

Procurement Rules

See Section 1.2 for Applicability



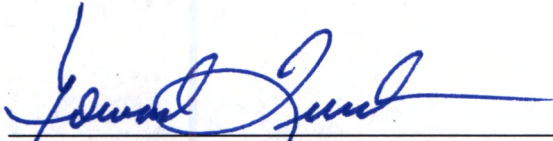
City of Mesa, Arizona

These Rules are promulgated pursuant to Management Policy 200.

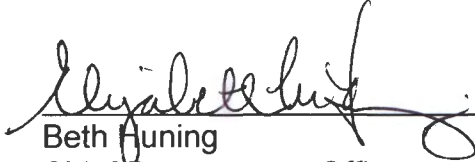
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CITY OF MESA
PROCUREMENT RULES

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ARTICLE 1. GENERAL PROVISIONS

1.1 Purpose

The purpose of these Rules is to:

- Clarify and standardize the City's Procurement procedures;
- Provide for economy and efficiency in City Procurements and maximize the value of monies spent; and
- Provide safeguards that ensure the quality and integrity of the City's Procurement process.

1.2 Applicability

The applicability of these Rules to a specific Procurement are governed by Title 1, Chapter 21 of the Mesa City Code and by Management Policy established by the City Manager.

For capital improvements and related professional services only Article 6 titled Protests, Appeals, Debarments, Confidential Information, and Contract Disputes is applicable. For the other rules governing capital improvements and related professional services see Management Policy 200.

Except by mutual consent of the parties to the Contract, these Rules as applicable will not change any commitment, right or obligation of the City or of a Contractor under a Contract in existence on the effective date of these Rules or any amendment.

1.3 Expenditure of Funds

Nothing herein shall authorize the commitment or expenditure of funds greater than those available or without obtaining proper approvals.

ARTICLE 2. DEFINITIONS

2.1 Definitions

Affiliate - A branch or unit of a larger organization or a company effectively controlled by another or associated with others under common ownership or control.

A.R.S. - Arizona Revised Statutes, as amended from time to time.

Award - A determination by the City to enter into a Contract with one or more Respondents. An Award precedes execution of a Contract.

Bid - A Response to an Invitation for Bids.

Bidder- A Person submitting a Bid.

Bid Opening - A meeting held on the due date and time specified in the Solicitation and open to the public to receive and acknowledge Responses, whether Bids or Proposals or other type of Solicitation.

Brand Name or Equal Specification - A Specification that uses one or more manufacturers' names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet City requirements, and that provides for the submission of equivalent products.

Brand Name Only Specification - A Specification limited to one or more items by manufacturers' names or catalog numbers.

Capital Improvement(s) - The construction of a building or structure, or additions to or alterations of existing buildings or structures. The term structure shall include without limitation paving, concrete, or other mortar work, streetlights, traffic signals, drainage facilities, pipes, grading, major improvements to landscaping, and other construction work.

Change Order - A written order signed by a Chief Procurement Officer or Designee that authorizes a change in the scope, quantities, items, time for performance and/or pricing, etc. of a previously issued Purchase Order or Contract.

Chief Procurement Officer – An employee appointed by the City Manager with the authority and responsibility to administer day-to-day procurement activities pursuant to the Mesa City Charter, Mesa City Code, Mesa City Management Policies, and other applicable laws, or their Designee.

City - The City of Mesa, Arizona.

City Department - Any department or other organizational unit or official of the City.

City Manager Designee - A City employee designated the authority granted to the City Manager pursuant to a written document executed by the City Manager, which is effective until revoked.

Competitive Selection - A process whereby a public Solicitation is used to select the best provider of Materials, Services, Concessions, or Capital Improvements. Methods of Competitive Selection include Invitation for Bids, Request for Proposals, and Request for Qualifications.

Concession - An authorization allowing use of City property for the purpose of making profit by the Contractor, the City or both.

Consulting Services - Services provided by a vendor to study, advise and/or assist in solving specific management or programmatic problems involving the organization, planning, direction, control or operations of a City department/program.

Contract - All types of agreements regardless of what they may be called, for the Procurement of Materials, Services, Concessions or Capital Improvements. Oral contracts are strictly prohibited.

Contract Amendment - Any written alteration in the terms and conditions of any Contract accomplished by mutual action of the parties to the Contract.

Contract Manager - The City staff member(s) assigned to perform day-to-day administration of a Contract and resolve first-level Contract issues.

Contractor - A Person who has a Contract with the City.

Cooperative Purchasing - A Procurement conducted by, or on behalf of, or utilized by more than one Governmental Agency or Governmental Organization.

Cost-Plus-a-Percentage-of-Cost Contract - A Contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work. This type of contract is prohibited by these Rules.

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 paid a fee, if provided for in the Contract.

Day - A calendar day unless otherwise specified.

Debar(s)/Debarment/Debarred - An action taken by the Chief Procurement Officer to prohibit a Person from participating in City Procurements or Solicitations.

Debarred Person - A Person who has been Debarred.

Demonstration Project - A project in which a vendor supplies a Material or Service 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.

Designee - A representative duly authorized in writing.

Determination - Written documentation of certain decisions as required in these Rules.

Discussions - Oral or written communications between the City and a Respondent to a Multi-Step Invitation for Bids or a Request for Proposals during which information is exchanged about Specifications, scope of work, terms and conditions and price set forth in the initial Response. Communication with a Respondent for the sole purpose of clarification does not constitute Discussions.

Emergency Purchase - A Procurement necessary for the immediate preservation of the public peace, health, or safety and for which compliance with established procurement procedures are impracticable or contrary to the public interest.

Filed - Delivery to the Procurement Officer or Chief Procurement Officer, as applicable. A time/date stamp affixed to a document by the City shall be determinative of the time of delivery for purposes of filing.

Governmental Agency - The State of Arizona or a political subdivision thereof, any other state of the United States, or a political subdivision thereof, or any department of the federal government.

Governmental Organization - An organization, the members of which are Governmental Agencies.

Grant - Monies given to the City to carry out a specific purpose for which the money is granted. Grant does not include an agreement whose primary purpose is to procure a specific end product in the form of Materials, Services or Capital Improvements. A Contract resulting from such an agreement is not a Grant but a Procurement Contract.

Interested Party - Prior to the deadline for responding to a Solicitation, an Interested Party is an actual or prospective Respondent. After the deadline for responding to a Solicitation, an Interested Party is an actual Respondent.

Invitation for Bids - All documents, whether attached or incorporated by reference, which are used for soliciting Bids in accordance with the procedures defined herein.

Maintenance Services - Routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Materials - All items of Personal Property, including without limitation materials, supplies, commodities, equipment and insurance. Materials do not include land or an interest in Real Property.

Minor Informality - Mistakes that have negligible effect on price, quantity, quality, delivery, or other Contractual terms and the waiver or correction of which does not materially prejudice other Respondents.

Multiple Award - An award of separate Contracts based on one Solicitation for one or more similar Materials, Insurance, Services or Concessions to more than one Respondent.

Multistep Invitation for Bids - A two-phased Solicitation process consisting of a technical first phase composed of one or more steps in which Persons submit unpriced Technical Offers to be evaluated by the City and a second phase in which those Respondents whose Technical Offers are determined to be acceptable during the first phase receive an Invitation for Bids.

Negotiations - An exchange of information during which the Respondent and the City may alter or otherwise change the conditions, terms and price, unless prohibited, of the proposed contract.

Non-Professional Contract Services - Services which are primarily provided through semi-skilled labor. The primary criteria in the selection process will be qualifications of the vendor and price.

Notice of Intent to Award – A written notice issued by the City that the City intends, pursuant to the terms of a specific Solicitation, to award a Contract to the Person or Person(s) identified in the notice.

On-Line Bidding – A Procurement process in which the City receives Bids for Materials or Services electronically over the internet in a real-time, competitive bidding event.

Person - A Vendor or any corporation or business entity of whatever legal form, individual, union, committee, club, other organization or group of individuals or subsidiary thereof, their Affiliates and representatives.

Prequalification - A Determination that a Person satisfies the criteria for which Responses would be considered.

Procure/Procurement - The purchase of Materials, Non-Professional Contract Services, or the contracting for Capital Improvements. Procurement includes development of requirements, solicitation and selection of sources, and contract administration. This includes purchasing, renting, leasing or otherwise acquiring Materials, Insurance, Services, Concessions or Capital Improvements. This also includes all functions that pertain to obtaining any Material, Insurance, Services, Concessions or Capital Improvements including development of requirements, Solicitation and selection of sources, Award, preparation and execution of a Contract, and all phases of contract administration.

Procurement Officer – An employee(s) delegated authority by the Chief Procurement Officer to carry out the day to day Procurement activities herein.

Professional Services - Infrequent, technical and/or unique functions performed by independent contractors/consultants whose occupation is the rendering of such services. While not limited to licensed occupations, these Services require special knowledge, education or skill and the qualifications of vendors rendering the Services are of primary importance. Services primarily involving manual skills or labor are not Professional Services.

Professional Services include, but are not limited to; appraisers; architects; assayers; attorneys; consultants; certified public accountants; clergy; engineers; entertainers; environmental studies; financial and operational audits; geologists; organizational, planning, personnel and benefits studies; physicians and other health professionals; land surveyors; landscape architects; teachers and other trainers; and other technical registrants as defined in Arizona Revised Statutes.

Proposal - A Response to a Request for Proposals.

Proposer - A Person submitting a Proposal.

Protector – A Person who has Filed a protest under Article 6.

Purchase Order - A form of Contract between the City and a vendor to acquire Materials, Insurance, Services or Capital Improvements for an agreed upon price.

Qualified Products List - An approved list of Materials described by model or catalog numbers that the City has determined will meet the applicable Specification requirements.

Real Property - Land and its permanently affixed buildings or structures.

Request for Information - All documents, whether attached or incorporated by reference, issued to vendors for the sole purpose of seeking information about the availability of Materials, Concessions or Services in the commercial marketplace. A Request for Information is not a Solicitation.

Request for Proposals - All documents, whether attached or incorporated by reference, which are used for soliciting Proposals in accordance with procedures defined herein.

Request for Qualifications - All documents, whether attached or incorporated by reference, which are used for soliciting qualified providers of Services.

Response - A Bid or Proposal, submitted in response to an Invitation for Bids, Request for Proposals, Request for Information, or Request for Qualifications.

Responsible Respondent – A Respondent who has the capability to perform the Contract requirements and has the integrity and reliability which will assure good faith performance.

Responsive Response– A Response that conforms in all material respects to the requirements of the Solicitation.

Respondent - A Person submitting a Response.

Services - Professional Services and Non-Professional Contract Services. Services do not include employment agreements.

Shall - Denotes the imperative.

Small Dollar Procurement Threshold – The threshold established by the City Charter Section 609 (C) at which Procurements of Materials, and Capital Improvements

require Competitive Selection. The threshold established by Management Policy 200 for Services and Concessions.

Solicitation - An Invitation for Bids, Request for Multi-Step Sealed Bids, a Request for Proposals or a Request for Qualifications.

Sole Source Procurement - A Procurement in which there is only one source for the required Material, Service, Concession or Capital Improvement.

Specification/Scope of Work - Any description of the physical or functional characteristics, or of the nature of a Material, Service, Concession or Capital Improvements. Specification may include a description of any requirement for inspecting, testing or preparing a Material, Service, Concession or Capital Improvement for delivery.

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.

Technical Offer – Unpriced written information from a prospective Bidder stating the manner in which the prospective Bidder intends to perform certain work, its qualifications and its terms and conditions.

Vendor - A supplier/seller of goods and services.

Unsolicited Proposal - A written Proposal that is submitted on the initiative of the offeror for the purposes of obtaining a Contract with the City and that is not in response to a formal or informal Solicitation or request from the City.

ARTICLE 3. SMALL DOLLAR PURCHASES

3.1 Small Dollar Procurements

- A. Procurements less than Small Dollar Procurement Threshold will be made in accordance with Management Policy 200 and other applicable Management Policies and procedures published by the Purchasing Division and available on their Intranet page.
- B. Procurements shall not be artificially divided or fragmented to circumvent Competitive Selection.

ARTICLE 4. SOURCE SELECTION AND CONTRACT FORMATION

4.1 Use of City Contracts

City Departments shall utilize existing City Contracts to satisfy their needs for those Materials and Services covered by such Contracts where practicable.

4.2 Competitive Selection

- A. A Solicitation shall be issued and shall include a purchase description, Specifications and major contractual terms and conditions applicable to the Procurement.
- B. Public notice shall be given not less than fourteen (14) calendar days before the due date set forth in Solicitation. Public notice shall include:
 - 1. Direct mailing or electronic notification of interested parties registered with the City, and;
 - 2. Publication on the City's website, or;
 - 3. Publication at least one (1) time in one (1) or more newspapers of general circulation in the City within the first seven (7) days of the public notice period.
- C. Solicitations shall be available for public inspection at the Procurement Officer's office and copies shall be available to all who desire them.
- D. Specifications shall not be unnecessarily restrictive so as to preclude reasonable competition.
- E. A Bid Opening shall be conducted at the time and place designated in the Solicitation.
- F. Any Response that is conditioned upon award to the Respondent of both the particular Contract being solicited and another Contract shall be deemed Non-Responsive or unacceptable.
- G. Responses shall be unconditionally accepted without alteration or correction, except as authorized herein.
- H. The amount of any applicable sales, transaction privilege or use tax is not a factor in evaluating the Response(s).

4.3 Invitation for Bids

An Invitation for Bids is the default Solicitation method. Invitations for Bids are awarded to the lowest responsive and responsible bidder.

- A. Contracts will be awarded using an Invitation for Bids unless it is determined by the Procurement Officer that another Competitive Selection process is more advantageous to the City.
- B. The Invitation for Bids shall be prepared in a format approved by the Chief Procurement Officer. The Invitation for Bids shall include the following:
 - 1. Instructions and information concerning submission requirements, including the due date and time, the address of the office to which Bids are to be received, the period that the Bid shall remain open, and any other special information.
 - 2. The purchase description, Specifications, evaluation criteria, delivery or performance schedule, and inspection and acceptance requirements.
 - 3. The major Contract terms and conditions, including warranty and security requirements, as applicable.

4. If the Invitation for Bids incorporates documents by reference, the Solicitation shall specify where such documents may be obtained.
 5. Acknowledgement by the Bidder of the receipt of any addenda issued.
 6. Any requirements for the submission of samples, descriptive literature, technical data and inspection or testing of a product before Award.
 7. Any pricing preferences that will be considered for recycled materials.
- C. The name of each Bidder, the total net or total group bid price, and other information deemed appropriate by the Procurement Officer shall be read aloud at the Bid Opening and recorded on an abstract. The abstract shall be available for public inspection. All other information contained in the Bids shall be kept confidential except to those participating in the evaluation process so as to avoid disclosure of contents prejudicial to competing Bidders during the process of evaluation and Contract execution.
 - D. An evaluation may be conducted to determine whether a Bidder's product is acceptable as set forth in the Invitation for Bids which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose but not to determine whether one Bidder's product is superior to another Bidder's product. Any Bid that does not meet the acceptability requirements shall be rejected as Non-Responsive.
 - E. Bids shall be evaluated to determine which Bidder offers the lowest cost to the City in accordance with the evaluation criteria set forth in the Solicitation. Only objectively measurable criteria that are set forth in the Solicitation shall be applied in determining the lowest Bidder. Examples of such criteria include, but are not limited to; delivery cost, energy cost, ownership cost, and other identifiable costs or life cycle costs. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the Procurement Officer has available concerning future use.
 - F. The Procurement Officer may seek clarification of a Bid but this rule does not permit any change to the Bid as submitted.
 - G. Unless otherwise provided in the Solicitation, award may be made by individual line item, by group of line items, or for the aggregate total of all line items.
 - H. Award shall be recommended to the lowest responsive, responsible Bidder, unless otherwise defined in the Solicitation as multiple awards or unless all Bids be rejected.
 - I. A record showing the basis for determining the successful Bidder shall be retained in the Procurement file.
 - J. A Contract, in a form approved by the City Attorney may be entered into between the City and the Awarded Bidder(s) for the Procurement described in the Solicitation. The Contract may contain additional or more detailed contractual terms and provisions appropriate to the Procurement, or as required by State law, City Charter or Code, or customarily included in City Contracts.
 - K. Notice of the City's intent to Award a Contract shall be published on the City's website at least seven (7) days prior to execution of the Contract.
 - L. Responses received shall be open to public inspection once the City cancels the Solicitation or rejects all Responses without the intent to resolicit, executes a

Contract or otherwise takes action which ends the Solicitation process, whichever is later, except to the extent set forth in Section 6.13.

4.4 Multi-Step Invitation for Bids

A Multi-Step Invitation for Bids is used when the Award will be to the lowest Responsive and Responsible Bidder but information is needed from bidders to define the final Specifications.

The Multi-Step Invitation for Bids method may be used if the Procurement Officer determines in writing that:

1. Available Specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and Discussions to ensure mutual understanding between each Bidder and the City, and
2. Definite criteria exist for evaluation of Technical Offers, and
3. More than one technically qualified source is expected to be available, and
4. A Fixed-Price Contract will be used.

4.4.1 Phase One of Multi-Step Invitation for Bids

A. Multi-Step Request for Bids shall be initiated by the issuance of an Invitation to Submit Technical Offers and shall be prepared in a format approved by the Chief Procurement Officer. The Invitation to Submit Technical Offers shall contain the following information:

1. Notice that the Procurement will be conducted in two phases and that priced Bids shall be considered only in the second phase and only from those Offerors whose unpriced, Technical Offers are found acceptable in the first phase.
2. Instructions and information concerning the submission requirements, including the due date and time, the address of the office to which Technical Offers are to be received, the period that the Technical Offer shall remain open, and any other special information.
3. The best description of the Material or Service desired.
4. The requirements for the Technical Offers, such as drawings and descriptive literature, submission of samples, descriptive literature, technical data and inspection or testing of a product before Award.
5. The criteria for evaluating Technical Offers.
6. Acknowledgement by the Offeror of the receipt of any addenda issued.

B. The name of each Offeror and other information deemed appropriate by the Procurement Officer shall be read aloud at the Bid Opening and recorded on an abstract. The abstract shall be available for public inspection. All other information contained in the Technical Offers shall be kept confidential so as to avoid disclosure of contents prejudicial to competing Offerors during the process of evaluation and negotiation.

C. The Invitation to Submit Technical Offers may be amended after the submission of the Offers. The amendment shall be distributed only to Offerors who submitted Offers, and those Offerors shall be permitted to submit new Unpriced Technical Offers or to amend the Offers already submitted. If an amendment materially

changes the Procurement, the Invitation to Submit Technical Offers shall be cancelled in accordance with Section 4.17.

- D. Unpriced Technical Offers shall be evaluated in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable or potentially acceptable for further consideration or unacceptable. A Determination that an Offer is unacceptable shall state the basis of the decision, and be retained in the Procurement file. If the Procurement Officer determines an Offer is unacceptable, the Procurement Officer shall notify that Offeror of the decision and that the Offeror shall not be afforded an opportunity to amend its Offer.
- E. The Procurement Officer may conduct Discussions with any Offeror who submits an acceptable or potentially acceptable Technical Offer, at any time during the evaluation of the Offers. During Discussions, the Procurement Officer shall not disclose any information derived from one Offer to any other Offeror. After Discussions, the Procurement Officer shall establish a closing date for receipt of Final Technical Offers and shall notify in writing Offerors submitting acceptable or potentially acceptable Offers of the closing date. The Procurement Officer shall keep a record of all Discussions.
- F. After receipt of Final Unpriced Technical Offers, the Procurement Officer shall determine whether the Offers are acceptable for consideration in phase two or are unacceptable.
- G. At any time during phase one, Offers may be withdrawn.
- H. Responses received shall be open to public inspection once the City cancels the Solicitation or rejects all Responses without the intent to resolicit, executes a Contract or otherwise takes action which ends the Solicitation process, whichever is later, except to the extent set forth in Section 6.13.

4.4.2 Phase Two of Multi-Step Invitation for Bids

Upon completion of phase one, the Procurement Officer shall issue a Invitation for Bids and conduct Phase Two under Section 4.3 except that the Invitation for Bids shall be issued only to Offerors whose Technical Offers were determined to be acceptable in phase one.

4.5 Request for Proposals

A Request for Proposals is the Solicitation method used when Award will be determined by evaluation factors in addition to price such as qualifications, experience and the solution proposed.

- A. If the Procurement Officer determines in writing that the use of an Invitation for Bids is either not practicable or advantageous to the City, a Request for Proposals may be used.
- B. The Request for Proposals shall be prepared in a format approved by the Chief Procurement Officer. The Request for Proposals shall include the following:
 - 1. Instructions and information concerning submission requirements, including the due date and time, the address of the office to which Proposals are to be received, the period that the Proposal shall remain open, and any other special information.

2. The purchase description, Specifications, delivery or performance schedule, and inspection and acceptance requirements.
 3. The Request for Proposals shall state the relative importance of price and other evaluation factors.
 4. The major Contract terms and conditions, including warranty and security requirements, as applicable.
 5. If the Request for Proposals incorporates documents by reference, the Solicitation shall specify where such documents may be obtained.
 6. Acknowledgement by the Proposer of the receipt of any addenda issued.
 7. Any requirements for the submission of samples, descriptive literature, technical data and inspection or testing of a product before Award.
- C. The name of each Proposer shall be read aloud at the Bid Opening and recorded on an abstract. The abstract shall be available for public inspection. All other information contained in the Proposals shall be kept confidential except to those participating in the evaluation process so as to avoid disclosure of contents prejudicial to competing Proposers during the process of evaluation and negotiation.
- D. The Procurement Officer may seek clarification of a Proposal at any time after receipt of Proposals, but this rule does not permit change to the Proposal as submitted.
- E. The Procurement Officer may determine at any time during the evaluation period and before Award that a Proposal is not susceptible for Award. The Procurement Officer shall place a Determination, based on one or more of the following, in the procurement file:
1. The Proposal fails to substantially meet one or more of the mandatory requirements of the Solicitation;
 2. The Proposal fails to comply with any susceptibility criteria identified in the Solicitation; or
 3. The Proposal is not within the competitive range in comparison to other Proposals based on the criteria set forth in the Solicitation. When there is doubt as to whether a Proposal is in the competitive range, the Proposal should be included.
- The Procurement Officer shall promptly notify the Proposer in writing of the final decision that the Proposal is not susceptible for Award unless the Procurement Officer determines notification to the Proposer would compromise the City's ability to negotiate with other Proposer(s). The Proposer shall not be afforded an opportunity to modify its Proposal.
- F. As provided in the Solicitation, Discussions and presentations may be conducted with one or more Respondents determined to be reasonably susceptible to being selected for Award for the purpose of clarification to assure full understanding of, and responsiveness to the Solicitation requirements. In conducting Discussions and presentations, there shall be no disclosure of any information derived from Proposals submitted by competing Respondents.
- G. Proposals shall be evaluated against the evaluation criteria set forth in the Solicitation.
- H. The Procurement Officer shall approve an evaluation committee of three (3) or more persons to evaluate the Proposals. A person who serves on an evaluation

committee shall sign a statement before reviewing the Responses that they have no potential conflict of interest in the Procurement, that they will refrain from any contact related to the Solicitation with Respondents or other parties during the course of evaluation except to the extent provided in these Rules, and that they will fairly and honestly evaluate the Responses. The evaluation committee shall prepare a written evaluation report for the Procurement Officer. The Procurement Officer may:

1. Accept the findings of the evaluation committee;
 2. Request additional information from the evaluation committee; or
 3. Reject the findings of the evaluation committee.
- I. Following the preliminary evaluation of Proposals, the Procurement Officer may issue a written request for Best and Final Proposals. The request shall include the revised Specifications and shall set forth the date, time and place for the submission of Best and Final Proposals. Best and Final Proposals shall be requested only once, unless the Procurement Officer makes a decision that it is advantageous to the City to conduct further Discussions or change the City's requirements. The request for Best and Final Proposals shall inform Proposer that, if they do not submit a notice of withdrawal or a Best and Final Proposal, their immediate previous Proposal will be construed as their Best and Final Proposal.
 - J. A record showing the scoring for each Proposer shall be retained in the Procurement file.
 - K. Award shall be recommended to the Proposer determined to be in the best interests of the City, unless otherwise defined in the Solicitation as multiple Awards or unless all Proposals be rejected.
 - L. A record showing the basis for determining the successful Proposer shall be retained in the Procurement file.
 - M. A Contract, in a form approved by the City Attorney may be entered into between the City and the Awarded Proposer(s) for the Procurement described in the Solicitation. The Contract may contain additional or more detailed contractual terms and provisions appropriate to the Procurement, or as required by State law, City Charter or Code, or customarily included in City Contracts.
 - N. Notice of the City's intent to Award a Contract shall be published on the City's website at least seven (7) days prior to execution of the Contract.
 - O. Responses received shall be open to public inspection once the City cancels the Solicitation or rejects all responses without the intent to resolicit, executes a Contract or otherwise takes action which ends the Solicitation process, whichever is later, except to the extent set forth in Section 6.13.

4.6 Request for Qualifications

A Request for Qualifications is the Solicitation method used when Award will be determined by evaluation factors primarily based on qualifications and experience.

- A. If the Procurement Officer determines in writing that the use of an Invitation for Bids is either not practicable or advantageous to the City, a Request for Qualifications may be used for the acquisition of Services or Professional Services.
- B. The Request for Qualifications shall be prepared in a format approved by the Chief Procurement Officer. The Request for Qualifications shall include the following:

1. Instructions and information to Respondents concerning the Response submission requirements, including the due date and time, the address of the office to which Responses are to be received, the period that the Response shall remain open, and any other special information.
 2. A description of the Services required and such other information as appropriate.
 3. Any other pertinent information requested by the Procurement Officer.
 4. The required Response elements including but not limited to and as applicable;
 - a. An expression of interest in providing a particular Service.
 - b. Technical education and training; certifications, licenses, and memberships in professional associations, societies, or boards.
 - c. General, special or specific experience.
 5. Selection may be made without requiring priced Responses, but if price is required in the Response, no Contract may be Awarded solely on the basis of price.
- C. The name of each Respondent shall be read aloud and recorded on an abstract. The abstract shall be available for public inspection. All other information contained in the Response shall be kept confidential except to those participating in the evaluation process so as to avoid disclosure of contents prejudicial to competing Respondents during the process of evaluation and negotiation.
- D. Responses shall be evaluated against the evaluation criteria set forth in the Solicitation.
- E. The Procurement Officer shall approve an evaluation committee of three (3) or more persons to evaluate the Proposals. A person who serves on an evaluation committee shall sign a statement before reviewing the Responses that they have no potential conflict of interest in the Procurement, that they will refrain from any contact related to the Solicitation with Respondents or other parties during the course of evaluation except to the extent provided in these Rules, and that they will fairly and honestly evaluate the Responses. The evaluation committee shall prepare a written evaluation report for the Procurement Officer. The Procurement Officer may:
1. Accept the findings of the evaluation committee;
 2. Request additional information from the evaluation committee; or
 3. Reject the findings of the evaluation committee.
- F. The committee may, at any time, request such additional information from a Respondent as it deems necessary and may require Respondents to participate in interviews. In conducting clarifications and interviews, there shall be no disclosure of any information derived from Responses submitted by other Respondents.
- G. A Determination that a Response is unacceptable shall state the basis of the decision and be retained in the Procurement file. The Procurement Officer shall notify that Respondent of the Determination.
- H. The committee may create a qualified vendor list, rank the vendors and select one (1) or more to render the required Services, or may issue an RFP to the qualified vendors. The Solicitation shall indicate the method of Award process.
- I. If selecting from a Qualified Vendor List for recurring Services, at the time Services are needed, the department shall review the list and select the Vendor best qualified for the Services required. The basis for the selection shall be approved by the Department Head and shall be retained in the Procurement file.

- J. A Contract shall be negotiated with the Vendor(s) selected at a compensation determined to be fair and reasonable.
- K. If the Professional Services are needed on a recurring basis, the list of Qualified Vendors resulting from that Solicitation will be valid for the period stated in the Solicitation. Qualifications will only be accepted from additional vendors during that period if stated in the Request for Qualifications or if the number of Qualified Vendors is limited and not advantageous to the City.
- L. A Contract, in a form approved by the City Attorney may be entered into between the City and the Awarded Respondent(s) for the Procurement described in the Solicitation. The Contract may contain additional or more detailed contractual terms and provisions appropriate to the Procurement, or as required by State law, City Charter or Code, or customarily included in City Contracts.
- M. Contracts for legal services shall not become binding upon the City until signed by the City Attorney.
- N. Respondents shall be notified of the City's intent to Award a Contract at least seven (7) days prior to execution of the Contract.
- O. Responses received shall be open to public inspection once the City cancels the Solicitation or rejects all Responses without the intent to resolicit, executes a Contract or otherwise takes action which ends the Solicitation process, whichever is later, except to the extent set forth in Section 6.13.

4.7 Solicitation Addenda

- A. An addendum to a Solicitation shall be issued if necessary to:
 - 1. Make changes in the Solicitation.
 - 2. Correct defects or ambiguities.
 - 3. Furnish to other Vendors information given to one Vendor if the information will assist the other Vendors in submitting Responses or if the lack of the information will prejudice the other Vendors.
- B. Addenda to the Solicitation shall be so identified and shall be sent to all Vendors to whom the Procurement Officer distributed the Solicitation and shall be posted on the City's website and shall be available in the Procurement office.
- C. Addenda shall require that the Respondent acknowledge receipt of the addendum in their Response. Failure to acknowledge addenda that make material changes to the terms of the Procurement, shall result in the Response being deemed Non-Responsive.
- D. Addenda shall be issued a reasonable time in advance of the due date, but not less than seven (7) calendar days to allow Vendors to receive and consider them in preparing their Responses. If the due date does not permit sufficient time for the Vendor to receive and consider the addendum, the due date shall be extended.
- E. It is the responsibility of the Respondent to obtain any solicitation addenda.

4.8 Pre-Bid Conferences

The City may conduct a Pre-Bid Conference within a reasonable time, but not less than seven (7) calendar days before the due date to explain the Procurement requirements. Verbal statements made at the Pre-Bid Conference shall not be binding upon the City unless a written addendum is issued.

4.9 Pre-Opening Modification or Withdrawal of Responses

- A. A Respondent may modify or withdraw its Response at any time before due date if the modification or withdrawal is received in writing before the due date. A Respondent or the Respondent's authorized representative may withdraw the Response in person if, before the due date and time, the identity of the person requesting withdrawal is established and that person signs a receipt for the Response. A Response may not be withdrawn if the Bid Opening has begun. Responses that are withdrawn prior to the start of the bid opening will be returned to the Respondent and no copies shall be retained by the City.
- B. A Proposal may be withdrawn at any time before the due date and time for receipt of Best and Final Proposals, if the City requests Best and Final Proposals. Withdrawal of a Proposal if Best and Final Proposals have not been requested or after submission of Best and Final Proposals is permissible only in accordance with Section 4.12.
- C. All documents concerning a modification or withdrawal of a Response shall be retained in the appropriate Procurement file.

4.10 On-Line Bidding

- A. If the Procurement Officer determines that electronic, On-Line Bidding is more advantageous than other procurement methods provided in this Article, the Procurement Officer may use On-Line Bidding to obtain Bids electronically for the Procurement of Materials or Services.
- B. An On-Line Bidding Solicitation must designate an opening date and time.
- C. The closing date and time for an On-Line Bidding may be fixed or remain open depending on the structure of the item being bid on-line. Information regarding the closing date and time must be included in the Solicitation. At the opening date and time, the City must begin accepting On-Line Bids and must continue accepting Bids until the Bid is officially closed.
- D. All On-Line Bids must be posted electronically and updated on a real-time basis.
- E. The City may:
 - 1. Require Bidders to register before the opening date and time and, as part of that registration, require Bidders to agree to any terms, conditions or other requirements of the Solicitation.
 - 2. Prequalify Bidders and allow only those Bidders who are prequalified to submit bids on line.
- F. The provisions of these Rules apply to On-Line Bidding to the extent that they do not conflict with the On-Line Bidding process.

4.11 Receipt, Opening, and Recording of Responses

- A. Each Response and modification shall be time-stamped upon receipt and stored unopened in a secure place until the time and date set for the Bid Opening.
- B. An envelope that is not marked as a Response or does not identify the Respondent or Solicitation may be opened for the purpose of identification. Record shall be made on the envelope of the reason for opening it, the date and time it was opened, the

Solicitation to which responded, and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the Procurement file.

- C. Responses and modifications shall be opened publicly in the presence of one or more witnesses at a Bid Opening at the time, date, and location designated in the Solicitation.

4.12 Late Responses, Late Modifications and Late Withdrawals

- A. A Response, modification or withdrawal is late if it is received by the City after the time and date set for the Bid Opening to begin.
- B. A late Response or modification shall be rejected unless it would have been timely received but for the action or inaction of City personnel.
- C. Late Responses and modifications shall be rejected and returned unopened and no copies shall be retained by the City.
- D. A request to withdraw a Response shall be in writing. A copy of the Response shall be retained in the Procurement file and will be available for public inspection except to the extent set forth in Section 6.13. Late withdrawal of a Response may be a factor in determining Responsibility of a Vendor for future Solicitations or for Debarment.
- E. Documentation concerning a late Response, late modification, or late withdrawal shall be retained in the Procurement file.

4.13 Mistakes in Responses

- A. A Respondent may correct mistakes discovered before the time and date set for the Bid Opening by withdrawing or correcting the Response as provided in Section 4.9.
- B. After the Bid Opening, a mistake may not be corrected or withdrawal allowed except:
 - 1. In the case of a mathematical error. The unit cost shall prevail and any correction(s) required due to that error shall be done by the City.
 - 2. The Procurement Officer may waive any Minor Informalities in a Response or allow the Respondent to correct them if correction is advantageous to the City.
 - 3. The Procurement Officer may permit a Respondent to furnish information called for in the Solicitation but not supplied if the intended response is evident.
 - 4. The Procurement Officer may permit a Respondent to withdraw a Response if the Respondent establishes by clear and convincing evidence that a mistake was made.
- C. If correction or withdrawal of a Response after Bid Opening is permitted or denied under this Section, the Procurement Officer shall prepare a Determination showing that the relief was permitted or denied under these rules and regulations.
- D. This Section shall not preclude any Response modifications requested or allowed as part of a Best and Final Proposal process.

4.14 Only One Response Received

If only one Response is received, after analysis of Responsiveness and Responsibility an Award may be made to the single Respondent if the Procurement Officer determines in writing that the price submitted is fair and reasonable, and that either other Vendors had reasonable opportunity to respond, or there is not adequate time for resolicitation.

Otherwise the Response may be rejected and new Responses may be solicited if the need for the Material or Service continues.

4.15 Tie Responses

- A. Tie Responses are those from Responsive and Responsible vendors that are identical in Bid price or Proposal evaluation.
- B. Tied Responses may be decided by:
 - 1. A Mesa respondent shall be given preference over a nonresident Respondent.
 - 2. An Arizona respondent shall be given preference over a nonresident Respondent.
 - 3. If a non-price response requested in the Solicitation such as delivery time, warranty, return charges, percent discount for other items is advantageous to the City, Award may be made to the Respondent most advantageous to the City.
 - 4. Awards may be split if advantageous to the City, if splitting is feasible given the type of Materials, Insurance, Services or Concessions requested, if overall pricing would not increase, if delivery would be better ensured, or if necessary or desirable to promote future competition.
 - 5. If the Responses are equal in every respect or if there is no Response that is clearly advantageous to the City, the Award shall be made by a drawing of lots. If time permits, the Respondents involved shall be given an opportunity to attend the drawing of lots. The drawing of lots shall be witnessed by at least one person other than the Procurement Officer supervising the drawing of lots.
- C. Documentation of the resolution of tied Responses shall be retained in the Procurement file.

4.16 Cancellation of Solicitation Before the Due Date and Time

- A. A Solicitation may be cancelled before the Bid Opening if the Procurement Officer determines that cancellation is in the best interest of the City.
- B. If a Solicitation is cancelled before the Bid Opening, notice of cancellation shall be sent to all Vendors to whom the Procurement Officer distributed a Solicitation. The notice of cancellation shall identify the Solicitation and briefly explain the reason for cancellation.
- C. Any Responses that have been received shall be returned unopened and no copies shall be retained by the City.
- D. A written record of the reason to cancel a Solicitation shall be made a part of the Procurement file and shall be available for public inspection except to the extent set forth in Section 6.13.

4.17 Cancellation of Solicitation After Bid Opening

- A. After Bid Opening but before Award, a Solicitation may be cancelled and all Responses may be rejected if the Procurement Officer determines in writing that cancellation and rejection is in the best interest of the City for reasons including but not limited to:
 - 1. The City no longer requires the Materials, Insurance, Services or Concession;
 - 2. Ambiguous or otherwise inadequate Specifications were part of the solicitation;

3. The Solicitation did not provide for consideration of all factors of significance to the City;
 4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 5. All otherwise acceptable Responses received are at clearly unreasonable prices;
 6. There is reason to believe that the Responses may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
 7. Competition was insufficient.
- B. The approving body (the City Council or City Manager or Designee) may cancel a Solicitation or Award prior to execution of a Contract.
- C. A notice of cancellation or rejection shall be sent to all Respondents.
- D. Responses received under the cancelled Solicitation shall be retained in the Procurement file. If the City intends to issue another Solicitation within six (6) months after cancellation for the same Materials, Insurance, Services or Concessions, the Chief Procurement Officer may withhold from public inspection Responses submitted under the cancelled Solicitation if the Procurement Officer makes a written determination that to release that information would prevent fair competition in the new Solicitation. After execution of a Contract under the second Solicitation, Responses submitted in response to the cancelled Solicitation shall be open for public inspection except to the extent set forth in Section 6.13.
- E. The determination to cancel a Solicitation and reject Responses shall be made a part of the Procurement file and shall be available for public inspection except to the extent set forth in Section 6.13.

4.18 Rejection of Individual Responses

- A. The Procurement Officer may reject a Response if:
1. The Response is not Responsive pursuant to Section 4.19.
 2. The Respondent is determined to be Non-Responsible pursuant to Section 4.20.
 3. The Proposal price is unreasonably or unsubstantiatedly high.
- B. Respondents whose Responses are rejected shall be notified in writing of the rejection. Record of the rejection shall be made part of the Procurement file and shall be available for public inspection except to the extent set forth in Section 6.13.

4.19 Responsiveness

- A. Factors to be considered in determining if a Response is Responsive include:
1. Whether the Respondent has completed all Response requirements in the Solicitation.
 2. Whether the Respondent has met the minimum qualification requirements stated in the Solicitation to submit a Response.
 3. The unreasonable failure of a Respondent to promptly supply information requested in the Solicitation, for clarification or in Best and Final Proposal requests.
- B. If the Procurement Officer determines that a Response is Non-Responsive, the determination shall be made part of the Procurement file.

4.20 Responsibility of Respondents

- A. Factors to be considered in determining if a Respondent is Responsible include:
 - 1. The Respondent's financial, physical, personnel or other resources, including Subcontracts.
 - 2. The Respondent's record of performance and integrity.
 - 3. Whether the Respondent is legally qualified to Contract with the City.
 - 4. Whether the Respondent, including all Affiliates, is current in obligations due the City.
 - 5. The degree to which a Respondent promptly supplies information in connection with an inquiry with respect to Responsibility.
- B. If the Procurement Officer determines that a Respondent is Non-Responsible, the Procurement Officer will issue a Determination that sets forth the basis for the decision. The Determination shall be made part of the Procurement file.
- C. A notice shall be promptly sent to the Non-Responsible Respondent. The notice shall state:
 - 1. The basis for the decision.
 - 2. That Responses shall not be solicited or accepted from the Vendor and, if received, will not be considered.
 - 3. That the decision may be protested as provided in Article 6.
- D. Information furnished by a Respondent determined to be non-Responsible this Section shall not be disclosed outside of the office of the Procurement Officer without prior written consent by the Respondent except to the extent set forth in Section 6.13.

4.21 Extension of Response Acceptance Time

After receipt of Responses, the Procurement Officer may request in writing Respondents who have submitted timely Responses to extend the time during which the City may accept their Responses. A Respondent may withdraw their Response without penalty if they submit a written request subsequent to the notification of the extension. No other modifications shall be allowed.

4.22 Sole Source Procurements

A Contract may be Awarded for a Material or Service without competition if the Procurement Officer determines in writing that there is only one source for the required Material or Service. Sole source procurements should be avoided, unless there is only one source for the required Material or Service and no other type of Materials or Service will satisfy the requirements of the City.

- A. City Departments seeking a Sole Source Procurement shall prepare a written request documenting the existence of a Sole Source condition, including why no other type of Material or Service will satisfy the needs of the City and the specific efforts made to determine the availability of any other source. The Department Head and Chief Procurement Officer shall approve the request.
- B. The Procurement Officer may require the submission of cost or pricing data in connection with an Award under this Section.

- C. The Procurement Officer shall negotiate with the single supplier, to achieve a Contract advantageous to the City. The City's terms and conditions will be part of the Contract document to the extent practicable, unless exempted by the Procurement Officer.
- D. The Chief Procurement Officer shall prepare a written determination stating the basis for the Sole Source Procurement shall be which shall be included in the Procurement file.
- E. Public notice inviting comment shall be given not less than seven (7) calendar days before the Award and shall include:
 - 1. Direct mailing or electronic notification of interested parties registered with the City; and
 - 2. Publication on the City's website; or
 - 3. Publication at least one (1) time in one (1) or more newspapers of general circulation in the City.
 - 4. The failure of any Vendor or Person to receive notice shall not constitute grounds for a protest to the Procurement Officer.
- F. The provisions of this Section apply to all Sole Source Procurements unless emergency conditions exist as defined in Section 4.24.

4.23 Cooperative Procurements

The Procurement Officer is authorized to Procure Materials or Services through any Governmental Agency or Governmental Organization without performing a separate Competitive Selection, provided:

- 1. It is advantageous to the City, and
- 2. The terms of the Contract meet the City's requirements and protect the City's interests, and
- 3. Such Procurement is made through a written agreement with the Governmental Agency or Governmental Organization executed by the City Manager or a City Manager Designee, and
- 4. Procedures were used in the applicable Procurement, which are similar to the requirements of this Article, and
- 5. The Competitive Selection used by the Governmental Agency or Governmental Organization identified the potential cooperative use, and
- 6. Its use is not for the purpose of circumventing the general intent of these Rules.

4.24 Emergency Procurements

Notwithstanding any other provision of this Article, the City Manager or Designee may authorize Emergency Procurements where necessary for the immediate preservation of the public peace, health, or safety and compliance with established procurement procedures are impracticable or contrary to the public interest. An Emergency Procurement shall be limited to those Materials or Services necessary to satisfy the emergency. Such Emergency Procurements shall be made with such competitive evaluation as is practicable under the circumstances.

- A. A department seeking an Emergency Procurement shall prepare an emergency statement documenting the existence of an emergency condition. The statement shall include the nature of the emergency. The City Manager or City Manager

Designee shall approve the statement. The emergency statement must be submitted to the Procurement Officer as soon as practicable and shall be retained in the Procurement file.

- B. The Procurement Officer may require the submission of cost or pricing data in connection with an Award under this Section.
- C. The Procurement Officer or designee shall negotiate with the supplier, to the extent practicable, a Contract advantageous to the City. The price being paid must be reasonable considering the circumstances. The City's terms and conditions will be part of the Contract document to the extent possible, unless exempted by the Procurement Officer.
- D. Any Emergency Procurement for Materials exceeding the dollar threshold for City Council approval shall be scheduled for discussion and ratification at the next reasonably available City Council meeting.

4.25 Bid/Proposal, Performance and Payment Security

- A. The City may require the submission of a security to guarantee the bid/proposal, faithful performance and/or subcontractor and vendor payments. In determining the amount and type of security required for each Contract, the Procurement Officer shall consider the nature of the performance and the need for protection of the City as well as any statutory requirements. The requirement for security must be included in the Solicitation.
- B. The security may be submitted in any one of the following forms: an executed surety bond issued by a firm licensed and registered to transact such business with the State of Arizona; cash; certified or cashier's check payable to the City of Mesa (personal or company checks are not acceptable); an irrevocable letter of credit; certificate of deposit or any other form of deposit issued by a financial institution and acceptable to the City.
- C. A Bid/Proposal security shall be forfeited to the City of Mesa should the Respondent selected fail to execute a Contract when requested. If a Response is withdrawn at any time before the Bid Opening, any Bid/Proposal security shall be returned to the Respondent. Following execution of a Contract with the successful Respondent, Respondent's Bid/Proposal security shall be returned.
- D. If the Contractor fails or refuses to fully comply with the terms and conditions of the Contract, the City shall have the right to use all or such part of the Performance security as may be necessary to reimburse the City for loss sustained by reason of such breach. The balance of said security, if any, will be returned to Contractor.
- E. Payment bonds will be administered consistent with the Arizona Procurement Code.
- F. Bid/Proposal or performance securities shall not be used as a substitute for a determination of Responsibility.

4.26 Cost or Pricing Data

- A. The submission of current cost or pricing data may be required in situations in which analysis of the proposed price is essential to determine that the price is reasonable and fair. A Contractor shall, when requested, submit current cost or pricing data and shall certify that, to the best of the Contractor's knowledge and belief, the cost or

pricing data submitted is accurate, complete and current as of a mutually determined date.

- B. This certification may also be requested to substantiate requests for price adjustments for term Contracts, options to renew, any Contract Amendment or Change Order, or to substantiate requests for cost reimbursements pursuant to the specific terms and conditions contained in a Contract.

4.27 Mistakes Discovered After Award

- A. If a mistake in a Response is discovered after the Award, the Contractor may request withdrawal or correction in writing and shall include all of the following in the written request:
 - 1. Explanation of the mistake and any other relevant information;
 - 2. A request for correction including the corrected Response or a request for withdrawal; and
 - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the City.
- B. Based on the considerations of fair competition and the best interest of the City, the Procurement Officer may:
 - 1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest Response;
 - 2. Terminate all or part of the Award; or
 - 3. Deny correction or withdrawal.
- C. Documentation of the resolution of mistake shall be retained in the Procurement file.

4.28 Negotiations

Negotiations may be conducted with Respondents to a Request for Proposals or Request for Qualifications. Respondents shall be accorded fair and equal treatment in conducting Negotiations and there shall be no disclosure of any information derived from Responses submitted by other Respondents.

- A. Concurrent Negotiations may be conducted with Respondents for the purpose of determining source selection and/or Award.
- B. Exclusive Negotiations may be conducted with the Respondent whose Response is determined in the source selection process to be most advantageous to the City. Exclusive Negotiations may be conducted without requiring previous concurrent Negotiations. Exclusive Negotiations shall not constitute a contract Award nor shall it confer any property rights. If exclusive Negotiations are conducted and an agreement is not reached, the City may enter into exclusive Negotiations with the next highest ranked Respondent without the need to repeat the formal Solicitation process.

4.29 Types of Contracts

Subject to the limitations of this Section, any type of Contract, which will promote the best interests of the City, may be used, except that the use of a Cost-Plus-a-Percentage-of-Cost Contract is prohibited.

- A. Fixed-Price Contract. A Fixed-Price Contract may be used if the extent and type of work necessary to meet City requirements can be reasonably specified, the cost can be reasonably estimated and prices advantageous to the City can be established at the outset of the Contract. A Contract with a percent discount or mark-up from a specified manufacturer's published price list is a Fixed-Price Contract. A Fixed-Price Contract with price adjustment may be used if the Solicitation and the resultant Contract specifies a Fixed-Price Contract with price adjustment and the basis for determining the price adjustment. Notice of price adjustment or updates to the manufacturer's published price list shall be given by the Contractor in the manner and within the time specified in the Contract.
- B. Lease and Lease-Purchase Contract. A Lease may be entered into only after the Procurement Officer determines in writing that a Lease is advantageous to the City, all conditions for renewal and costs of termination are set forth in the Lease, and the Lease is not used to circumvent required Procurement procedures. For leases where the total payments, including interest, exceed the Small Dollar Procurement Threshold, a purchase option may be exercised only if the Lease containing the purchase option was Awarded by way of Competitive Selection.
- C. Cost-Reimbursement and Cost-Incentive Contracts. A Cost-Reimbursement or Cost-Incentive Contract may be used only when the Procurement Officer determines in writing that the use of such Contract is advantageous to the City.
- D. Time and Materials and Labor Hour Contracts. Time and Materials and Labor Hour Contracts shall, to the extent possible, contain a stated ceiling or an estimate of a Contractual amount that shall not be exceeded without prior written approval of the Procurement Officer. A Time and Materials or Labor Hour Contract may only be used if the City Department determines that personnel have been assigned to monitor the performance of the work, it is advantageous to the City to use such Contract and no other Contract type is practicable.
- E. Recovery Contract. Contracts may provide for payment to the vendor of a percentage of the amount the vendor recovers or collects on behalf of the City. The percentage may be fixed or may vary depending on amount of recovery or other factors, and the percentage may be paired with a Fixed-Price or Cost-Reimbursement method.

4.30 Procurement Contract Clauses

- A. The Procurement Officer may permit or require the inclusion of clauses providing for appropriate remedies, adjustments in prices, time of performance or other provisions.
- B. A Contract may be entered into between the City and the Awarded Respondent(s), for the Procurement described in the Solicitation. The Contract may contain additional or more detailed contractual terms and provisions appropriate to the Procurement, or as required by State law, City Charter or Code, or customarily included in City Contracts.
- C. All Procurement Contracts shall incorporate standard terms and conditions approved by the Chief Procurement Officer.
- D. The Procurement Officer may modify standard terms and conditions for inclusion in any particular City Procurement Contract, provided that any variations are supported

by a determination that the circumstances justifying the variation and provided that notice of any material variation is stated in the Solicitation.

- E. All Contract clauses shall be consistent with the provisions of these rules.
- F. All Contracts, clauses, terms and conditions shall be subject to the approval of the City Attorney.

4.31 Multiple Award Contracts

- A. If the Procurement Officer anticipates that a Multiple Award will be made, the Solicitation shall include a notification of the intent of the City to make such an Award and the criteria upon which such an Award will be based.
- B. The City reserves the right to make a Multiple Award when not described in the Solicitation if that right is reserved in the Solicitation. If the Procurement Officer decides that none of the Responses alone meets the needs of the City and if the Procurement Officer determines in writing that a single Award is not advantageous to the City.

4.32 Multi-Year Contracts

- A. Unless otherwise provided, a Contract for Materials, Insurance, Services or Concessions may be entered into for a period of time up to five years, as deemed to be in the best interest of the 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 Award. Use of a multi-year Contract is appropriate when estimated requirements cover the period of the Contract and are reasonable and continuing and when such a Contract will serve the best interests of the City by promoting economies in City Procurement.
- B. A Contract may be entered into for a period of time exceeding five years at the recommendation of the department head if the Chief Procurement Officer determines in writing that such a Contract would be advantageous to the City.
- C. Multi-year Contracts shall contain provisions for cancellation by the City in the event funds are not appropriated for the continuance of the Contract.

4.33 Contract Renewals

- A. Contracts may only be renewed if the Solicitation defined the renewal possibility and the potential renewal term.
- B. The decision to pursue renewal of a Contract rests solely with the City.
- C. Before exercising any option for renewal, the Procurement Officer shall determine in writing that a competitive Procurement is not more advantageous to the City than exercise of the particular option.

4.34 Procurement of Information Systems and Telecommunications Systems

The evaluation of Responses for Information Systems or Telecommunications Systems may include as price evaluation criteria, the Vendor Costs and Vendor Support, Total City Costs, the Total Life Cycle Cost and Application Benefits of the Information Systems or Telecommunications Systems to the City Department. These factors must be defined in the Solicitation if they are to be evaluated.

Application Benefit - A quantified assessment of the benefits to be achieved in City program and support areas by the Information Systems or Telecommunications Systems proposed by the vendor, including for example, reasonably projected reductions in program costs and increases in productivity of personnel.

Information Systems - A system of hardware, software or vendor support that processes information or data by electronic data processing methods and devices.

Telecommunications Systems - A system including but not limited to all instrumentalities, facilities, apparatus and Services, for the transmission and reception of messages, impressions, signs, signals, pictures, sounds or any other symbols by wire, radio, optical cable, electromagnetic or other similar means.

Total Life Cycle Cost - Vendor Costs, Total City Costs and financing costs throughout the useful life of the Information Systems or Telecommunications Systems to the original City Department to perform the application for which it was initially procured.

Total City Costs - Costs to the City for the Information Systems or Telecommunications Systems including energy, facilities, personnel and all other identifiable City costs.

Vendor Costs - Costs of all hardware, materials, software, transportation, vendor support and all other identifiable costs associated with the Response.

Vendor Support - Services provided such as consulting, education, management of the Information Systems or Telecommunications Systems, systems planning, development, integration and maintenance and training.

4.35 Procurement of Construction Equipment

The evaluation of Responses for Construction Equipment may include as price evaluation criteria the Total City Costs including Vendor Charges and Vendor Support, Total Life Cycle Cost including Residual Value. These factors must be defined in the Solicitation if they are to be evaluated.

Construction Equipment - Earth moving, material handling, road maintenance, and other construction equipment - A track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader, having a published manufacturer's minimum unit list price of fifty thousand (\$50,000) dollars or more and a minimum expected life cycle of three (3) years.

Residual value - The guaranteed minimum market value of the Construction Equipment at the end of the life cycle as determined by a guaranteed minimum value proposed by the Respondent or other parties in its Response.

Total City Costs - Cost to the City for the construction equipment including repair costs, present value of monies, vendor charges, and all other identifiable costs that may be incurred.

Total Life Cycle Cost - Total City Costs and financing costs through the life cycle of the construction equipment being purchased less Residual Value.

Vendor Charges - Costs of all vendor support, materials, transportation and all other identifiable costs associated with the Response.

Vendor Support - Services provided such as consulting, education and training.

4.36 Request for Information

The Procurement Officer may issue a Request for Information to obtain data about Materials, Services or Concessions available to meet a specific need. Adequate public notice as specified in Section 4.2(B) shall be provided. Requests for Information may be submitted via hard copies or electronic submission including email. A Request for Information does not meet the requirements of Competitive Selection and Responses cannot be accepted to form a binding Contract.

4.37 Demonstration Projects

- A. A Demonstration Project may be undertaken if recommended by the department head and the Procurement Officer determine in writing that the project is innovative and unique. The City shall not be obligated to pay the Contractor, or to Procure the Materials or Services supplied by the Contractor. The Contract term shall not exceed two years. The Procurement Officer shall prepare a Determination of the basis for the Contract Award which shall be included in the Contract file.
- B. A Contract to Procure or lease Materials or Services previously supplied during a Demonstration Project shall be conducted under the provisions of this Article.
- C. Except as otherwise provided by law, a Contractor for a Demonstration Project shall not be precluded from participating as a Bidder in a Procurement for the Materials or Services supplied during a Demonstration Project.

4.38 Unsolicited Proposals

A Contract may be Awarded based on an unsolicited Proposal only if the Procurement Officer determines that the conditions of either Sole Source (4.22) or Emergency (4.24) exist. The determination of the Procurement Officer shall include all of the following:

- 1. The Proposal is innovative and unique.
- 2. The Proposal is not available without restriction from another source and does not closely resemble a similar product which is either available or pending in the industry.

4.39 Change of Name

If a Contractor requests to change the name in which it holds a City Contract, the Procurement Officer may, upon receipt of a document indicating name change, enter into a written Contract Amendment with the Contractor to effect the name change. The Amendment shall provide that no other terms and conditions of the Contract are changed.

4.40 Assignment of Rights and Duties

- A. The rights and duties of a Contract are not transferable or otherwise assignable without the written consent of the City.
- B. The City may agree to the assignment or may reject the assignment and terminate the Contract.
- C. If the City agrees to the assignment of a Contract, the City Manager or Designee may enter into a written Contract Amendment with the Contractor to effect the assignment. The amendment shall provide that no other terms and conditions of the Contract are changed.

D. All requests for assignment shall be made of the City before the date that the assignment becomes effective.

4.41 Contract Amendments/Termination

- A. The City Manager or Designee may enter into a written Contract Amendment with the Contractor to affect changes to the terms and conditions of a Contract. Amendments shall not so significantly amend a Contract so as to warrant termination and resolicitation.
- B. The City Manager or Designee may terminate a Contract for reasons including for non-appropriation, for cause, or for convenience upon the recommendation of the department head and approval of the City Manager or Designee.
- C. The Chief Procurement Officer and City Manager or Designee shall use discretion on when Council approval is appropriate for Contract Amendments and Contract Termination.

4.42 Rewarding a Contract

If a Contract is terminated within one (1) year of the Solicitation's Bid Opening, the City may reaward all or part of the Contract to the next lowest, Responsible and Responsive Bidder (Bids) or the next highest-scored Respondent (Proposals or Qualifications), based on the considerations of fair competition and the best interest of the City. Reaward shall be subject to City Council or City Manager or Designee's approval.

4.43 Reporting of Anticompetitive Practices

- A. Upon submitting a Response, the Respondent must certify that the submission of the Response did not include collusion or other anticompetitive practices.
- B. If for any reason collusion or other anticompetitive practices are suspected among any Respondents, a notice of the relevant facts shall be transmitted to the Chief Procurement Officer and the City Attorney.

4.44 Prequalification

The Procurement Officer may prequalify Vendors for particular types of Materials and Services. Prequalified Vendors have a continuing duty to provide the Procurement Officer with information on any material change affecting the basis of Prequalification. Solicitation mailing lists shall include the Prequalified Vendors. A Vendor need not be prequalified to be Awarded a Contract, unless so stated in the Solicitation and there has been reasonable notice and opportunity to become Prequalified.

Prequalification does not represent a determination of Responsibility.

The existence of a Qualified Product List pursuant to Section 5.4 does not constitute Prequalification of any Vendor of that product.

4.45 Prospective Vendors List

Purchasing shall maintain a prospective vendors list. Any Person desiring to be included on the list may register with the City. Inclusion of a Person on the list shall not indicate whether the Person is Responsible or otherwise capable of successfully

performing a City Contract. It shall be the Person's sole responsibility to ensure that registration information is current and active. The Procurement Officer or Designee may remove Persons from the list if a notice sent to the Person is returned as undeliverable.

4.46 Compliance With State or Federal Requirements

If a Procurement involves the expenditure of state or federal assistance, Grant or Contract monies, the Procurement Officer shall comply with state or federal law and authorized regulations which are mandatory and which are not presently reflected in this Article.

ARTICLE 5. SPECIFICATIONS

5.1 Duties of the Chief Procurement Officer

The Chief Procurement Officer shall establish guidelines governing the preparation, maintenance and content of Specifications for Materials, Services and Concessions required by the City.

The Chief Procurement Officer retains the authority to approve or disapprove all Specifications.

5.2 Maximum Practicable Competition

All Specifications, regardless of whether they are prepared by City staff or by others on behalf of the City, 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.

5.3 Requirements of Nonrestrictiveness and Standardization

- A. Unless otherwise permitted herein, all Specifications shall describe the City's requirements in a manner that does not unnecessarily exclude a Material or Service that will satisfy the City's needs or discriminate against the use of recycled Materials.
- B. To the extent practicable, the City should Procure standard, commercial Materials and Services.
- C. To the extent possible, specifications should promote standardization of products used by the City to minimize stock levels and promote economies of scale.

5.4 Types of Specifications

- A. Commercial Standards Specification
 - 1. A Specification for a commonly known and standardized Material or Service
 - 2. A federal, state or industry standard may be used to define the item or the quality and/or workmanship
- B. Design Specification
 - 1. A complete and detailed description of an item. May include the composition of materials, size, shape, capacity, dimensions, tolerances and method of manufacture.
- C. Performance Specification
 - 1. A Specification that details the performance criteria required for a Material or Service.
- D. Brand Name or Equal Specification
 - 1. A Brand Name or Equal Specification may be used when the Procurement Officer determines that use of a Brand Name or Equal Specification is advantageous to the City and that:
 - a. No Common or General Use Specification or Qualified Products List is available, or
 - b. Time or resources do not permit the preparation of another form of Specification, or
 - c. The use of Brand Name or Equal Specification defines a level of Material or Service required by the City and provides adequate competition by multiple

- providers of the Brand Name product and/or through "or-equal" Materials or Services, and
- d. The nature of the product or the City's requirements makes use of a Brand Name or Equal Specification suitable for the Procurement.
2. Such determination may be made for categories of Materials or Services or, in appropriate circumstances, for an entire Procurement action even though a number of different items are being procured.
 3. A Brand Name or Equal Specification shall designate as many different brands as are practicable as "or equal" references.
 4. A Brand Name or Equal Specification shall include a description of the particular design, functional, or performance characteristics that are required unless the Procurement determines that the essential characteristics of the Brand Names designated in the Specifications are commonly known.
 5. A Solicitation that uses a Brand Name or Equal Specification shall explain that the use of a Brand Name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The Solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.
- E. Brand Name Only Specification
1. A Brand Name Only Specification may be prepared and utilized only if the Procurement Officer makes a written determination that only the identified Brand Name item will satisfy the City's needs. Past success in the Material's performance, traditional purchasing practices, or inconvenience of drawing Specifications do not justify the use of Brand Name Only Specifications.
 2. If a Brand Name Only Specification is utilized, the Procurement Officer shall to the extent practicable, identify sources from which the designated Brand Name item can be obtained and shall solicit such sources to achieve the maximum practicable competition. If only one source can supply the requirement, the Procurement may be made as a Sole Source Procurement under Section 4.22.
- F. Qualified Products List.
1. A Qualified Products List may be utilized when the Procurement Officer determines that testing or examination of the Materials prior to issuance of the Solicitation is desirable or necessary in order to best satisfy City requirements.
 2. Inclusion on a Qualified Products List shall be based on results of tests or examinations conducted in accordance with requirements established by Governmental Agencies and Governmental Organizations or by the City.
 3. The Procurement Officer shall solicit as many potential suppliers as practicable to submit products for testing and/or examination to determine acceptability for inclusion on a Qualified Products List. Any potential supplier, even though not solicited, may submit its products for consideration in accordance with the schedule or procedure established for this purpose. The Qualified Products List shall not be modified after a Solicitation is issued.
 4. Products may be removed from the Qualified Products List when it is determined in writing by the City Department that the product no longer meets the current specifications or standards, except during a Solicitation process.

ARTICLE 6. PROTESTS, APPEALS, DEBARMENTS, CONFIDENTIAL
INFORMATION, AND CONTRACT DISPUTES

6.1 Protests to Solicitations and Awards

This Section sets forth who may protest a Solicitation or Award and the required content for such protests.

- A. The Procurement Officer has the authority to resolve protests relating to Solicitations and Awards.
- B. Prior to the deadline for submitting a Response, any Person may submit a protest so long as it complies with Section 6.1 and Section 6.2 of these Rules.
- C. After the deadline for submitting a Response, any Respondent may submit a protest so long as it complies with Section 6.1 and Section 6.2 of these Rules.
- D. The protest of Solicitations or Awards must be in writing and must include all of the following information:
 - 1. The name, address and telephone number of the Protestor.
 - 2. The signature of the Protestor or their representative.
 - 3. Identification of the Solicitation or Contract number.
 - 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents, with any statement concerning confidential information under Section 6.13, if applicable.
 - 5. The form of relief requested.

6.2 Time for Filing Protests

- A. Protests based upon alleged mistake, impropriety, or defect in a Solicitation that is apparent before the Bid Opening must be Filed with the Procurement Officer no later than 6:00 p.m. four (4) calendar days before Bid Opening.
- B. Protests that only become apparent after the deadline in Subsection (A) above must be Filed within the earlier of seven (7) calendar days after: (i) the Protestor knows or should have known the basis of the protest; or (ii) the date the City issues a Notice of Intent to Award.
- C. Protests that only become apparent after the City issues a Notice of Intent to Award must be Filed within seven (7) calendar days after the Protestor knows or should have known the basis of the protest; however, no protest may be Filed later than seven (7) calendar days after Contract execution.

6.3 Protest Decision by the Procurement Officer

- A. The Procurement Officer may immediately deny a protest if:
 - 1. The protest does not state a valid basis for the protest; or
 - 2. The protest is untimely pursuant to Section 6.2.
- B. If the protest is not denied pursuant to Subsection (A) above, the Procurement Officer may provide written notice of the protest, including a copy of the written protest, to an Interested Party and allow the Interested Party to File a written response to the protest in the time specified within such notice.
- C. The Procurement Officer will issue a written decision in a timely manner. A copy of the decision will be furnished to the Protestor and any other Person provided a notice pursuant to Subsection (B) above, by certified mail, fax, email or other method

that tracks delivery status. The decision will contain an explanation of the basis of the decision and a statement that the decision may be appealed within seven (7) calendar days from receipt of the decision by the Protestor.

6.4 Appeals of the Procurement Officer's Decision

- A. An appeal from a decision entered by the Procurement Officer issued pursuant to Section 6.3 must be Filed with the Chief Procurement Officer within seven (7) calendar days after the date the decision is received by the Protestor.
- B. Content of appeal. The appeal must contain:
 - 1. A copy of the original protest.
 - 2. A copy of the decision of the Procurement Officer.
 - 3. The precise factual or legal error in the protest decision from which an appeal is taken.
- C. The Chief Procurement Officer will deny an appeal if: (i) The appeal fails to meet the requirements of Subsection (B) above; or (ii) the appeal is untimely pursuant to Subsection (A) above or the protest was untimely under Section 6.2. If an appeal attempts to raise issues not raised in the protest, any newly raised issues will be dismissed.
- D. If the appeal is not denied pursuant to Subsection (C) above, the Chief Procurement Officer may provide written notice of the appeal, including a copy of the written appeal, to an Interested Party and allow the Interested Party to File a written response to the appeal in the time specified within such notice.
- E. The City Manager or City Manager Designee has the authority to decide appeals. The City Manager or City Manager Designee at his/her sole discretion may designate a hearing officer to hold a hearing on an appeal pursuant to Section 6.6.
- F. The City Manager or City Manager Designee's written decision, including the recommendation of the hearing officer, if applicable, will be provided to all parties to the appeal.
- G. The decision by the City Manager or City Manager Designee is final.

6.5 Stay of Procurements During the Protest or Appeal

If a protest or appeal of a Solicitation or Award is timely Filed before the execution of a Contract or before performance of a Contract has begun, the Contract execution or Contract performance will be stayed until the protest or appeal is resolved unless the Chief Procurement Officer determines in writing that a stay is contrary to the best interests of the City.

6.6 Hearing Officer

- A. If the City Manager, or City Manager Designee designates a hearing officer to hold a hearing on an appeal, the designated hearing officer will arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.
- B. The hearing will be conducted in an informal manner without formal rules of evidence or procedure.
- C. The hearing officer may:
 - 1. Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

2. Administer oaths or affirmations.
 3. Require parties to state their positions concerning the various issues in the proceeding.
 4. Require parties to produce for examination those relevant witnesses and documents under their control.
 5. Rule on motions and other procedural items on matters pending before the hearing officer.
 6. Regulate the course of the hearing and conduct of participants.
 7. Establish time limits for submission of motions or memoranda.
 8. Impose appropriate sanctions against any Person failing to obey an order under these procedures, which may include:
 - a. Refusing to allow the Person to assert or oppose designated claims or defenses, or prohibiting that Person from introducing designated matters in evidence.
 - b. Excluding all testimony of an unresponsive or evasive witness.
 - c. Expelling Person from further participation in the hearing.
 9. Take judicial notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice.
- D. An audio recording of the hearing will be made available at no cost to the parties.
- E. The hearing officer will present a recommended decision on the appeal or petition for reinstatement to the City Manager or City Manager Designee based on the evidence presented. The hearing officer's written decision will be provided to all parties.
- F. The City Manager or City Manager Designee may accept, modify, or reject the hearing officer's recommended decision in whole or in part, may remand the matter to the hearing officer with additional instructions, or make any other appropriate disposition of the appeal.

6.7 Protest and Appeal Remedies Related to Procurements

- A. If the Procurement Officer sustains a protest or the City Manager or City Manager's Designee sustains an appeal in whole or part, the Procurement Officer, City Manager, or City Manager's Designee will implement an appropriate remedy.
- B. In determining an appropriate remedy, the Procurement Officer, City Manager, or City Manager's Designee may consider all the circumstances surrounding the Procurement including, but not limited to, the seriousness of the Procurement deficiency, the degree of prejudice to other Interested Parties or to the integrity of the Procurement process, the good faith of the parties, the extent of performance, costs to the City, the urgency of the Procurement, and the impact of the relief on the City's purpose in the subject Procurement.
- C. The Procurement Officer, City Manager, or City Manager's Designee may direct the parties to engage in settlement negotiations or alternative disputes resolution procedures.
- D. An appropriate remedy may include, but is not limited to, one or more of the following:
 1. Amend the Solicitation.
 2. Cancel the Solicitation.

3. Issue a new Solicitation.
4. Reject all Responses.
5. Decline to exercise an option to renew under the Contract.
6. Terminate the Contract.
7. Such other relief as is determined necessary to ensure compliance with Procurement statutes and regulations.

6.8 Debarment of Contractors

- A. The Chief Procurement Officer has the authority to Debar a Person from participating in City Procurements.
- B. Upon receipt of information concerning a possible cause for Debarment, the Chief Procurement Officer will investigate the possible cause. If after such investigation the Chief Procurement Officer has a reasonable basis to believe that a cause for Debarment exists, the Chief Procurement Officer may Debar a Person by serving notice to the Person, stating the basis for the Debarment.
- C. Causes for Debarment include, but are not limited to, the following:
 1. Conviction of such Person or Affiliate 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 such Person or Affiliate under any statute of the federal government, the State of Arizona, the City or any other state or city 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 of a violation by such Person or Affiliate under state or federal antitrust statutes.
 4. Violations of Contract provisions of a character which are deemed to be so serious as to justify Debarment action, such as any of the following:
 - a. Abandonment of a Contract without good cause.
 - b. Knowingly fails to perform in accordance with the Specification or within the time limit provided in the Contract without good cause.
 - c. Failure to perform or unsatisfactory performance in accordance with the terms of one or more Contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor will not be considered to be a basis for Debarment.
 - d. Termination for Cause of an earlier Contract.
 - e. Failure to pay a Contractor, Subcontractor or Material provider.
 5. Any other cause deemed by the Chief Procurement Officer to affect Responsibility as a City Contractor, including Debarment of such Person by another Governmental Agency.
- D. If the Chief Procurement Officer Debars a Person, the period of time for a Debarment will not exceed three (3) years from the date of the notice of Debarment. If Debarment is based solely upon Debarment by another Governmental Agency, the

period of Debarment may run concurrently with the period established by that other Debarring agency.

- E. The Chief Procurement Officer will notify the Person in writing by certified mail, fax, email or other method that tracks delivery status, of the Debarment. The notice will state the following:
 - 1. The basis for Debarment.
 - 2. The period, including dates, of the Debarment.
 - 3. That Responses to future Solicitations will not be considered from the Person during the Debarment period except as otherwise allowed under Section 6.12.
 - 4. That the Debarment may be appealed by the Person to be Debarred pursuant to Section 6.9.
 - 5. Appeals of a Debarment must be Filed with the Chief Procurement Officer within seven (7) calendar days from receipt of the notice of the Debarment.
- F. The Debarment will become final upon expiration of the time for filing an appeal if no timely appeal is properly Filed, or upon the issuance of a written denial of any timely and properly Filed appeal by City Manager or City Manager Designee.

6.9 Appeals of a Debarment

- A. An appeal from a Debarment must be Filed with the Chief Procurement Officer within seven (7) calendar days from receipt of the notice of the Debarment by the Debarred Person.
- B. Content of appeal. The appeal from a Debarment must contain:
 - 1. The name, address and telephone number of the Debarred Person.
 - 2. The signature of the Debarred Person or their representative.
 - 3. A detailed statement of the legal and factual grounds of the appeal including copies of relevant documents, with any statement concerning confidential information under Section 6.13, if applicable.
- C. The Chief Procurement Officer will deny an appeal of a Debarment for improper filing if: (i) The appeal fails to meet the requirements of Subsection (B) above; or (ii) the appeal is untimely pursuant to Subsection (A) above.
- D. If the appeal is not denied pursuant to Subsection (C) above, the Chief Procurement Officer may provide written notice of the appeal of a Debarment, including a copy of the written appeal, to an Interested Party and allow the Interested Party to File a written response to the appeal in the time specified within such notice.
- E. The City Manager or City Manager Designee has the authority to decide appeals of a Debarment. The City Manager or City Manager Designee at his/her sole discretion may designate a hearing officer to hold a hearing on an appeal pursuant to Section 6.6.
- F. The City Manager or City Manager Designee's written decision, including the recommendation of the hearing officer if applicable, will be provided to all parties to the appeal of a Debarment.
- G. The decision by the City Manager or City Manager Designee is final.

6.10 Reinstatement of Debarred Person

- A. The Chief Procurement Officer may, at any time after a Debarment becomes final, reinstate a Debarred Person upon a determination that the cause upon which the Debarment is based no longer exists and that it is not likely to recur.
- B. Any Debarred Person may request reinstatement by submitting a written petition to the Chief Procurement Officer supported by documentary evidence showing that the cause for Debarment no longer exists or has been substantially mitigated.
- C. The Chief Procurement Officer may grant or deny the petition, in whole or in part, with or without a hearing. The Chief Procurement Officer may, but is not required to, designate a hearing officer to hold a hearing pursuant to Section 6.6.
- D. The Chief Procurement Officer will issue a written decision in a timely manner, not to exceed thirty (30) days after Filing of a petition under Subsection (B) above, or after the conclusion of any hearing held, whichever is later. The decision will contain an explanation of the basis of the decision.
- E. The Chief Procurement Officer may allow a Debarred Person to participate in City Contracts on a limited basis during the Debarment period upon a written determination that such limited participation is advantageous to the City. The determination will specify the factors on which it is based and define the extent of the limits imposed.

6.11 Master List of Debarments

The Chief Procurement Officer will maintain a master list of Debarments under this Article. The master list will show as a minimum the following information:

- 1. The names of those Persons whom the City has Debarred under this Article.
- 2. The basis for the action.
- 3. The period of Debarment, including the expiration date.
- 4. The name of the Debarring agency if the City's Debarment is based on Debarment by another Governmental Agency.

6.12 Debarments Not Applicable Where Precluded

A Solicitation will state if there is a law or funding requirement that precludes the Debarment of a specific Person or class of Persons from submitting a Response and that the precluded Debarment(s) will not apply to that specific Solicitation.

6.13 Confidential Information

- A. If a Respondent believes that a Bid, Specification, or information provided with a protest or appeal submitted to the City contains trade secrets or other proprietary data, the Respondent must include with the submission a statement that explains and supports the Respondent's claim that the submission contains such information. The Respondent also must specifically identify the trade secrets or other proprietary data that the Respondent believes should remain confidential. A Respondent's entire submission is not eligible to be considered confidential.
- B. The City is a public entity, subject to Arizona's public records law (A.R.S. § 39-121). The City retains the right to determine what information will remain confidential or to disclose the information in response to a public records request, subpoena, or other judicial process.

- C. In the event the City determines it is legally required to disclose pursuant to law any documents or information the Respondent deems confidential trade secrets or proprietary data, the City, to the extent possible, will provide the Respondent with prompt written notice by certified mail, fax, email or other method that tracks delivery status of the requirement to disclose the information so that the Respondent may seek a protective order from a court having jurisdiction over the matter or obtain other appropriate remedies. The notice will include a time period for the Respondent to seek court ordered protection or other remedies as deemed appropriate by Respondent from such request. If the Respondent does not obtain such court ordered protection by the expiration of said time period, the City may release the information without further notice to the Respondent.

6.14 Contract Disputes

- A. The Contract Manager has the responsibility for day-to-day Contract administration. Any and all disputes in relation to the Contract will initially be referred to the Contract Manager.
- B. A Contractor or a Contract Manager may elevate a Contract dispute to the Procurement Officer for a decision.
- C. The Procurement Officer, at his/her sole discretion, may forward a Contract dispute to a hearing officer for a recommendation pursuant to Section 6.6. In such case, the Procurement Officer will have the roles and responsibilities described in Section 6.6 as belonging to the City Manager or City Manager Designee.
- D. The Procurement Officer will furnish a copy of the decision to the Contractor by certified mail, fax, email or other method that tracks delivery status.
- E. The decision of the Procurement Officer will be final.
- F. This Section does not apply to Procurements for Capital Improvements or Related Professional Services (e.g. Title 34 Procurements).

ARTICLE 7. PROCUREMENT ETHICS STANDARDS

7.1 General Policy

- A. It is the policy of the City to promote courtesy, fairness, impartiality, integrity, service, professionalism, economy, and government by law in the Procurement process. The responsibility for implementing this policy rests with each individual who participates in the Procurement process, including employees and other agents of the City, Respondents and Contractors.
- B. Public employees responsible for the expenditure of public funds have a responsibility to ensure that their conduct will not violate the public trust placed in them. They must make certain that their conduct does not raise suspicion or give the appearance that they are in violation of that public trust.

To this end, employees and agents of the City having responsibility for Procurement at all levels shall:

- 1. Encourage competition, prevent favoritism, and obtain the best value in the interest of the City and the public.
 - 2. Place professional responsibilities above personal interests.
 - 3. Ensure fair, competitive access to City Procurement opportunities.
 - 4. Deal with the public and Contractors with courtesy, consideration, and even-handedness.
 - 5. Use information gained confidentially in the performance of City duties solely in the City's interest.
 - 6. Disclose any potential conflict of interest to their supervisor and the Chief Procurement Officer.
 - 7. Recuse themselves from any specific procurement for which there is a conflict.
 - 8. Report corruption and unethical practices, wherever and whenever discovered, to the appropriate official and/or take other such action as is warranted by the situation.
- C. To achieve the purpose of this Article, it is essential that Respondents and Contractors doing business with the City also observe the ethical standards prescribed herein. It shall be a breach of ethical standards to:
 - 1. Exert any effort to influence any City employee or agent to breach the standards of ethical conduct.
 - 2. Intentionally invoice any amount greater than provided in Contract or to invoice for Materials or Services not provided.
 - 3. Intentionally offer or provide sub-standard Materials or Services or to intentionally not comply with any term, condition, specification or other requirement of a City Contract.

7.2 Conflicts of Interest

Notice is hereby given of the applicability of the Arizona Revised Statute on conflict of interest of officers and employees of the City of Mesa related to Procurement activities (A.R.S. Title 38, Chapter 3, Article 8, as may be amended).