ARTICLE 5: PUBLIC PURCHASES

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§ 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 indication of the acceptance of an offer and the creation of a contract.

BUSINESS. A seller of goods and/or services and/or a provider of construction services and materials. 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 for a user, including the Public Works Department.

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 Office of Management and Budget, a division of the Mayor's office of the city, or to 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, 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 does not include routine repair or maintenance of public buildings or other public structures.

CONTRACT. Any agreement for the procurement of goods, services or construction, or for the establishment of a concession.

CONTRACTOR. An offeror who has been awarded a contract.

FEDERAL AGENCY. Any 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 government of the United States.

GOODS. Items of tangible personal property furnished for the use or benefit of Users.

GREATER ALBUQUERQUE METROPOLITAN AREA. All locations within the city, and Bernalillo County, and within any municipality, i.e. incorporated city, town or village, contiguous thereto.

LOCAL PUBLIC BODY. Every political subdivision of the state and the agencies, instrumentalities and institutions thereof.

MAYOR. The Mayor of the city. Where the Mayor has delegated his authority to a representative, this term shall be deemed to refer to that representative.

OFFER. A business's response to a competitive solicitation and includes quotes, bids, proposals, or other requested responses.

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

PURCHASING or ***PROCUREMENT.*** The buying, renting, leasing, lease-purchasing or otherwise obtaining of any goods, services or construction. 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.

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 furnished for the benefit of users; and does not include the services of city employees.

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 private, nonprofit or public governmental 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.

SOLICITATION. A request to submit an offer to prospective offerors which contains the requirements established for the purchase, sale, lease, rental or other transaction of goods, services or construction; and includes requests for bids, requests for quotations, requests for proposals, or other procurement methodologies established by the City Purchasing Officer or authorized by the Mayor.

STATE AGENCY. Any 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 government of the state.

STATE PURCHASING CONTRACTS. This term means, but is not limited to, contracts entered into by the Purchasing Division of the General Services Department of the state and the State Purchasing Agent, professional services contracts and contracts for election supplies entered into by the New Mexico Secretary of State, and State Highway Department contracts.

USER. A city department or unit for which goods, services or construction are purchased.
('74 Code, § 5-7-3) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 4-2003)

§ 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 the State Purchasing Agent or any public governmental agency in obtaining contracts or price agreements for capital items and such contracts or agreed prices shall apply to purchase orders subsequently issued under the agreement.

(D) (1) The Central Purchasing Office, shall annually adjust the monetary limits contained in §§ 5-5-10(B),(D),(E) and 5-5-15.

(2) The adjustment shall be a percentage increase in the monetary limits equivalent to the average percentage increase in the consumer price index for the period since the preceding adjustment in the monetary limits. All adjustments will be rounded to the nearest $500.

(E) The Central Purchasing Office shall make quarterly reports to the City Council:

(1) Summarizing all transactions in excess of $10,000 (excluding noncompetitive disbursements) authorized under division (C) of § 5-5-10; and

(2) Identifying all contracts and subcontracts for professional/technical services for the reporting period.

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

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

(A) As needed, the City Purchasing Officer shall select individuals to comprise an ad hoc committee called the "City Purchasing Standards and Specifications Committee." The Committee shall consist of five voting members selected by the City Purchasing Officer from a standing list maintained by the Central Purchasing Office of city employees and others appointed by the Mayor. 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. 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)
Penalty, see § 1-1-99

§ 5-5-9 CITY PURCHASING POLICY REVIEW COMMITTEE.

(A) There is created a standing committee for the periodic review of city purchasing procedures called the "Purchasing Policy Review Committee." The Committee shall meet at least annually to consider the need for changes to this article (i.e., the Public Purchases Ordinance) or other purchasing related issues as determined by the City Council, the Mayor, or the City Purchasing Officer. Changes to this article will be reviewed by the Committee prior to final action by the City Council. The Committee shall make its recommendations to the Mayor and the City Council.

(B) The Purchasing Policy Review Committee shall consist of five voting members appointed by the Mayor and approved by the City Council. A minimum of two members shall be city employees. The City Purchasing Officer shall be Chairman and an ex officio non-voting member of the Committee. Additional members shall be appointed by the Mayor and shall serve for a term of two years. Members may be reappointed to additional one year terms. The City Purchasing Officer shall promulgate rules and regulations for the conduct of business by the Committee which shall be approved by the members. In all other respects, the Committee shall be subject to the requirements of §§ 2-6-1-1 et seq.

(C) (1) The Purchasing Policy Review Committee shall review the following matters with regard to the city's purchasing practices:

(a) Emergency purchases of goods and services without the normal competitive sealed bids, proposals, or quotations, to determine whether such actions were warranted by "urgent and compelling reasons."

(b) Purchases of goods, services, and construction by city departments through an existing government contract with a federal or state public governmental agency, to determine whether this practice was in the best interest of the city.

(c) Sole source purchases, to determine whether the absence of competitive purchasing was warranted by circumstances.

(d) Contracts entered into by the Mayor for professional/technical services for which competitive sealed proposals were deemed to be "inappropriate," to determine whether this practice was in the best interest of the city.

(e) Purchases of relatively standardized capital items to identify goods which may be acquired through continuing contracts with vendors in order to reduce acquisition and maintenance costs for the city.

(2) These issues shall be addressed by the Purchasing Policy Review Committee and included in an annual report to be submitted to the City Council.
('74 Code, § 5-7-9) (Ord. 6-1991; Am. Ord. 30-1998)

§ 5-5-10 PROCUREMENT REQUIREMENTS; REJECTION OF OFFERS.

Except as otherwise provided by law, all purchases of goods, services and construction shall be made in accordance with the following provisions:

(A) *Small purchases.*

(1) The City Purchasing Officer shall establish regulations for the purchase of goods and

services which shall be considered "small purchases," allowable without prior authorization from the Central Purchasing Office. The monetary limit of small purchases, the "Small Purchase Order limit," shall be set by the City Purchasing Officer by written notice to the Users, but shall not be less than $250 and not more than $1,000.

(2) Petty cash purchases of $100 or less may be made without a purchase order at the best obtainable price by authorized individuals and within the regulations established by the City Purchasing Officer.

(B) *Purchases by quotation.* Purchases of goods, services and construction may be made by the Central Purchasing Office by requests for quotation in accordance with the following provisions:

(1) (a) A single purchase involving the expenditure of more than the limit set for "Small Purchase Orders," as provided in division (A) of this section, but not more than $10,000, may be made after requesting three oral quotations. Purchases shall be made from the responsible offeror submitting the lowest responsive offer. If fewer than three responsive offers are obtainable, the purchase may be made at the best documented obtainable price. In this circumstance, a memo shall be written to the Purchasing Officer describing the steps taken to obtain oral quotations, which memo shall be retained as part of the procurement file.

(b) Quotations for the purchase of goods or services involving the expenditure of not more than $10,000 shall be obtained only from businesses located within the Greater Albuquerque Metropolitan Area, if there are three or more businesses within those boundaries which provide the goods, services or construction. Award may be made only to the responsible offeror(s) submitting the lowest responsive offer(s), provided the prices offered are comparable to those available on the open market.

(2) Separate purchases of the same or similar goods or services from the same or different businesses at or about the same time shall be considered a single purchase for purposes of this section.

(C) *Competitive sealed bids.*

(1) All purchases of goods, services, and construction in excess of $10,000 shall be made by competitive sealed bid except as otherwise authorized by this article.

(2) Purchases by competitive sealed bid shall be made by a request for bids, in accordance with the provisions set out in § 5-5-12, notice of procurements or § 5-5-11, capital projects, whichever applies. In addition, the following provisions shall apply:

(a) Offers shall be publicly opened according to such procedures as may be adopted by the Central Purchasing Office or CIP.

(b) 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.

(c) A contract may be awarded only to the responsible offeror(s) with the lowest responsive offer to the request for bids.

(d) The Central Purchasing Office or CIP may accept a lower 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.

(e) If any responsive offer for services submitted by a responsible offeror is the same as or within 1%, but no more than $500, of the lowest responsive offer submitted by a responsible offeror, and all other terms are equal, the Central Purchasing Office shall notify the User, who shall be given the option of selecting the offeror to whom the award will be given. In cases where the User wishes to exercise this option, a written justification must be submitted to the Central Purchasing Office and be approved by the City Purchasing Officer.

(f) Separate purchases of the same or similar goods, services or construction from the same or different businesses at or about the same time shall be considered a single purchase for purposes of this section.

(D) *Purchases of professional/technical services by contract.*

(1) Purchases of professional/technical services of $55,000 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; or signed by the CIP Official for such contracts processed through CIP. All contracts shall be reviewed for legal sufficiency.

(2) Contracts for purchases of professional/technical services with public governmental agencies are exempt from competitive solicitation as provided in § 5-5-20 below, but if such a contract exceeds $25,000 a determination shall be made, in accordance with a method prescribed by the Purchasing Rules and Regulations, or approved by the City Purchasing Officer, whether a competitive market exists for the purchase of such services. If a competitive market exists, such contract shall be awarded following a competitive solicitation.

(E) *Competitive sealed proposals.*

(1) Purchases of goods, services or construction may be made by competitive sealed proposals if the use of competitive sealed bids is either not practicable or not advantageous to the city, as determined by the City Purchasing Officer or the CIP Official, for the purchase of goods, services, or construction. Factors which may, among others, be considered in the determination are:

(a) Specifications cannot be adequately prepared that permit the award on the basis of the lowest evaluated bid price;

(b) The use of proposals would promote innovation, the use of state of the art technology and overall efficiencies to the benefit of the city;

(c) Evaluation of responsive offers is dependent on levels of performance, expertise, financial capability or other criteria and cannot be based solely on lowest price alone.

(2) Purchases by competitive sealed proposals shall be made by a requests for proposals, in accordance with the provisions set out in § 5-5-12, notice of procurements, or § 5-5-11, capital projects, whichever applies. In addition, the following provisions shall apply:

(a) The request for proposals shall include a weighted scale to indicate the relative importance of evaluation factors to be used in the scoring of proposals. Pricing, revenues or other cost-related items will be a weighted factor in scoring the proposals. Evaluation factors shall be developed by the users according to their needs in conjunction with the Central Purchasing Office or CIP.

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

(c) During the evaluation of proposals, and until approval of the Recommendation of Award by the Mayor, the contents of proposals may not be disclosed to any persons other than the members of the ad hoc advisory committee or its advisors. 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 request for proposals may not be disclosed until after approval by the Mayor of the Recommendation of Award for the second RFP, or cancellation of the RFP.

(d) As part of the evaluation of the ad hoc advisory committee, 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. Any discussions with finalists may not disclose any information derived from proposals submitted by competing offerors.

(e) On the basis of the weighted evaluation of the proposals offered, the committee shall submit to the Mayor a list of the top three or more proposals in the order in which they are recommended. A written explanation of the reasons for selection shall be prepared and kept as a public record.

(f) If any contract to be awarded is for professional/technical services in excess of $55,000, the Mayor shall submit the committee's list to the City Council, indicating the order in which the proposals are recommended by the Mayor, if different from the committee's recommendations, and the reasons therefor. Any legal contract which may eventually be compensated in excess of $55,000 shall be submitted for Council for approval. The Council discourages the practice of executing an initial legal contract for an amount under $55,000 without Council approval, then increasing the contract amount through supplements, even if those supplements require Council approval. Pursuant to this policy, the Legal Department shall provide a written estimate to the Purchasing Officer of the total cost of the legal services for the case or

cases covered in each contract which shall become part of the contract documentation. The City Council shall approve or disapprove the list of recommended proposals submitted by the Mayor and, in the event of disapproval, give reasons therefor. If appropriate, considering the City Council's reasons for rejection, the Mayor may submit a revised list of recommended proposals to the City Council. If the award of a request for proposals has been approved by the City Council, the negotiated contract resulting from that RFP and any supplements authorized by the RFP do not require an additional approval by the Council, pursuant to § 5-5-19(A), approval of purchases on the condition that the dollar amounts of base contract and the supplements have been identified in the formal materials presented to Council for approval, or within 10% of the base amount.

(g) In the case of all other contracts to be awarded pursuant to a request for proposals, the committee's list of recommended proposals shall be approved or disapproved by the Mayor. If the list is disapproved by the Mayor, he may revise the list or return the list to the committee for additional review. In either case, the Mayor shall provide the committee with his reasons in writing for revision or disapproval of the list.

(h) Negotiations of price or other contract terms may be conducted once a Recommendation of Award has been approved by the Mayor, as described above. If only one contract will be awarded, negotiations shall begin with the offeror whose proposal appears first on the approved list and if unsuccessful, as determined by the City Purchasing Officer, may then be conducted with the next offeror on the list. If more than one contract will be awarded, simultaneous negotiations may be conducted with more than one offeror on the list.

(i) A request for proposals for the City Council for professional/technical services to facilitate its legislative function shall be prepared and submitted by the City Council in accordance with the provisions of this article, with the exception that proposals submitted shall be evaluated and awarded by the City Council, without a recommendation from the Mayor or appointment of an ad hoc advisory committee.

(3) Requests for proposals shall be required for:

(a) The purchase of professional/ technical services other than legal services by an attorney involving an amount exceeding $55,000.

(b) The purchase of gas, electricity, water, telephone, cable TV, sewer or refuse collection services and goods, if competition for the provision of such services and goods is available, and if the estimated purchase amount is in excess of $25,000, or the estimated annual lease payment is in excess of $10,000.

(c) The selection of the city's Agent of Record who shall be 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.

(d) Concession contracts which are reasonably estimated to generate revenues to the city, over a 12-month period, in excess of $55,000 if there is competition for use of the city property. In order to determine whether there may be competition, the city shall provide notice of the available concession contract through a newspaper of general circulation and otherwise inform potentially interested parties.

(F) *Sole source purchases.* When the city requires goods or services which are produced by only one manufacturer and the estimated cost of the purchase exceeds $10,000, the Central Purchasing Office may specify such manufacturer's make or brand in the solicitation and shall obtain competitive offers from authorized dealers or distributors of such manufacturer. If such manufacturer is the sole source of supply, regardless of the estimated cost of the purchase, the Central Purchasing Office is authorized to negotiate a contract with the manufacturer or its authorized representative at prices and on terms most advantageous to the City. The Central Purchasing Office shall retain documentation supporting the fairness and reasonableness of the price and validity of the sole source.

(G) *Special purchase methods.* The following purchase methods may be utilized for the purchase of goods, services and construction in lieu of the purchase methods required by divisions (B)and (C) of this section:

(1) Government Contracts. Goods, services or construction may be purchased from a business, or authorized representative, under contract with a public governmental 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 must be from:

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

2. A current State Purchasing Contract which has been awarded after notice and publication pursuant to the requirements of the New Mexico Procurement Code, §§ 13-1-28 et seq. NMSA 1978; or

3. A valid contract for the purchase of goods, services or construction which has been awarded by a public governmental agency after notice and publication pursuant to 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, a copy of each contract relied upon to make a purchase under this subsection without seeking competitive offers.

(2) Rapid Procurement. Purchases of perishable food products and other 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 the oral or written quotation procedures approved by the City Purchasing Officer or the CIP Official, as appropriate. Complete documentation of all proposed prices submitted by offerors must be maintained in the Central Purchasing Office, or CIP, for public inspection.

(3) 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 may purchase goods, services and construction by order without competitive sealed bids, proposals, or quotations. Emergency purchases in excess of a cumulative amount of $55,000 for professional/technical services shall be approved by the President of the City Council, or his designee. Approval by the Council President or his designee will be made with regard to the declaration of an emergency. Emergency purchases in excess of $10,000 shall be reported to the City Council in the quarterly purchasing reports addressed in § 5-5-7E. Complete documentation of all proposed prices submitted by offerors must be maintained in the Central Purchasing Office for public inspection.

(4) Insurance.

(a) Insurance coverage, other than employee health care, for the city 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 competitively in accordance with the procurement methods authorized by this section.

(5) 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 sealed proposals pursuant to § 5-5-10(E). For each appraisal project, oral or written quotes must be obtained from three or more of the appraisers 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 quotations must be documented in writing and maintained in the procurement file. The Purchasing Officer shall establish maximum hourly charges for appraisal services. The quote process shall apply to updates for an appraisal.

(6) Attorney services. Every four years a competitive solicitation shall be issued 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. The City Attorney or Risk Manager may contract with the attorneys listed so long as the specific contract is approved by the City Council if the ultimate dollar amount of the legal work in the case is expected to exceed $55,000.

(H) *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 all offers received are rejected, then a revised competitive solicitation may be issued. If the offers received in response to this second solicitation are unacceptable, or if no bids are received, the Central Purchasing Office or CIP may purchase the required goods or service in the open market at the best obtainable price, or readvertise the request for bids or proposals.

(I) *Cost plus construction contracts.* The city shall not enter into any contract for construction which is a cost-plus-percentage-of-cost contract, unless division (G)(3) of this section applies.
('74 Code, § 5-7-10) (Ord. 6-1991; Am. Ord. 16-1994; Am. Ord. 30-1998; Am. Ord. 51-1999) Penalty, see § 1-1-99

§ 5-5-11 CAPITAL PROJECTS.

(A) The purchase of goods, services and construction for capital projects, which are not procured through the Central Purchasing Office, shall be procured through the CIP, in accordance with the "CIP Regulations Governing the Award and Rejection of Bids and Debarment of Contractors for Public Works Projects of the City of Albuquerque" promulgated by the Mayor, effective July 8, 1988, and as amended May 19, 1989.

(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) Section 5-5-10(G)(3) of this article applies.

(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) Penalty, see § 1-1-99

§ 5-5-12 NOTICE OF PROCUREMENTS.

All purchases of goods and services by competitive sealed bids or proposals shall be made in accordance with the following provisions:

(A) Such purchases shall be made only after notice that sealed offers will be received is furnished to the public by means of publication, mailing, and posting through an electronic medium which is accessible to the general public. The notice shall specify the time and place when offers will be received for the proposed purchase.

(B) Notice shall also be published at least once in a newspaper of at least weekly general and/or business circulation, not less than ten days before the closing date for receipt of offers. These requirements of notice are in addition to any other procedure which may be adopted by the Central Purchasing Office to notify prospective offerors that offers are requested.

(C) Notices of proposed purchases involving sealed offers for the expenditure of more than $10,000 shall also be posted on a public bulletin board of the Central Purchasing Office for not less than three business days in advance of such purchase.

(D) Fees may be set and collected by the Central Purchasing Office for providing notice that sealed offers will be received through direct mailings or electronic medium and for receipt 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)
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, as defined in this article, agreements with other public governmental agencies, and real property agreements. The Mayor may delegate this signature authority by executive instruction.

(B) *Initiation by the Council.* The Council may enter into agreements pursuant to its legislative function as provided in § 5-5-10(D)(1) and its Rules of Procedure.
(Ord. 30-1998)

§ 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.

Any lease agreement for personal property involving the expenditure of $10,000 or more annually shall be subject to § 5-5-10(C) or (E), except the lease of personal property in those instances where the property is designated to match other property in use by the user or where a unique or novel product application is required to be used in the public interest, which shall include but not be limited to the leasing of computers and related equipment.
('74 Code, § 5-7-15) (Ord. 6-1991; Am. Ord. 30-1998)
Penalty, see § 1-1-99

§ 5-5-16 DISPOSITION OF SURPLUS OR UNCLAIMED PERSONAL PROPERTY AND SCRAP MATERIAL.

(A) Personal property which is recorded as a city asset may not be sold unless it is declared surplus property by the City Purchasing Officer, in accordance with applicable rules and regulations.

(B) Surplus or unclaimed personal property of a value of less than $1,000 may be sold by bid or auction to the general public, to another governmental

agency at a discounted price, or to a non-profit organization registered with the State of New Mexico at fair market value in accordance with procedures established by the City Purchasing Officer.

(C) Surplus or unclaimed personal property of a value of more than $1,000 shall be sold either at public auction conducted by a licensed auctioneer or by sealed bids. The terms of sale will include but are not limited to:

(1) For cash, cashier's check, certified check, or letter of credit;

(2) Sold to the highest bidder "as is, where is";

(3) Full settlement to be made prior to the removal of any item. Upon settlement, the item becomes the responsibility of the purchaser;

(4) Any or all bids may be rejected; and

(5) A minimum acceptable sale price may be established for any item of surplus or unclaimed property and if established, shall be stated in the notice of sale.

(D) Surplus and unclaimed personal property of any value may be transferred to another city agency in accordance with established procedures.

(E) Scrap material, other than personal property which is recorded as a city asset, may be disposed of by the department which purchased the material with the prior written approval of the Department Director. For purposes of this section, scrap material refers to material or equipment which has no monetary or resale value, or which is non-functional and the repair of which would be equal to or more than its market value. Scrap material does not include any material or equipment which retains a salvage value such as copper, aluminum or other recyclable materials, as determined by the City Purchasing Officer. Scrap material consisting of personal property which is recorded as a city asset shall be disposed of following an evaluation by the City Purchasing Officer to determine the correct method of disposal.

(F) The sale of recyclable material shall be exempt from all other sections of this article. The method of competitive sale of recyclable materials will be determined by the City Purchasing Officer and may include, but is not limited to, soliciting oral quotes from offerors or by the establishment of non-exclusive contracts with offerors provided such contracts will result in obtaining the best price at the time of sale. Oral quotations and prices obtained at the time of sale through non-exclusive contracts must be documented in writing and maintained in the procurement file.

(G) If a minimum acceptable sale price has been established for an item of surplus personal property and no bid equaling or exceeding this amount has been received, then the Central Purchasing Office may negotiate the sale of such item at a sale price equaling or exceeding the minimum acceptable sale price.
('74 Code, § 5-7-16) (Ord. 6-1991; Am. Ord. 30-1998)
Penalty, see § 1-1-99
Cross-reference:
Unclaimed personal property, see §§ 5-4-1 et seq.

§ 5-5-17 RESIDENT AND LOCAL PREFERENCES.

(A) *Application of Preferences.* A local or resident preference shall be applied to all requests for bids or requests for proposals for the purchase of goods, services or construction or for the award of concession contracts, but shall not be applied to any solicitation for a purchase or concession contract in excess of $5,000,000, for a federal aid construction project, or when the expenditure of federal funds designated for the contract is involved.

(1) The Resident Contractor Preference shall be applied to all requests for bids or requests for proposals for the award of construction. The local preference shall not be applied to such solicitations.

(2) If, in response to a request for bids or request for proposals, one or more offers have been received from offerors eligible for the local preference, the Resident Business Preference shall not be applied.

(B) *Definitions.*

(1) ***LOCAL BUSINESS*** shall mean a business that maintains its principal office and place of business in the Greater Albuquerque Metropolitan Area, defined in Section 3 of this Article, and, if applicable, meets the following requirements:

(a) If a corporation, it shall be incorporated in New Mexico; or

(b) If a partnership, general or limited, or other legal entity, it shall be registered as a New Mexico entity with the New Mexico Public Regulation Commission, if applicable.

(2) ***PREFERENCE FACTOR*** shall mean .95 when applied to bids, which factor shall be multiplied times the amount of the eligible bid, and shall mean 1.05 when applied to proposals, and shall be multiplied times the total score given the eligible proposal during evaluation.

(3) ***RESIDENT CONTRACTOR PREFERENCE*** shall mean the preference described in Section 13-4-2 NMSA 1978.

(4) ***RESIDENT BUSINESS PREFERENCE*** shall mean the preference described in Section 13-1-21 NMSA 1978.

(C) *Local Preference.* When offers are received in response to a request for bids or proposals and one or more offers qualifies for a local preference, as described below, the amount bid or the proposal score of all eligible offers shall be multiplied by the appropriate Preference Factor before determination of the recommended offeror for the solicitation.

(D) *Resident Preferences.*

(1) When offers are received in response to a request for bids or proposals for construction, the Resident Contractor Preference shall be applied in accordance with Section 13-4-2 NMSA 1978, as currently enacted or hereafter amended.

(2) When offers are received in response to a request for bids or proposals for award of other types of contract, and no offers are received that are eligible for the local preference, the Resident Business Preference shall be applied in accordance with Section 13-1-21 NMSA 1978, as currently enacted or hereafter amended.

(E) *Qualification for Local Preference.* The Central Purchasing Office shall prepare a form to be completed by those offerors to a solicitation meeting the definition of a Local Business as set out above. To qualify for the preference, the offeror must submit the completed form containing verifiable information certified by the offeror with its offer. If necessary the Central Purchasing Office may seek additional information or proof to verify the offeror's eligibility.

(F) *Limitations.* No offeror shall receive more than a 5% preference pursuant to this section on any one offer submitted. Only the principal offeror or one of the principal offerors, not a subcontractor, may qualify an offer for the preference.
('74 Code, § 5-7-17) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 33-2002) Penalty, see § 1-1-99

§ 5-5-18 RECYCLED PRODUCTS PREFERENCE.

(A) The Central Purchasing Office shall, whenever the cost differential makes it prudent, purchase recycled goods the composition of which makes them a "recycled product" as defined by federal regulation. For the purposes of this section ***PRUDENT*** means that additional cost to the city will be modest.

(B) The City Purchasing Officer shall publish and update on a quarterly basis a standing list of products for which recycled products are acceptable. Offers submitted which meet or exceed federal guidelines for recycled products and are identified on the acceptable recycled products list will be afforded a preference over non-recycled products. This preference will be in addition to any resident preference for which the offeror may be eligible.

(C) The percentage amounts of various recycled products' preference will be established annually by the City Purchasing Officer and approved by the City Council, but shall not be less than 20%.

(D) This section shall not apply when the expenditure involves federal funds and the grant of such funds prohibits the application of this preference or establishes a higher preference. In such case, prevailing federal guidelines will be followed.
('74 Code, § 5-7-18) (Ord. 6-1991; Am. Ord. 30-1998) Penalty, see § 1-1-99

§ 5-5-19 APPROVAL OF PURCHASES.

(A) The following purchases 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; and

(3) The following contracts for professional/technical services, except as otherwise provided by ordinance:

(a) A contract for any amount if entered into by the City Council to facilitate its legislative functions as provided in the City Charter and the City Council Rules of Procedure;

(b) A contract for legal services by an attorney, which exceeds $55,000 or is expected, at the time of contracting, to exceed $55,000 for all services to be performed under the contract;

(c) Any social services contract entered into after July 1, 2001 where the total amount of funds encumbered for that contract in a single fiscal year exceeds $100,000;

(d) Any social services contract entered into after July 1, 2001 with a single agency where the total amount of funds encumbered in a single fiscal year for social services contracts with that agency exceeds $120,000;

(e) A contract for all other professional/technical services for an amount exceeding $55,000;

(f) An amendment to a contract where the total amount of funds encumbered for that contract in a single fiscal year exceeds $55,000; and

(g) Any contract with a single business where the total amount of funds encumbered in a single fiscal year for professional/technical contracts with that business exceeds $75,000.

(4) Concession contracts expected to generate revenues to the City in excess of $55,000 over a 12-month period. The Mayor shall provide the expected contract amount of all contracts submitted to Council for approval and of any requested extensions of these contracts.

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

(B) The following purchases must be approved by the Mayor:

(1) Contracts for professional/technical services and rapid procurement of goods, services and construction as specified in § 5-5-10(G)(2) of this article involving an amount in excess of $55,000, notwithstanding division (A)(3) of this section, when the Mayor determines that urgent and compelling reasons require emergency professional/technical services; provided that in the case of emergency procurement of professional/technical services 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) Concession contracts where the amount of revenues due to the city over a 12 month period are reasonably estimated to exceed $25,000 but not be greater than $55,000.

(C) All other purchases shall be approved by the City Purchasing Officer or a designated representative.
('74 Code, § 5-7-19) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 51-1999; Am. Ord. 12-2001; Am. Ord. 14-2001) Penalty, see § 1-1-99

§ 5-5-20 EXEMPTIONS.

(A) The following purchases shall be exempt from all sections of this article other than § 5-5-19:

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

(2) Agreements for social services which shall be procured in accordance with written regulations promulgated by the Family & Community Services Department, or a successor agency, and approved by the City Purchasing Officer. At a minimum, these regulations shall include service performance standards which shall be reviewed and revised on a regular basis and services which fail to meet performance standards for two consecutive years shall be subject to the competitive procurement procedures contained in this article;

(3) Leases, exchanges, or purchases of real property;

(4) Purchases of gas, electricity, water, telephone, cable TV, sewer and refuse collection service, but see § 5-5-10(E)(3)(b), which does apply;

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

(6) Purchases of travel by public employees by common carrier or by public conveyance;

(7) Purchases, exchanges, sales, or transportation of animals for the city;

(8) Purchases of surety bonds;

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

(10) 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;

(11) 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;

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

(13) Concession contracts unless such contracts generate revenues to the city, over a 12-month period, in excess of $55,000 of revenues to the city, which will be awarded by competitive sealed proposals as outlined in § 5-5-10(E);

(14) Purchases of computer software, including ancillary services, where such is 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 will include applicable initial and subsequent licensing fees and services to modify or maintain proprietary software, if such services are available from only a single provider;

(15) 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;

(16) Payment for conference registration, membership dues, or any other similar issues which are administrative in nature and are determined to be non-competitive by the City Purchasing Officer;

(17) Purchases, rentals, leases (personal and real property), and professional/technical services contracts necessary for the investigation of criminal activities. The Police Department may purchase such materials and services without quotations, requests for proposals, or bids if such would compromise a criminal 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. All documentation will be maintained by the Police Department and shall be subject to internal audit. Rentals, leases, and professional/technical services will be limited to the term of an investigation; and

(18) Purchases of specialty goods as defined by the City Purchasing Officer, not including sundries, for resale to the general public at a retail business operated by the city.

(B) The following purchases shall be exempt from all competitive requirements of this article other than § 5-5-19:

(1) Agreements for services of dentists, physicians, psychiatrists, psychologists and other medical personnel such as nurses, technicians, etc. so long as these services are provided as individual practitioners and not as a group for defined functions. In specific, the purchases of medical and psychiatric services for jail residents at the Bernalillo County Detention Center or its successor agency shall be subject to the normal purchase of professional/ technical services to manage a medical or psychiatric program and shall not be exempt.

(2) Agreements for services of attorneys other than bond attorneys, and legal assistants, except as provided in § 5-5-10(G)(6).

(3) Agreements for the services of technical experts and expert witnesses hired in anticipation of litigation, claims, or administrative actions.

(4) Agreements for services of lobbyists.

(5) Agreements for services of a sports professional or team.
('74 Code, § 5-7-20) (Ord. 6-1991; Am. Ord. 30-1998; Am. Ord. 4-2003) 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) *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) Penalty, see § 1-1-99

§ 5-5-23 PROTEST.

(A) *Right to protest.* Any offeror who is aggrieved in connection with a competitive solicitation or recommendation of award of a contract may protest to the City Purchasing Officer. The protest must be submitted in writing by the deadline specified in the solicitation documents or recommendation of award, but in no event later than 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. A protest of the specifications of a competitive solicitation must be made within the deadline specified and prior to the deadline for receipt of offers.

(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.
(Ord. 30-1998)

§ 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 a fair hearing prior to suspension or debarment.
(Ord. 30-1998)