

ORDINANCE NO. 5775

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING MESA CITY CODE TITLE 1, CHAPTER 21 ENTITLED “THE PROCUREMENT OF MATERIALS, NON-PROFESSIONAL CONTRACT SERVICES AND CAPITAL IMPROVEMENTS.”

WHEREAS, City of Mesa purchases are generally governed by the Mesa City Charter, the Mesa City Code, Management Policy 200, and the City Procurement Rules which lay out various conditions and requirements that must be met by the City when procuring certain types of services and/or materials.

WHEREAS, for charter cities in Arizona, the charter frames the governance of the city. As a result, Section 609 of the City Charter titled “Procurements” lays out the framework for procurements by the City of Mesa.

WHEREAS, a majority of the qualified voters of the City of Mesa voted in favor of an amendment to Section 609 of the City Charter at the November 8, 2022 general election (the “Charter Amendment”), and the Governor of the State of Arizona approved the Charter Amendment making it effective on December 23, 2022.

WHEREAS, Title 1, Chapter 21 of the Mesa City Code entitled “The Procurement of Materials, Non-Professional Contract Services and Capital Improvements” sets forth certain requirements related to procurements made by the City (“Procurement Code”).

WHEREAS, the City Council finds it appropriate to amend the Procurement Code to bring it in line with the Charter Amendment and to make such other amendments as provided herein, including an amendment that sets forth the dollar amount for the types of procurements requiring City Council approval pursuant to the Charter Amendment.

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

SECTION 1: Mesa City Code Title 1, Chapter 21 is amended as follows:

Text written in **CAPITAL LETTERS AND UNDERLINED** indicates new language, text written in ~~strike through~~ represents removed language, and ***ITALICIZED CAPITAL LETTERS*** indicate that the capitalization of the first letter of the word must be changed.

## 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~~ **THIS CHAPTER** shall not apply to contracts for Professional Services as defined below, or contracts between the City and the State, **OF ARIZONA OR** 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) A.R.S.: ARIZONA REVISED STATUTES, AS AMENDED.**

~~(AB)~~ **CAPITAL IMPROVEMENTS:** The construction of a building or structure, or additions to or alterations of existing buildings or structures. The term structure, **ALTERATION, REPAIR, IMPROVEMENT, OR DEMOLITION OF ANY PUBLIC STRUCTURE OR BUILDING OR PUBLIC IMPROVEMENTS OF ANY KIND TO ANY PUBLIC REAL PROPERTY. SUCH ACTIVITIES** 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. **CAPITAL IMPROVEMENTS DOES NOT INCLUDE THE ROUTINE OPERATION, ROUTINE REPAIR OR ROUTINE MAINTENANCE OF EXISTING FACILITIES, STRUCTURES, BUILDINGS, OR REAL PROPERTY.**

### **(C) CITY MANAGER: THE MESA CITY MANAGER OR THEIR DESIGNEE.**

### **(D) COMPETITIVE SELECTION: MEANS AS DEFINED IN SECTION 1-21-5.**

~~(BE)~~ **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.

~~(CE)~~ **GOVERNMENTAL ORGANIZATION:** An organization, the members of which are **PRIMARILY** Governmental Agencies.

**(G) LARGE DOLLAR PROCUREMENTS: PROCUREMENTS OF MATERIALS AND NON-PROFESSIONAL CONTRACT SERVICES THAT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000).**

~~(DH)~~ **MATERIALS:** Materials, supplies, commodities, equipment, and insurance. Materials do not include land or an interest in real property.

~~(EI)~~ **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~~J) 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~~K) PROCUREMENT: The purchase of Materials, Non-Professional Contract Services, or the contracting for Capital Improvements. Procurement includes THE development of requirements, solicitation and selection of sources, and contract administration.
- (~~H~~L) PROFESSIONAL SERVICES: Services which require special knowledge, education, or training. The primary criteria in the selection process will be the qualifications of the vendors.
- (~~H~~) 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 OR SKILLED registrants as defined in Arizona Revised Statutes.
- (~~J~~M) 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~~ WHICH MAY INCLUDE THE POSTING ON A CITY WEBSITE. 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.
- (~~K~~N) RESPONSE: A bid ~~or~~ proposal, OR OTHER REPLY submitted in response to A SOLICITATION ~~an Invitation for Bids; Request for Proposals; Request for Information; or Request for Qualifications.~~
- (~~O~~) SMALL DOLLAR PROCUREMENTS: PROCUREMENTS OF MATERIALS AND NON-PROFESSIONAL CONTRACT SERVICES OF ONE HUNDRED THOUSAND DOLLARS (\$100,000) OR LESS.
- (~~L~~P) SOLICITATION: An Invitation for Bids, Request for Proposals ~~or~~ Request for Qualifications, OR OTHER PROCUREMENT METHOD THAT ALLOWS FOR COMPETITIVE SELECTION.

### 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(~~e~~) (C) THROUGH (G) 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(~~e~~) (C) THROUGH (G) 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~~ **ONE HUNDRED** thousand dollars (\$25,000 **\$100,000**) must be approved by **City** 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: **SMALL DOLLAR** 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~~ **LARGE DOLLAR** Procurements: Unless otherwise provided in this Chapter, procurements **LARGE DOLLAR 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

- (A) Competitive Selection means a ~~process whereby one or more providers are selected using a Solicitation in the form of an~~ **SOLICITATION PROCESS THAT ALLOWS FOR COMPETITION BETWEEN POTENTIAL PROVIDERS OF THE MATERIAL OR NON-PROFESSIONAL CONTRACT SERVICE THAT MEETS THE REQUIREMENTS SET FORTH IN SECTION 1-21-5(B). EXAMPLES OF A COMPETITIVE SELECTION PROCESS INCLUDE, WITHOUT LIMITATION,** Invitation for Bids, Request for Proposals ~~or,~~ **AND** Request for Qualifications.

(A) ~~Solicitations~~ **COMPETITIVE SELECTION SOLICITATION REQUIREMENTS**

~~1.~~ Solicitations shall include:

- (a) ~~A purchase~~ **THE SOLICITATION MUST INCLUDE A** description ~~and~~ **OF THE MATERIAL OR NON-PROFESSIONAL CONTRACT SERVICE,** major contractual terms and conditions applicable to the procurement, **AND THE CRITERIA FOR THE EVALUATION OF RESPONSES.**

~~(b)~~ Public Notice

~~(c)~~ Criteria to evaluate the responses submitted.

- (2.) ~~Shall be available for public inspection at the City~~ **THE SOLICITATION SHALL BE MADE BY PUBLIC NOTICE** and copies ~~shall be~~ **OF THE SOLICITATION MUST BE MADE** available to all who ~~THE PUBLIC UPON~~ request them.

(B) Responses to **COMPETITIVE SELECTION** Solicitations

- ~~(1-)~~ Responses shall be received ~~publicly~~ **FROM THE PUBLIC IN THE MANNER AND** at the time and place designated in the Solicitation. The results of the ~~public opening~~ **OF THE RESPONSES** 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 **OR** reject **ANY OR** all Responses.
- ~~(C)~~ The requirement for a Competitive ~~Procurement~~ **SELECTION** will be satisfied if the City contracts with a broker to represent it (e.g., liability and property insurance).
- (E) THE CITY COUNCIL BY ORDINANCE OR RESOLUTION MAY ADOPT ALTERNATIVE PROCUREMENT PROCESSES TO SATISFY COMPETITIVE SELECTION OR APPROVAL REQUIREMENTS OF THIS CHAPTER.**

#### 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~~ **FOR ANY SOLICITATION, 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~~ 2
- ~~(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

- (A) The City Council, OR City Manager ~~or Designee~~ may authorize the ~~Procurement of Materials, Non-Professional Contract Services or Capital Improvements~~ **PROCUREMENTS** without following the requirements of 1-21-3 and, 1-21-4, **OR 1-21-5, OR A.R.S. TITLE 34 FOR CAPITAL IMPROVEMENTS AS PERMITTED BY LAW,** if they determine that:
- (A1) The Procurement is necessary for the immediate preservation of the public peace, health, or safety, and
- (B2) **COMPLIANCE** with the requirements of this Chapter **OR A.R.S. TITLE 34** 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.
- (B) Any Procurement authorized under this Section shall meet the requirements of Sections 1-21-3 and 1-21-5 (A), **OR A.R.S. TITLE 34, AS APPLICABLE,** to the extent practicable or not contrary to the public interest.
- (C) Any **LARGE DOLLAR** 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~~ **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 **MUNICIPALITY** 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~~ **DEBARMENT** 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 it is 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 2: RECITALS.** The recitals above are fully incorporated in this Ordinance by reference.

**SECTION 3: EFFECTIVE DATE.** The effective date of this Ordinance will be thirty (30) days following adoption by the Mesa City Council.

**SECTION 4: PRESERVATION OF RIGHTS AND DUTIES.** This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

**SECTION 5: SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of any material adopted herein by reference is for any reason held to be invalid or unconstitutional by the 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 3<sup>rd</sup> day of April, 2023.

APPROVED:

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Mayor

ATTEST:

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City Clerk