

ORDINANCE NO. 2025-1630

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AMENDING ARTICLES 3-4, 3-5, AND 3-6, OF GOODYEAR CITY CODE RELATED TO PROCUREMENT PROVISIONS.

WHEREAS, Articles 3-4, 3-5, and 3-6 of City of Goodyear city code comprise the City's procurement code; and

WHEREAS, the procurement code was last revised in September 2008; and

WHEREAS, it has been determined that certain sections of procurement code require corrections, clarification, or revisions to facilitate efficiency and oversight in the procurement process; and

WHEREAS, the corrections, clarifications, and revisions were presented at the City Council Work Session on April 7, 2025; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GOODYEAR, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. AMENDING AND REPLACING ARTICLES 3-4, 3-5, AND 3-6 OF GOODYEAR CITY CODE

Article 3-4 entitled General Procurement Provisions, Article 3-5 entitled Source Selection, and Article 3-6 entitled Material Management, are hereby amended by deleting and replacing in their entirety all sections and subsections, as set forth in that certain document titled, "Amendment to Articles 3-4, 3-5 and 3-6 of Goodyear City Code," attached as Exhibit A to this Ordinance No. 2025-1630 which is referred to, adopted, and made a part hereof as if fully set forth in this Ordinance.

SECTION 2. CORRECTIONS

The City Clerk and the codifiers of this Ordinance are authorized to make necessary clerical corrections to this Ordinance, including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

SECTION 3. SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4. PENALTIES

Any person who violates any provision of Articles 3-4, 3-5, and 3-6 being adopted herein shall be subject to penalties as set forth in Article 1-8 of the City of

Goodyear Code of Ordinances as it may be amended from time to time, and which currently provides:

§ 1-8-1 Penalty.

(A) Any person found guilty of violating any provisions of this code, except as otherwise provided in this code, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed \$2,500 for an individual and not more than \$20,000 for an enterprise or by imprisonment for a period of not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as hereinabove described. The term ENTERPRISE as used in this subsection shall mean any corporation, partnership, association, labor union or other entity or any group of persons associated in part although not a legal entity.

(B) Any violation of or failure or refusal to do or perform any act required by Chapter 13 of this code constitutes a civil traffic violation. Civil traffic violations are subject to the provisions of A.R.S. Title 28, Chapter 6, Arts. 20 and 21 and amendments thereto.

(C) Notwithstanding any provisions to the contrary in this code providing for enforcement of violations of this code as misdemeanors or petty offenses, violations of any provision of this code and violations of any proscription, requirement or duty set forth in any ordinance incorporated into this code or any other ordinance of the City are declared to be civil code violations which may be adjudicated and enforced by the City court pursuant to Chapter 18 of this code, as an additional enforcement alternative to other remedies provided in this section or remedies and procedures provided for specifically in this code or other ordinance. Use of this civil code enforcement alternative is not mandatory and shall be at the discretion of the City official undertaking enforcement action on an alleged violation of this code or other ordinance.

Any person who violates any provisions in section 3-4-20 being adopted herein shall be subject to a civil penalty up to \$5,000 in addition to any other penalty available pursuant to Article 1-8 of the City of Goodyear Code of Ordinances as it may be amended from time to time. This Ordinance shall be recorded with the Maricopa County Recorder's Office.

SECTION 5. EFFECTIVE DATE

This Ordinance shall become effective at the time and in the manner prescribed by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Goodyear, Maricopa County, Arizona, by a _____ vote, this 28 day of April, 2025.

Joe Pizzillo, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Jasmine Pernicano, City Clerk

Roric Massey, City Attorney

Exhibit A
AMENDMENT TO Articles 3-4, 3-5 and 3-6
OF GOODYEAR CITY CODE

Pursuant to City of Goodyear Ordinance No. 2025-1630 Article 3-4, entitled General Procurement Provisions, Article 3-5, entitled Source Selection, and Article 3-6, entitled Material Management, are hereby amended by deleting and replacing in their entirety all sections and subsections, as set forth below.

Article 3-4
GENERAL PROCUREMENT PROVISIONS

Sections:

- 3-4-1 Applicability.**
- 3-4-2 Supplementary general principles of law applicable.**
- 3-4-3 Definitions.**
- 3-4-4 Definitions – Electronic bidding.**
- 3-4-5 Authority of the procurement manager.**
- 3-4-6 Delegation of authority by the procurement manager.**
- 3-4-7 Authority to contract for certain professional services; Continuity of services.**
- 3-4-8 Procurements involving a prescribed amount.**
- 3-4-9 Cooperative procurement.**
- 3-4-10 Compliance with federal requirements.**
- 3-4-11 Online solicitations.**
- 3-4-12 Contract clauses.**
- 3-4-13 Change order.**
- 3-4-14 Contracts in the best interest of the City.**
- 3-4-15 Term of contracts.**
- 3-4-16 Rules for protesting solicitations and contract awards.**
- 3-4-17 Rules for suspension and debarment of contractors.**
- 3-4-18 Debarment and suspension of contractors.**
- 3-4-19 Appeal.**
- 3-4-20 Violation; Penalty; Enforcement authority.**

§ 3-4-1 Applicability.

(A) Articles 3-4, 3-5, and 3-6 comprise the City's procurement code, and the use of the term "Article" in the City's procurement code will include Articles 3-4, 3-5, and 3-6.

(B) The purpose of this article is to provide for oversight, transparency, accountability, and good stewardship in the use of city resources. This article shall govern the purchase of any goods or services for or on behalf of the City, including, but not limited to, the purchase of equipment, material, supplies, services, and public improvements.

(C) Except as otherwise provided, this article applies to all expenditures of public monies irrespective of their source, including federal assistance monies to this City, for the purchase of materials, goods, and services, under any contract. All expenditures shall be made with prior

City Council approval. Prior Council approval exists when the expenditure has been provided for in the current budget as adopted and the funds are available without limitation or restriction, or Council may designate prior approval by way of resolution as provided for in § 3-4-8. This article also applies to the disposal of city materials.

(D) This article does not apply to:

- (1) Grants, as defined in this article;
- (2) Contracts or payments between the City and other governments, except as provided in § 3-4-9;
- (3) Public utility purchases, including, but not limited to, water, power, and related services;
- (4) Development agreements, as defined in Arizona Revised Statutes (A.R.S.) Section 9-500.05, as amended;
- (5) Contracts or arrangements for testimony relating to an existing or probable judicial proceeding in which the City is or may become a party;
- (6) Agreements negotiated by legal counsel representing the City in settlement of litigation or threatened litigation are exempt from the provisions of this article, except as may be provided in § 3-4-7;
- (7) Contracts for special investigative services for law enforcement purposes;
- (8) Contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals, or environmental assessments to the extent that they are negotiated in connection with a contract for purchase or sale of real property;
- (9) Debt repayment obligations previously approved by City Council.
- (10) Contracts for professional services as defined in § 3-4-3, except as may be provided in § 3-4-7.

(E) Nothing in this article shall prevent the City from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-2 Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this article, the principles of law and equity, the common law of contracts as applied in the City and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this article. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-3 Definitions.

In this article, unless the context otherwise requires:

AFFILIATE. Any person effectively controlling or controlled by another or associated with others under common ownership or control.

AGGREGATE DOLLAR AMOUNT. Purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.

ALTERNATE PROJECT DELIVERY METHODS. Design build, construction management at-risk, and job-order-contracting construction services.

AMENDMENT. Any written alteration to the contract, accomplished by mutual action of the parties and signed by the Procurement Manager or by unilateral action as permitted by the

terms of the contract, that authorizes a change in scope, quantities, items, pricing, schedule, or term.

ARCHITECT SERVICES. Those professional architect services that are within the scope of architectural practice as provided in A.R.S. Title 32, Chapter 1.

AWARD. A determination by the City that it is entering into a contract with one or more offerors.

BID. The response submitted by a bidder to an Invitation for Bids (IFB).

BIDDER. A supplier who submits a bid in response to an Invitation for Bids (IFB) or other formal solicitation type in which price is the primary factor in the evaluation process for award determination.

BRAND NAME. A name, term, symbol, design, or any combination thereof used in specifications to describe a product by a unique identifier specific to a particular seller or manufacturer that distinguishes it from its competition.

BRAND NAME OR EQUIVALENT. One or more manufacturers' brand names, with identifying model numbers, used in a specification to invoke certain quality, performance, and other salient characteristics needed to meet solicitation requirements.

BUSINESS. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.

CHANGE ORDER. A written modification or amendment to a contract, which is signed by the Procurement Manager.

CITY. The City of Goodyear.

COMPETITIVE RANGE. The group of responsible proposers chosen for additional discussions and negotiations based on an evaluation of their proposals, which are determined to be responsive and have a reasonable chance of being selected for an award.

CONSTRUCTION.

- (1) The process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvements of any kind to any public real property.
- (2) Does not include:
 - (a) The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings, or real property.
 - (b) The investigation, characterization, restoration, or remediation due to an environmental issue of existing facilities, structures, buildings, or real property.

CONSTRUCTION-MANAGER-AT-RISK. A project delivery method in which:

- (1) There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the City may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase, and for any other construction services.
- (2) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (3) Design and construction of the project may be in sequential phases or concurrent phases and construction of some phases commencing before the entire design is complete.

- (4) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

CONSTRUCTION SERVICES. Either of the following for construction-manager-at-risk, design build and job-order-contracting project delivery methods:

- (1) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
- (2) A combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design build or job-order-contracting in this section.

CONTRACT. All types of city agreements, regardless of what they may be called, for the procurement of materials, services, construction, or the disposal of materials.

CONTRACT MODIFICATION. Any written alteration in the specifications, delivery point, frequency of delivery, period of performance, price, quantity, terms, and conditions, or other provisions of any contract, accomplished by mutual action of the parties to the contract.

CONTRACTOR. Any individual or business having a contract with the City.

COOPERATIVE (PROCUREMENT) PURCHASING.

- (1) The action taken when two or more entities combine their requirements to obtain the advantages of volume purchases, including administrative savings and other benefits.
- (2) A variety of arrangements, whereby two or more public procurement entities purchase from the same supplier or multiple suppliers using a single solicitation. Cooperative procurement efforts may result in contracts that other entities may “piggyback”.

COST OR PRICING DATA. Factual information about the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the contractor or offeror in performing the contract.

COST PLUS A PERCENTAGE OF COST CONTRACT. An agreement in which the contractor is provided a specified percentage profit over and above the actual costs. This pricing method is generally prohibited, or at least discouraged, because it provides an incentive for the contractor to increase, rather than decrease, costs.

COST REIMBURSEMENT CONTRACT. A contract under which a contractor is reimbursed for costs which are reasonable, allowable, and allocable in accordance with the contract terms and the provisions of this article, and paid a fee, if provided for in the contract.

DATA. Documented information, regardless of form or characteristic.

DAY. A calendar day, unless otherwise specified in the solicitation or contract.

DEBARMENT. An action taken by the Procurement Manager that prohibits a person from participating in the City’s procurement process.

DELIVERABLES. The actual contractual work product as defined in the statement of work; the desired goods or services described in a statement of requirement, specifications, scope of work, or other similar solicitation component to be provided under the contract.

DEPARTMENT. A subdivision or unit within the City as set forth in its organizational chart.

DESIGN BID BUILD. A project delivery method in which:

- (1) There is a sequential award of two separate contracts.

- (2) The first contract is for design services.
- (3) The second contract is for construction.
- (4) Design and construction of the project are in sequential phases.
- (5) Finance services, maintenance services and operations services are not included.

DESIGN BUILD. A project delivery method in which:

- (1) There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the City may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.
- (2) Design and construction of the project may be in sequential phases or concurrent phases and construction of some phases commencing before the entire design is complete.
- (3) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

DESIGN REQUIREMENTS.

- (1) Means at a minimum the City's written description of the project or service to be procured, including:
 - (a) The required features, functions, characteristics, qualities, and properties.
 - (b) The anticipated schedule, including start, duration, and completion.
 - (c) The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.
- (2) May include:
 - (a) Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by an architect or engineer, as appropriate, who is registered pursuant to A.R.S. § 32-121.
 - (b) Additional design information or documents that the City elects to include.

DESIGN SERVICES. Architect services, engineer services or landscape architect services.

DESIGN PROFESSIONAL. An individual or firm that is registered by the state board of technical registration pursuant to A.R.S. § 32-121 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and persons employed by the registered individual or firm.

DESIGNEE. A duly authorized representative of the Procurement Manager.

ELIGIBLE PROCUREMENT UNIT. A local public procurement unit, any other state, any agency of the United States, or a nonprofit educational or public health institution that is eligible under a cooperative agreement to use City contracts.

E-PROCUREMENT SYSTEM. The City's official electronic procurement system as authorized by the Procurement Manager.

ENGINEER SERVICES. Those professional engineer services that are within the scope of engineering practice as provided in A.R.S. Title 32, Chapter 1.

FINANCE SERVICES. Financing for a construction services project.

GENERAL SERVICES ADMINISTRATION CONTRACT. Contracts awarded by the United States government general services administration.

GRANT.

- (1) A transfer of federal government funds to state or local governments to support or stimulate programs authorized by federal or state laws in order to accomplish objectives that are locally defined and managed under a broad federal or state program.
- (2) The furnishing of assistance by a federal, state, county, or city governmental jurisdiction, whether financial or otherwise, to any person to support a program authorized by law; does not include an award whose primary purpose is to procure supplies, services, or construction.

INTERESTED PARTY. An offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.

JOB-ORDER-CONTRACTING. A project delivery method in which:

- (1) The contract is a requirements contract for indefinite quantities of construction.
- (2) The construction to be performed is specified in job orders issued during the contract.
- (3) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.

LANDSCAPE ARCHITECT SERVICES. Those professional landscape architect services that are within the scope of landscape architectural practice as provided in A.R.S. Title 32, Chapter 1.

LOCAL PUBLIC PROCUREMENT UNIT. Any political subdivision, any agency, board, department or other instrumentality of such political subdivision and any nonprofit corporation created solely for the purpose of administering a cooperative purchase, as defined in A.R.S. §41-2631.

MAINTENANCE SERVICES. Routine maintenance, repair, and replacement of existing facilities, structures, buildings, or real property.

MATERIALS.

- (1) All property, including equipment, supplies, printing, and insurance.
- (2) Does not include land, a permanent interest in land or real property, or leases of property.

MAY. Denotes the permissive in a contract clause or specification.

MINOR IRREGULARITY OR INFORMALITY. A variation from the solicitation that does not affect the price of the contract or does not give an offeror an advantage or benefit not enjoyed by the other offerors or does not adversely impact the interests of the contracting party.

MUST. Denotes the imperative in contract clauses or specifications/statements of work. Also indicates a legal condition required to occur before a prescribed consequence will happen.

MULTIPLE AWARD. Contracts awarded to more than one supplier for comparable supplies and services.

NEGOTIATION. An exchange or series of exchanges between the City and an offeror or contractor in which both parties intend to revise, in writing, an offer or contract, unless revision is specifically prohibited by these rules or statutes.

NOTICE OF INTENT TO AWARD. A written notice publicly posted prior to announcing the award of a contract to notify interested parties of the intended award.

OFFER. A response to a solicitation that, if accepted, would bind the offeror to honor what was submitted.

OFFEROR. A generic term that refers to an individual or business that submits an offer in response to a solicitation.

OPERATIONS SERVICES. Routine operation of existing facilities, structures, buildings, or real property.

OWNER. The City of Goodyear.

PERSON. Any corporation, business, individual, union, committee, club, other organization, or group of individuals.

PIGGYBACK (PIGGYBACK COOPERATIVES). Form of intergovernmental cooperative purchasing in which an entity will be given the pricing and terms of a contract entered into by another entity. Generally, the other entity will competitively award a contract that will include language allowing for other entities to use the contract to their advantage in terms of pricing, thereby gaining economies of scale that they normally would not receive if they competed on their own.

PRECONSTRUCTION SERVICES. Services and other activities during the design phase.

PROCUREMENT.

(1) Buying, purchasing, renting, leasing or otherwise acquiring any materials, goods, services, construction, or construction services.

(2) Includes all functions that pertain to obtaining any material, services, construction, or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

PROCUREMENT CARD. A credit card issued to an authorized city employee that enables and facilitates online or electronic purchases directly from suppliers within pre-approved authority levels and spending limits.

PROCUREMENT FILE. A file containing documents relating to the acquisition and purchase of materials, supplies, services, construction, or construction services.

PROCUREMENT MANAGER. The individual designated by the City Manager for the City who is thereby duly authorized as directed to enter into, approve, execute, or administer contracts; make written determinations on contracts, bids, or purchases; and to serve as the property administrator. Written determinations required by this article shall be retained in the appropriate official records file of the Procurement Manager.

PROFESSIONAL SERVICES. Those services that require specialized knowledge, education, or skill, and where the qualifications of the person(s) rendering services are of primary importance. Professional services include, but are not limited to, appraisers, land surveyors, attorneys, architects, engineers, psychologists, physicians, health practitioners, auditors, financial advisors, systems and software analysts, consultants, and other technical registrants as defined in A.R.S. Title 32.

PROPERTY. Assets with a useful life of more than one year.

PROPERTY TRANSFER FORM. A form submitted by the department requesting transfer of fixed assets between departments or transfer of property to or from the surplus property program.

PROPOSAL. An offer to provide goods or services.

PROSPECTIVE OFFEROR. A person that expresses an interest in a specific solicitation.

PUBLIC PROCUREMENT UNIT. The City, a state or an agency of the United States, or any local public procurement unit such as a city or county government.

PURCHASE ORDER. A purchaser's written document to a supplier, authorized by the Procurement Manager, formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, cost of items being purchased, delivery schedule, terms of payment, and transportation.

PURCHASE REQUISITION. A written request authorizing the commencement of a purchasing transaction; typically, will include a description of the need and other information relative to the transaction. Submitted via eProcurement software.

QUOTATION. A statement of price, terms of sale, and description of goods or services offered by a supplier to a prospective purchaser; may be non-binding if solicited to obtain market information for planning purposes.

RESPONSIBLE BIDDER OR OFFEROR. A bidder or offeror who has (i) the capability to fully perform the contract requirements and (ii) the reliability that will ensure good faith performance.

RESPONSIVE BIDDER OR OFFEROR. A bidder or offeror who has submitted a bid or offer that fully conforms in all material respects to the solicitation and all of its requirements, including all form and substance.

RULES. A directive for conduct that is intended to provide regulations for implementing the requirements of this procurement code. In the event of a conflict, the code shall control over the rules, regulations, policies, or procedures.

SERVICES.

(1) The furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance.

(2) Does not include employment agreements or collective bargaining agreements.

SHALL. Something is mandatory.

SINGLE-SOURCE. A procurement whereby a purchase is directed to one source because of standardization, warranty, or other factors even though other competitive sources may be available.

SITE. The land or premises on which the project is located.

SOLE-SOURCE. A non-competitive method of procurement used when only one supplier possesses the unique ability or capability to meet the particular requirements of the entity or when only one supplier is practicably available.

SOLICITATION. A Request for Quotations, an Invitation for Bids, a Request for Proposals, a Request for Qualifications, or any other invitation or request issued by the City to invite a person to submit an offer.

SOURCE SELECTION METHOD. A purchasing method, approved by the Procurement Manager, by which goods, services, or construction may be obtained. Such methods may include emergency purchases, competitive bidding, competitive negotiation, intergovernmental cooperative agreements, or purchases via credit card.

SPLIT PURCHASE. Separating a requirement that exceeds a single purchase limit or threshold into two or more buys as a means of circumventing a purchase limit or threshold. Split purchases are prohibited.

STATEMENT OF QUALIFICATIONS (SOQ). All documents submitted by a potential offeror in response to a request for qualifications.

SUBCONTRACTOR. A person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the City.

SUPPLIER. A manufacturer, fabricator, distributor, or vendor having a direct contract with a contractor or subcontractor to furnish materials or equipment to be incorporated in the construction phase work by a contractor or subcontractor.

SURPLUS PROPERTY. Property no longer needed by City departments for their operations, obsolete property, property in poor or non-working condition, or property that is a by-product (e.g. scrap metal, used tires and oil, etc.). It does not include real property, which is governed by § 3-6-4.

SUSPENSION. An action taken by the Procurement Manager that temporarily disqualifies a person from participating in a city procurement process.

TRADE SECRET. Information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known and not being readily ascertainable by public means. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-4 Definitions – Electronic bidding.

In this article, unless the context otherwise requires:

AUCTION. A public sale in which property or items are sold to the highest bidder. Online auctions are allowed as directed by the Procurement Manager.

INFORMATION SERVICES. Data processing, telecommunications and office systems technologies and services.

INTERNET. The international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical sub network called the world wide web.

ONLINE SOLICITATION. A procurement process in which the City receives vendors' bids or offers for goods, services, construction or information services electronically over the internet in a real time, competitive solicitation event.

REVERSE AUCTION. A procurement method in which offerors are invited to bid on specified goods or services through online bidding and real time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-5 Authority of the procurement manager.

(A) The Procurement Manager shall serve as the central procurement authority and the Property Administrator for the City. The Procurement Manager shall be designated by the City Manager and will be duly authorized as directed to enter into, approve, execute, or administer contracts, and to make written determinations on contracts, bids, or purchases.

(B) The Procurement Manager may adopt rules, consistent with this article, governing the procurement and management of all materials, specifications, services, and construction to be procured by this City and the disposal of materials. Any prior approval that Council may establish by resolution as permitted by § 3-4-8 is still subject to this article and the rules established thereunder.

(C) Except as otherwise provided in this article, the Procurement Manager, in accordance with rules adopted under this article shall:

- (1) Procure or supervise the procurement of all goods, services, and construction services needed by the City.
- (2) Establish guidelines for the management of all inventories of materials belonging to the City.
- (3) Sell, trade, or otherwise dispose of surplus property belonging to the City.
- (4) Establish and maintain programs for the inspection, testing and acceptance of materials, services, and construction.
- (5) Establish forms and procedures for use in all procurements.

(D) The Procurement Manager has the sole authority to debar or suspend a person from participating in city procurements. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-6 Delegation of authority by the procurement manager.

The Procurement Manager may designate and delegate authority to qualified individuals of any city department. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-7 Authority to contract for certain professional services; Continuity of services.

(A) Contracts for professional services as defined in § 3-4-3 or for services listed in (B) of this section are not required to comply with the provisions of this article except as may be set forth in this section. Any contract for services that does not meet the definition of professional services under § 3-4-3, but for which services relate to a prior contractual relationship that permits a continuity of services for the City may be exempt from this article, subject to the written approval of the Procurement Manager.

(B) All contracts for the services of legal counsel, expert witnesses related to an existing or probable judicial proceeding in which the City is or may be a party, or for special investigative services, shall be approved by the City Attorney.

(C) Payment for any services, including those services described in (A), and (B) of this section, procured under this article shall not be made unless pursuant to a written contract. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-8 Procurements involving a prescribed amount.

(A) All City expenditures must be approved by Council prior to purchase. Prior approval exists for items that are included in the current budget as adopted by Council, and Council may designate an amount, by way of resolution, authorizing the City Manager to approve non-budgeted expenditures. Council may also designate an amount, by way of resolution, above which a budgeted expenditure must be approved, or specifically identified in the adoption of the budget to be considered approved, by Council before a contract, purchase order, change order, or a notice to proceed may be issued. Prior approval of expenditures does not waive the application of the provisions of this article. The expenditure must still meet the requirements of this article, as applicable.

(B) Any procurement less than one hundred thousand dollars (\$100,000.00) will be procured in accordance with the rules established by the Procurement Manager.

(C) Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this section and to circumvent the source selection procedures required under Article 3-5. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-9 Cooperative procurement.

(A) Pursuant to this article the City Council hereby approves and authorizes the Procurement Manager to enter into cooperative purchasing agreements and piggyback cooperatives deemed by the Procurement Manager to be in the best interest of the City. The City Council reserves the right to revoke its approval and authorization for an individual agreement.

(B) The Procurement Manager on behalf of the City may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more public procurement units in accordance with an agreement entered into between the participants. The Procurement Manager will make a written recommendation that such an agreement is allowable and in the best interest of the City. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-10 Compliance with federal requirements.

If a procurement involves the expenditure of federal assistance or monies, the Procurement Manager shall comply with federal law and authorized regulations which are mandatory and which may not be reflected in this article. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-11 Online solicitations.

(A) If the Procurement Manager determines that electronic, online solicitation is advantageous, the Procurement Manager may use online solicitations to obtain bids or offers electronically for the purchase of goods, services, construction, and information services.

(B) An online 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 solicited online. Information regarding the closing date and time must be included in the solicitation. At the opening date and time, the City must begin accepting online bids or offers and must continue accepting bids or offers until the solicitation is officially closed. The online system must provide for security equal to competitive sealed solicitations.

(D) All online bids or offers must be posted electronically and updated on a real time basis.

(E) The Procurement Manager may:

- (1) Require vendors to register before the opening date and time and, as part of that registration, require vendors to agree to any terms, conditions, or other requirements of the solicitation.
- (2) Pre-qualify vendors and allow only those vendors who are pre-qualified to submit bids or offers online.

(F) Provisions regarding competitive sealed solicitations (§§ 3-5-9 and 3-5-10) apply to solicitations issued pursuant to this section, except for the means of advertising. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-12 Contract clauses.

(A) The Procurement Manager may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other contract provisions.

(B) The Procurement Manager may modify clauses for inclusion in any City contract, provided that any variations are supported by a written determination that states the circumstances justifying the variation and provided that notice of any material variation is stated in the solicitation.

(C) All contract clauses shall be approved by the City Attorney's office and shall be consistent with the provisions of this article and the regulations issued pursuant to this article. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-13 Change order.

A change order exceeding an amount or percentage established by regulation may be executed only after the Procurement Manager determines in writing that the change order is advantageous to the City. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-14 Contracts in the best interest of the City.

Any type of contract which will promote the best interests of the City may be used with the following limitations. A cost plus a percentage of cost contract is prohibited. All determinations regarding the best interest of the City shall be deemed by the Procurement Manager. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-15 Term of Contracts.

(A) Unless otherwise provided by law, a contract for goods, services, or job-order-contracting construction services may be entered into for a period of time up to five years, as deemed to be in the best interest of the City by the Procurement Manager, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. A contract may be entered into for materials or services for a period of time exceeding five years if, under rules adopted pursuant to this article, the Procurement Manager determines in writing that such a contract would be advantageous to the City. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

(B) Before the use of a multi-term contract, it shall be determined in writing that:

- (1) Estimated requirements cover the period of the contract and are reasonable and continuing.

(2) Such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in city procurement.

(C) If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled, and the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the goods or services delivered under the contract or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for such purposes. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-16 Rules for protesting solicitations and contract awards.

The Procurement Manager shall include in the rules authorized by § 3-4-5, procedures providing for the expeditious administrative review of all solicitation protests and contract award claims or controversies.

§ 3-4-17 Rules for suspension and debarment of contractors.

The rules adopted by the Procurement Manager pursuant to §§ 3-4-5 and 3-4-18 shall include hearing procedures for the suspension and debarment of contractors. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-18 Debarment and suspension of contractors.

(A) All contracts for services involving minors shall require background checks for all employees, or that contractor shall be placed on a suspension list until such time as all employees successfully meet this requirement. If there are reasonable grounds for debarment, the rules of the Procurement Manager may provide for the suspension of any person. A debarment shall not exceed three years.

(B) The causes for debarment or suspension include the following:

- (1) Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of 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 statute of the federal, state, or local government for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes, and practices, bid rigging, perjury, forgery, bribery, falsification, or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a city contractor.
- (3) Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
- (4) Violations of city contract provisions of a character which are deemed to be so serious as to justify debarment action.
- (5) Any other cause deemed to affect responsibility as a city contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause listed in rules of the Procurement Manager.

(C) A written determination to debar or suspend shall be issued pursuant to the rules of the Procurement Manager which shall:

- (1) State the reasons for the action taken.

(2) Inform any debarred or suspended person involved of the right to administrative review as provided in this article.

(D) A copy of the decision under (C) of this section shall be furnished to any debarred or suspended person and to any intervening party, and a copy retained in the records of the City Clerk. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-19 Appeal.

Any final decision on a protest, suspension, or debarment by the Procurement Manager under this article may be appealed. A copy of the appeal must be provided to the Procurement Manager and the City Attorney. (Ord. 08-1137, passed 9-22-2008)

§ 3-4-20 Violation; Penalty; Enforcement authority.

A person who evaluates bids or proposals shall sign a statement before reviewing bids or proposals that the person has no interest in the procurement other than that disclosed and will have no contact with any representative of any vendor related to the procurement during evaluation of bids or proposals. The person shall disclose on the statement any contact unrelated to the pending procurement that the person may need to have with a representative of a competing vendor and any contact with a representative of a competing vendor during evaluation of bids or proposals. A person who evaluates bids or proposals who fails to disclose contact with a representative of a competing vendor or who fails to provide accurate information on the statement is subject to a civil penalty up to \$5,000, in addition to any other penalty available pursuant to § 1-8-1 of this Code. The Procurement Manager is authorized to initiate enforcement actions pursuant to the provisions of this section. (Ord. 08-1137, passed 9-22-2008)

Article 3-5 SOURCE SELECTION

Sections:

- 3-5-1 Definitions.
- 3-5-2 Methods of source selection.
- 3-5-3 Pre-qualification of contractors.
- 3-5-4 Bid and contract security.
- 3-5-5 Right to inspect plant.
- 3-5-6 Right to audit records.
- 3-5-7 Reporting of anti-competitive practices.
- 3-5-8 Retention of procurement records.
- 3-5-9 Competitive sealed bidding.
- 3-5-10 Competitive sealed proposals.
- 3-5-11 Cancellation of invitation for bids or requests for proposals.
- 3-5-12 Responsibility of bidders and offerors.
- 3-5-13 Sole-source and single-source procurement.
- 3-5-14 Emergency procurements.
- 3-5-15 Competition impracticable procurement.
- 3-5-16 Request for information.
- 3-5-17 Demonstration projects.
- 3-5-18 Unsolicited proposals.
- 3-5-19 General services administration (gsa) contracts.
- 3-5-20 Procurement of construction and specified professional services.
- 3-5-21 Cost principles rules.
- 3-5-22 Cost or pricing data.

§ 3-5-1 Definitions.

In this article, unless the context otherwise requires:

BIDDER PREQUALIFICATION. Determining in accordance with rules adopted pursuant to this article that a prospective bidder or offeror satisfies the criteria for being included on the bidder's list.

DEMONSTRATION PROJECT. A project in which a vendor supplies a service or material to the City for which the City does not pay but for which the City may be obligated to provide routine support such as utility cost and operating personnel.

ESTABLISHED CATALOG PRICE. The price included in a catalog, price list, schedule or other form that:

- (1) Is regularly maintained by a manufacturer, distributor or contractor.
- (2) Is either published or otherwise available for inspection by customers.

- (3) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.

INVITATION FOR BIDS (IFB). A procurement method used to solicit competitive sealed bid responses, sometimes called formal bids, when price is the basis for award, in accordance with the procedures prescribed in § 3-5-9.

MULTI-STEP SEALED BIDDING. A method of source selection involving two competitive steps that combine the elements of both Invitation for Bids and Request for Proposals. The first step may require the submission of technical and price proposals, with only the technical proposals being evaluated and scored. The second step involves opening the price proposals of those firms that have achieved the highest technical scores and are in competitive range.

PURCHASE DESCRIPTION. The words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.

REQUEST FOR INFORMATION. A non-binding method whereby a jurisdiction publishes via newspaper, internet, or direct mail its need for information about the availability in the commercial marketplace of materials or services from interested parties for an upcoming solicitation.

REQUEST FOR PROPOSALS. All documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in § 3-5-10.

REQUEST FOR PROPOSALS (RFP). All documents, whether attached or incorporated by reference, which are issued by a procurement entity to solicit proposals from potential providers (proposers) for goods and services in accordance with procedures prescribed in § 3-5-10. Price is usually not a primary evaluation factor. An RFP provides for the negotiation of all terms, including price, prior to contract award. May include a provision for the negotiation of best and final offers. May be a single-step or multistep process.

REQUEST FOR QUALIFICATIONS (RFQu). All documents, whether attached or incorporated by reference, which are issued by a procurement entity to solicit statements of the qualifications of potential submitters for professional or construction services that will be evaluated solely upon the basis of the qualifications of the submitters.

REQUEST FOR QUOTATIONS (RFQ). All documents, whether attached or incorporated by reference, which are issued by a procurement entity to solicit quotations in accordance with procedures prescribed in § 3-4-8.

SPECIFICATION. Any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery. All specifications, including those prepared by architects, engineers, consultants and others for public contracts, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying this City's needs and shall not be unduly restrictive.

UNSOLICITED PROPOSAL. A written proposal that is submitted on the initiative of the offeror or for the purposes of obtaining a contract with the City and that is not in response to a formal or informal request from the City. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-2 Methods of source selection.

All city contracts shall be awarded by competitive sealed solicitations, including online solicitations, as provided in §§ 3-5-9 or 3-5-10, or as otherwise provided in this procurement code. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-3 Pre-qualification of contractors.

Prospective contractors may be pre-qualified for particular types of materials, goods, services, and construction. Prospective contractors have a continuing duty to provide the Procurement Manager with information on any material change affecting the basis of pre-qualification. Solicitation mailing lists of potential contractors shall include the pre-qualified contractors. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-4 Bid and contract security.

The Procurement Manager may require, in accordance with rules adopted by the Procurement Manager, the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Procurement Manager shall consider the nature of the performance and the need for future protection to the City. The requirement for security must be included in the invitation for bids or request for proposals. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-5 Right to inspect plant.

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded, or to be awarded, by the City. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-6 Right to audit records.

(A) The City may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in § 3-5-23 to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order or contract modification for which cost, or pricing data is required shall maintain the books and records that relate to the cost or pricing data for five years after the completion of the contract.

(B) The City is entitled to audit the books and records of a contractor or any subcontractor conducting business with the City to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five years after the completion of the prime contract. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-7 Reporting of anti-competitive practices.

If for any reason collusion or other anti-competitive practices are suspected among any bidders or offeror, a written summary of the relevant facts shall be transmitted to the Procurement Manager and the City Attorney. Anonymous reports may be considered if supported by verifiable facts. This section does not require an investigation by a law enforcement agency. The Procurement Manager or City Attorney may conduct such investigation as may be warranted. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-8 Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the City Clerk's Office. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-9 Competitive sealed bidding.

(A) An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement.

(B) Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids, but not less than two weeks before bid opening date and time. The notice should include publication one or more times in a newspaper of general circulation, including circulation within the City. The notice may also be posted at a city approved site on a public network or by electronic notification to registered vendors.

(C) Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid together with the name of each bidder shall be read, recorded, and published. The bid documents shall not be open for public inspection until after a contract is awarded. To the extent the bidder designates, and the City concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential in accordance with rules adopted by the Procurement Manager.

(D) Bids shall be received without alteration or correction, except as authorized in this article. Bids shall be evaluated based on the requirements set forth in the invitation for bids, including criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, as may be prescribed in rules adopted by the Procurement Manager. The invitation for bids shall set forth the evaluation criteria to be used, including the weighting of identified criteria. Evaluation criteria shall not be used for construction and no criteria may be used in bid evaluation that is not set forth in the invitation for bids.

(E) The correction or withdrawal of erroneous bids before or after bid opening, based on bid mistakes, may be permitted in accordance with rules adopted by the Procurement Manager. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Procurement Manager.

(F) The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids. Except for procurement of construction, for purposes of determining the low bidder the Procurement Manager may consider the amount of applicable city business privilege tax and exclude that amount from the evaluation unless otherwise precluded by applicable law. If all bids for a construction project exceed available monies as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such monies by more than 5%, the Procurement Manager may, in situations in which time or economic considerations preclude re-solicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, to bring the bid within the amount of available monies.

(G) The multi-step sealed bidding method may be used if the Procurement Manager determines in writing that it is not practical to initially prepare a definitive purchase description which is suitable to permit an award based on competitive sealed bidding. An invitation for bids

may be issued requesting the submission of technical offers to be followed by an invitation for bids limited to those bidders whose offers are determined to be technically acceptable under the criteria set forth in the first solicitation, except that the multi-step sealed bidding method may not be used for construction contracts. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-10 Competitive sealed proposals.

(A) If the Procurement Manager determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract for materials or services may be entered into by competitive sealed proposals. This section does not apply to procurement of construction, construction services or specified professional services pursuant to § 3-5-20. Construction services shall be procured pursuant to §§ 3-5-14 or 3-5-20.

(B) Proposals shall be solicited through a request for proposals.

(C) Adequate public notice of the request for proposals shall be given a reasonable time before the date set forth in the request for proposals for the opening of proposals, but not less than two weeks before the solicitation opening date and time. The notice should include publication one or more times in a newspaper of general circulation, including circulation within the City. The notice may also be posted at a city approved site on a public network or by electronic notification to registered vendors.

(D) Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror and such other relevant information shall be publicly read and recorded in accordance with rules adopted by the Procurement Manager. All other information contained in the proposals shall be confidential until after contract award. Any trade secrets or other proprietary data designated by the offeror may or may not remain confidential in accordance with rules adopted by the Procurement Manager.

(E) The request for proposals shall state the relative importance of price and other evaluation factors. Specific numerical weighting is not required.

(F) As provided in the request for proposals, and under rules adopted by the Procurement Manager, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of the solicitation requirements and to permit revision of offers. Offerors shall be accorded fair treatment with respect to any opportunity for discussion. Revisions may be permitted after submission and before award. If discussions are conducted, all offerors who have submitted proposals that are determined by the Procurement Manager to be in the competitive range shall be invited to submit a final proposal revision. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(G) The award shall be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of the City, except as allowed by § 3-5-9(F) and applied to proposals, is not a factor in determining the most advantageous proposal. The contract file shall contain the basis on which the award is made. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-11 Cancellation of invitation for bids or requests for proposals.

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 as may be specified in the solicitation if it is

in the best interests of the City as determined by the Procurement Manager. The reasons for the cancelation or rejection shall be made part of the contract file. The City Council may reject any bid that exceeds the prescribed amounts in § 3-4-8. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-12 Responsibility of bidders and offerors.

(A) A written determination of non-responsibility of a bidder or offeror shall be made in accordance with rules adopted by the Procurement Manager. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of non-responsibility with respect to the bidder or offerors. A finding of non-responsibility shall not be construed as a violation of the rights of any person.

(B) Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the office of the Procurement Manager without prior written consent by the bidder or offeror except to law enforcement agencies or as otherwise required by applicable law. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-13 Sole-source and single-source procurement.

A contract may be awarded for a material, good, service, or construction item without competition if the Procurement Manager determines in writing that there is a sole or single source for the required material, good, service, or construction item. The Procurement Manager may require the submission of cost or pricing data in connection with an award under this section. Sole-source or single-source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination of the basis for the sole-source or single-source procurement shall be included in the procurement file. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-14 Emergency procurements.

Notwithstanding any other provision of this article, the Procurement Manager may make or authorize others to make emergency procurements if there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with §§ 3-5-9, 3-5-10, or 3-5-20 impracticable, unnecessary, or contrary to the public interest as defined in rules adopted by the Procurement Manager, except that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. Materials, goods, or services obtained in an emergency procurement that exceed the amount prescribed in §3-4-8 shall be reported to the Council at its next regular meeting. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-15 Competition impracticable procurement.

Notwithstanding any other provision of this article, the Procurement Manager may make, or authorize others to make, competition impracticable procurements if a situation exists which makes compliance with §§ 3-5-9, 3-5-10, or 3-5-20 impracticable, unnecessary, or disadvantageous to the City's interest, except that such procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included in the contract file. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-16 Request for information.

The Procurement Manager may issue a request for information to obtain data about services or materials available to meet a specific need. Adequate public notice as specified in § 3-5-9 shall be provided. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-17 Demonstration projects.

(A) A demonstration project may be undertaken if the Procurement Manager determines in writing that the project is innovative, unique, and in the best interests of the City. The City shall not be obligated to pay the contractor during the demonstration period, or to procure or lease the services or materials supplied by the contractor. However, on the written request and justification by a department director and written determination by the Procurement Manager, the City may pay the contractor all or part of the expendable costs incurred during the demonstration period. The term of the demonstration shall not exceed two years.

(B) A subsequent contract to procure or lease services or materials previously supplied during a demonstration project may be procured under this section, subject to the Procurement Manager's approval, or it may be procured as otherwise provided in this article.

(C) Except as otherwise provided by law, a contractor for a demonstration project shall not be precluded from participating as a bidder or offeror in a procurement for the services or materials supplied during a demonstration project. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-18 Unsolicited proposals.

A contract may be awarded based on an unsolicited proposal only if the Procurement Manager determines in writing that §§ 3-5-13 or 3-5-15 applies. The determination shall also include the following findings:

(A) The proposal is innovative and unique.

(B) The proposal is not available without restrictions from another source and does not closely resemble a similar product which is either available or pending in the industry.

(C) The City department receiving the proposal has sufficiently supported its recommendations with facts and circumstances that preclude competition.

(D) The Procurement Manager has approved, in writing, the award of a contract based on the unsolicited proposal. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-19 General Services Administration (GSA) contracts.

Notwithstanding §§ 3-5-9 and 3-5-10, the Procurement Manager or the Procurement Manager's designee may use the pricing and cost schedules of General Services Administration (GSA) contracts for materials and services. The Procurement Manager or the Procurement Manager's designee may authorize a city department to make purchases under a GSA contract approved by the Procurement Manager or the Procurement Manager's designee without complying with the requirements prescribed in §§ 3-5-9 or 3-5-10 if the Procurement Manager or the Procurement Manager's designee determines that it meets the requirements established by the rules adopted by the Procurement Manager. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-20 Procurement of construction and specified professional services.

Professional services contracts with technical registrants, as defined in A.R.S. Title 32, and construction services contracts will be governed by the provisions of A.R.S. Title 34, except that for Job-Order-Contracting construction services only, the maximum dollar amount of an

individual job order shall be five million dollars (\$5,000,000.00). (Ord. 08-1137, passed 9-22-2008)

§ 3-5-21 Cost principles rules.

The Procurement Manager may adopt rules setting forth cost principles which shall be used to determine the allowability of incurred costs under contract provisions which provide for the reimbursement of costs. (Ord. 08-1137, passed 9-22-2008)

§ 3-5-23 Cost or pricing data.

The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is fair and reasonable. The Procurement Manager may establish by rules what constitutes a fair and reasonable price. (Ord. 08-1137, passed 9-22-2008)

Article 3-6 MATERIAL MANAGEMENT

Sections:

- 3-6-1** **Definitions.**
- 3-6-2** **Property administrator.**
- 3-6-3** **Surplus property management rules.**
- 3-6-4** **Disposition of real or personal property.**
- 3-6-5** **Disposition of abandoned or unclaimed property.**

§ 3-6-1 Definitions.

In this article, unless the context otherwise requires:

PROPERTY. Assets with a useful life of more than one year.

PROPERTY TRANSFER FORM. A form submitted by the department requesting transfer of fixed assets between departments or transfer of property to or from the Surplus Property Program.

SURPLUS PROPERTY. Property no longer needed by city departments for their operations, obsolete property, property in poor or non-working condition, or property that is a byproduct (e.g. scrap metal, used tires and oil, etc.). It does not include real property, which is governed by § 3-6-4.

UNCLAIMED, LOST AND CONFISCATED PROPERTY. All property used as evidence in the courts and remaining unclaimed after final disposition, property seized by a peace officer as being used unlawfully, and all property coming into the hands of any city officer or employee as lost or unclaimed. (Ord. 08-1137, passed 9-22-2008)

§ 3-6-2 Property administrator.

The Procurement Manager, as appointed by the City Manager, shall serve as the Property Administrator for the City and shall be primarily responsible for all property, real or personal, belonging to the City. The Procurement Manager may designate another employee, or employees, of the City as Property Administrator. The real estate coordinator, and other real estate staff, will coordinate and advise the Property Administrator of all real estate transactions for the City. (Ord. 08-1137, passed 9-22-2008)

§ 3-6-3 Surplus property management rules.

The Procurement Manager shall adopt rules governing:

- (A) The transfer of surplus property and operation of the surplus property program.
- (B) The sale or disposal of surplus, unclaimed, and seized property by public auction, competitive formal and informal bid, electronic, or other appropriate method.

(C) The trade-in of surplus property for purchase of new equipment. (Ord. 08-1137, passed 9-22-2008)

§ 3-6-4 Disposition of real or personal property.

Any disposition of real or personal property or improvements thereto may be made in accordance with rules adopted by the Procurement Manager, or otherwise in accordance with an approved method as determined by City Council, except that firearms and police canines shall be disposed of in accordance with Article 4-4. (Ord. 08-1137, passed 9-22-2008)

§ 3-6-5 Disposition of abandoned or unclaimed property.

The disposition of all property coming into the possession of the Police Department, not purchased with city funds, shall be disposed of in accordance with Article 4-4, including but not limited to evidence, seized, lost, confiscated, abandoned, and unclaimed property.