

ARTICLE 5: PUBLIC PURCHASES

Section

- 5-5-1 Authority
- 5-5-2 Short title
- 5-5-3 Definitions
- 5-5-4 Central purchasing office
- 5-5-5 Central purchasing required
- 5-5-6 Rules and regulations governing central purchasing
- 5-5-7 Responsibilities of the central purchasing office
- 5-5-8 City purchasing standards and specifications committee
- 5-5-9 Procurement requirements
- 5-5-10 Rejection of offers
- 5-5-11 Capital projects
- 5-5-12 Notice of solicitations
- 5-5-13 Signature authority
- 5-5-14 Trade-in or exchange of used articles
- 5-5-15 Lease agreements and used goods
- 5-5-16 Disposition of city-owned surplus, salvage and scrap property
- 5-5-17 Resident, local and small business preferences
- 5-5-18 [Reserved]
- 5-5-19 Approval of contracts
- 5-5-20 Exemptions
- 5-5-21 Utility franchises
- 5-5-22 Ethical conduct
- 5-5-23 Protest
- 5-5-24 Debarment
- 5-5-25 Determination of responsibility in construction and consultant contracts
- 5-5-26 Small purchases
- 5-5-27 Purchases by quotation
- 5-5-28 Competitive sealed bids
- 5-5-29 Purchases of professional/technical services
- 5-5-30 Competitive sealed proposals
- 5-5-31 Sole source purchases
- 5-5-32 Purchasing from government contracts
- 5-5-33 Rapid procurement
- 5-5-34 Emergency purchases
- 5-5-35 Insurance related purchases
- 5-5-36 Purchases of appraisal services
- 5-5-37 Purchases of attorney services
- 5-5-38 Purchases of social services
- 5-5-39 Intergovernmental agreements

§ 5-5-1 AUTHORITY.

The City Council, pursuant to Article 1 of the Charter of the city and Article X, Section 6 of the Constitution of New Mexico, enacts this article as authorized by such provisions and for the purpose of providing maximum local self-government. To that end, it is intended that this article shall govern all purchasing transactions of the city and shall serve to exempt the city from all provisions of the New Mexico Procurement Code, as provided in Section 13-1-98K NMSA 1978.

('74 Code, § 5-7-1) (Ord. 6-1991; Am. Ord. 30-1998)

§ 5-5-2 SHORT TITLE.

This article may be cited as the "Public Purchases Ordinance."

('74 Code, § 5-7-2) (Ord. 6-1991; Am. Ord. 30-1998)

§ 5-5-3 DEFINITIONS.

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

AWARD. The issuance of a purchase order or other validly executed contract.

BUSINESS. A seller of goods and/or services and/or a provider of construction services and materials; or a concessionaire. This term may refer to an individual, partnership, corporation, trust or other legal entity and does not include the subsidiaries, affiliates, parent companies, shareholders or principals thereof.

CAPITAL PROJECT. A construction or public works project.

CENTRAL PURCHASING OFFICE. The Purchasing Division of the Department of Finance and Administrative Services of the city, or any department or division of the city subsequently charged with the duty of purchasing.

CIP. The Capital Improvement Program of the city, or any department or division of the city subsequently charged with the oversight of capital construction projects.

CITY PURCHASING OFFICER. That person charged with the responsibility of administering the Central Purchasing Office.

COMPETITIVE SOLICITATION. A request to businesses to respond to contractual requirements established by the Central Purchasing Office for the purchase, sale, lease, rental of goods, services or construction; or other transactions by submitting an offer. A competitive solicitation may take the form of a request for bids (RFB), a request for proposals (RFP), a request for quotes (RFQ), or other procurement methodology established by the City Purchasing Officer.

CONCESSION CONTRACTS. Revenue-producing contracts licensing or permitting the use of city property other than rights of way, of any kind, by businesses for the sale of goods or services at a profit.

CONSTRUCTION. The building, alteration, repair, improvement, installation, or demolition of any public structure, building, pipeline, or other public improvement of any kind on public real property. Construction may not include routine repair or maintenance of public buildings or other public structures.

CONTRACT or AGREEMENT. Any written agreement for the procurement of goods, services or construction, or for the establishment of a concession, including, but not limited to, a purchase order and incorporated documents.

CONTRACTOR. An offeror who has been awarded a contract.

COOPERATIVE PROCUREMENT AGENCY. Any public or private procurement cooperative established for use primarily by public agencies.

GOODS. Items of tangible personal property.

GREATER ALBUQUERQUE METROPOLITAN AREA. All locations within the city and Bernalillo County.

INTERGOVERNMENTAL AGREEMENT. An agreement between two or more public agencies.

MAYOR. The Mayor of the city, which term, as used herein, shall refer to the Mayor and/or the Mayor's designee(s).

OFFER. A response to a competitive solicitation.

OFFEROR. A business that submits a response to a competitive solicitation.

PROFESSIONAL/TECHNICAL SERVICES. Those services performed by or under the direction of a licensed professional, other professional technician, or other person with technical training, as more particularly defined by the City Purchasing Officer.

PUBLIC AGENCY. Any local public body, department, division, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the United States, any state of the United States, any Indian tribe or pueblo, or any foreign government.

PURCHASING or PROCUREMENT. The buying, renting, leasing, lease-purchasing or otherwise obtaining of any goods, services or construction or a concession contract. It includes all functions that pertain to any city procurements, including, but not limited to, the preparation of specifications, solicitation and selection of sources, preparation and award of contracts, and contract administration unless otherwise excepted in this article.

RECOMMENDATION OF AWARD or ROA. The document approved by the City Purchasing Officer which summarizes the offers received in response to a competitive solicitation and which designates the selected offeror and other relevant information.

RESPONSIBLE OFFEROR. A business which has the capability in all respects to perform fully the

contract requirements set out in the competitive solicitation, and the integrity and reliability which will assure good faith performance, and who has not violated or attempted to violate any provision of law or ethical conduct. Factors which may be considered in determining the offeror's capability to perform, among others, are its financial resources, production or service facilities, service reputation and experience.

RESPONSIVE OFFER. A written offer to furnish goods, services or construction in conformity with standards, specifications, delivery terms and conditions, and all other requirements established in a competitive solicitation.

SERVICES. Labor, time or effort.

SOCIAL SERVICES. The provision, primarily to low and moderate income residents of the city, of human services such as health care, substance abuse treatment and prevention, day care, emergency shelters, youth services, senior services, employment services, and job training; the provision of housing intended primarily for low and moderate income residents of the city; and economic development activities designed primarily to benefit low to moderate income areas of the city or to increase employment among low and moderate income residents. A social services contract is a contract with a nonprofit organization or public agency for social services in return for the payment by the city of costs associated with the provision of social services, including, but not limited to, the costs for labor, supplies, operating expenses, equipment, and the acquisition or improvement of real property.

USER DEPARTMENT, USER, or DEPARTMENT. A city department or unit for which procurement services are provided.

WATER UTILITY AUTHORITY. The Albuquerque Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico created by Laws 2003, Chapter 437 (Section 72-1-10 NMSA 1978).

('74 Code, § 5-7-3) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 4-2003; Am. Ord. 13-2006; Am. Ord. 33-2007; Am. Ord. 26-2011)

§ 5-5-4 CENTRAL PURCHASING OFFICE.

The Central Purchasing Office is created and shall be the central purchasing office for the city, except as otherwise provided by ordinance.

('74 Code, § 5-7-4) (Ord. 6-1991; Am. Ord. 30-1998)

§ 5-5-5 CENTRAL PURCHASING REQUIRED.

All purchasing for users shall be performed by the Central Purchasing Office, except as otherwise provided by this article.

('74 Code, § 5-7-5) (Ord. 6-1991; Am. Ord. 30-1998)

§ 5-5-6 RULES AND REGULATIONS GOVERNING CENTRAL PURCHASING.

(A) The City Purchasing Officer shall have the authority and responsibility to draft regulations related to administration of the Central Purchasing Office and interpreting and implementing this article. Such regulations shall be promulgated by the Mayor after providing notice through a newspaper of general circulation to the general public requesting comments and informing businesses of the regulations in a manner determined by the Purchasing Officer.

(B) For administration of the Central Purchasing Office, regulations may be promulgated to govern the issuance of purchase orders; receipt, inspection, and acceptance of goods and services; payment for purchases; and the maintenance and disclosure of records.

(C) Additional regulations may be promulgated to establish procedures for the receipt of requisitions for goods and services from users, for creation of specifications; for the issuing of solicitations; for the maintenance of vendor lists; for the handling and opening of sealed offers; for determining the responsibility and responsiveness of offerors; for determining and issuing a recommendation of award; for review of procurement decisions; and for the debarment and suspension of businesses.

(D) Regulations may also be promulgated on such other matters as the City Purchasing Officer deems desirable for the most efficient operation of the purchasing function.

(E) Unless the regulations promulgated pursuant to this section provide otherwise, they shall not apply to capital projects which are subject to the regulations promulgated pursuant to § 5-5-11.

('74 Code, § 5-7-6) (Ord. 6-1991; Am. Ord. 30-1998) Penalty, see § 1-1-99

§ 5-5-7 RESPONSIBILITIES OF THE CENTRAL PURCHASING OFFICE.

(A) It shall be the responsibility of the Central Purchasing Office:

(1) To reduce, to the maximum extent possible, the number of purchase transactions by

combining into bulk orders and contracts the requirements of users for common-use items or items repetitively purchased.

(2) To develop, when possible, continuing contracts with vendors for specific, standardized capital items and, when appropriate, direct City Departments to purchase through these contracts. Such procedures should be designed to reduce acquisition and maintenance costs for the city.

(3) To develop and use those types of contracts, procurement methodologies and purchase orders which will reduce to the minimum the accompanying paper work and which in other respects will be most advantageous to the city.

(4) To make contract awards for the acquisition of city equipment and machinery to offerors which maintain an adequate supply and/or availability of repair parts and qualified service personnel and facilities located in the Greater Albuquerque Metropolitan Area, capable of providing timely and responsive, major and minor service of the equipment and/or machinery being purchased. This subsection is applicable in circumstances where a lack of such capability could be detrimental to city service delivery.

(5) Participate as appropriate in an inter-departmental committee which addresses problems related to the overall procurement process, departmental requirements, awards, and payment process and make recommendations to the Mayor and City Council.

(B) The Central Purchasing Office is authorized to prescribe by regulation the use of various types of contracts and orders, including but not limited to the following:

(1) Definite-quantity contracts, whereby the contractor agrees to furnish a specified quantity of materials or services at a specified time or times at specified unit prices;

(2) Indefinite-quantity contracts/price agreements, whereby the Central Purchasing Office or the user agrees to obtain from the contractor part or all of its requirements for specified materials or services in an estimated but indeterminate amount during a prescribed period of time at a definite unit price or at a specified discount from list or posted prices.

(C) The Central Purchasing Office may cooperate by agreement with any cooperative procurement agency or any public agency in obtaining contracts or price agreements and such contracts or agreed prices shall apply to purchase orders subsequently issued under the agreement.

(D) The City Purchasing Officer may annually adjust the monetary limits contained in this article, other than the limits set out in § 5-5-19, if the changes are approved by the Chief Administrative Officer, as confirmed by the issuing of an Administrative Instruction, and notification is provided to City Council. The adjustments shall be determined using best practices, including, but not limited to, comparisons to equivalent limits established for municipalities and public agencies similar to Albuquerque, and/or economic indicators such as changes in the Consumer Price Index.

(E) The Central Purchasing Office shall provide information to the City Council summarizing all transactions processed through the Central Purchasing Office which are in excess of the limit currently established for purchases by quotation. Information shall be provided through online reporting and quarterly written reports. The requirement for quarterly written reports shall terminate at the end of the city's fiscal year 2013.

('74 Code, § 5-7-7) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 26-2011) Penalty, see § 1-1-99

§ 5-5-8 CITY PURCHASING STANDARDS AND SPECIFICATIONS COMMITTEE.

(A) As needed, the City Purchasing Officer shall submit to the Chief Administrative Officer for approval, a list of qualified individuals to comprise an ad hoc committee for the purpose of setting fair and unrestrictive standards and specifications for one or more competitive solicitations for a particular type of goods, or services. The Committee shall be called the "City Purchasing Standards and Specifications Committee" and shall consist of five voting members with appropriate expertise. A minimum of two members of the Committee shall be city employees and at least two members shall be from a department other than the department for which specifications are being reviewed. Additional members may be non-city employees. The City Purchasing Officer or a designee will be a non-voting member and will serve as the chairperson of the Committee. Meetings of the Committee shall be open to the public and notice of meetings shall be provided by posting. The Committee shall not be considered a public board, commission or committee subject to §§ 2-6-1-1 et seq.

(B) It is the function of the Committee to initially review, modify, and approve standards and specifications submitted by the Central Purchasing Office so that the most suitable service or material is obtained. Specifications for capital projects shall not be reviewed by the Committee. It is the duty of the

Committee to ensure that standards and specifications are:

- (1) Clear and understandable as measured in terms of design, technical and/or performance detail; and
- (2) Subject to measurement or testing when necessary; and
- (3) Promotive of competition to the degree the needs of the city are not sacrificed.

(C) The Central Purchasing Office shall provide staff support to the Committee in the determination of standards and specifications. In reviewing specifications and standards for goods or services, it is the duty of the Committee to solicit comments and suggestions from businesses and users.

('74 Code, § 5-7-8) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 26-2011) Penalty, see § 1-1-99

§ 5-5-9 PROCUREMENT REQUIREMENTS.

(A) *General.* All city purchasing shall be made by competitive sealed bids as provided in § 5-5-28 of this article, except purchases made through the following procurement methodologies or methodologies approved by the City Purchasing Officer and determined in writing to be in the best interest of the city.

- (1) § 5-5-11, Capital Projects;
- (2) § 5-5-26, Small Purchases;
- (3) § 5-5-27, Purchases by Quotation;
- (4) § 5-5-29, Purchases of Professional/ Technical Services;
- (5) § 5-5-30, Competitive Sealed Proposals;
- (6) § 5-5-31, Sole Source Purchases;
- (7) § 5-5-32, Purchasing from Government Contracts;
- (8) § 5-5-33, Rapid Procurement;
- (9) § 5-5-34, Emergency Purchases;
- (10) § 5-5-35, Insurance Related Purchases;
- (11) § 5-5-36, Purchases of Appraisal Services;
- (12) § 5-5-37, Purchases of Attorney Services;
- (13) § 5-5-38, Purchases of Social Services;
- (14) § 5-5-39, Intergovernmental Agreements.

(B) *Cost plus construction contracts.* The city shall not enter into any contract for construction which is a cost-plus-percentage of cost contract, unless the contract meets the requirements in this article for an emergency purchase.

(C) *Purchase splitting prohibited.* Separate purchases of the same or similar goods, services or construction, whether from the same or different businesses, within a time frame established by the City Purchasing Officer, shall be considered a single purchase for purposes of this article.

(D) *Federal funding.* When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of this article, compliance with federal law or regulations shall be in compliance with this article.

(Ord. 26-2011)

§ 5-5-10 REJECTION OF OFFERS.

The Central Purchasing Office or CIP may reject any or all offers received in response to a competitive solicitation, but the rejection shall be accompanied by a written statement declaring the reasons for the rejection, which shall be made part of the procurement file. If no acceptable offers are received, or if no responsive offers are received, then the Central Purchasing Office or CIP may purchase the required goods or services, with no change in the published specifications, in the open market at the best obtainable price. If the specifications are changed, or if so required by the City Purchasing Officer or CIP Official, a purchase in the open market shall not be permitted and the competitive solicitation may be reissued.

(Ord. 26-2011)

§ 5-5-11 CAPITAL PROJECTS.

(A) Unless otherwise agreed to by the Central Purchasing Office and CIP, the purchase of goods, services and construction for capital projects not procured through the Central Purchasing Office, shall be procured through CIP, in accordance with the "Regulation Governing the Award and Rejection of Bids/Offer and Debarment of Contractors for Public Works Projects of the City of Albuquerque", effective July 25, 2008, or as hereafter amended.

(B) The Mayor may promulgate additional or revised rules and regulations regarding the solicitation of offers for capital projects and the award or rejection of offers therefor, including but not limited to

establishing procedures for the solicitation and consideration of offers, award or rejection of offers, determining the responsibility of offerors, and such other matters as the Mayor deems desirable for the efficient administration of capital projects.

(C) It is the policy of the city to require local participation in capital projects where possible. Major construction projects which can reasonably be expected to exceed \$5,000,000 in cost may require that a market analysis be conducted to determine the percentage of local participation to be required for the project. This determination of the need for a market analysis and the appropriate local participation requirement shall be made on a case by case basis by the user with advice from the city's legal department as needed.

(D) The purchase of goods, services or construction for capital projects for the city shall not occur as part of a contract originally procured as a concession contract or entered into as a lease unless the following applies:

(1) The capital project is included in the original competitive solicitation for the concession contract or lease; or

(2) A city contractor is unable to complete a capital project, which was awarded to that city contractor through a competitive bid process, which will cause damage or harm to the concessionaire or lessee and the concessionaire or lessee can quickly complete the project as determined in writing by the CIP Official; or

(3) The purchase meets the requirements of an emergency purchase as set out in this article.

(E) Any and all rules and regulations adopted or promulgated under this provision shall be consistent with and subject to the provisions of this article, and in the event of a conflict between such rules and regulations and this article, this article shall control.

('74 Code, § 5-7-11) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 51-1999; Am. Ord. 26-2011) Penalty, see § 1-1-99

§ 5-5-12 NOTICE OF SOLICITATIONS.

All competitive sealed bids or proposals issued by the Central Purchasing Office shall be made in accordance with the following provisions:

(A) Notice that sealed offers shall be received is furnished to the public by means of publication in a newspaper of at least weekly general and/or business circulation. The notice shall specify the time and place when offers will be received and shall be published not less than ten days before the deadline for receipt of offers.

(B) This requirement of notice is in addition to any other procedure which may be adopted by the Central Purchasing Office to notify prospective offerors that offers are requested, such as direct mailing, electronic mailing and posting through an electronic medium which is accessible by the general public.

(C) Notices may also be posted on a public bulletin board of the Central Purchasing Office for not less than three business days in advance of the deadline for receipt of offers.

(D) Fees may be set and collected by the Central Purchasing Office for providing notice that sealed offers will be received and for providing copies of or access to competitive solicitations and related documents. Fees collected shall be utilized solely for the purpose of providing notice to the public, access to competitive solicitations, and related administrative costs.

('74 Code, § 5-7-12) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 26-2011) Penalty, see § 1-1-99

§ 5-5-13 SIGNATURE AUTHORITY.

(A) *Initiation by Mayor.* Except as otherwise provided in this article or these ordinances, and following approval by the City Council, if required, the Mayor is authorized to enter into agreements of any type on behalf of the city. This includes, but is not limited to, contracts and intergovernmental agreements, as defined in this article, and real property agreements. The Mayor may delegate this signature authority by executive instruction.

(B) *Initiation by the City Council.* The City Council may enter into agreements pursuant to its legislative function as provided in this article and its Rules of Procedure.

(Ord. 30-1998; Am. Ord. 26-2011)

§ 5-5-14 TRADE-IN OR EXCHANGE OF USED ARTICLES.

Where it is desired to trade-in or exchange used articles as part payment on the purchase price of new articles, the Central Purchasing Office shall, in requesting offers, describe such used property, inform prospective offerors where the used property can be examined, and notify prospective offerors that the sale price of the new article and the allowance as credit for the trade-in or exchange shall be stated

separately. The difference between the sale price of the new article and the trade-in allowance shall be deemed the offer of the seller.

('74 Code, § 5-7-14) (Ord. 6-1991; Am. Ord. 30-1998) Penalty, see § 1-1-99

§ 5-5-15 LEASE AGREEMENTS AND USED GOODS.

Agreements for the lease of personal property and the purchase of used goods shall be subject to the requirements of this article.

('74 Code, § 5-7-15) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 26-2011) Penalty, see § 1-1-99

§ 5-5-16 DISPOSITION OF CITY-OWNED SURPLUS, SALVAGE AND SCRAP PROPERTY.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY ASSET. Tangible personal property which is required pursuant to Administrative Instruction to be recorded on the city's inventory of fixed assets.

EXTERNAL PROCUREMENT UNIT. Any procurement organization not located in this state which, if located in this state, would qualify as a state agency or a local public body.

IT EQUIPMENT. Computers, peripheral equipment, printers, radios, telephones and the like.

LIBRARY MATERIALS. Books, magazines, compact discs, videotapes, tapes and the like purchased by the Library Division of the city, or any successor agency, for lending to the public.

SALVAGE PROPERTY. Tangible personal property of the city of any value which has been determined, pursuant to subsection (D) of this section, to no longer be functional in the state of its original intent, but retains a value in the market place in its marginal use, by repair, resale, scrap value in recyclable materials or other reasons that make it of value in the proper market setting.

SCRAP PROPERTY. Tangible personal property of the city which has been determined, pursuant to subsection (D) of this section, to be surplus property, but which has also been determined to be of no value or where the cost to repair or maintain such property would exceed its value. SCRAP PROPERTY does not include salvage property, including but not limited to any material or equipment which retains a salvage value such as copper, aluminum or other recyclable materials, as determined by the City Purchasing Officer.

SURPLUS PROPERTY. Tangible personal property of the city of any value which has been determined, pursuant to subsection (D) of this section, to be functional, but is no longer required or needed for use within or by the user department or other city department and whose cost to retain may be adverse to city interests based on space allocation, obsolescence or depreciating market value.

UNCLAIMED PROPERTY. Tangible personal property which has been left in the possession of the city, as defined in § 5-4-1 ROA 1994.

(B) *Disposition of surplus property.* Surplus property shall be disposed of as follows in accordance with procedures established by the City Purchasing Officer:

(1) Surplus property may be transferred to another city agency; or

(2) Surplus property may be sold at fair market value or donated to other public governmental agencies or external procurement units. The sale or donation pursuant to this subsection (B)(2) of surplus property used for public safety functions must be approved by the Chief Administrative Officer.

(3) Surplus property may be sold at fair market value to any non-profit organization registered with the State of New Mexico.

(4) Unless otherwise disposed of pursuant to this subsection, surplus property shall be disposed of by means of a publicized sale including, but not limited to, a live or electronic public auction, a competitive solicitation or through a city store.

(5) If the city is unable to dispose of an item of surplus property pursuant to this subsection, that surplus property shall be considered to have no value and may be disposed of as scrap property.

(C) *Disposition of scrap or salvage property.* Following a determination under subsection (D) of this section that property is scrap property, it may be disposed of in a manner that is determined by the department director to be the most advantageous to the city. Salvage property shall be disposed of in a manner consistent with procedures established by the City Purchasing Officer.

(D) *Determination of status of tangible personal property.*

(1) No department can dispose of any item of tangible personal property or any city asset until it has been determined to be surplus property, salvage property or scrap property.

(2) Each department director shall designate a property disposal officer to make determinations and to recommend and oversee the disposition of surplus, salvage and scrap property. The property disposal officer

shall maintain written records of his determinations for public review and for audit purposes.

(3) Before disposition of an item of tangible personal property of the city, the property disposal officer's recommendation must be approved as follows:

(a) By the department director if the item has an estimated fair market value of less than \$3,500;

(b) By the City Purchasing Officer if the item has an estimated fair market value of \$3,500 or more, but less than \$10,000; or

(c) By the Chief Administrative Officer if the item has an estimated fair market value of \$10,000 or more.

(d) The values in this subsection may be periodically adjusted to reflect changes in the Consumer Price Index by Administrative Instruction of the Chief Administrative Officer.

(4) IT equipment shall be determined to be surplus, salvage or scrap property if the item of equipment is not in compliance with current information technology standards or if such determination is approved by the Chief Information Officer or his designee.

(5) Library materials shall be determined to be surplus, salvage or scrap property if the library materials are determined to be no longer necessary to perform their intended function, or they are worn, outdated or a duplicate of other library materials.

(E) Unclaimed property shall be disposed of in accordance with the provisions of § 5-4-1 et seq., ROA 1994.

(F) Each department shall be responsible for insuring that surplus, salvage and scrap property is properly disposed of in accordance with this section and that city assets are properly and timely removed from the city's fixed asset inventory list, if appropriate.

(74 Code, § 5-7-16) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 22-2005) Penalty, see § 1-1-99

Cross-reference:

Unclaimed personal property, see §§ 5-4-1 et seq.

§ 5-5-17 RESIDENT, LOCAL AND SMALL BUSINESS PREFERENCES.

(A) *Application of Preferences.* Prior to making a recommendation of award, the Central Purchasing Office shall apply the following preferences by applying the 5% preference for each to the amount bid or quoted or the proposal score of all eligible offers.

(1) A local business preference shall be applied to a qualified bid, proposal or quote submitted in response to a competitive solicitation for the purchase of goods or services or for the award of a concession contract by a local business, as defined in this section.

(2) A small business preference shall be applied to a qualified bid, proposal or quote submitted in response to a competitive solicitation for the purchase of goods or services by a small business, as defined in this section.

(3) The state's resident contractor preference shall be applied to a qualified bid or quote submitted in response to a competitive solicitation for the purchase of construction, in accordance with state law.

(4) The state's Veterans preference shall be applied to a qualified bid or proposal submitted in response to a competitive solicitation by a state certified veterans business.

(5) A resident preference based on the state's resident business preference shall be applied to a request for bids or request for proposals for the purchase of goods or services, but only if no offers have been received in response to the solicitation from offerors eligible for the local preference.

(B) *Definitions.*

(1) **LOCAL BUSINESS** shall mean a business that maintains its principal office and place of business in the Greater Albuquerque Metropolitan Area, as defined in Section 3 of this Article.

(2) **PLACE OF BUSINESS** shall mean a business's location in the Greater Albuquerque Metropolitan Area which is staffed and open to the public on a regular basis.

(3) **RESIDENT CONTRACTOR PREFERENCE** shall mean the preference described in Section 13-4-2 NMSA 1978, as currently enacted or hereafter amended.

(4) **SMALL BUSINESS** shall mean a Local Business which employs an average of fewer than 50 full-time employees in a calendar year, which number can be verified on request by submittal of the business's quarterly IRS Form 941 or other documentation acceptable to the city.

(C) *Eligibility for Preferences.*

(1) To qualify for a local business or small business preference, the offeror must submit verifiable information in accordance with procedures established by the City Purchasing Officer.

(2) To qualify for the state's resident contractor preference, an offeror must submit a valid number issued by the State of New Mexico with its offer.

(3) To qualify for the state's resident veterans preference, the offeror must submit with its offer the certification of resident veterans business issued by the State of New Mexico.

(4) If necessary the Central Purchasing Office may seek additional information or proof to verify the offeror's eligibility.

(5) Only the principal offeror or one of the principal offerors, not a subcontractor, may qualify an offer for a preference.

(D) *Small Business Goal.* Each fiscal year the Central Purchasing Office shall strive to award to small businesses competed city purchases for goods and services processed through that office equivalent to 10% of the total value of such purchases for the prior fiscal year.

(E) *Limitation.* The total amount of all preferences awarded under this section for the purchase of goods and services in any single award shall not exceed 10% or \$50,000, whichever is less.

(F) *Applicability.* This section shall not apply to competitive solicitations where the cost to the city or revenues to the business will exceed \$5,000,000.

('74 Code, § 5-7-17) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 33-2002; Am. Ord. 33-2007; Am. Ord. 26-2011; Am. Ord. 2013-002) Penalty, see § 1-1-99

§ 5-5-18 [RESERVED.]

§ 5-5-19 APPROVAL OF CONTRACTS.

(A) The following contracts must be approved by the City Council:

(1) All special assessment district construction contracts in accordance with §§ 6-8-1-1 et seq., Albuquerque Special Assessment District Policy Ordinance;

(2) Contracts for ambulance services and other emergency rescue services;

(3) Contracts for professional/technical services, as follows:

(a) Any contract for professional/technical services in an amount exceeding \$75,000, including, but not limited to, legal services contracts and contracts entered into by the City Council to facilitate its legislative function;

(b) An amendment to a professional/technical services contract which causes the amount of that contract to exceed \$75,000; and

(c) Any professional/technical services contract with a single business where the total amount in a single fiscal year for professional/technical contracts with that business exceeds \$150,000.

(4) Social services contracts as follows:

(a) Any social services contract in an amount exceeding \$120,000; and

(b) An amendment to a social services contract causes the amount of that contract to exceed \$120,000; or any amendment to a social services contract exceeding \$120,000 that increases the amount of the contract by 20% or more; and

(c) Any social services with a single organization or agency where the total amount in a single fiscal year for social services contracts with the organization or agency exceeds \$120,000;

(d) Except that City Council approval shall not be required if the goal, amount and contractor of any such contract or amendment is included in the City of Albuquerque annual performance plan or has been previously approved by the Council in an appropriating resolution.

(e) The exception contained in § 5-5-19(A)(4)(d) shall not apply if a Councillor has requested a special report on a particular contract from the Mayor, which report shall be due within 30 days of the request, and a Councillor has requested approval of said contract by the full Council.

(5) Concession contracts expected to generate revenues to the contractor in excess of \$75,000 over a 12-month period.

(6) Sole source construction contracts in excess of \$50,000 for a single project.

(7) If the City Council has previously approved a contract by approving the selection of the contractor, the contract amount and the services or subject matter of the contract, either through approval of a Performance Plan, a recommendation of award, or other similar approval process, the final contract will not require an additional approval pursuant to this section.

(8) Any supplements to a contract will not require an additional approval by the City Council if the original amount of the contract and the amount of possible supplements were previously presented to City Council for approval, and the increase to the contract is within 20% of the amounts previously identified.

(B) The following purchases must be approved by the Mayor rather than City Council:

(1) When the Mayor determines that urgent and compelling reasons require an emergency procurement of professional/technical services exceeding \$75,000 or social services exceeding \$120,000, the Mayor shall notify the City Council, at its next regularly scheduled meeting, of the action and shall give a full description of the urgent and compelling reasons, the scope of work, the contract amount, and the name of the contractor;

(2) Award or rejection of offers and the execution of contracts for the construction, demolition, alteration, improvement, or repair of public works; and

(3) Contracts with the New Mexico State Auditor, or other contracts required by law.

(C) All other purchases shall be approved by the City Purchasing Officer or designee, or as otherwise provided by ordinance.

(D) For all procurements and approval of contracts and purchases by or for the Water Utility Authority pursuant to this article approval by the Executive Director of the Water Utility Authority shall substitute for approval by the Mayor and approval by the Water Utility Authority Board shall substitute for approval by the City Council.

(74 Code, § 5-7-19) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 51-1999; Am. Ord. 12-2001; Am. Ord. 14-2001; Am. Ord. 18-2004; Am. Ord. 58-2005; Am. Ord. 13-2006; Am. Ord. 26-2011) Penalty, see § 1-1-99

§ 5-5-20 EXEMPTIONS.

The following purchases shall be exempt from the competitive requirements of this article, unless otherwise determined by the City Purchasing Officer:

(A) Agreements for services of professionals selected pursuant to §§ 14-7-2-1 et seq., Selection Advisory Committee ordinance;

(B) Goods, services or construction procured from a public agency;

(C) Leases, licenses, permits, exchanges, or purchases of real property and all other real property transactions;

(D) Purchases from regulated utilities such as gas, electricity, water, telephone, cable TV, sewer and refuse collection service, unless competition is available and the annual cost will exceed \$75,000;

(E) Purchases of books, periodicals, films, training materials, subscriptions, on-line information services, or advertising from the publishers and distributors or agents thereof;

(F) Purchases of travel by common carrier or by private conveyance and related travel expenditures such as meals and lodging;

(G) Purchases, exchanges, sales, or transportation of animals;

(H) Purchases of surety bonds;

(I) Purchases of exotic plants which will be accessioned into a permanent collection maintained by the city;

(J) Purchases of parts and labor for equipment or machinery where a breakdown of this equipment or machinery could cause an emergency or costly condition to exist and where the machinery or equipment is in immediate danger of failure;

(K) Purchases of parts and labor or maintenance agreements to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop;

(L) Purchases of chemicals, drugs, and other controlled substances, the distribution and use of which is controlled by law or requires licensing;

(M) Concession contracts, unless such contracts are expected to generate revenues to the contractor in excess of \$75,000 over a 12-month period;

(N) Purchases of computer software and ancillary services required to match other software in use or where a unique or novel application (available from only a single provider) is required to be used in the public interest. This includes licensing fees and services to modify or maintain proprietary software, if such services are available from only a single provider;

(O) Purchase, lease, rental or any other financial arrangement for the acquisition of works of art, artifacts, or other items for the purpose of exhibition in a public facility or area;

(P) Payments for conference registrations, membership dues, offsite training courses, or similar minor purchases where prepayments are required or which are administrative in nature and non-competitive as determined by the City Purchasing Officer;

(Q) Purchases necessary for the investigation of criminal activities, which, if purchased competitively,

would compromise an investigation as determined by the Chief of Police in writing. All funds expended for this type of activity will be properly receipted and accounted for with supporting documentation maintained by the Police Department and subject to internal audit;

(R) Purchases of specialty goods, as defined by the City Purchasing Officer, for resale to the general public at a retail business operated by the city;

(S) Agreements for the services of medical practitioners such as dentists, doctors, psychiatrists, psychologists, veterinarians, nurses, technicians, and the like, except that medical and mental health services for the Employee Health Center, and similar group medical services, shall be competitively obtained;

(T) Agreements for the services of attorneys, other than bond attorneys, and for legal assistants, except as otherwise provided in this article;

(U) Contracts and expenditures in connection with court or administrative proceedings, including, but not limited to, experts, mediators, interpreters, translators, court reporters, process servers, witness fees, and printing and duplicating of materials for filing;

(V) Agreements for the services of lobbyists;

(W) Agreements with a sports professional or team;

(X) Contracts with private, nonprofit, independent contractors whose primary purpose is to provide services to persons with disabilities, and which contracts provide employment opportunities for persons with disabilities;

(Y) Grant funded contracts with civic groups to provide community services, as required by the terms of the grant;

(Z) Contracts for retirement and other benefits which are paid for directly by city employees, except that employee health care insurance will be obtained competitively as otherwise provided in this article;

(AA) Contracts with professional entertainers and associated expenditures;

(BB) Purchases of goods, and ancillary services such as installation or training, where required to match equipment currently in use and where a written standardization policy is in effect, or where a unique or novel application (available from only a single provider) is required to be used in the public interest. This includes applicable purchases and services to obtain, modify or maintain equipment, if such services are available from only a single provider;

(CC) The purchase of goods or services for a reasonable trial period for testing purposes as approved by the City Purchasing Officer; on the condition that if additional purchases are required after testing, such goods or services shall be subject to the requirements of this article; and

(DD) The purchase of used items if available for a limited time, such as by auction or public sale, and if determined to be at a cost advantage to the city. A memo shall be written to the City Purchasing Officer for approval describing the steps taken to determine that a cost advantage to the city exists.

('74 Code, § 5-7-20) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 4-2003; Am. Ord. 1-2005; Am. Ord. 30-2010; Am. Ord. 26-2011) Penalty, see § 1-1-99

§ 5-5-21 UTILITY FRANCHISES.

This article does not apply to the city's grant or extension of any utility franchise, license or other rights to provide utility services within the city.

('74 Code, § 5-7-21) (Ord. 6-1991; Am. Ord. 30-1998)

§ 5-5-22 ETHICAL CONDUCT.

In the procurement of goods, services and construction for the city, all City employees shall comply with the rules of ethical conduct set out in §§ 3-3-1 et seq., Conflict of Interest. In addition, the following ethical provisions shall also apply to all city procurements:

(A) *Employee conflict of interest.* It shall be unlawful for any city employee to participate directly or indirectly in a procurement when the employee knows that:

(1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or

(2) Any other person, business, or organization with whom the employee or any member of an employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(B) *Business conflict of interest.* It shall be unlawful for any business which knowingly has a conflict of interest or an employee with a conflict of interest, which conflict of interest would allow it an unfair advantage in a competitive process, or would prevent its being able to perform fully and objectively under a

contract with the city, to make an offer to the city or enter into a contract with the city.

(C) *Prohibition of unfair advancement of private financial interest by any Person, Organization, Board, Committee, or Business.* It shall be unlawful for any member of a City board or commission; any director, officer, or employee of a business; or any other individual or business by virtue of a personal or corporate relationship with the city to use confidential or insider information concerning the property, government, or affairs of the governmental body by which that person or corporation entity possesses a confidential relationship, for the purpose of real or potential advancement of private interest.

(1) *Disclosure.* Every member of a City Board or commission; every business, the directors, officers, and key employees of that business; and any other individual who has an existing or potential financial interest or who has an immediate family member who has a presently existing or potential financial interest in any contract or other matter existing or pending before or within the governmental body of which that person or business is affiliated with, shall disclose that interest in writing to the City Clerk and to the City Department Head with whom that person or business is negotiating, immediately upon knowing that such a conflict exists or upon having knowledge that a conflict may potentially come into being.

(2) *Enforcement.* In each instance in which an individual member of a board or committee, a business, or any other person knowingly uses confidential or inside information for unfair advancement of private interest, or fails to disclose real or potential financial conflict with the City, the City shall, if the offending party is a business or person affiliated with that business, cease all negotiations and contractual relationships with the offending party. If the offending party is a member of a board or committee, that person shall not be permitted to participate in continued negotiations or receive further information regarding the matter in question. Nothing in this subsection (C) shall preclude the implementation of any other remedy provided by law.

(3) *Definitions.* For the purposes of this subsection (C), the following definitions apply:

(a) **BUSINESS.** Any corporation, LLC, partnership, sole proprietorship, firm, enterprise, company, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust, whether or not organized for profit.

(b) **UNFAIR ADVANCEMENT OF PRIVATE INTEREST.** Any real or potential financial gain sought or realized by use of confidential or inside information that would not be readily available to individuals and or businesses not involved in negotiations, contracts, or other direct or indirect transactions with the governmental entity.

(c) **IMMEDIATE FAMILY.** A person and his or her spouse, their children; grandchildren; parents; siblings including step or half brothers and sisters; aunts, uncles; or any natural person residing in the same household.

(D) *Gratuities and kickbacks.*

(1) It shall be unlawful 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 or any part of a program requirement or a purchase request, influencing the content of any specification or 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 program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) It shall be unlawful 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.

(E) *Prohibition against contingent fees.* It shall be unlawful for a person to be retained, or to retain a person, 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 for the purpose of securing business.

(F) *Contemporaneous employment prohibited.* It shall be unlawful for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

(G) *Waiver from contemporaneous employment prohibition and other conflicts of interest.* The City Council may grant a waiver from the employee conflict of interest provision or the contemporaneous

employment provision upon making a written determination that:

- (1) The contemporaneous employment or financial interest of the employee has been publicly disclosed;
- (2) The city employee will be able to perform his or her procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interests of the city.

(H) *Use of confidential information.* It shall be unlawful 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.

(I) *Recovery of value transferred or received in breach of ethical standards.*

(1) The value of anything transferred or received in breach of the ethical standards of this section by an employee or a nonemployee may be recovered from both employee and nonemployee.

(2) 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, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(J) *Disclosure of travel expenses.* Officials using taxpayer funded travel in excess of \$1,000 for any trip shall disclose that trip to the City Clerk within one week after completion of the trip. All such travel expenses shall be immediately posted on the city's website and shall itemize all expected expense as well as the purpose of the trip.

(K) *Penalties.* To the extent that violation of the ethical standards of conduct set forth in this section constitute violations of a city ordinance or state statute, they shall be punishable as provided therein. The civil penalties set forth in this section and available for the violation of provisions of this article shall be in addition to such criminal penalties.

('74 Code, § 5-7-22) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 24-2000; Am. Ord. 34-2006) Penalty, see § 1-1-99

§ 5-5-23 PROTEST.

(A) *Right to protest.* Any business may protest the specifications of a competitive solicitation issued by the Central Purchasing Office and any offeror may protest a recommendation of award resulting from a competitive solicitation. Such protests must be submitted within the time frame specified in the competitive solicitation or recommendation of award, but in no event more than 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Protests shall be made to the City Purchasing Officer.

(B) *Actions pending protest.* In the event of a timely protest the Central Purchasing Office shall not proceed further with the procurement unless the Purchasing Officer makes a determination that the award of the contract is necessary to protect substantial interests of the city.

(C) *Protest authority.* The City Purchasing Officer shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved offeror. This authority shall be exercised in accordance with regulations promulgated by the City Purchasing Officer pursuant to its authority granted in § 5-5-6 of this article.

(D) *Applicability.* This section shall not apply to the procurements made pursuant to § 5-5-11, Capital Projects.

(Ord. 30-1998; Am. Ord. 26-2011)

§ 5-5-24 DEBARMENT.

The City Purchasing Officer, after reasonable notice to the business involved, shall have authority to recommend to the Mayor the suspension or debarment of a business for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years, and a suspension shall not exceed three months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the City Purchasing Officer pursuant to its authority granted in § 5-5-6 of this article and such regulations shall provide for reasonable notice and an opportunity to be heard prior to suspension or debarment.

(Ord. 30-1998; Am. Ord. 26-2011)

§ 5-5-25 DETERMINATION OF RESPONSIBILITY IN CONSTRUCTION AND CONSULTANT CONTRACTS.

(A) In all contracts related to capital projects procured through § 5-5-11 or § 14-7-2-1, the Director of the Department of Municipal Development, upon receiving a recommendation by any City Councilor, the Deputy Director of the Department of Municipal Development, or any other Department Director, may evaluate the past performance of an entity doing business with the city pursuant to the above-referenced sections and determine that the contractor is not a responsible offeror. In the evaluation of the performance of a contractor, the following factors shall be considered:

- (1) Timeliness of performance;
- (2) Quality of performance;
- (3) Compliance with the Air Quality Control Act;
- (4) Compliance with the Street Excavation and Barricading Ordinance;
- (5) Compliance with the Noise Ordinance;
- (6) Compliance with labor laws regarding payment of wage rates;
- (7) Poor performance causing delays in performance by other contractors;
- (8) Failure to comply with safety laws, rules and regulations;
- (9) Failure to accept responsibility for managing claims arising out of the performance of their contracts;
- (10) Or any other factor which, singly or in combination with the above, results in a determination by the department director that the proposed contracting entity is not a responsible offeror.

(B) Any such determination of non-responsibility made by the Director of the Department of Municipal Development shall be sent to the contractor by certified mail, return receipt requested. A determination of non-responsibility shall continue until such time as the Director of the Department of Municipal Development, based on contract performance occurring after the determination, then determines that the offeror has improved its performance sufficient to be deemed responsible. Any determination of non-responsibility may be protested pursuant to § 5-5-23.

(Ord. 27-2005)

§ 5-5-26 SMALL PURCHASES.

(A) The City Purchasing Officer shall establish regulations for the purchase of goods, services and construction which shall be considered "small purchases," allowable without prior authorization from the Central Purchasing Office. The monetary limit of small purchases (the "small purchase limit") shall be set by the City Purchasing Officer by written notice to the user departments. The small purchase limit shall not exceed \$2,500.

(B) Petty cash purchases of \$100 or less may be made without a purchase order at the best obtainable price by authorized individuals in accordance with regulations established by the City Treasurer.

(Ord. 26-2011)

§ 5-5-27 PURCHASES BY QUOTATION.

Purchases of goods, services and construction may be made by the Central Purchasing Office by request for quotes in accordance with the following provisions:

(A) A single purchase involving the expenditure of more than the small purchase limit, but not more than \$25,000, may be made after requesting quotes. Such quotes shall be obtained only from small businesses as defined in this article.

(1) If fewer than three responsive quotes are obtainable from small businesses, additional quotes obtained from local businesses which are not small businesses shall be considered.

(2) If fewer than three responsive quotes are obtainable from small businesses and local businesses, additional quotes from all available businesses shall be considered.

(3) If fewer than three responsive quotes are obtainable from any source, the purchase may be made at the best documented obtainable price and a memo shall be written to the City Purchasing Officer for his approval describing the steps taken to obtain the quotes and determine the best price.

(B) Award may be made only to the responsible offeror(s) submitting the lowest responsive offer(s), considering all applicable preferences. The recommended offer shall not exceed the lowest responsive offer of all offers received without preferences applied, plus 15%.

(Ord. 26-2011)

§ 5-5-28 COMPETITIVE SEALED BIDS.

(A) All purchases of goods, services, and construction in excess of \$25,000, and the establishment of concession contracts expected to exceed \$75,000 in revenues to the contractor shall be made by competitive sealed bid except as otherwise authorized by this article.

(B) Purchases by competitive sealed bid shall be made by a request for bids. The following provisions shall apply.

(1) Offers shall be opened according to such procedures as may be adopted by the Central Purchasing Office or CIP to ensure confidentiality of offers prior to opening.

(2) Offers shall be evaluated based on the requirements set forth in the request for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose.

(3) A contract may be awarded only to the responsible offeror(s) with the lowest cost or highest revenues or other best cost-related offer, as established in the solicitation, considering all applicable preferences.

(4) The Central Purchasing Office or CIP may accept an improved total offer from the awarded offeror to a request for bids, if said offer has otherwise qualified, and if there is no change in the original terms and conditions of the request for bids.

(Ord. 26-2011)

§ 5-5-29 PURCHASES OF PROFESSIONAL/ TECHNICAL SERVICES.

Purchases of professional/technical services of \$75,000 or less may be made by negotiation and execution of a contract signed by the City Purchasing Officer, and processed through the Central Purchasing Office; signed by the CIP Official for such contracts processed through CIP; or signed by the Director of Council Services for such contracts entered into by the City Council pursuant to its legislative function. All contracts shall be reviewed for legal sufficiency. The provisions in this article applicable to professional/ technical services do not apply to intergovernmental or social services agreements.

(Ord. 26-2011)

§ 5-5-30 COMPETITIVE SEALED PROPOSALS.

(A) Competitive sealed proposals may be used for the purchase of goods, services or construction, or to obtain concession contracts, particularly where specifications cannot be adequately prepared that permit the award on the basis of the lowest evaluated bid price; the use of proposals would promote innovation, state of the art technology and overall efficiencies to the benefit of the city; or the evaluation of responsive offers depends on levels of performance, expertise, financial capability or other criteria and not price alone.

(B) Purchases by competitive sealed proposals shall be made by a request for proposals (RFP). The following provisions shall apply:

(1) The RFP shall include a weighted scale to indicate the relative importance of evaluation factors to be used in the scoring of proposals.

(2) Pricing, revenues or other cost-related items will be a weighted factor in scoring the proposals, unless the City Purchasing Officer makes a written determination that a cost factor is inappropriate.

(3) Evaluation factors shall be developed by the user departments according to their needs in conjunction with the Central Purchasing Office or CIP.

(4) The Mayor shall name an ad hoc advisory committee to evaluate proposals. The committee shall include as one of its members a representative from the department or agency requesting the purchase.

(5) The contents of proposals may not be disclosed to any persons other than the members of the ad hoc advisory committee or its advisors until approval of the recommendation of award. If a request for proposals is canceled and a similar RFP will be issued within six months, the contents of proposals received in response to the first RFP may not be disclosed until after approval of the recommendation of award for the second RFP, cancellation of the second RFP, expiration of the six month period, or a written determination of the City Purchasing Officer that disclosure will not be detrimental to the interests of the city and offerors.

(6) Additional information may be requested from and interviews may be conducted with all offerors determined in writing by the ad hoc advisory committee to be among the finalists considered for award. Revisions to proposals may be permitted after the submission of proposals and prior to approval of the ROA for the purpose of obtaining best and final offers. Any discussions with finalists may not disclose any information derived from proposals submitted by competing offerors.

(7) The committee shall submit to the Mayor the ROA containing a list of the top three or more proposals in the order in which they are recommended by the committee. The Central Purchasing Office shall retain as a public record any committee notes which contain an explanation of the reasons for selection.

(8) The committee's list of recommended proposals shall be approved or disapproved by the Mayor. If the list is disapproved by the Mayor, or by Council, he may revise the list or return the list to the committee

for additional review. If the Mayor has disapproved the list, he shall provide the committee with his reasons for revision or disapproval of the list, in writing.

(9) If City Council approval is required, the Mayor shall submit the ROA and an executive communication containing the term and dollar amount of the contract, and a copy of the RFP to the City Council for consideration. In the event of disapproval, the City Council shall give its reasons therefor. The Mayor may submit a revised ROA to the City Council if an ROA is not approved.

(10) If the ROA for an RFP has been approved by the City Council, the contract resulting from that RFP and any supplements to that contract will not require an additional approval by the City Council on the condition that the amounts of the contract and any possible supplement amounts were identified in the executive communication or any related documents presented to City Council for approval, and the increase to the contract is within 20% of the amounts identified.

(11) Prior to City Council approval, but after the ROA has been initially approved, negotiations may be conducted with the recommended offeror, or offerors if multiple contracts will be awarded. If negotiations are unsuccessful, as determined by the City Purchasing Officer, negotiations may be conducted with the next offeror or offerors identified in the ROA.

(12) An RFP for the City Council shall be subject to the provisions of this article, with the exception that proposals submitted shall be evaluated and recommended for award by an ad hoc advisory committee appointed by the Director of Council Services, and the ROA shall be approved by the City Council without the Mayor's approval.

(Ord. 26-2011)

§ 5-5-31 SOLE SOURCE PURCHASES.

A contract may be awarded without a competitive solicitation regardless of the estimated cost when the City Purchasing Officer makes a determination, after conducting a good faith review of available sources and consulting the user department, that there is only one source for the required goods, services, or construction. The City Purchasing Officer or designee shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to the city.

(Ord. 26-2011)

§ 5-5-32 PURCHASING FROM GOVERNMENT CONTRACTS.

Goods, services, including professional or technical services, or construction may be purchased from a business, or its authorized representative, under contract with a public agency or cooperative procurement agency at prices which are equal to or less than the prices of goods, services or construction meeting the same specifications or standards of those purchases, if the following conditions are met:

(A) Prices are from:

(1) A nationally published federal price schedule or a "federal government price schedule" published by the business under contract with the federal government;

(2) A current contract which has been awarded after notice and publication and in accordance with the requirements of the New Mexico Procurement Code, §§ 13-1-28 et seq. NMSA 1978; or

(3) A valid contract which has been awarded by any public agency or cooperative procurement agency after notice and publication and in accordance with the requirements of the procurement laws and regulations applicable to that agency.

(B) The quantity purchased shall not exceed the quantity which may be purchased under the applicable contract.

(C) The goods, services or construction shall be purchased at the best obtainable price.

(D) The terms and conditions of the contract shall not be modified for the city purchase, unless the change is agreed to by the contracting business and is more favorable to the city than the original terms and conditions.

(E) The purchase order for the goods, services or construction purchased shall adequately identify the contract relied upon.

(F) The Central Purchasing Office or CIP shall retain for public inspection and internal use, official documentation, as required by the City Purchasing Officer or CIP Official, whichever applies.

(Ord. 26-2011)

§ 5-5-33 RAPID PROCUREMENT.

Purchases of goods, services and construction for any amount where advertising and the solicitation of offers would entail unnecessary and detrimental delay and loss to the city, may be made by the Central

Purchasing Office, or CIP, at the best obtainable price in accordance with procedures approved by the City Purchasing Officer or the CIP Official, whichever applies. Complete documentation of all proposed prices submitted by offerors must be maintained in the Central Purchasing Office, or CIP, for public inspection.

(Ord. 26-2011)

§ 5-5-34 EMERGENCY PURCHASES.

In the event of an unforeseen and dangerous situation requiring immediate action to preserve the peace, health, or safety of people or property within the jurisdiction of the city or to prevent significant economic loss, the Central Purchasing Office or a user department may purchase goods, services and construction by order without a competitive solicitation. Documentation of all proposed prices submitted by offerors must be maintained in the Central Purchasing Office for public inspection.

(Ord. 26-2011)

§ 5-5-35 INSURANCE RELATED PURCHASES.

(A) Insurance coverage for the city, other than employee health care, shall be remarketed by a controlled bidding process through an agent of record under the direction of the city department responsible for risk management. Rules of procedure for the controlled bidding process shall be established by the Mayor and published in the appropriate internal procedure manual.

(B) Employee health care insurance will be obtained in accordance with the procurement methods described in this article or otherwise approved by the City Purchasing Officer.

(C) The selection of the city's agent of record responsible for the negotiation of insurance coverages for the city and who shall work with and under the direction of the city department responsible for risk management will be obtained in accordance with the procurement methods described in this article or otherwise approved by the City Purchasing Officer.

(Ord. 26-2011)

§ 5-5-36 PURCHASES OF APPRAISAL SERVICES.

Contracts for the services of appraisers of real property shall be entered into, as needed, following selection of a list of appraisers by competitive solicitation. For each appraisal project, oral or written quotes must be obtained from three or more of the appraisers, if possible, listed and the project shall be awarded to the appraiser with the best quote as determined by the user department in conjunction with the city's Real Property Division, or its successor, in accordance with a procedure approved by the City Purchasing Officer. Oral quotes must be documented in writing and maintained by the Real Property Division. The Real Property Division shall establish maximum hourly charges for appraisal services. The quote process shall apply to updates for an appraisal.

(Ord. 26-2011)

§ 5-5-37 PURCHASES OF ATTORNEY SERVICES.

The Legal Department and the Risk Management Division, or their successors, shall each use their best efforts to issue a competitive solicitation every four years to select a list of attorneys available and qualified to provide legal services in particular areas of law utilized by the city. Attorneys may be added to the list at any time if they submit a proposal which meets the minimum requirements of the most current competitive solicitation and are approved by the City Attorney and the Risk Manager.

(Ord. 26-2011)

§ 5-5-38 PURCHASES OF SOCIAL SERVICES.

Social services contracts shall be procured in accordance with written regulations promulgated by the Family and Community Services Department, or a successor department, and approved by the City Purchasing Officer. At a minimum, these department regulations shall require social services contracts to include service performance standards which shall be reviewed and revised on a regular basis. If these performance standards are not met for two consecutive years, a request for proposals pursuant to the department regulations shall be required. Contracts which meet the definition of social services contracts shall not be subject to the provisions in this article applicable to those professional/technical services contracts and intergovernmental agreements, but shall be subject only to the provisions in this article applicable to social services agreements. City Council approval of social services contracts is required as set out in § 5-5-19 of this article.

(Ord. 26-2011)

§ 5-5-39 INTERGOVERNMENTAL AGREEMENTS.

Intergovernmental agreements of any amount may be made by negotiation and execution of a contract

signed by the Chief Administrative Officer, or by a city official designated by Administrative Instruction. All intergovernmental agreements shall be reviewed for legal sufficiency. Intergovernmental agreements for professional/technical services shall not be subject to the provisions in this article applicable to professional/technical agreements. Intergovernmental agreements that meet the definition of social services contracts shall be subject to the provisions in this article applicable to social services contracts. (Ord. 26-2011)