

2018 Amendments to Apache Junction City Code, Vol. I, Chapter 3:
Administration, Article 3-7: Procurement Procedure

ARTICLE 3-7: PROCUREMENT PROCEDURE

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§ 3-7-1 PURPOSES.

The purposes of this article are to:

- (A) Establish standard policies and practices for the procurement of supplies, materials, equipment and services on a fiscal year basis for each department per commodity.
- (B) Provide for aid for the procurement of goods and services at the appropriate time, place, quantity, purpose and price to meet the operational requirements of the city.
- (C) Ensure the fair and equitable treatment of all persons who participate in the city procurement system and foster effective broad-based competition.
- (D) Ensure the proper disposal of property, equipment and materials that are no longer of value to the city.

§ 3-7-2 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.

CITY MANAGER OR HIS OR HER DESIGNEE: Person(s) the city manager or city council selects in writing to implement or administer the provisions of this article.

COMMODITY: A marketable item produced to fulfill a need or want and references both goods and services.

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.

FORMAL WRITTEN QUOTE: A hard copy, on official business letterhead and with signature of vendor directed to city staff member.

INFORMAL WRITTEN QUOTE: An email, fax or other hard copy directed to city staff member and fully documented by such staff member.

INVITATION FOR 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.

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; and
- (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 approved or recognized government organizations.

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

SERVICES. The furnishing of labor, time or effort.

TECHNICAL REGISTRANT: A person who provides any of the professional services listed in A.R.S. Title 32, Chapter 1, as amended and includes, but is not limited to, architects, assayers, engineers, geologists, land surveyors and landscape architects.

§ 3-7-3 PROCUREMENTS LESS THAN \$5,000.

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 less than \$5,000, may be made directly by the city manager or his or her designee without quotes.

§ 3-7-4 PROCUREMENTS OF \$5,000 BUT LESS THAN \$10,000.

Purchases, leases, rentals and contracts for supplies, services, equipment, materials, professional services and the sale of personal property of an estimated value of \$5,000 but less than \$10,000, may be made by the city manager or his or her designee by soliciting at least three (3) informal written quotes, and shall be awarded to the lowest responsive and responsible quote.

§ 3-7-5 PROCUREMENTS OF \$10,000 BUT LESS THAN \$50,000.

Purchases, leases, rentals and contracts for supplies, services, equipment, materials, professional services and the sale of personal property of an estimated value of \$10,000 but less than \$50,000, may be made by the city manager or his or her designee by soliciting at least three (3) formal written quotes, and shall be awarded to the lowest responsive and responsible quote.

§ 3-7-6 PROCUREMENTS OF \$50,000 OR MORE.

Purchases, leases, rentals and contracts for supplies, services, equipment, materials, professional services and the sale of personal property of \$50,000 or more in estimated value, shall be made by written contract, approved by the mayor and city council, pursuant to the following provisions:

(A) *Invitation for bids.* An invitation for bids (“IFB”) or request for proposals (“RFP”)/ request for statement of qualifications (“SOQ”) shall:

- (1) Include a description of the articles to be purchased or sold;
- (2) State where IFB/RFP/SOQ forms and specifications may be obtained; and

(3) State the date, time and place for opening bids. An IFB/RFP/SOQ shall be published at least ten (10) calendar days before the date of opening the bids. Pursuant to A.R.S. § 39-204, publication shall be made in a qualified 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.* The bidder's security shall be prescribed in the IFB/RFP/SOQ. Failure to submit security in the amount and the type of security required shall result in the rejection of the response to an IFB/RFP/SOQ. Unsuccessful bidders shall be entitled to returned bid security. A successful bidder of RFP/SOQ 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 or his or her designee and the bid number and project title shall be clearly written on the exterior of 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 shall be returned unopened to bidders who fail to file their bids in a timely manner.

(D) *Bid rejection.* Bids submitted without bid bonds will not be considered and shall be rejected. 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 \$50,000 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, professional services or sales as presented by the city manager or his or her designee.

(F) *Payment and performance bonds.* The city 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. The form for the payment and performance shall be included in the IFB/RFP/SOQs. Bonding shall not be required for contracts under \$50,000.

(G) The contract shall be awarded by written notice to the bidder whose bid conforms in all material respects to requirements and criteria set forth in the IFB/RFP/SOQ.

(1) In the case of an RFP and SOQ, if the construction project exceeds available funds and such bid does not exceed such funds by more than five percent (5%), the city manager or his or her designee may negotiate an adjustment of the bid price with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds.

§ 3-7-7 EXEMPTIONS.

The following services, materials, contracts, and incidents are exempt from this article:

(A) *Professional services.* Administrative or appellate hearing officers, appraisal, architectural, bond and municipal improvement district consulting, certified public accountant, clergy, dental, economic and environmental assessments, educator, employee benefits provider, employment, engineering, entertainers, financial, fireworks, indigent defense attorneys, instructors, interim consulting positions for personnel services, judicial appointments, legal, medical, nursing,

physician, psychologist, senior meal and senior transportation programs, surveying, tax software, technological, title insurance, travel and tourism center or marketing efforts, and veterinarian and any healthcare related affiliations.

(B) *License and maintenance agreements.* License and maintenance agreements, relating to software and tangible public property.

(C) *Materials and equipment valued less than \$5,000.* Materials and equipment valued at less than \$5,000.

(D) *Library materials exemption.* 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.

(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 per project excluding materials and equipment previously acquired by bid.

(3) *Public art.* Any painting, sculpture, mural, monument, memorial, fountain, or 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 or rights-of-way, accessible to the viewing public.

(F) *Sole source procurement.* Materials, supplies and services only if the city manager or his or her designee determines the needed materials, supplies or services are available from only one (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.* Emergency purchases where:

(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) *Competitive purchasing and 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, school districts or special districts which have used procurement procedures that are equal to or stricter than the provisions set forth herein.

(I) *Job-Order-Contracting.* Construction supplies, materials, equipment and labor handled through job-order-contracting construction services procured under A.R.S. § 34-603, *as amended.*

(J) *Development agreements.* Development agreements pursuant to A.R.S. § 9-500.05, except that public infrastructure improvements undertaken by the city through a development agreement with a private entity or organization, shall be subject to the applicable competitive procurement statutes.

§ 3-7-8 BID PROTEST AND APPEAL.

(A) Any aggrieved person may protest any aspect of any bid solicitation by filing such protest at the city clerk's office within five (5) city working 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 two (2) city working days after receipt of the protest, forward such protest to the city manager. The city manager or his or her designee shall, within two (2) city working days, 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 five (5) city working 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 five (5) city working days after the hearing has been completed, issue a written opinion and send it to the protestor and all interested parties. The decision shall be final.

In determining an appropriate remedy, the city manager or his or her designee shall consider the circumstances surrounding the procurement or proposed procurement including, but not limited to the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the city, the urgency of the procurement and the impact of the relief upon the city.

An appropriate remedy may include one or more of the following:

- (1) Reissue the solicitation.
- (2) Issue a new solicitation.
- (3) Such other relief as is determined necessary to ensure compliance with this procurement code, procurement guidelines and procedures.

(B) A judicial appeal may be pursued pursuant to applicable law.

(C) No protest shall be accepted after award of bid by council.

§ 3-7-9 DISPOSAL OF PERSONAL PROPERTY.

The city may, sell, lease, exchange, donate or otherwise dispose of city personal property in the best interest of the city. The disposal of surplus or obsolete personal property shall be done in as competitive a manner as the procurement agent or authorized designee determines to be practicable including, but not limited to, through competitive sealed bids, public auction, online sales, established markets or posted prices. Procedures shall be prescribed prohibiting the conversion of surplus and obsolete city personal property for personal use by city employees unless the city receives fair market value for such personal property and the personal property is disposed of in a commercially reasonable manner. This code does not apply to unclaimed property regulated under A.R.S. §§ 12-940 through 12-945, *as amended*.

§ 3-7-10 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 based on the following factors:

(1) As to bidders and their principle employees, conviction 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) As to bidders and their principal employees, conviction of any federal or state statute for murder, rape, robbery, assault, theft, embezzlement, fraudulent schemes and artifices and practices, bid rigging, perjury, forgery, gambling, bribery, falsification or destruction of records, receiving stolen property, terrorist acts, or any other offenses indicating lack of business integrity, credibility, or honesty which affects the responsible criteria to qualify as a city contractor;

(3) As to bidders and their principle employees, a conviction or civil judgment relating to a violation of 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 or use 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 to 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 five (5) city working 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 five (5) city working days. 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 five (5) city working days of the hearing and shall notify the disqualified party within an additional five (5) city working day period. The decision shall be final, subject only to judicial appeal pursuant to applicable law.

§ 3-7-11 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. The council may exercise its authority to approve any change orders in any amount substantiated by staff.

§ 3-7-12 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) If the code adopted herein by reference, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof and the rules of severability shall apply.

§ 3-7-13 ONLINE BIDDING.

(A) The city manager or his or her designee may utilize online bidding to obtain bids, proposals or offers electronically for the purchase of goods, services, construction and information services.

(B) An online bidding solicitation must designate an opening date and time.

(C) The closing date and time for an online solicitation may be fixed or remain open depending on the structure of the item being bid online. Information regarding the closing date and time must be included in the solicitation. At the opening date and time, the city manager or his or her designee must begin accepting online bids, proposals or offers and must continue accepting bids, proposals or offers until the solicitation has officially closed.

(D) All online bids must be posted electronically on the city's website and updated on a real-time basis.

(E) The city manager or his or her designee may:

(1) Require bidders, offerors or respondents to register with the city prior to the opening date and time, and as part of the registration, require bidders, offerors or respondents to agree to any terms, conditions or other requirements of the solicitation.

(2) Prequalify bidders, offerors, or respondents and permit only such prequalified vendors to submit bids, proposals or offers online.

(F) All bids, proposals, or offers submitted electronically through an online bidding process are public information and subject to the same public disclosure laws that govern bids, proposals and offers received through the competitive sealed procurement process.

(G) All remedies available to the city and to bidders pursuant to the city's conventional sealed bidding practices as described in this chapter are also available to the city and bidders in an online bidding process.

(H) City shall accept online signatures as original signatures.

§ 3-7-14 CONFLICT OF INTEREST AND PENALTIES.

No city employee or any city elected official 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 is subject to criminal penalties set forth in Vol. I, Article 1-8 of the city code, as well as applicable criminal and civil penalties set forth under state law.

§ 3-7-15 ETHICAL STANDARDS AND VIOLATIONS.

(A) *Standards.* All parties involved in the negotiation, performance, or administration of city contracts are required to act in good faith. Additionally, it is the policy of the city for employees to maintain high standards of honesty, integrity, impartiality, courtesy and conduct. The procurement agent or authorized designee is authorized to take steps to ensure compliance with the following ethical standards:

(1) It is an affirmative obligation for city employees to perform their responsibilities in such a manner to assure fair competitive access to governmental procurement by responsible vendors.

(2) No employee of the city shall engage in acts that, in the reasonable judgment of the city manager or his or her designee, would result in a loss of confidence in the integrity of the city's procurement process. Such acts would include, but are not limited to; (1) receipt of gifts or services of more than a *de minimis* value from a prospective vendor; (2) statements to a vendor that they will be awarded the contract based on personal knowledge or relationships with city employees without an evaluation of their submittal; (3) failure of a city employee sitting on a review committee to disclose any prior or current conflict or business or financial relationship with a proposed vendor; (4) criticism of one vendor to another vendor who is competing for the same procurement prior to contract award; or (5) any acts similar to those outlined in subsections (1) through (4) of this section. For purposes of this procurement code, "*de minimis*" value is defined as twenty-five dollars (\$25.00) or less from any single party in any calendar year.

(3) City employees responsible for participation in procurement by virtue of their positions shall make reasonable efforts to ensure that contractors doing business with the city are aware that such contractors are expected to observe these same ethical standards. Violation of these standards shall constitute grounds for termination of a contract with the city and debarment of the vendor from doing any further business with the city.

(B) *Ethical violations.*

(1) In addition to any applicable state law, it is a violation of this procurement code:

(a) For any person to attempt to or influence any city employee to violate the provisions of ethical conduct set forth in this procurement code.

(b) For any person preparing specification or plans pursuant to this procurement code or any policy or procedure of the city to receive any direct pecuniary benefit from the utilization of such plans or specifications.

(c) For any employee or agent acting on behalf of the city to directly or indirectly participate in or benefit or receive any pecuniary benefit from a procurement solicitation in violation of state or federal law.

(d) For any person to offer, give or agree to give any employee or former employee of the city or for any employee or former employee of the city to solicit, demand, accept, or agree to accept from another person, any valuable thing or valuable benefit that would not accrue in the performance of their official duties 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 content of any specification or procurement standard, rendering of advice, investigation, auditing or in any advisory capacity in any proceeding or application request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement of a contract or subcontract, or to any solicitation or proposal therefore.

(e) 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 of any person associated therewith, as an inducement for the award of a subcontract or order. Violation of this standard shall constitute grounds for termination of a contract with the city and debarment of the vendor from doing any further business with the city.

(f) 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 established selling agencies for the purpose of securing business.

(g) For any employee who is participating directly or indirectly in a procurement process to become the employee of any person under contract with the city concerning any matters that the employee participated in during the same procurement process for a period of twelve (12) months following their employment with the city.

(h) For any employee or former employee of the city to disclose or use confidential information acquired by the employee in the performance of their official duties for anticipated pecuniary benefit, or for the actual or anticipated pecuniary benefit of any person.

(2) It is no defense to a violation of this section that the employee to whom a benefit or offer of employment was made, or agree to be made, was not qualified to act in the desired manner.

(3) An employee or person violates this section by intentionally or knowingly engaging in a violation or by recklessly or negligently engaging in a violation. The person's state of mind shall only be considered in imposing the penalty for such violation.

§ 3-7-16 UNAUTHORIZED PURCHASES; VIOLATION, LIABILITY, ENFORCEMENT

(A) Except as provided in this procurement code, it shall be improper for any city employee to purchase supplies or services or to attempt to enter into contracts on behalf of the city other than through the city manager or his or her designee. Purchase orders or contracts made contrary to the provisions of this section shall not be approved by the city manager or his or her designee and the city shall not be bound thereby.

(B) A person who contracts for or purchases any materials, services or construction in a manner contrary to the requirements of this procurement code or violates the ethical standards contained in this procurement code shall be personally liable for the recovery of all public monies paid, together with legal interest and all costs, attorney fees and damages arising out of the violation.

(C) No action taken for violations of this section shall be construed to preclude criminal prosecution of an employee or former employee or any other person under the provisions of state or federal law.

§ 3-7-17 UPFRONT COOPERATIVE AND PIGGYBACK PURCHASING.

(A) Upfront cooperative agreements include those in which city shares its needs with the administering agency and such agency includes the city's calculations and needs when it seeks IFB/RFP/SOQs, which allows the city to receive competitive pricing on needed commodities and services.

(1) On request, make available to other public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the information or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

(B) Piggy back purchasing is when the city would use an already existing procured contract.

(C) The city may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible

procurement units in accordance with an agreement entered into between the participants or within existing participatory language contained in agreements and intended for use by other municipal, county, state, educational and special district entities (to piggyback on existing agreements as appropriate). An agreement entered into as provided in this article is exempt from A.R.S. § 11-952(D), (E) and (F), *as amended*. Parties under a cooperative purchasing agreement may:

(1) Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services or construction.

(2) Cooperatively use materials and services.

(3) Commonly use or share warehousing facilities, capital equipment and other facilities.

(4) Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit, providing the personnel the direct and indirect cost of the personnel, in accordance with the agreement.

(D) The activities described in subsections (A) (1) and (C) (1) through (C) (4) do not limit the activities of parties under a cooperative purchasing agreement.

§ 3-7-18 DEBARMENTS AND SUSPENSIONS.

The city manager or his or her designee has the authority, with written approval from the city attorney to debar or suspend a vendor from participating in city procurement. The vendor may be suspended or debarred based upon the following factors:

(A) The vendor does not have sufficient financial ability, equipment or personnel to perform the contract.

(B) The vendor has repeatedly breached contractual obligations to public and private agencies.

(C) The vendor fails to comply with the requests of an investigation.