

ORDINANCE NO. 5089

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING THE EXISTING TITLE 1, CHAPTER 21 AND ADOPTING A NEW TITLE 1, CHAPTER 21, RELATING TO THE PROCUREMENT OF MATERIALS, NON-PROFESSIONAL CONTRACT SERVICES, AND CAPITAL IMPROVEMENTS.**

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

SECTION 1: The existing Mesa City Code Title 1, Chapter 21 is hereby repealed.

SECTION 2: The following provisions are hereby adopted as Title 1, Chapter 21.

**1-21-1: APPLICATION**

- (A) The provisions of this Chapter shall apply to the Procurements of Materials, Non-Professional Contract Services and Capital Improvements by the City using public funds, including state and federal assistance funds. It shall not apply to contracts for Professional Services as defined below; or contracts between the City and the State, its political subdivisions or other Governmental Agencies or Governmental Organizations.
- (B) Nothing in this Chapter shall prevent the City from complying with the terms and conditions of any grant, gift, bequest or agreement.
- (C) 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) **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.

- (B) **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.
- (C) **GOVERNMENTAL ORGANIZATION:** An organization, the members of which are Governmental Agencies.
- (D) **MATERIALS:** Materials, supplies, commodities, equipment, and insurance. Materials do not include land or an interest in real property.
- (E) **NON-PROFESSIONAL CONTRACT SERVICES:** Services which are primarily provided through semi-skilled labor. The primary criteria in the selection process will be qualifications of the vendor and price.
- (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, Non-Professional Contract Services, or the contracting for Capital Improvements. Procurement includes development of requirements, Solicitation and selection of sources, and contract administration.
- (H) **PROFESSIONAL SERVICES:** Services which require special knowledge, education or training. The primary criteria in the selection process will be the qualifications of the vendors.  
  
Professional Services include, but are not limited to; advertising; appraisers; architects; attorneys; consultants; certified public accountants; engineers; entertainers; environmental studies; financial and operational audits; personnel and benefits studies; physicians and other health professionals; land surveyors; landscape architects; renewals of proprietary computer hardware and software licensing; trainers and teachers; and other technical registrants as defined in Arizona Revised Statutes.
- (I) **PUBLIC NOTICE:** The distribution or dissemination of information to interested parties at least one (1) time using methods established by the City Manager or Designee. 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
- (J) **RESPONSE:** A bid or proposal submitted in response to an Invitation for Bids; Request for Proposals; Request for Information; or Request for Qualifications.
- (K) **SOLICITATION:** An Invitation for Bids, Request for Proposals or Request for Qualifications.

### **1-21-3: PROCEDURES FOR PROCUREMENT OF CAPITAL IMPROVEMENTS**

All procurements for Capital Improvements, as defined herein, shall be awarded in accordance with the requirements of state law.

- (A) 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.
- (B) 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 1-21-5 of the Mesa City Code or in accordance with the procedures established in A.R.S. Title 34 for alternative contracting.
- (C) City Council Approved Procurements: Unless otherwise provided in this Chapter, Procurements of, or change orders not prior approved as contingencies for, Capital Improvements that exceed twenty-five thousand dollars (\$25,000) must be approved by Council. This applies to one-time Procurements and annually for term Procurements.

### **1-21-4: PROCEDURES FOR PROCUREMENT OF MATERIALS AND NON-PROFESSIONAL CONTRACT SERVICES**

- (A) Small Dollar Procurements: Procurements that do not exceed twenty-five thousand dollars (\$25,000) shall be made in accordance with procedures established by the City Manager or Designee.
- (B) City Council Approved Procurements: Unless otherwise provided in this Chapter, Procurements of, or change orders not prior approved as contingencies for, Materials and Non-Professional Contract Services that exceed twenty-five thousand dollars (\$25,000) shall be made by Competitive Selection, Sole Source Procurement, Cooperative Procurement or Emergency Procurement and must be approved by the City Council. This applies to one-time Procurements and annually for term Procurements.

### **1-21-5: COMPETITIVE PROCUREMENTS**

Competitive Selection means 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.

- (A) Solicitations
  - 1. Solicitations shall Include:

- a. A purchase description and major contractual terms and conditions applicable to the Procurement.
  - b. Public Notice.
  - c. Criteria to evaluate the Responses submitted.
2. Shall be available for public inspection at the City and copies shall be available to all who request them.

(B) Responses to Solicitations

1. 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.
2. 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.
3. The City may accept the Response(s), or the City Council, City Manager or Designee may reject all Responses.

(C) The requirement for a Competitive Procurement will be satisfied if the City contracts with a broker to represent it (e.g., liability and property insurance).

**1-21-6: 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 or Non-Professional Contract Service and that no other type of Material or Non-Professional Contract Service 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.

**1-21-7: COOPERATIVE PROCUREMENTS**

The City Manager or Designee is authorized to participate with any Government Agency or Government Organization for the procurement of Materials or Non-Professional Contract Services in cooperative purchasing agreements, 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 1-21-5; 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.

**1-21-8: EMERGENCY PROCUREMENTS**

The City Council, City Manager or Designee may authorize the Procurement of Materials, Non-Professional Contract Services or Capital Improvements without following the requirements of 1-21-3 and 1-21-4 if they determine that:

- (A) The Procurement 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, provided that the Procurement is limited to the Materials, Non-Professional Contract Services, 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 1-21-5(A) 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.

**1-21-9: 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.

#### **1-21-10: 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.

#### **1-21-11: CONFLICTS OF INTEREST**

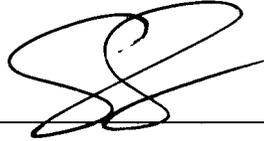
Notice is hereby given of the applicability of the Arizona Revised Statute on Conflicts of Interest of officers and employees of the City of Mesa related to Procurement activities (A.R.S. Title 38, Chapter 3, Article 8, and as may be amended).

**SECTION 3: EFFECTIVE DATE.** The effective date of this ordinance shall be September 1, 2012.

**SECTION 4: SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA,  
MARICOPA COUNTY, ARIZONA, this 7<sup>th</sup> day of May, 2012.

APPROVED:



\_\_\_\_\_  
Mayor

ATTEST:

  
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City Clerk

