25,000) shall be placed on the City Council agenda for ratification at the next reasonably available City Council meeting.

1-21-6: APPROVAL OF CITY COUNCIL:

Except as provided for Emergency Procurements in Section 1-21-5, the Procurement of; or change orders not prior approved as contingencies for Materials, insurance, and Capital Improvements, the cost of which exceeds twenty-five thousand dollars (\$25,000) for one-time Procurements and annually for term Procurements, shall be prior approved by the City Council.

1-21-7: DEBARMENT:

- (A) The City Manager or Designee may debar a Person from receiving an award or participating in City Procurements for a period of time not to exceed three (3) years.
- (B) Causes for Debarment include but are not limited to the following:
 - 1. Conviction of such Person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - 2. Conviction of such Person under any statute, code, ordinance or regulation of the federal government, the State of Arizona, the City or any other state or city for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a City contractor.
 - 3. Conviction or civil judgment finding a violation by such Person under state or federal antitrust statutes, state or federal immigration statutes, procurement violations, or breach of contract.
 - 4. Violations of contract provisions of a character which are deemed to be so serious as to justify Debarment action, such as but not limited to:
 - a. Knowingly fails to perform in accordance with the Specifications or within the time limits provided in the contract without good cause.
 - b. Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except 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 deemed to affect Responsibility as a City contractor, including Debarment of such Person by another Governmental Agency for any cause listed herein.
- (C) Persons being Debarred shall receive proper notice and shall have the right to protest the decision.
- (D) The City Manager or Designee may allow a Debarred Person to participate in City contracts on a limited basis if determined that participation is advantageous to the City.
- (E) The City Manager or Designee may reinstate a Debarred Person if the cause upon which the Debarment is based no longer exists and that it is not likely to recur.

1-21-8: PROTESTS AND APPEALS:

The City Manager or Designee shall have the authority to resolve protests and appeals and shall establish by rule a process to allow protests and appeals of Procurement decisions.

1-21-9: CONFLICTS OF INTEREST:

Notice is hereby given of the applicability of the Arizona Revised Statute on Conflicts of Interest of officers and employees of the City of Mesa related to Procurement activities (A.R.S. Title 38, Chapter 3, Article 8, and as may be amended).

SECTION 3. Effective Date. This ordinance shall be effective from and after February 1, 2011.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona,

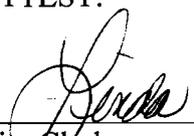
This 13th day of December, 2010.

APPROVED:



Mayor

ATTEST:



City Clerk

