

# THE CITY OF PRESCOTT



# PROCUREMENT CODE

September 23, 2004

**PROCUREMENT CODE  
OF THE  
CITY OF PRESCOTT, ARIZONA**  
(Prescott City Code - Title 1, Chapter 27)

DECLARED AS A PUBLIC RECORD  
Resolution No. 2684 – April 12, 1994

ADOPTED  
Ordinance No. 3180 – April 12, 1994  
Effective April 12, 1994

AMENDED

- ❖ **Ordinance No. 3260** – September 13, 1994 – Effective October 13, 1994  
- Section 15(C) and 15 (H) and Section 24(G)
- ❖ **Ordinance No. 3537** – September 24, 1996 – Effective October 24, 1996  
- Section 9(G) and Section 24(H)
- ❖ **Ordinance No. 3546** – October 8, 1996 – Effective November 7, 1996  
- Section 2(E)
- ❖ **Ordinance No. 4071** – January 9, 2001 – Effective February 8, 2001  
- Section 20
- ❖ **Ordinance No. 4145** – September 11, 2001 – Effective October 11, 2001  
- Section 18(K)
- ❖ **Ordinance No. 4206** – March 12, 2002 – Effective April 11, 2002  
- Section 24(C)(2)
- ❖ **Ordinance No. 4253** – August 20, 2002 – Effective September 19, 2002  
- Section 9(H) and Section 18(J)
- ❖ **Ordinance No. 4413** – August 24, 2004 – Effective September 23, 2004  
- Section 13(A)

**CITY CODE TITLE 1, SECTION 27  
CITY OF PRESCOTT  
PROCUREMENT CODE**

**SECTION:**

- 1: General Provisions
- 2: Applicability
- 3: Procurement Organization
- 4: Requirements of Good Faith
- 5: Fraud and Collusion
- 6: Conflict of Interest
- 7: Gifts and Gratuities
- 8: Specifications
- 9: Procurement Methods
- 10: Emergency Procurements
- 11: Expenditures of \$3,000 or less
- 12: Expenditures of \$3,000.01 to \$10,000
- 13: Expenditures Exceeding \$10,000
- 14: Multi-Step Sealed Bids
- 15: Request for Proposal
- 16: Selection of Professional Services
- 17: Purchases of Merchandise for Resale
- 18: Awards
- 19: Change Orders
- 20: General Contract Authority
- 21: Types of Contracts
- 22: Contract Clauses
- 23: Insurance and Bond Provisions
- 24: Sale, Transfer or Disposition of City Personal Property

**SECTION 1: GENERAL PROVISIONS:**

The City hereby adopts the following policies governing the procurement of all supplies, materials, equipment and services for the offices, departments and agencies of the City.

**SECTION 2: APPLICABILITY:**

- (A) This Code applies only to contracts or purchases solicited or entered into after the adoption of this Code. Renewal of existing contracts shall also be subject to this Code unless the specific contract terms provide otherwise.

- (B) This Code shall apply to every expenditure of public funds regardless of source, including State and Federal assistance monies, by this City, except that nothing in this Code shall prevent the City from complying with the terms and conditions of any grant, gift or bequest or cooperative agreement. This Code shall also apply to the disposal of City property.
- (C) It shall be unauthorized for any City employee, appointed or elected official to order the procurement of materials, supplies or services, or make contracts within the purview of this Code, other than in accordance with this Code and any regulations or directives promulgated pursuant to this Code. Contracts or Purchase Orders made contrary to the provisions hereof may not be approved and the City may not be bound thereby. Unauthorized contracts or purchases may result in disciplinary action or personal liability to the person entering into said unauthorized contract or purchase.
- (D) The authority granted to purchasing agents by the City Manager pursuant to this Code shall be limited by available funds having been budgeted by the City of Prescott.
- (E) Notwithstanding anything to the contrary contained herein, this Code shall not apply to financial stipends, grants or allowances by the City to assist in the continued operations of existing entities providing a public service to residents of Prescott, provided that said payment is first approved by the City Council. (amd. Ord. No. 3546, eff. 11/7/96)

### **SECTION 3: PROCUREMENT ORGANIZATION:**

- (A) The City Manager is vested with the authority for procurement. The City Manager may employ a Purchasing Agent (hereinafter referred to as the "City's Purchasing Agent"), who may be vested with the authority for procurement by a fiduciary relationship between the purchasing agent and the City Manager, except as otherwise provided herein.
- (B) Department Heads may be appointed by the City Manager to serve as the Purchasing Agent for their respective departments (hereinafter specifically referred to as the "Purchasing Agent"), with the authority to procure or supervise the procurement of supplies, materials, equipment and services for their departments as provided herein.
- (C) The City's Purchasing Agent shall establish guidelines for the management of all inventories of materials belonging to the City.
- (D) The sale, trade or other disposal of City-owned personal property and surplus supplies shall be supervised by the City's Purchasing Agent.

- (E) The City Manager is hereby empowered to adopt rules and regulations relating to purchases and the entering into of contracts, which rules and regulations are not otherwise inconsistent with the provisions of this Code or the City Charter.

**SECTION 4: REQUIREMENTS OF GOOD FAITH:**

- (A) This Code requires all parties involved in the negotiation, performance or administration of City contracts or purchases to act in good faith. Any effort to influence any public employee to breach the standards of ethical conduct is also a breach of ethical standards.
- (B) City employees and elected or appointed officials must discharge their duties impartially so as to ensure fair competitive access to City procurement by responsible suppliers of goods and services. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City procurement organization.
- (C) Any City employee who knowingly violates any of the provisions of this Code shall be subject to disciplinary action and/or termination depending upon the severity of the violation, in accordance with City Code Personnel provisions.
- (D) An individual who is not an employee of the City who violates any provision of this Code may be subject to debarment from having the opportunity to bid or be awarded any City contracts for a period of up to twenty-four (24) months, depending upon the severity of the violation, in the sole discretion of the City Manager. Any individual, organization or entity so debarred shall be advised in writing by the City of the debarment, the period thereof, and the reason therefor. Any appeal of the City Manager's determination of debarment must be presented to the City Council, in writing, within ten (10) days of the notice of debarment.
- (E) Criminal, civil and administrative remedies otherwise available against employees or non-employees for a violation of this Code are cumulative, and shall not be impaired by this Code.

**SECTION 5: FRAUD AND COLLUSION:**

- (A) Where competitive solicitations are required pursuant to Sections 13, 14 or 15 of this Code, no City employee, elected or appointed official shall assist a supplier of goods or services in securing a contract or purchase order by prejudicing the selection of that supplier or the price paid for goods or services sold to the City.
- (B) Willful misleading or withholding of information by a prospective supplier or City representative regarding the character of the goods or services procured or sold by the supplier or the City representative shall be considered a breach of ethical standards, resulting in administrative and civil remedies pursuant to Section 4(C) and (D).

- (C) It shall be a breach of ethical standards 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.
- (D) Prices offered by suppliers of goods and services procured by the City shall be independently developed without consultation or collusion with other suppliers or potential suppliers when responding to bids, quotes or requests for proposals.

**SECTION 6: CONFLICT OF INTEREST:**

- (A) This Code specifically incorporates the provisions of ARS Title 38, Chapter 3, Article 8 regarding conflict of interest and exceptions thereto.
- (B) The value of anything transferred or received in breach of the purchasing ethics of this Code by an employee or non-employee shall be recoverable by the City.

**SECTION 7: GIFTS AND GRATUITIES:**

- (A) It is a breach of procurement ethics for any person to solicit, offer, give or accept money, credits, gifts, entertainment, discounts, favors or services in connection with recommendations or decisions pertaining to any procurement.
- (B) It shall be conclusively presumed that the value of the gifts or gratuities was included in the price of the contract, subcontract or order and ultimately borne by the City and will be recoverable by the City from the recipient, from the vendor, or both.
- (C) Exceptions to this Section are unsolicited advertising or promotional materials such as pens, pencils, calendars and other items of nominal, intrinsic value offered on infrequent occasions in the ordinary course of business.

**SECTION 8: SPECIFICATIONS:**

- (A) All specifications, including those prepared by architects, engineers, consultants and others for procurement by the City shall not be unduly restrictive and shall encourage maximum, practical competition among suppliers.
- (B) Specifications for goods and services that exclude suppliers offering similar performance or functional characteristics shall not be used unless such specifications are technically justified or it is not practicable nor advantageous to use a less restrictive specification.

## **SECTION 9: PROCUREMENT METHODS:**

- (A) The cost of an item, not the method of payment, determines the method of procurement. Artificial division, splitting or fragmentation of a transaction to circumvent source selection or to avoid requirements for bidding or authorization of procurements are prohibited.
- (B) Procurements made for the City shall be documented by a written contract or purchase order that has been authorized and issued prior to receipt of the goods or services or prior to payment for goods and services, except as otherwise provided for in this Code.
- (C) The City's Purchasing Agent shall maintain a current list of prospective suppliers who have expressed an interest in providing goods and services to the City and they shall be contacted for quotations or bids until they have failed to respond.
- (D) The City may participate with the State of Arizona, or any other public entity, for goods and services that have been obtained in accordance with the State Procurement Code or in substantial compliance with the provisions of this Code.
- (E) Procurements may be solicited from suppliers without competition if the Purchasing Agent determines, by clear and convincing evidence, that only one source exists.
- (F) Notwithstanding the provisions of Subsection B above, purchases by Purchasing Agents pursuant to open accounts established by the City shall be allowed, conditioned upon said purchases being within budgetary restrictions, and in accordance with the policy for purchases on open accounts as established by the City Manager or his designee; provided, however, that no purchase on an open account may exceed that amount set forth in Section 12 of this Code.
- (G) Procurements in an amount of more than \$3,000.00 may be solicited from suppliers without bidding or competition, with the prior approval of the City Council, for used vehicles, used equipment and other used personal property, upon clear and convincing evidence that the item or items to be purchased are only sporadically or occasionally available for purchase, and due to the sporadic nature of availability, the purchase via bidding or other competition would not be productive. (amd. Ord. No. 3537, eff. 10/24/96)
- (H) Notwithstanding any other provision or requirement in this Code, a contract may be awarded for a supply, service or construction item without competition or solicitation when the purchasing agent, with the concurrence of the City Manager, determines in writing that there is only one source for the required supply, service or construction item. (amd. Ord. No. 4253, eff. 9/19/02)

**SECTION 10: EMERGENCY PROCUREMENTS:**

- (A) A purchasing agent may make or authorize others to make emergency procurements if there exists a threat to the public health, welfare or safety or if a situation is determined to be necessary for the public interest.
- (B) An emergency procurement shall be limited to the goods or services necessary to satisfy the emergency need with as much competition as practicable under the circumstances.
- (C) Emergency expenditures and obligations to suppliers of goods and services in actual emergencies that exceed Ten Thousand Dollars (\$10,000.00) shall be submitted to the Council for authorization or ratification at the next scheduled Council meeting.

**SECTION 11: EXPENDITURES OF THREE THOUSAND DOLLARS (\$3,000.00) OR LESS:**

- (A) Any procurement that results in an expenditure of Three Thousand Dollars (\$3,000.00) or less shall have been made with as much economy as practicable in the open market place at the prevailing price, without the requirement of public notice or Council authorization, by the Purchasing Agent.
- (B) Petty cash expenditures may be authorized by the Treasurer and disbursed by a designee from a cash fund set aside and maintained for small procurements. The maximum expenditure from petty cash shall be as determined by the City Manager.

**SECTION 12: EXPENDITURES OF THREE THOUSAND AND 01/100 DOLLARS (\$3,000.01) TO TEN THOUSAND DOLLARS (\$10,000.00):**

- (A) Any procurement resulting in an expenditure from Three Thousand and 01/100 Dollars (\$3,000.01) to Ten Thousand Dollars (\$10,000.00) may be made by a purchasing agent without the requirements of public notification by advertisement.
- (B) The Purchasing Agent shall obtain, when possible, three (3) informal competitive quotations, in writing, from suppliers on the current prospective supplier list and from other available suppliers.
- (C) Informal quotations of suppliers responding to an inquiry other than in writing are satisfactory when the method of inquiry, date and person quoted is documented; however, a written informal quotation is encouraged.
- (D) The solicitation requirements provided for herein are to be considered minimum requirements.

**SECTION 13: EXPENDITURES EXCEEDING TEN THOUSAND DOLLARS (\$10,000.00):**

- (A) Any procurement resulting in an expenditure of more than Ten Thousand Dollars (\$10,000.00) shall have been made only after formal competitive sealed bidding, solicited by public notification, and awarded by the City Manager; provided, however, that any procurement resulting in an expenditure of more than Twenty Thousand Dollars (\$20,000.00) shall only be awarded by the City Council. (amd. Ord. No. 4413, eff. 9/23/04)
- (B) A formal invitation to bid shall be issued by the City Clerk, and shall include the dates of public notice, the time and place for bid receipt and opening and a description of the goods or services.
- (C) Public notification shall be considered adequate when a formal invitation to bid is advertised and published at least once in a newspaper of general circulation within the City not less than five (5) days before the bid opening.
- (D) The Purchasing Agent shall solicit formal sealed bids from those suppliers on the current prospective supplier list that have requested to be included in bids for goods or services of a specific character and kind.
- (E) Amendments to invitations to bid that are necessary to make a change shall be issued in writing by the Purchasing Agent, with a copy to the City Clerk, within a reasonable time before the bid opening to all suppliers to whom the Purchasing Agent has distributed invitations to bid and to all suppliers who have requested bid documents or specifications and shall require acknowledgement of receipt by the bidder before the bid opening or within the bid.
- (F) Sealed bids shall be considered properly received only when delivered in a sealed envelope marked in accordance with the request for bid or as set forth in the bid specifications, to the City Clerk or designee by or before the specified time and designated place as advertised in the public notice and shall be time-stamped and stored unopened in a secure place until the public bid opening.
  - 1. Late bids shall be rejected if received after the designated time in the location for receipt thereof; except that bids that are received by City personnel before the bid opening and would have been timely received but for the action or inaction of City personnel directly serving the procurement function may be received and considered.
  - 2. Minor informalities may be waived by the City Manager in consultation with the Purchasing Agent and City Attorney if the waiver is deemed to be in the best interest of the City.

- (G) A modification or withdrawal of bid must be received before the time and date set for bid opening in the location designated for receipt of bids and shall be time-stamped and recorded.
- (H) Bids shall be opened publicly by the City Clerk or designee in the presence of one or more witnesses at the time, date and location designated in the invitation to bid.
  - 1. The name of each bidder, the price bid and other information deemed appropriate shall be read aloud and recorded.
- (I) Mistakes in the bid discovered after the bid opening based on an error in judgment may not be corrected or withdrawn except as set forth herein.
  - 1. After bid opening, the City Manager, in consultation with the Purchasing Agent and the City Attorney, may waive minor informalities in a bid.
  - 2. After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid only if a bid mistake and the intended bid are evident on the face of the bid.
  - 3. After bid opening, the City Manager, in consultation with the Purchasing Agent and City Attorney, may permit a bidder to withdraw a bid when:
    - a. A nonjudgmental mistake is evident on the face of the bid and the intended bid is not clear; or
    - b. The bidder establishes by clear and convincing evidence in the sole opinion of the City that a nonjudgmental mistake was made; or
    - c. The bid is so low as to create a likelihood that the contract cannot be completed and to enforce compliance with the bid would be unconscionable.
- (J) An invitation for bids, a request for proposals or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part by the City Manager or the City Council if it is in the best interest of the City.
- (K) The solicitation requirements provided for herein are to be considered minimum requirements. Purchasing agents are expected to also publicize and inform the public and potential bidders of the availability of a bid opportunity by any other practical means.

## **SECTION 14: MULTI-STEP SEALED BIDS:**

When it is considered impractical to initially prepare a procurement description to support an award based on the price of the goods or services, an invitation to bid may be issued requesting the submission of unpriced offers. The initial invitation to bid will be followed by a subsequent invitation to bid limited to those bidders whose offers have been determined technically acceptable under the criteria set forth in the first solicitation.

## **SECTION 15: REQUEST FOR PROPOSAL:**

- (A) A request for proposal may be utilized whenever the Purchasing Agent determines that the City wishes to utilize competitive negotiation, or if the City is unable to provide bid specifications for an entire project and shall request the prospective bidders to specify a method or manner at the bidder's choosing of performing a contract.
- (B) If the estimated dollar amount of the ultimate contract to be awarded exceeds that amount set forth in Section 13 of this Code, the procedure for seeking requests for proposals shall be in accordance with Section 13 of this Code.
- (C) All proposals shall be opened publicly at the time and place designated in the Request for Proposals. The name of the offeror and such other relevant information as may be designated by the Purchasing Agent shall be publicly read. All other information contained in the proposals shall be confidential as to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. All proposals may be open for public inspection after a recommendation is made to the City Council for, but in no event, no later than the contract award by the City Council. To the extent as designated by the offeror and the Purchasing Agent concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential. (amd. Ord. No. 3260, eff. 10-13-94)
- (D) Competitive negotiation may be used at the discretion of the purchasing agent. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (E) Negotiation following the opening of sealed proposals is not required if one or more of the initial offers is fully satisfactory. Award may be made on the basis of the proposal as first submitted, without any discussion with the offeror or changes to the content of the proposal.
- (F) Criteria for evaluation of proposals may include, but shall not be limited to, managerial or technical capabilities, comparative feasibilities of the approach or other elements where price may not be the sole determining factor for selection of a supplier.

- (G) Authorized awards shall be made in writing to the responsible offeror whose proposal is determined to be the most advantageous to the City, taking into consideration (but not limited to) price, those evaluation factors set forth in the solicitation, and in Section 18 of this Code.
- (H) Once a formal recommendation is made to the City Council regarding which proposal (as subsequently amended by negotiations) should be accepted, no further negotiations or modifications to proposals may be made; provided, however, that this does not prohibit the City Council from either rejecting all proposals, or directing City staff to pursue further negotiations with one or more of the proposers. (amd. Ord. No. 3260, eff. 10-13-94)

**SECTION 16: SELECTION OF PROFESSIONAL SERVICES:**

- (A) Personal services provided by members of professions that require specialized knowledge and expertise acquired by advanced training and/or experience may be procured or retained on an as-needed basis or for a particular project by the purchasing agent without the formal bidding requirements set forth in Section 13 of this Code. These services may be procured annually, or on an as-needed basis.
- (B) The purchasing agent may award a contract to a provider of professional services in the event that the contract for said services is not estimated to exceed the amount set forth in Section 13. Any contract for professional services, which is expected to exceed that amount set forth in Section 13 must be approved by the City Council.
- (C) Notwithstanding the foregoing provisions, purchasing agents are expected to also publicize and inform qualified professionals in the Prescott area of the availability of a contract award pursuant to this Section by any other practical means.
- (D) In the event that there is justification to do so due to the particular expertise or knowledge of a particular professional consultant, contracts for professional services for expert witnesses in litigation matters may be exempted from the provisions of Sections 8, 9, 11, 12, 13, 14, 15, 18 and 19 of this Code, at the discretion of the purchasing agent. However, any contract for professional services, which is expected to exceed that amount set forth in Section 13 must be approved by the City Council.

## **SECTION 17: PURCHASES OF MERCHANDISE FOR RESALE:**

Due to the fact that the City of Prescott is involved in certain enterprises which consist, wholly or partially, of retail sales to the general public (e.g., the Golf Course Pro Shop), it is understood that the practicalities of operating a retail sales establishment should be dictated not necessarily by the lowest competitive price, but rather by various market factors (e.g., brand name, etc.). Therefore, a purchasing agent who is responsible for purchasing merchandise for resale to the general public shall be exempt from the provisions of Sections 8, 9, 11, 12, 13, 14, 15, 18, and 19 of this Code for said purchases, provided, however, that any purchases which exceed the dollar amount as set forth in Section 13 of this Code shall still require City Council approval.

## **SECTION 18: AWARDS:**

- (A) Authorized awards shall be made to the lowest and most qualified supplier whose bid, quotation or offer conforms to the procurement requirements and criteria set forth in the City's solicitation and is deemed to be in the best interest of the City.
- (B) The evaluation methods to determine the conformity of the procurement requirements and criteria shall be uniform and equal for each responding supplier.
- (C) Goods or services shall be evaluated as much as possible by tangible, measurable criteria that includes but is not limited to, transaction privilege or use tax to be paid to the City of Prescott, transportation costs, energy costs, standard practices or procedures, life cycle and effective ownership costs, whether the goods are made from recycled material, or other factors that satisfy the particular function at the lowest overall cost to the City. Additionally, the City may include in its evaluation managerial or technical capabilities, comparative feasibilities of the approach to be used (if applicable), prompt service, accessibility, delivery, travel, or any other factors which may reduce or offset the cost of goods or services solicited by the City.
- (D) A bidder or offeror may be required to submit to the Purchasing Agent a certification of current cost or pricing data used to price the bid or offer prior to an award to determine if the price is fair, reasonable, and in the best interests of the City.
- (E) The City Manager retains the authority to debar or suspend any potential supplier of goods or services from consideration of award if the potential supplier is in default of any obligation, taxes or fees due and owing the City, until such time as the breach or default is cured.
- (F) Low bids, quotations or offers which are identical in all respects from two (2) or more responsible and responsive suppliers may be awarded by the drawing of lots in public in the presence of two (2) or more witnesses including the City Clerk or designee.

- (G) Multiple awards may be made in whole or in part to two (2) or more suppliers of similar goods or services to facilitate delivery, service, product compatibility or obtain the best value in the best interest of the City.
- (H) If only one responsive bid, quotation or offer is received from a competitive solicitation:
1. An authorized award may be made to the single bidder if the price is determined to be fair and reasonable; or
  2. The bid may be rejected; or
  3. New competitive solicitation may be made; or
  4. The need for the procurement continues and the acceptance of one bid is not advantageous to the City, the procurement may be made under provision for sole source or emergency as defined in Sections 9(E) or 10 of this Code.
- (I) If no response is received from competitive solicitation, the Purchasing Agent may resolicit, terminate further solicitation, or procure under the provisions for emergency or sole source, whichever is applicable.
- (J) If all bids received exceed available monies as certified by the City Manager or his designee, and the lowest and most qualified bid exceeds such monies, the Purchasing Agent may negotiate an adjustment of the bid price, including changes in the bid requirements and specifications, with the lowest responsive and responsible bidder, to bring the bid within the amount of available monies. (amd. Ord. No. 4253, eff. 9/19/02)
- (K) In reviewing bids and/or proposals and/or estimates, and determining whether or not a proposed contractor or vendor is the most responsible and/or most qualified bidder, the City shall consider, among other factors: (amd. Ord. No. 4145, eff. 10/11/01)
1. Costs incurred by the City or other governmental entities in contested change orders by the contractor;
  2. Litigation in which the contractor was involved with the City or other governmental entities relative to contract performance;
  3. Failure of the contractor to have met bid specifications or time limits in previous contracts;
  4. Abandonment of a contract or refusal to perform without legal cause after sub- mission of a bid;

5. A record of bidding errors or omissions in two or more bid submissions in a thirty-six (36) month period;
6. A record of failure to perform or unsatisfactory performance of two or more contracts within a thirty-six (36) month period;
7. Inadequate equipment, lack of expertise or insufficient personnel to complete the proposed contract;
8. A record of safety violations in two or more contracts within a thirty-six (36) month period;
9. Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract within a ten (10) year period;
10. Conviction of a criminal offense within a ten year period of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which might affect responsibility as a municipal contractor;
11. Conviction of state or federal antitrust statutes within a ten year period arising out of the submission of bids or proposals;
12. Any other cause that the City determines to be so serious and compelling as to affect responsibility as a municipal contractor, including debarment or similar proceedings by another governmental entity.

**SECTION 19: CHANGE ORDERS:**

- (A) The provisions regarding approval of change orders as set forth in this section supersede any other provision to the contrary as contained elsewhere in this Code.
- (B) A change order shall be defined as any change order, contract modification or any adjustment to the amount of the original authorized award for work or a project in progress, when extra work or materials are required due to bona fide unforeseen conditions.
- (C) Any change order in an amount of Ten Thousand Dollars (\$10,000.00) or less must be approved by the purchasing agent in writing.
- (D) Any change order in an amount of more than Ten Thousand Dollars must be submitted to the City Council for approval. In the event that prior approval of the Council will unduly delay a project in progress, the City Manager shall have the authority to approve said change orders subject to subsequent ratification by the City Council.

- (E) Cost or pricing data may be required to be submitted for change orders, contract modifications or adjustments to the original award when such adjustments increase the amount of the original award or decrease value of work.

**SECTION 20: GENERAL CONTRACT AUTHORITY:**

Any contract or agreement for the procurement of services in excess of \$3,000.00, or that assigns rights, remedies, duties or obligations to the City, shall be expressed in writing, approved by the City Attorney, and properly authorized before the City shall be contractually bound. (amd. Ordinance No. 4071, eff. 2/8/01)

**SECTION 21: TYPES OF CONTRACTS:**

- (A) Any type of contract, which will promote the best interest of the City, may be used.
- (B) Fixed-price contracts shall be used only when the extent or type of goods or services can be specified and the cost can be reasonably estimated at the outset of the contract.
  - 1. Fixed-price contracts with a price adjustment allowance shall be used only if the solicitation and the contract specify the basis for the price adjustment and provide for adequate notice of such adjustments.
- (C) Time and material contracts may be used only when the Purchasing Agent determines that such a contract is less costly than any other type or that it is impractical to obtain the goods or services except under such a contract. The purchasing agent may set performance criteria in monitoring said work.
  - 1. Time-and-materials or labor-hour contracts shall provide for a maximum contractual amount.
- (D) Lease agreements and lease-purchase contracts may be used if all conditions for renewal, including the cost determination for renewal, are set forth in the agreement and the lease is not used to circumvent the required procurement procedures of this Code.
  - 1. A purchase option may be exercised if the lease-purchase was awarded by competitive solicitation as set forth in Sections 13 or 15 of this Code and if exercise of such option is in the best interest of the City.

(E) Multi-term contracts may be used for any period of time deemed to be in the best interests of the City. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriations of funds therefor.

1. Before exercising any option for renewal or extension of a contract, the Purchasing Agent shall evaluate the performance during the original contract period and determine that a competitive procurement is not more advantageous to the City than exercise of the particular option.
2. A contract entered into by the City should not provide for automatic extensions or renewals thereof without first requiring some affirmative act on the part of the City to continue or extend said contract.
3. In the event that funds are not appropriated or made available to support the continuation of a contract in a subsequent fiscal year, the contract shall be canceled and the City shall have no further obligation under said contract.

## **SECTION 22: CONTRACT CLAUSES:**

The City Attorney may establish standard contract clauses for inclusion in City contracts. Such standard clauses may be modified upon review by the City Attorney on a case-by-case basis.

## **SECTION 23: INSURANCE AND BOND PROVISIONS:**

- (A) The submission of bid security by the bidder or offeror may be required to guarantee a faithful bid and execution of all contracts if awarded the bid. Any requirements for a bid bond shall be set forth in the bid solicitation or bid specifications.
- (B) When the solicitation requires bid security, non-compliance with such security requires that the bid or offer be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements. In that event and upon request of the City, the bidder must post the required bid security within twenty-four (24) hours of the bid opening.
- (C) No action shall be had against the bidder or offeror's bid security if the bidder or offeror is permitted to withdraw its bid or offer prior to award as provided in Section 13.
- (D) The submission of performance or payment bonds by the successful bidder or offeror may be required by the City in an amount of not less than one hundred percent (100%) of the total bid. Any requirement shall be set forth in the bid solicitation or bid specifications.

- (E) All performance and payment bonds shall be submitted to the City prior to execution of the contract and prior to release of any bid bond.
- (F) All bid, payment or performance bonds shall be a cash bond, C.D., or bond provided by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. §20-217, a copy of which is to be attached to the applicable bond.
- (G) All insurance required by a successful bidder or offeror shall be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS § 20-217, a copy of which is to be attached to the applicable insurance policy, binder or certificate of insurance.
- (H) A bid, payment or performance bond shall not be required solely to exclude potential bidders.
- (I) The nature of performance and the need for future protection of the City shall be considered when determining the amount and type of bond required for each solicitation.
- (J) In addition to the requirements of subsections "F" and "G" above, depending upon the nature of the contract and amount thereof, the City may also require insurance companies and/or bonding companies to have an "A" rating or better with Moody's or A.M. Best Company, and/or to be included on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended) by the audit staff, Bureau of Accounts, U.S. Treasury Department.

**SECTION 24: SALE, TRANSFER OR DISPOSITION OF PERSONAL PROPERTY:**

- (A) The method, form and manner of the sale or transfer or disposition of personal property of the City shall be uniform and consistent within the provisions of this Code and in accordance with the requirements set forth in the City Charter.
- (B) The City's Purchasing Agent shall be the custodian of all personal property that has been identified and declared by a City governmental unit to be not needed nor likely to be needed within a reasonable future time.
  - 1. No individual, City employee, elected or appointed official, City office or agency shall sell, transfer, trade in, condemn or otherwise dispose of any City personal property without written notification of such intent to the City's Purchasing Agent and authorization in accordance with the requirements set forth in the Charter.

2. The City's Purchasing Agent may identify City personal property, idle equipment, excess inventory, obsolete materials or expendable supplies that may be subject for disposition and recommend their disposition to the City Manager.
- (C) It is assumed that all City personal property has a value which shall be determined by the fair and competitive market at the time of sale or transfer or disposition through consistent methods, form and manner as to be determined by the City's Purchasing Agent and subject to such conditions as the Council may from time to time prescribe.
1. The method, form and manner selected by the City's Purchasing Agent for the sale, disposition or transfer to other than City governmental units shall consider the value, terms of sale, timing of the activity and other economic factors relative to obtaining the maximum value in the best interests of the City.
  2. The City's Purchasing Agent may employ whatever methods are most advantageous to the City to dispose of personal property valued at Three Thousand Dollars (\$3,000.00) or less. (amd. Ord. No. 4206, eff. 4/11/02)
- (D) Prior to sale or disposition of City personal property, the City's Purchasing Agent shall endeavor to identify and recommend to the City Manager any City personal property that has potential for recycle, reutilization or transfer to other City governmental units.
1. Personal property transferred to or from City governmental units shall be documented on such forms and at such times as the City's Purchasing Agent may prescribe with authorization by the Department Heads of the sending and receiving departments.
- (E) The value received from the sale, transfer or disposition of City personal property shall be allocated in accordance to the proper accounting practices determined by the City Treasurer.
- (F) The City's Purchasing Agent shall act on behalf of the City with the State, Federal or other surplus property agencies regarding the procurement or disposition of surplus property.
- (G) That notwithstanding anything to the contrary herein, the Police Chief is hereby authorized to trade or destroy weapons, in accordance with any policy as promulgated by the City Manager. (amd. Ord. No. 3260, eff. 10/13/94)
- (H) That notwithstanding anything to the contrary herein, the City Manager or his designee is hereby authorized to transfer and convey surplus personal property of value not to exceed \$3,000.00 to other governmental entities. (amd. Ord. No. 3537, eff. 10/24/96)

End