



CITY OF SOUTH TUCSON, ARIZONA  
ORDINANCE NO 11-07

RELATING TO PROCUREMENT; AMENDING THE CITY OF SOUTH TUCSON, ARIZONA CODE, BY AMENDING CHAPTER 28 (PROCUREMENT CODE), ARTICLES I, III, VIII AND IX AND RESPECTIVE SECTIONS AS ENUMERATED BELOW, ADOPTION BY REFERENCE AND DECLARING AN EMERGENCY.

WHEREAS, the South Tucson Procurement Code was adopted pursuant to Ordinance 06-07 and HUD regulations and 24 CFR Section 85.36 require procurement methods that need to be incorporated into the Procurement Code; and

WHEREAS, the City of South Tucson desires to amend the Procurement Code to incorporate HUD regulations and 24 CFR Section 85.36 procurement requirements; and

WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of South Tucson, Arizona that this Ordinance become immediately effective, an emergency is hereby declared to exist and this Ordinance shall be effective immediately upon its passage and adoption.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1: THE SOUTH TUCSON CITY CODE, CHAPTER 28 (PROCUREMENT CODE), ARTICLES I, III, VIII AND IX AND RESPECTIVE SECTIONS/SUB-SECTIONS ARE AMENDED AND CREATED AS ENUMERATED BELOW:

Article I:

Amending Sections 28-1(3) and 1(4); 28-2(1) through 2(7), 28-2(9) and 2(10), 28-2(12) through 2(14), 28-2(17) through 2(24).

Creating/Adding 28-2(33) through 2(35), 28-2(37) through 2(45), 28-2(47) through 2(61), 28-2(65) through 2(74), 28-2(76) and 2(77).

Article III:

Amending Section 28-27(1).

Article VIII:  
Amending Section 28-68

Article IX:  
Creating/Adding Section 28-130 (Ethics in Public Contracting); Sec. 28-130(1) (Credit or Purchasing Cards); 28-130(2) (Assistance to Small and Other Businesses); 28-130(3) (Appeals and Remedies);

**SECTION 2: Adoption by Reference.**

That a certain document, three (3) copies of which are on file in the office of the City Clerk of the City of South Tucson, being marked and designated as Amended Chapter 28 [SOUTH TUCSON PROCUREMENT CODE] governing all City of South Tucson and STHA procurement policies are hereby adopted, by reference.

*State law reference* — Adoption by reference, A.R.S. §§ 9-801 and 9-802

**SECTION 3:** The sections and/or sub-sections of Chapter 28 that have been amended and created herein serve to repeal the former sections or sub-sections and to create additional sections or sub-sections. All other sections and sub-sections of Chapter 28 that have not been amended herein shall remain in full force and effect as they currently exist.

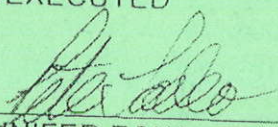
**SECTION 4:** If any provision of this Ordinance or the Application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable

**SECTION 5:** The various City officers and employees are authorized and directed to publish this Ordinance as required by law and to perform all acts necessary or desirable to give effect to this Ordinance.

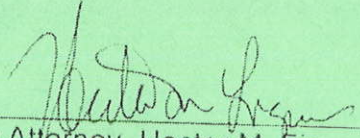
**SECTION 6:** An emergency is hereby declared to exist and this Ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, this 14<sup>th</sup> day of November, 2011

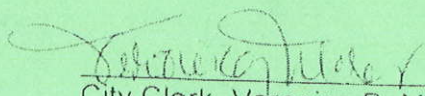
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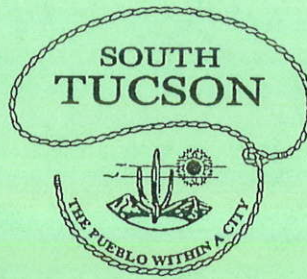
  
MAYOR, JENNIFER ECKSTROM

APPROVED AS TO FORM:

  
City Attorney, Hector M. Figueroa, Esq.

ATTEST:

  
City Clerk, Veronica B. Moreno



CITY OF SOUTH TUCSON, ARIZONA  
ORDINANCE NO 09-02

RELATING TO PROCUREMENT; AMENDING THE CITY OF SOUTH TUCSON, ARIZONA CODE, CHAPTER 28, SECTIONS 28- 20(3); 20-21; AND 28-23, AND DECLARING AN EMERGENCY.

WHEREAS, the South Tucson Procurement Code was adopted pursuant to Ordinance 06-07 and HUD regulations and 24 CFR Section 85.36 require procurement methods that need to be incorporated into the Procurement Code; and

WHEREAS, the City of South Tucson desires to amend the Procurement Code to incorporate HUD regulations and 24 CFR Section 85.36 procurement requirements; and

WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of South Tucson, Arizona that this Ordinance become immediately effective, an emergency is hereby declared to exist and this Ordinance shall be effective immediately upon its passage and adoption.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1: The South Tucson City Code, Chapter 28, Sections 28-20(3); 28-21 and 28-23 are hereby amended, to read as follows:

**Sec. 28-20: Small Purchases.**

Sec. 28-20(3): Small Purchases for Municipal purchases under \$5,000.00 shall be used and authorized by the City Manager pursuant to adopted procedures. Small purchase between \$2,000 and \$5,000 require no less than three quotations to be submitted before the purchase is made. Procurement methods under HUD Procurement Handbook and 24CFR85.36 (d) (1) are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold fixed by 41 U.S.C. 403(11) (currently set at \$100,000).

The STHA shall follow "Buy American" requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United State in their projects.

**Sec. 28-21: Sole Source Procurement.**

A contract may be awarded without competition when the City Manager determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using agency, department or entity requesting sole source procurement shall provide written evidence to support a sole source determination. The City Manager may require that negotiations be conducted as to price, delivery, and terms. The City Manager may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record. Procurement methods under HUD Procurement Handbook and 24CFR85.36 (d) (4) for procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, and competition is determined inadequate. Such procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and requires HUD prior approval.

The STHA shall follow "Buy American" requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United State in their projects.

**Sec. 28-23: Special Procurements.**

Notwithstanding any other provisions of this Chapter, the City Manager or his designee may make procurements above the small purchase amount specified in Section 28-20 when, due to unusual or special circumstances, it would be in the best interest of the City to accomplish the procurement without compliance with Sections 28-17 (Competitive Sealed Bidding), 28-18 (Competitive Sealed Proposals), 28-49 (Procurement of Professional Design Services), or 28-50 (Procurement of Construction Services). Any special procurement under this Section shall be limited to those materials, services, or construction necessary to satisfy the City's need and shall be made with sound fiscal discretion. A written determination by the City Manager of the basis for the special procurement and for the selection of the particular contractor shall be included in the contract file. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is in the public interest, fair, honest, prudent and a wise exercise of discretion. Procurement under HUD Procurement Handbook and 24CFR85.36 for procurement by noncompetitive methods is procurement done without a sealed bid. Such procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and requires HUD prior approval.

The STHA shall follow "Buy American" requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United State in their projects.

**SECTION 2:** The sections and/or sub-sections of Chapter 28 that have been amended herein serve to repeal the former sections or sub-sections. All other sections and sub-sections of Chapter 28 that have not been amended herein shall remain in full force and effect as they currently exist.

**SECTION 3:** If any provision of this Ordinance or the Application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

**SECTION 4:** The various City officers and employees are authorized and directed to publish this Ordinance as required by law and to perform all acts necessary or desirable to give effect to this Ordinance.

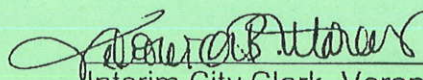
**SECTION 5:** An emergency is hereby declared to exist and this Ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, this 17<sup>th</sup> day of August, 2009

APPROVED/EXECUTED

  
\_\_\_\_\_  
Mayor, Jennifer Eckstrom

ATTEST:

  
\_\_\_\_\_  
Interim City Clerk, Veronica B. Moreno

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney, Hector M. Figueroa, Esq.

CITY OF SOUTH TUCSON, ARIZONA  
ORDINANCE NO 06-07

RELATING TO PROCUREMENT; AMENDING THE CITY OF SOUTH  
TUCSON, ARIZONA CODE, CHAPTER 28, IN ITS ENTIRETY, AND  
DECLARING AN EMERGENCY

WHEREAS, it is the purpose of the South Tucson Procurement Code to:

Simplify, clarify, centralize, and modernize the law governing procurement by the City of South Tucson, Arizona; and

Permit the continued development of procurement policies and practices; and

Provide for increased public confidence in the procedures followed in public Procurement; and

Ensure the fair and equitable treatment of all persons who deal with the Procurement system of the City of South Tucson; and

Provide increased economy in City Procurement activities and maximize, to the fullest extent practicable, the purchasing value of public monies of the City while fostering effective broad-based competition within the free enterprise system; and

Provide safeguards for the maintenance of a procurement system of quality and integrity; and

Obtain, in a cost-effective and timely manner, the materials, services and construction required by the City of South Tucson to better serve its citizens.

**BE IT ORDAINED** BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, AS FOLLOWS:

**SECTION 1.** The South Tucson City Code, Chapter 28, is hereby amended, in its entirety, to read as follows:

**CHAPTER 28**  
**SOUTH TUCSON PROCUREMENT CODE**

**ARTICLE I. GENERAL PROVISIONS**

**Sec. 28-1. Applicability.**

Sec. 28-1(1) This chapter applies to every expenditure of public monies by this City irrespective of their source, including federal assistance monies, except that this chapter does not apply to grants or contracts between this City and other governments, except as provided in Article IX of this chapter. This chapter also applies to the disposal of City materials. Nothing in this chapter shall prevent this City from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. This chapter also applies to contracts, except sale or lease of City real property, where there is no expenditure of public monies when the City determines source selection and award of a contract.

Sec. 28-1(2) The provisions of this chapter are not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for services or testimony relating to an existing or probable judicial proceeding in which this City is or may become a party or to contracts for special investigative services for law enforcement purposes.

Sec. 28-1(3) Agreements negotiated by the City Attorney in settlement of litigation or threatened litigation are exempt from the provisions of this chapter.

Sec. 28-1(4) The purchases of materials for resale in a concession operation are exempt from the provisions of this chapter. However, such purchases shall be in accordance with procedures prescribed by the City Manager.

Sec. 28-1(5) The provisions of this chapter are not applicable to contracts for municipal improvement districts. Such contracts shall be awarded in accordance with A.R.S. Title 48, Chapter 4.

Sec. 28-1(6) Contracts for the performance of annual audits required by A. R. S. Title 9, Article 7.1 shall be awarded in accordance to A. R. S. 9-482.

**Sec. 28-2. Definitions.**

In this chapter, unless the context otherwise requires:

Sec. 28-2(1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Sec. 28-2(2) "Change order" means a written order signed by the City Manager or designee which directs the contractor to make changes that the contract

authorizes the City Manager to order with or without the consent of the contractor, as applicable.

Sec. 28-2(3) "City" means the municipal corporation now existing and known as the City of South Tucson.

Sec. 28-2(4) "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings or real property.

Sec. 28-2(5) "Construction services" means either of the following for construction-manager-at risk, design-build and job-order-contracting project delivery methods:

- (a) Construction, excluding services through the construction-manager-at-risk or job-order-contracting project delivery methods.
- (b) 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 pre-construction services, as those services are authorized in the definitions of construction-City Manager-at-risk, design-build or job-order-contracting in Sec. 28-47.

Sec. 28-2(6) "Contract" means all types of City agreements, regardless of what they may be called, for the procurement of materials, services, or construction or the disposal of materials.

Sec. 28-2(7) "Contract amendment" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties of the contract.

Sec. 28-2(8) "Contractor" means any person who has a contract with the City.

Sec. 28-2(9) "Days", unless otherwise specified, means calendar days and shall be computed pursuant to A.R.S. §1-243.

Sec. 28-2(10) "Department" means the any City department .

Sec. 28-2(11) "Designee" means a duly authorized representative of the City Manager.

Sec. 28-2(12) "Director" means the head of a City department.

Sec. 28-2(13) "Disposal of material" means sale of surplus, unclaimed and seized property by public auction, electronic auction, competitive sealed bidding, small purchase procedures or other appropriate method designated by this chapter.



Sec. 28-2(14) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Sec. 28-2(15) "Grant" means the furnishing by this City of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of materials, services or construction. A contract resulting from such an agreement is not a grant but a procurement contract.

Sec. 28-2(16) "Materials" means all property, including but not limited to, equipment, supplies, printing, insurance and buildings but does not include land, a permanent interest in land or leases of real property.

Sec. 28-2(17) "Person" means any corporation, consultant, business, individual, union, committee, club, other organization or group of individuals.

Sec. 28-2(18) "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Sec. 28-2(19) "Contract Officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts. Contract Officer also includes an authorized representative acting within the limits of the officer's authority.

Sec. 28-2(20) "Public Notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods may include electronic mailing lists and a website maintained for that purpose.

Sec. 28-2(21) "Services" means the furnishing of labor, time or effort by a contractor, consultant, subcontractor or sub consultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to, consulting, personal, professional, legal counsel, auditing, technical, professional design, construction and purchase-of-client services.

Sec. 28-2(22) "Subcontractor or sub consultant" means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the City.

Sec. 28-2(23) "Written or In Writing" means the product of any method for forming characters on paper, or other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 28-2(24) "Using agency" means any organizational unit of the City, which utilizes any materials, services or construction procured under this chapter.

**Sec. 28-3. Supplementary General Principles of Law Applicable.**

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.

**Sec. 28-4. Requirement of Good Faith.**

This Chapter requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

**Sec. 28-5 Confidential Information.**

Confidential information shall be designated as follows:

Sec. 28-5(1) If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the Contract Officer of this fact shall accompany the submission and the information shall be so identified wherever it appears.

Sec. 28-5(2) The information identified by the person as confidential may not be disclosed until the City Manager makes a written determination.

Sec. 28-5(3) The City Manager shall review the statement and information and may determine in writing whether the information shall be withheld.

Sec. 28-5(4) If the City Manager determines to disclose the information, the City Manager shall inform the person in writing of such determination.

**Secs. 28-6 through 28-10. Reserved.**

**ARTICLE II. CITY MANAGER AUTHORITY**

**Sec. 28-11. Authority of the City Manager.**

Sec. 28-11(1) Except as otherwise provided in this chapter, the City Manager may adopt operational procedures, consistent with this chapter, governing the procurement and management of all materials, services and construction to be procured by this City and the disposal of materials.

Sec. 28-11(2) The City Manager shall serve as the central Contract Officer of this City.

Sec. 28-11(3) Except as otherwise provided in this chapter, the City Manager shall:

- (a) Procure or supervise the procurement of all materials, services and construction needed by this City.
- (b) Establish guidelines for the management of all inventories of materials belonging to this City.
- (c) Sell, trade or otherwise dispose of surplus materials belonging to this City.
- (d) Prepare, issue, revise, maintain, and monitor the use of specifications for supplies, services and construction required by this City.
- (e) Establish and maintain programs for the inspection, testing and acceptance of materials, services and construction.

Sec. 28-11(4) The City Manager may delegate procurement authority to designees or to any department or official of the City.

#### **Sec. 28-12. Written Determinations.**

Written determinations required by this Chapter shall be filed with the City Clerk.

**Secs. 28-13 and 28-14. Reserved.**

### **ARTICLE III. SOURCE SELECTION AND CONTRACT FORMATION**

#### **Sec. 28-15. Definitions.**

In this article, unless the context otherwise requires:

Sec. 28-15(1) "Best Value" means a bid, which after an evaluation based on objective criteria, is determined to provide the best overall value to the City.

Sec. 28-15(2) "Discussions" means communication with an offeror for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal clarification of any offer to assure full understanding of, and responsiveness to, solicitation requirements or to establish the competency or financial stability of any offeror.

Sec. 28-15(3) "Invitation for bid" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in Section 28-17.

Sec. 28-15(4) "Minor informality" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of such mistakes does not prejudice other bidders or offerors.

Sec. 28-15(5) "Negotiations" means an exchange of information or any form of negotiation during which the offeror and the City may alter or otherwise change the conditions, terms, and price, unless prohibited, of the proposed contract. Discussions may be conducted in connection with competitive sealed proposals, requests for qualifications, small purchases, sole source procurements, emergency procurements, and special procurements or contract amendments.

Sec. 28-15(6) "Proposal revision" means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contract officer, as the result of negotiation.

Sec. 28-15(7) "Request for proposals" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in Section 28-18.

Sec. 28-15(8) "Request for qualifications" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents in accordance with Article V.

Sec. 28-15(9) "Responsible bidder, offeror, or respondent" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

Sec. 28-15(10) "Responsive bidder, offeror, or respondent" means a person who submits a bid, proposal or response which conforms in all material respects to the invitation for bids, request for proposals, or request for qualifications.

Sec. 28-15(11) "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for qualifications, a request for quotations, or any other invitation or request by which the City invites a person to participate in a procurement.

## **Sec. 28-16. Methods of Source Selection.**

All contracts of the City shall be awarded by competitive sealed bidding except as otherwise provided in Sections 28-18 (Competitive Sealed Proposals), 28-19 (Contracting for Legal Counsel), 28-20 (Small Purchases), 28-21 (Sole Source Procurement), 28-22 (Emergency Procurements), 28-23 (Special Procurements), 28-49 (Procurement of Professional Design Services) and 28-50 (Procurement of Construction Services) of this Chapter.

## **Sec. 28-17 Competitive Sealed Bidding.**

Sec. 28-17(1) Invitation for Bids. An invitation for bids shall be issued and shall include specifications, any applicable evaluation criteria, and all contractual terms and conditions specifically applicable to the procurement. Standard contractual terms and conditions may be included within the solicitation document or incorporated by reference.

Sec. 28-17(2) Public Notice. Adequate public notice of the invitation for bids shall be given not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the City Manager. The public notice shall state the place, date, and time of bid opening. Notice of the invitation for bids shall be posted and a copy of the invitation for bids shall be available for public inspection.

Sec. 28-17(3) Late Bids. A bid is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. The City Clerk's clock is the governing clock. A late bid shall be rejected. A late bid shall not be opened; except for, if necessary, identification purposes. Such bids may be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.

Sec. 28-17(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as the City Manager deems appropriate, together with the name of each bidder shall be recorded. This record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by the Department of Procurement and a "bid" or "no bid" may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets will indicate that there were no attendees present. Unless otherwise determined by the City Manager, the bids shall not be opened for public inspection until after a contract is awarded. After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 28-5.

Sec. 28-17(5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

Sec. 28-17(6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the department prior to the time set for bid opening. After bid opening corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- (a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- (b) the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. 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 City Manager.

Sec. 28-17(7) Contract Award.

- (a) General. The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.
- (b) Contract Award Based on Best Value. Notwithstanding Sec. 28-17(7) a, the contract may be awarded on best value analysis provided that the criteria for analysis was included in the invitation for bids in accordance with Sec. 28-17(l). The contract shall be awarded by appropriate written notice to the response bidder determined to be the best value to the City and whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.

- (c) Procurement of Recycled Material. If the price of recycled material, which conforms to specifications, is within ten percent of a low bid material, which is not recycled, and the recycled material bidder is otherwise the lowest responsible and responsive bidder, the award shall be made to the bidder offering the recycled material. The City Manager is authorized to purchase recycled material where the price differential between available virgin material and recycled content material is greater than ten percent when the additional cost, as determined by the City Manager, is deemed insignificant and substantial budget impacts will not result.
- (d) Consideration of Taxes in Competitive Sealed Bidding. In evaluating the bids, except for procurement of construction, and for purposes of determining the low bidder, the City Manager shall include the amount of applicable business privilege tax. The amount of a city's business privilege tax shall not be included in the evaluation except in those instances in which the award is between a South Tucson area bidder and an Arizona-based, non-South Tucson area bidder. In this event, the applicable city business privilege tax shall be included in the non-South Tucson area bidder's price for evaluation purposes only to determine the lowest bidder.
- (e) Exceeding Available Funds. In the event the low responsive and responsible bid for a construction project exceeds available funds and such bid does not exceed such funds by more than five percent, the City Manager is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- (f) Public Record. After the City issues a notice of intent to award or upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 28-5 (Confidential Information).

Sec. 28-17(8) Low Tie Bids. If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the City Manager.

**Sec. 28-18. Competitive Sealed Proposals.**

Sec. 28-18(1) Conditions for Use. Unless otherwise prohibited, a contract may be entered into by use of the competitive sealed proposals method when the use of competitive sealed bidding is either not practicable or not advantageous to the City.

Sec. 28-18(2) Request for Proposals. Competitive sealed proposals shall be solicited through a request for proposals.

Sec. 28-18(3) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 28-17(2) (Competitive Sealed Bidding, Public Notice).

Sec. 28-18(4) Late Proposals. A proposal is late if it is received at the location designated in the Request for Proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with Sec. 28-17(3).

Sec. 28-18(5) Receipt of Proposals. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after a notice of award issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 28-5 (Confidential Information).

Sec. 28-18(6) Evaluation of Proposals.

(a) Evaluation Criteria. The request for proposals shall state the criteria to be used in the evaluation of the proposals and may include their relative importance. Specific numerical weighting is not required.

(b) Selection Committee. The City Manager shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

Sec. 28-18(7) Discussion with Offerors. Discussions may be conducted with responsible offerors.

Sec. 28-18(8) Negotiations with Responsible Offerors and Revisions to Proposals. Negotiations may be conducted with responsible offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no



disclosure of any information derived from proposals submitted by competing offerors.

(a) Concurrent Negotiations. Negotiations may be conducted concurrently with responsible offerors for the purpose of determining source selection and/or contract award.

(b) Exclusive Negotiations. Exclusive negotiations may be conducted with the responsible offeror whose proposal is determined in the selection process to be most advantageous to the City. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the City may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.

Sec. 28-18(9) Contract Award. Contract award shall be made by the City Manager to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City taking into consideration price and the other evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

#### **Sec. 28-19. Contracting for Legal Counsel.**

Sec. 28-19(1) Authority. For the purpose of procuring the services of legal counsel, as defined by the laws of the state, the City Manager may procure such services, except that all contracts exceeding twenty-five thousand dollars in amount shall require approval by resolution of the Mayor and Council. No contract for the services of legal counsel may be awarded without the authorization of the City Attorney except as otherwise provided by law.

Sec. 28-19(2) Selection Procedure for Services of Legal Counsel.

- (a) Conditions for Use. Unless determined by the City Attorney that direct selection is in the best interest of the City or except as provided under Section 28-21 (Sole Source Procurement) or Section 28-22 (Emergency Procurements), the services of legal counsel shall be procured in accordance with this section.
- (b) Statement of Qualifications. Persons engaged in providing the services of legal counsel may submit statements of qualifications and expressions of interest in providing such services. The City may specify a uniform format for

statements of qualifications. Persons may amend these statements at any time by filing a new statement.

- (c) Public Announcement. The City Attorney shall give adequate notice of the need for such services. The notice shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.
- (d) Discussions. The City Attorney or a designee of such officer may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (e) Award. Award over \$25,000 shall be made by the Mayor and Council to the offeror determined in writing by the City Attorney or a designee of such officer to the best qualified and after negotiation of compensation determined to be fair and reasonable.

#### **Sec. 28-20. Small Purchases.**

Sec. 28-20(1) General. Any contract not exceeding \$25,000 may be made by the City Manager or a designee in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.

Sec. 28-20(2) Small Purchases Over \$5,000. Insofar as it is practical for small purchases in excess of \$5,000 but less than \$25,000, no less than three businesses shall be solicited to submit quotations. Award shall be made to the responsible bidder submitting the quotation, which is most advantageous to the City and conforms in all material respects to the solicitation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

Sec. 28-20(3) Small Purchases Under \$5,000. The City Manager shall adopt operational procedures for making small purchases of \$5,000 or less.

#### **Sec. 28-21. Sole Source Procurement.**

A contract may be awarded without competition when the City Manager determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using agency requesting sole source procurement shall provide written evidence to support a sole source determination. The City Manager may require that negotiations are conducted as to price, delivery, and terms. The City

Manager may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.

#### **Sec. 28-22. Emergency Procurements.**

Notwithstanding any other provisions of this Chapter, the City Manager may make or authorize others to make emergency procurements of materials, services, or construction items when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with Sections 28-17 (Competitive Sealed Bidding), 28-18 (Competitive Sealed Proposals), 28-49 (Procurement of Professional Design Services), or 28-50 (Procurement of Construction Services) contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

#### **Sec. 28-23. Special Procurements.**

Notwithstanding any other provisions of this Chapter, the City Manager or his designee may make procurements above the small purchase amount specified in Section 28-20 when, due to unusual or special circumstances, it would be in the best interest of the City to accomplish the procurement without compliance with Sections 28-17 (Competitive Sealed Bidding), 28-18 (Competitive Sealed Proposals), 28-49 (Procurement of Professional Design Services), or 28-50 (Procurement of Construction Services). Any special procurement under this Section shall be limited to those materials, services, or construction necessary to satisfy the City's need and shall be made with sound fiscal discretion. A written determination by the City Manager of the basis for the special procurement and for the selection of the particular contractor shall be included in the contract file. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is in the public interest, fair, honest, prudent and a wise exercise of discretion

#### **Sec. 28-24. Cancellation of Solicitations.**

Sec. 28-24(1) Cancellation of Solicitation. An invitation for bids, a request for proposals, a request for qualifications or other solicitation may be cancelled, or any or all bids, proposals or statement of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the City. Each solicitation issued by the City shall state that the solicitation may be

cancelled and that any bid, proposal or statement of qualification may be rejected in whole or in part when in the best interests of the City.

Sec. 28-24(2) Prior to Opening.

- (a) As used in this Section, "opening" means the date set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals.
- (b) Prior to opening, a solicitation may be cancelled in whole or in part when the City Manager determines in writing that such action is in the City's best interest for reasons including but not limited to:
  - (i) the City no longer requires the materials, services, or construction;
  - (ii) the City no longer can reasonably expect to fund the procurement; or
  - (iii) proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- (c) When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all persons solicited.
- (d) The notice of cancellation shall:
  - (i) identify the solicitation
  - (ii) briefly explain the reason for cancellation; and
  - (iii) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.

Sec. 28-24(3) After Opening.

- (a) After opening but prior to award, all bids, proposals or requests for qualifications may be rejected in whole or in part when the City Manager determines in writing that such action is in the City's best interest for reasons including but not limited to:

- (i) the materials, services, or construction being procured are no longer required;
  - (ii) ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation;
  - (iii) the solicitation did not provide for consideration of all factors of significance to the City;
  - (iv) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  - (v) all otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices; or
- (b) (vi) there is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith. A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to Subsection 28-24 (2)(d) of this Section.
- (c) If all bids, proposals or request for qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.

Sec. 28-24(4) Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

**Sec. 28-25. Rejection of Individual Bids, Proposals or Statements of Qualifications.**

- (a) A bid may be rejected if:
- (i) the bidder is determined to be nonresponsive pursuant to Section 28-24 (Responsibility of Bidders and Offerors); or
  - (ii) the bid is nonresponsive in accordance with Section 28-17 (Competitive Sealed Bidding).
- (b) A proposal, statement of qualifications or quotation may be rejected if:

(i) the person responding to the solicitation is determined to be nonresponsible pursuant to Section 28-24 (Responsibility of Bidders and Offerors); or

(ii) it is unacceptable;

(iii) the proposed price, unless prohibited, is unreasonable;

or

(iv) it is otherwise not advantageous to the City.

(d) Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

**Sec. 28-26. Responsibility of Bidders and Offerors.**

Sec. 28-26(1) Determination of Nonresponsibility. If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written finding of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Contract Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of nonresponsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

Sec. 28-26(2) Right of Nondisclosure. Confidential information furnished by a bidder, offeror or respondent pursuant to this Section shall not be disclosed by the City outside of the department, or using agency, without prior written consent by the bidder, offeror or respondent.

Sec. 28-26(3) Factors to be considered in determining if a prospective contractor is responsible include:

(a) The proposed contractor's financial, physical, personnel or other resources, including subcontracts;

(b) The proposed contractor's record of performance and integrity;

(c) Whether the proposed contractor is qualified legally to contract with the City; and

(d) Whether the proposed contractor supplied all necessary information concerning its responsibility.

Sec. 28-26(4) The City Manager may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

**Sec. 28-27. Bid and Contract Security, Material or Service Contracts.**

The City Manager may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the City 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. Failure to submit security in the amount and type of security required may result in the rejection of the bid, statement of qualifications or proposal.

**Sec. 28-28. Types of Contracts.**

Subject to the limitations of this chapter, any type of contract which will promote the best interests of this City may be used.

**Sec. 28-29. Approval of Accounting System.**

The City Manager may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

**Sec. 28-30. Multi-year Contracts.**

Unless otherwise provided by law, a contract for materials or services may be entered into for any period of time deemed to be in the best interest of this City, 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. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

- (1) Prior to use of a multi-term contract, it shall be determined that:
  - (a) Estimated requirements cover the period of the contract and are reasonably firm and continuing;
  - (b) The contract will serve the best interests of the city by encouraging effective competition or otherwise promoting economies in city procurement.

- (2) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

**Sec. 28-31. Right to Inspect.**

The City may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or subconsultant that is related to the performance of any contract awarded or to be awarded by this City.

**Sec. 28-32. Right to Audit Records.**

Sec. 28-32(1) 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 Article VII of this Chapter 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 three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the City Manager.

Sec. 28-32(2) The City is entitled to audit the books and records of a contractor, consultant or any subcontractor or subconsultant under any contract or subcontract 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 three years from the date of final payment under the prime contractor or consultant, and by the subcontractor or subconsultant for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the City Manager.

**Sec. 28-33. Reporting of Anticompetitive Practices.**

If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the City Manager and the City Attorney. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the City Manager.

**Sec. 28-34. Prospective Vendors Lists**

Sec. 28-34(1) The City Manager shall maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a city contract.

Sec. 28-34 (2) Persons desiring to be included on the prospective vendors list may notify the City Manager or may register with the department electronically. The department may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the City.



Sec. 28-34 (3) It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

**Sec. 28-35. Contract Form and Execution.**

All contracts entered into under this chapter will require City Council approval and shall be executed in the name of the City by the City Manager and approved as to form by the City Attorney. The Finance Director shall countersign such contracts.

**Sec. 28-36. Assignment of Rights and Duties.**

The rights and duties of a City contract are not transferable or otherwise assignable without the written consent of the City Manager.

**Secs. 28-37 through 28-40. Reserved**

**ARTICLE IV. SPECIFICATIONS**

**Sec. 28-41. Definition.**

As used in this Article, "specification" is used interchangeably with "scope" or "scope of work" and means 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.

**Sec. 28-42. Maximum Practicable Competition.**

Sec. 28-42(1) All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and shall not be unduly restrictive.

Sec. 28-42(2) To the extent practicable and unless otherwise permitted by this chapter, all specifications shall describe the City's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Sec. 28-42(3) Proprietary specifications shall not be used unless the City Manager determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of proprietary specifications.

Sec. 28-42(4) To the extent practicable, the City shall use accepted commercial specifications and shall procure standard commercial materials.

**Sec. 28-43. Specifications Prepared by Other Than City Personnel.**

All specifications, including those prepared by architects, engineers, consultants and others for public contracts, or subcontractors, 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. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

**Sec. 28-44. Brand Name or Equal Specification.**

A brand name or equal specification may be used when the Contract Officer determines in writing that use of brand name or equal specifications is advantageous to the City.

**Sec. 28-45. Brand Name Specification.**

A brand name specification may be prepared and utilized only if the City Manager makes a written determination that only the identified brand name item will satisfy the City's needs.

**Sec. 28-46. Reserved**

**ARTICLE V. PROCUREMENT OF PROFESSIONAL DESIGN SERVICES AND CAPITAL IMPROVEMENTS**

**Sec. 28-47. Definitions.**

In this article, unless the context otherwise requires:

Sec. 28-47 (1) "Capital Improvement" means an outlay of funds for the acquisition or improvement of real property, which extends the life or increases the productivity of the real property.

Sec. 28-47(2) "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing public infrastructures or facilities, including structures, buildings or real property.

Sec. 28-47(3) "Construction-manager-at-risk" means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.

- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (c) Design and construction of the project may be in sequential phases or concurrent phases.
- (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 28-47(4) "Construction services" means either of the following for construction-City Manager-at-risk, design-build and job-order-contracting project delivery methods:

- (a) Construction, excluding services, through the construction-City Manager-at-risk or job-order-contracting project delivery methods.
- (b) 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-City Manager-at-risk, design-build or job-order-contracting in this section.

Sec. 28-47(5) "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

Sec. 28-47(6) "Design-bid-build" means a project delivery method in which:

- (a) There is a sequential award of two separate contracts.
- (b) The first contract is for design services.
- (c) The second contract is for construction.
- (d) Design and construction of the project are in sequential phases.
- (e) Finance services, maintenance services and operations services are not included.

Sec. 28-47(7) "Design-build" means a project delivery method in which:

- (a) There is a single contract for design services and construction services.
- (b) Design and construction of the project may be in sequential phases or concurrent phases.
- (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 28-47(8) "Finance services" means financing for a construction services project.

Sec. 28-47(9) "Force Account" means construction work performed by the City's regularly employed personnel.

Sec. 28-47(10) "Infrastructure Facility" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

Sec. 28-47(11) "Job-order-contracting" means a project delivery method in which:

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

Sec. 28-47(12) "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Sec. 28-47(13) "Operations services" means routine operation of existing facilities, structures, buildings or real property.

Sec. 28-47(14) "Preconstruction services" means advice during the design phase.

Sec. 28-47(15) "Professional Design Services" means architect services, assayer services, engineering services, geologist services, landscape architect services, and land surveying service or any combination of those services that are legally required to be accomplished, reviewed, and approved by professionals registered to practice in the pertaining discipline in the State of Arizona.

#### **Sec. 28-48 Procurement of Construction.**

Contracts for construction shall be solicited through a competitive sealed bid process except as otherwise provided for in 28-50 (Procurement of Construction Services), 28-20 (Small Purchases), and 28-21 (Sole Source Procurement), 28-21 (Emergency Procurements) and 28-22 (Special Procurements). The City Manager shall award and administer contracts for construction in accordance with the requirements of A.R.S. Title 34 and the South Tucson Procurement Code.

**Sec. 28-49 Procurement of Professional Design Services.**

Contracts for professional design services shall be solicited through a request for qualifications except as otherwise provided for in 28-20 (Small Purchases), 28-21 (Sole Source Procurement), 28-21 (Emergency Procurements) and 28-22 (Special Procurements). The City Manager shall award and administer contracts for professional design services in accordance with the requirements of A.R.S. Title 34 and the South Tucson Procurement Code.

**Sec. 28-50 Procurement of Construction Services.**

Contracts for construction services shall be solicited through a design-build, construction-manager-at-risk or job-order-contracting selection process utilizing a request for qualifications except as otherwise provided for in 28-20 (Small Purchases), 28-21 (Sole Source Procurement), 28-21 (Emergency Procurements) and 28-22 (Special Procurements). The City Manager shall award and administer contracts for construction services in accordance with the requirements of A.R.S. Title 34 and the South Tucson Procurement Code.

**Sec. 28-51. Construction by City Employees.**

A building, structure, addition or alteration of a public facility may be constructed by force account if the cost does not exceed the amount established and adjusted each year in accordance with A.R.S. Title 34.

**Sec. 28-52. Nonsubstantial Failure to Comply.**

The City Manager may determine that noncompliance with any provision of this section is nonsubstantial and may allow for correction or may waive minor informalities or irregularities.

**Sec. 28-53 through 28-57. Reserved.**

**ARTICLE VI. CONTRACT CLAUSES**

**Sec. 28-58. Contract Clauses.**

Sec. 28-58(1) Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The City Manager, after consultation with the City Attorney, may issue clauses appropriate for material, service, or construction contracts, addressing among others the following subjects:

- (a) the unilateral right of the City to order in writing changes in the work within the scope of the contract;

- (b) the unilateral right of the City to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- (c) variations occurring between estimated quantities of work in contract and actual quantities;
- (d) defective pricing;
- (e) liquidated damages;
- (f) specified excuses for delay or nonperformance;
- (g) termination of the contract for default;
- (h) termination of the contract in whole or in part for the convenience of the City;
- (i) suspension of work on a construction project ordered by the City; and
- (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
  - (i) when the contract is negotiated;
  - (ii) when the contractor provides the site or design; or
  - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

Sec. 28-58(2) Price Adjustments.

- (a) Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:
  - (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (ii) by unit prices specified in the contract or subsequently agreed upon;
  - (iii) by the costs attributable to the events or

situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

- (iv) in such other manner as the contracting parties may mutually agree; or
  - (v) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City as accounted for in accordance with Article VII (Cost Principles).
- (b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Article VII (Cost Principles).

Sec. 28-58(3) Standard Clauses and Their Modification. The City Manager, after consultation with the City Attorney, may establish standard contract clauses for use in City contracts. If the City Manager establishes any standard clauses addressing the subjects set forth in Subsection (1) of this Section, such clauses may be varied with the City Manager's approval or the City Manager's designee.

**Secs. 28-59 through 28-61. Reserved.**

## ARTICLE VII. COST PRINCIPLES

### **Sec. 28-62. Cost Principles.**

The City Manager shall establish cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

### **Sec. 28-63. Cost or Pricing Data.**

Sec. 28-63(1) 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 reasonable and fair.

Sec. 28-63(2) Any contract, change order or contract modification under which cost or pricing data is required may contain a provision that the price to the City shall be adjusted to exclude any significant amounts by which the City finds that the price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed on between the parties. Such adjustment by the City may include profit or fee.

Sec. 28-63(3) The requirements of this section need not be applied to contracts if any of the following apply:

- (a) The contract price is based on adequate price competition.
- (b) The contract price is based on established catalogue prices or market prices.
- (c) Contract prices are set by law or regulation.

**Secs. 28-64 and 28-65. Reserved.**

## **ARTICLE VIII. MATERIALS MANAGEMENT**

### **Sec. 28-66. Definitions.**

In this article, unless the context otherwise requires:

Sec. 28-66(1) "Property" means assets with a useful life of more than one year.

Sec. 28-66(2) "Property transfer form" means a form submitted by the department requesting transfer of fixed assets between departments or transfer of property to or from the Surplus Property Program.

Sec. 28-66(3) "Surplus property" means 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.).

Sec. 28-66(4) "Unclaimed, lost and confiscated property" means 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.

### **Sec. 28-67. Materials Management Guidelines.**

In addition to Administrative Directives, the City Manager shall establish additional guidelines as may be required governing:

Sec. 28-67(1) The transfer of surplus property and operation of the surplus property program.

Sec. 28-67(2) The sale or disposal of surplus, unclaimed and seized property by public auction, competitive formal and informal bid, electronic, or other appropriate method designated by regulation.



Sec. 28-67(3) The trade-in of surplus property for purchase of new equipment.

**Sec. 28-68. Inventory Management.**

The City Manager shall control and supervise all existing and future City warehouses established for the purpose of purchasing, storing and issuing supplies used in large quantities and which may be purchased and stored advantageously. The purchase of inventory will be funded through a stores revolving fund of sufficient amount to finance inventory purchases. Such funds shall be under the control of the City Manager, who shall also be responsible and accountable for all warehouse materials and maintain a perpetual inventory record thereof. The City Manager will establish policies and procedures governing the addition or deletion of items carried in inventory, the sale or other disposal of inventory items no longer needed, delivery and other services provided to using agencies, and any policies or procedures required for efficient and effective operation of the inventory system.

**Sec. 28-69. Disposition of Surplus Property.**

Sec. 28-69(1) The City Manager will operate a surplus property program for the purpose of receiving, storing, transferring, or selling surplus property no longer needed by using agencies.

Sec. 28-69(2) Using agencies shall use the Property Transfer Form to request authorization to transfer fixed assets to another department, or to request transfer of property into or from the Surplus Property Program.

Sec. 28-69(3) Unless otherwise provided for, surplus property no longer needed by any using agency shall be offered for sale through competitive bids or public auction. Sales by competitive bid will be conducted in accordance with section 28-17 (Competitive sealed bidding) or section 28-10 (Small purchases), except that sale shall be made to the highest responsible bidder. Public auctions may be conducted on site or electronic.

Sec. 28-69(4) Unless otherwise provided, all proceeds from sale or auction of surplus property will be deposited into the City's general fund. Proceeds from sale of enterprise, federal, grant or other special designation property will be reimbursed, less pro-rated selling expenses, to the appropriate fund, after completion of each sale.

**Sec. 28-70. Disposition of Unclaimed, Lost, Confiscated Property.**

Sec. 28-70(1) The police department will deliver to the department all unclaimed, lost and confiscated property not claimed or taken away by owner or finder,

excluding all firearms, ammunition, knives or other weapons and excluding any items determined to be of use in special police operations.

Sec. 28-70(2) After delivery to the department, unclaimed or lost property may be transferred to using departments upon submission of a detailed request from a City department head to the City Manager. The request shall include a detailed description of the equipment and explanation of why the equipment is needed. A copy of approved requests will be forwarded to the budget department. Departments receiving unclaimed or lost property will place an inventory tag on the equipment and add such equipment to their inventory records.

Sec. 28-70(3) Unless otherwise provided for, all remaining unclaimed, lost and confiscated property shall be disposed of at public auction. Notice of public auction of unclaimed, lost and confiscated property shall be published three times prior to sale, the first notice to be at least ten (10) days prior to the date of sale. All public auctions will be conducted under the direction of the City Manager. Proceeds of the auction, less selling expenses if applicable, will be deposited to the general fund unless otherwise required by court order(s).

Secs. 28-71 (1). Notwithstanding any other provision surplus, unclaimed, or lost property not needed by using departments may be disposed of other than by competitive bid or public auction, provided that any such noncompetitive disposition is made pursuant to a request submitted to the City Manager for review, approval of the City Attorney and approval by the Mayor and Council. Mayor and Council shall consider the monetary loss to the City and determine whether such disposition is in the public interest.

Sec. 28-71(2). Notwithstanding the provisions of 28-71(1), surplus fire apparatus and/or related equipment may be disposed of through noncompetitive sale with public emergency, fire, rescue or medical agencies.

Sec. 28-71(3). Notwithstanding the provisions of 28-69(3) and 28-69(4), the fire chief and/or his designee may dispose of surplus fire apparatus and/or related equipment through noncompetitive sale at fair market value with public emergency, fire, rescue or medical agencies, with the proceeds of such a sale restricted for use by the fire department for the purchase of equipment or apparatus in accordance with sections 28-17 or 28-18.

**Secs. 28-72 through 28-125. Reserved.**

## **ARTICLE IX. INTERGOVERNMENTAL PROCUREMENT**

**Sec. 28-126. Definitions.**

In this Article, unless the context otherwise requires:

Sec. 28-126(1) "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

Sec. 28-126(2) "External Procurement Activity" means any buying organization not located in this State which, if located in this State would qualify as a Public Procurement Unit, Agencies of the United States, any other State or group of States, and non-profit associations are external Procurement activities.

Sec. 28-126(3) "Local Public Procurement Unit" means any county, city, town, and any other subdivision of the State, public authority, educational, health or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services and construction, and any nonprofit corporation operating a charitable hospital.

Sec. 28-126(4) "Public procurement unit" means any of the following:

- (a) a local public procurement unit,
- (b) an external procurement activity,
- (c) a State public procurement unit, and
- (d) any not-for-profit entity comprised of more than one unit or activity listed in subparagraphs (a), (b), or (c).

Sec. 28-126(5) "State Public Procurement unit" means the Arizona State Procurement Office or the central procurement office of any other State.

#### **Sec. 28-127. Applicability.**

Agreements entered into pursuant to this Article shall be limited to the areas of procurement, warehousing or materials management.

#### **Sec. 28-128. Intergovernmental Procurement Agreements Required.**

The City is not authorized to participate in cooperative purchasing unless, prior to the solicitation, an Intergovernmental Procurement agreement is executed between the parties. All agreements entered into pursuant to this Article shall be approved by the City Manager.

#### **Sec. 28-129. Cooperative Purchasing Authorized.**

The City may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an

agreement entered into between the participants. Parties under a cooperative purchasing agreement may:

Sec. 28-129(1) Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.

Sec. 28-129(2) Cooperatively use materials or services.

Sec. 28-219(3) Commonly use or share warehousing facilities, capital equipment and other facilities.

Sec. 28-129(4) Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

Sec. 28-129(5) On request, make available to other public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

The activities described in Paragraphs (1) through (5) do not limit the activities of parties under a cooperative purchasing agreement.

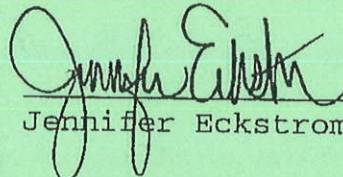
**SECTION 2.** If any provision of this Ordinance or the Application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

**SECTION 3.** The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

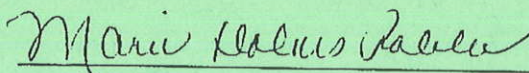
**SECTION 4.** Where this Ordinance conflicts or overlaps with any other ordinance, cod provision or regulation, whichever imposes the more stringent restrictions for the health, safety and welfare of the public shall prevail. Where this Ordinance conflicts with any other ordinance, code provision, code section or code regulation which is amended by the adoption herein, that code provision, section or regulation shall be deemed repealed.

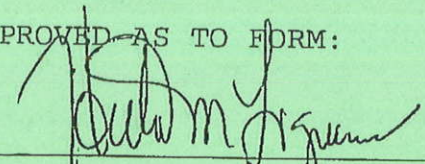
**SECTION 5. WHEREAS,** it is necessary for the preservation of the peace, health, and safety of the City of South Tucson, Arizona that this Ordinance become immediately effective, an emergency is hereby declared to exist and this Ordinance shall be effective immediately upon its passage and adoption.

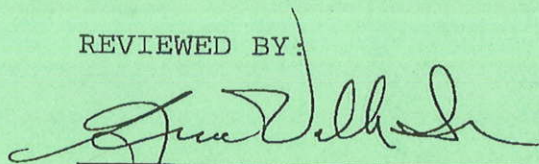
PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, this 24th day of July 2006.

  
Jennifer Eckstrom, Mayor

ATTEST:

  
Marie Dolores Robles  
City Clerk

APPROVED AS TO FORM:  
  
Hector M. Figueroa  
City Attorney

REVIEWED BY:  
  
Ruben Villa  
Acting City Manager