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Apache Junction, AZ Code of Ordinances

ARTICLE 3-7: PROCUREMENT PROCEDURE

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§ 3-7-1 DEFINITIONS.

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

CHANGE ORDER. A written order signed by an authorized agent of the city which directs the contractor to make changes that are authorized by the changes clause of the original contract.

CONSTRUCTION. The process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements to any public real property; construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or public real property.

CONTRACT. A written agreement between the city and another party for the procurement of materials, supplies or services; the term includes but is not limited to: contracts of a fixed price, cost, cost plus, fixed fee; contracts providing for the issuance of job tasks, leases and rentals, excluding real estate; maintenance agreements; letter contracts; and purchase orders.

LOWEST RESPONSIVE AND RESPONSIBLE BIDDERS. A person, firm or other entity that submits a bid:

- (1) Which is the least amount compared to other bidders;
- (2) That responds to the invitation for bids in all material respects; and
- (3) Which demonstrates the submitting party has the wherewithal to perform the work per the plans and specifications within the contract time, as determined by experience, skill, financial strength, integrity and experience record with the city and/or other municipalities.

MANAGER OR HIS OR HER DESIGNEE. Person(s) the City Manager selects in writing to implement or administer the provisions of this article.

NOTICE INVITING BIDS. All documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed herein, including request for proposals and request for statement of qualifications.

PROCUREMENT. The purchasing, sale of, renting, leasing or otherwise obtaining of any materials, supplies or services.

SERVICES. The furnishing of labor, time or effort.

(Prior Code, § 3-7-1)

§ 3-7-2 PROCUREMENTS OF \$25,000 OR MORE.

Except as otherwise provided herein, purchases, leases, rentals and contracts for supplies, services, equipment and materials and the sale of personal property of \$25,000 or more in estimated value, shall be made by written contract with the lowest responsive and responsible bidder, pursuant to the following provisions.

(A) *Notice inviting bids.* A notice inviting bids or request for proposals/request for statement of qualifications shall:

- (1) Include a description of the articles to be purchased or sold;
- (2) State where notice inviting bids/request for proposals/request for statement of qualifications forms and specifications may be obtained; and
- (3) State the date, time and place for opening bids. A notice inviting bids/request for proposals/request for statement of qualifications shall be published at least 10 calendar days before the date of opening the bids. Pursuant to A.R.S. § 39-204, publication should be made in a newspaper as follows:
 - (a) If the newspaper is a weekly, publication must occur once each week for 2 consecutive weeks; or
 - (b) If the newspaper is a daily, publication shall be made on 4 consecutive days.

(B) *Bidder's security.* When deemed necessary by the City Manager or his or her designee, bidder's security may be prescribed in the notice inviting bids. Unsuccessful bidders shall be entitled to returned bid security. A successful bidder or request for proposals/request for statement of qualifications bidder shall forfeit their bid security upon refusal or failure to execute the contract within the time specified,

dating from award of contract date, unless the city is responsible for the delay. The Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsive and responsible bidder.

(C) *Bid opening procedure.* Sealed bids shall be submitted to the City Manager's designee and the bid number and project title shall be reflected on the envelope. Bids shall be opened in public at the date, time and place stated in the public notice. A tabulation of all bids received shall be available to the public for inspection during regular business hours for a period of time as prescribed under Arizona law. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the best interest of the city or fair competition shall be permitted. Late bids will be returned unopened to bidders who fail to file their bids in a timely manner.

(D) *Bid rejection.* At its discretion, the Council may reject any and all bids.

(E) *Award of contracts.* Based on the bid opening, Council shall award the contract to the lowest responsive and responsible bidder for purchases, leases or rental contracts for supplies, services, equipment or sale of personal property, or professional services which are valued at \$25,000 or more. In awarding the contract, Council shall be advised of and shall consider the advantages or disadvantages of the proposed purchases, leases, rentals, contracts or sales as presented by the City Manager or his or her designee.

(F) *Payment and performance bonds.* The Council shall have the authority to require a payment and performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the city, and if the Council requires a payment and performance bond, the form and amount shall be described in the notice inviting bids/request for proposals/request for statement of qualifications. Bonding shall not be required for contracts under \$25,000.

(Prior Code, § 3-7-2)

§ 3-7-3 PROCUREMENTS LESS THAN \$25,000 BUT AT LEAST \$1,000.

Purchases, leases, rentals and contracts for supplies, services, equipment, materials, professional services and the sale of personal property of an estimated value in the amount of \$1,000 or more but less than \$25,000, may be made by the City Manager or his or her designee in the open market by observing the procedure for inviting and publishing bids with the following exception: open market purchases shall, wherever possible, be based on at least 3 written bids, and shall be awarded to the lowest responsive and responsible bidder.

(Prior Code, § 3-7-3)

§ 3-7-4 EXEMPTIONS.

(A) *Professional services.* Unless otherwise required by Council, provisions of this article shall not apply to the following types of professional services: appraisal, architectural, certified public accountant, clergy, dental, employment, engineering, financial, legal, medical, nursing, physician, psychologist, surveying, technological, veterinarian and any healthcare related affiliations.

(B) *License and maintenance agreements.* Unless otherwise required by Council, license and maintenance agreements are exempted from this article.

(C) *Materials and equipment valued less than \$1,000.* The provisions of this article do not apply to materials and equipment valued at less than \$1,000.

(D) *Library materials exemption.* The City of Apache Junction Public Library shall not be required to use the competitive bidding process as set forth in this article for the purchases of audiovisual materials, books, periodicals and subscriptions.

(E) *Public works projects exemption.*

(1) *Public buildings.* Any building, structure, addition or alteration thereto contemplated on city property constructed with the use of the city's regularly employed personnel or contractors in an amount up to and including \$100,000 (excluding materials and equipment previously acquired by bid) does not require Mayor and Council approval.

(2) *Public infrastructure.* Any street, road, bridge, water or sewer work, other than a water or sewer treatment plant or building, constructed with the use of the city's regularly employed personnel or contractors in an amount up to and including \$100,000 (excluding materials and equipment previously acquired by bid) does not require Mayor and Council approval.

(3) *Public art.* Any painting, sculpture, mural, monument, memorial, fountain, civic statuary, that has been planned and executed with the specific intention of being sited or staged in the physical public domain including on any city property and on any city easements, accessible to the viewing public for the purpose of defining a sense of place for residents and/or to enhance tourism and historical and cultural awareness of the community.

(F) *Single source procurement.* Materials, supplies and services may be procured without competition if the City Manager or his or her designee determines the needed materials, supplies or services are available from only 1 source and only when proven by city staff that the advantages and overriding considerations are paramount to the city's interests.

(G) *Emergency purchases.* The City Manager or his or her designee may authorize city staff to make emergency purchases without competition if:

(1) There exists a threat to public health, welfare or safety (including but not limited to damaged city property causing such threat without repair, replacement or substitute);

(2) If a situation exists which makes compliance with the procurement process contrary to the public interest;

(3) There is immediate need to prepare for national or local defense or assistance;

(4) There is a breakdown in machinery or in an essential service which requires the immediate purchase of equipment, supplies or services to protect the public health, welfare or safety; or

(5) An essential departmental operation effecting the public health, welfare and safety would be greatly hampered if the prescribed procurement procedure would cause an undue delay in obtaining the needed item or service.

(H) *Alternative bid procedure.* When deemed to be in the best interest of the city, supplies, materials

and equipment and services not otherwise exempted herein, may be purchased pursuant to specifications, solicitation or contracts issued by other local, state or federal governmental entities or through the state bid procurement lists or by quasi governmental units or school districts which have used procurement procedures that are equal to or stricter than the provisions set forth herein. In such instances, the requirement for the city to obtain sealed or written bids or to contact prospective suppliers from bidder lists or to publish or post notices regarding bids is not required.

(Prior Code, § 3-7-4) (Am. Ord. 1386, passed 11-6-2012)

§ 3-7-5 BID PROTESTS.

Any aggrieved person may protest any aspect of any bid solicitation by filing such protest at the City Clerk's office within 5 calendar days after bid opening and shall include the following: name and address of protestor, bid description, grounds for protest to include all evidence, exhibits or documents substantiating the protest. The City Clerk shall within 2 business days after receipt of the protest, forward such protest to the City Manager, who shall notify the protestor or other interested parties of the time and place set for hearing on the protest. Interested parties may also file position statements and may participate in the hearing. The City Manager or his or her designee shall conduct the hearing within 5 calendar days after sending the notice of the hearing to the protestor and/or interested parties, absent any stipulated continuances. The City Manager or his or her designee, shall within 5 business days after the hearing has been completed, issue a written opinion and send it by first class U.S. certified mail to the protestor and all interested parties. The decision shall be final. No protest may be required after award of contract by Council.

(Prior Code, § 3-7-5)

§ 3-7-6 DISPOSAL OF PROPERTY.

City staff shall follow the provisions of state law with regard to the sale, lease, exchange, trade or other disposal of surplus or obsolete city personal property. The city may also elect to donate any surplus or obsolete city personal property to a governmental, non-profit or charitable organization, without public notice, as determined by the City Manager or his or her designee.

(Prior Code, § 3-7-6)

§ 3-7-7 BID DISQUALIFICATION.

(A) *Grounds.* The City Manager or his or her designee may disqualify any bidder from consideration of award of bid for materials, supplies or services for up to 24 months. The following factors may be taken into consideration in making this determination:

(1) Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of or obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction of any person or any subsidiary or affiliate of any person under any federal or state statute for theft, embezzlement, fraudulent schemes and artifices and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records recovering stolen property or other offenses indicating lack of business integrity or honesty which affects the responsibility as a city contractor;

(3) Conviction or civil judgment finding a violation of any person or any subsidiary or affiliate of any person under state or antitrust statutes;

(4) Failure to pass any clearance or applicable background investigation in bids involving sensitive materials or tasks involving public safety;

(5) Failure to pay any transaction privilege taxes resulting from income received on public contracts; and

(6) Violation of contract provisions of a character which are deemed to be so serious as to justify disqualification, such as:

(a) Knowingly failing without good cause to perform in accordance with the specifications or within the time limits provided in the contract; and

(b) Failure to perform or unsatisfactorily perform in accordance with the terms of contract, except that failure to perform or unsatisfactorily perform caused by acts beyond the contract of the contractor shall not be considered a basis.

(B) The City Manager or his or her designee shall send written notice of the proposed disqualification, including the grounds and period of proposed disqualification to the disqualified party by first class U.S. certified mail from the address on the bid. The party shall have a right to a hearing before the City Manager or his or her designee if an appeal is filed within 5 business days after the notice is sent. The City Manager or his or her designee shall provide notice of the hearing date and time to the disqualified party within 5 business days after hearing of a hearing request. The party shall have the opportunity to present evidence rebutting the reasons for disqualification. The City Manager or his or her designee shall decide the matter within 5 business days of the hearing and shall notify the disqualified party within an additional 5-business day period. The decision shall be final, subject only to judicial appeal pursuant to A.R.S. Title 12.

(Prior Code, § 3-7-7)

§ 3-7-8 CHANGE ORDERS.

The City Manager or his or her designee may authorize change orders to any contract if the amount does not exceed 10% of the cumulative amount of the contract and as long as the cumulative amount of the change order plus the original contract amount is less than \$25,000. The Council may exercise its authority to approve any change orders in any amount substantiated by staff.

(Prior Code, § 3-7-8)

§ 3-7-9 CONFLICTS OF INTEREST AND PENALTIES.

No city employee shall participate directly or indirectly in any procurement when the employee has a conflict of interest as defined in A.R.S. § 38-503. In addition, any person who violates this article could be subject to criminal penalties set forth in Vol. I, Article 1-8 of the city code, as well as criminal and civil penalties set forth under state law.

(Prior Code, § 3-7-9)

§ 3-7-10 ADMINISTRATIVE PROCEDURES.

(A) The City Manager or his or her designee may promulgate administrative rules and regulations which more specifically delineates the responsibilities of procurement procedures pursuant to this article.

(B) The code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof.

(Prior Code, § 3-7-10)