

Procurement Rules

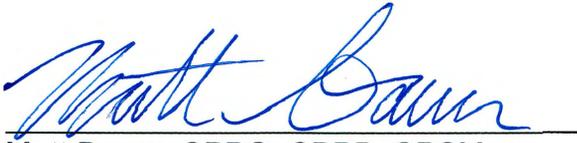
See Section 1.2 for Applicability



City of Mesa, Arizona

These Rules are promulgated pursuant to Management Policy 200.

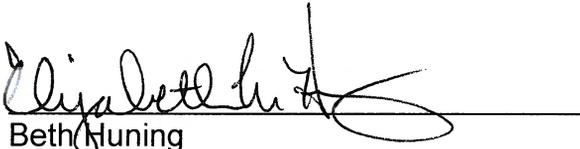
Issued and approved January 1st, 2016 by:



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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 City Management Policy 200.

Except by mutual consent of the parties to a 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 Contract Amendment.

1.3 Expenditure of Funds

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

ARTICLE 2: DEFINITIONS

2.1 Definitions

Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

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.

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

Best and Final Offer – The final Response submitted by a Respondent that contains the Respondent's most favorable terms for price, services, and products to be delivered.

Best Value Reverse Auction – A Reverse Auction event that utilizes evaluation criteria or weighting, as well as price, in determining the most advantageous Respondent to provide the requested Service/Material.

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

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.

Capital Improvement – 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 the Chief Procurement Officer that authorizes a change in the scope, quantities, items, time for performance and/or pricing, etc. of a previously issued 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 City Charter, City Code, City Management Policy 200, and other applicable laws, or his/her Designee.

City – The City of Mesa, Arizona.

City Attorney – The City Attorney for the City of Mesa, Arizona or his/her Designee.

City Department – Any department or other organizational unit of the City, or its representative.

City Manager – The City Manager for the City of Mesa, Arizona or his/her Designee.

Competition Impractical – A Procurement option utilized when a Professional Service is available from more than one Vendor, however, because of standardization, warranty, or other factors, a competitive Procurement is deemed impractical.

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 Request 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.

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, including Change Orders.

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

Cost-Incentive Contract – A Contract whereby the Contractor receives compensation for keeping the total amount expended below the agreed-upon maximum Contract amount or through a cost reduction program.

Cost-Plus-a-Percentage-of-Cost Contract – A Contract that, prior to completion of the work, the parties agree 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 reasonable costs 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/Debarment/Debarred – An action taken by the Chief Procurement Officer to prohibit a Person from continuing in City Procurements or participating in new 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 the City may be obligated to provide routine support such as utility cost and operating personnel.

Designee – A representative duly authorized in writing.

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

Due Date – The date and time set forth in a Solicitation for when the Response is due.

Emergency Procurement – 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 will 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.

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.

Materials – Materials, supplies, commodities, equipment and insurance. Materials do not include land or an interest in Real Property.

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

Multi-Step Invitation for Bids – A two-phased Solicitation process consisting of a first phase in which Respondents submit unpriced Technical Offers to be evaluated by the City. Respondents whose Technical Offers are determined to be acceptable during the first phase will receive an invitation to provide pricing.

Negotiations – An exchange of information during which a Respondent and the City may negotiate and alter or otherwise change the scope, conditions, terms, and price of a proposed Contract, unless otherwise prohibited.

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 Solicitation, to Award a Contract to the Respondent identified in the notice.

Person – Any individual or business entity of whatever legal form, union, committee, club, other organization or group of individuals or subsidiary thereof, their representatives or Affiliates.

Prequalification/Prequalify/Prequalified – A determination a Person satisfies the criteria for which Responses would be considered.

Procure/Procurement – The purchase, rent or lease of Materials, Services, or the contracting for Capital Improvements. Procurement includes development of requirements, solicitation, selection of sources and contract administration.

Procurement File – A file containing documents relating to the acquisition and purchase of a Material, Service, Concession, or Capital Improvement.

Procurement Officer –Employee(s) with the delegated authority by the Chief Procurement Officer to carry out the day-to-day Procurement activities herein or that Person's Designee.

Protest Officer – An employee with the delegated authority by the Chief Procurement Officer to evaluate and respond to protests or that Person's Designee.

Professional Services – Services which require special knowledge, education or training. The primary criteria in the selection process will be the qualifications of the Vendors. Professional Services include, but are not limited to: advertising, appraisers; architects; attorneys; Consultants; certified public accountants; engineers; entertainers; environmental studies; financial and operational audits; personnel and benefits studies; physicians and other health professionals; land surveyors; landscape

architects; renewals of proprietary computer hardware and software licensing; trainers and teachers; and other technical registrants as defined in Arizona Revised Statutes.

Protestor – A Person who Filed a protest pursuant to Article 6 of the Rules.

Public Notice – The distribution or dissemination of information to interested parties at least one (1) time using methods established by the City Manager. The failure of any Person to receive notice shall not constitute grounds for a protest or to invalidate the actions of the City as to the Procurement for which the notice was given.

Purchase Order – A form of Contract between the City and a Vendor to acquire Materials, Concessions or Services for an agreed upon price. The term Contract used in the Rules encompasses a Purchase Order.

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

Qualified Vendor – A Vendor placed on a Qualified Vendor List.

Qualified Vendor List – An approved list of Vendors the City determined will meet the applicable job requirements created through a Solicitation.

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

Request for Bids – All documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures defined herein. Request for Bids includes Solicitations that are Reverse Auctions, Best Value Reverse Auctions, Multi-Step Request for Bids, and Online Bidding. Request for Bids has the same meaning as an Invitation for Bid(s) as that term is utilized in City Code, City Charter, and City Management Policies.

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 cannot be accepted by a Vendor to form a binding contract.

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

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

Response – A bid or proposal submitted in response to a Request for Bids; Request for Proposals; Request for Information; or Request for Qualifications.

Responsible – Quality of a Respondent deemed by the City as a Vendor with whom the City can or should do business. Responsible includes, but is not limited to, a Vendor with the capability to perform under the Contract requirements and having the integrity and reliability which will assure good faith performance.

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

Respondent – A Person submitting a Response.

Reverse Auction – A specialized auction that allows the City to procure goods from sellers competing to provide a Material or Service.

Rules – These City Procurement Rules which are promulgated by the Chief Procurement Officer to administer the day-to-day Procurement functions and ensure compliance with the City Charter, City Code, Management Policy 200 and other applicable laws and rules.

Service(s) – Professional Services and Non-Professional Contract Services. Services do not include employment agreements.

Shall (shall) – Denotes a mandatory requirement.

Small Dollar Procurement Threshold – The dollar threshold established by: (i) the City Charter Section 609(C) at which Procurements of Materials require Competitive Selection; and (ii) Management Policy 200 for Services and Concessions.

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

Solicitation – A Request for Bids, Request for Proposals, or Request for Qualifications, in which the City invites a person or Vendor to participate in a Procurement related activity.

Solicitation Opening – A meeting open to the public held on the Due Date to receive and acknowledge Responses.

Specification – Any description of the physical/functional characteristics or nature of a Material, Service, Concession or Capital Improvement. Specification may include a description of any requirement for inspecting, testing or preparing a Material, Service, Concession or Capital Improvement for delivery. Specification is commonly referred to as a scope of work.

Subcontractor – A Person contracted to perform part or all of a Vendor's Contract with the City.

Task Order – A Specification submitted to Awarded Vendor(s) to provide a proposed solution and price to complete the work.

Vendor – A supplier or seller of goods and services.

Vendor Self Service (VSS) – A web portal allowing Vendors a single entry point to register and maintain Vendor account information with the City, including payment and contact information. The system provides the ability for a Vendor to update its own account information, designate commodity interests, upgrade to EFT payments, and participate in electronic bidding, where applicable.

Unsolicited Proposal – A proposal submitted on the initiative of a Vendor for the purpose of obtaining a Contract with the City and that is not in response to a Solicitation or request from the City.

ARTICLE 3: SMALL DOLLAR PROCUREMENTS

3.1 Small Dollar Procurements

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

ARTICLE 4: SOURCE SELECTION AND CONTRACT FORMATION

4.1 Use of City Contracts

City Departments will 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 will 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) Days before the Due Date. Public Notice will include:
 - 1. Direct mailing or electronic notification to interested parties registered with the City; and
 - 2. Publication on the City's website.

The failure of any Person to receive notice will not constitute grounds for a protest or invalidate the actions of the City as to the Procurement for which the notice was given.

- C. Solicitations will be available for public inspection in the City Purchasing office and copies will be available upon request.
- D. Specifications will not be unnecessarily restrictive so as to preclude reasonable competition.
- E. A Solicitation Opening will 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 will be deemed Non-Responsive or unacceptable.
- G. Responses will 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 a Response, except as provided by Management Policy 214, Local Business Consideration.

4.3 Request for Bids

Request for Bids are Awarded to the lowest Responsive and Responsible Respondent.

- A. Request for Bids will be prepared in a format approved by the Chief Procurement Officer. Request for Bids will include all of the following:
 - 1. Instructions and information concerning submission requirements, including the Due Date and location where Responses are to be received, the period the Solicitation will remain open, and any other appropriate 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 Request for Bids incorporates documents by reference, the Solicitation will specify where such documents may be obtained.

5. Acknowledgement by the Respondent 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.
- B. The name of each Respondent, the total net or group price, and other information deemed appropriate by the Procurement Officer will be read aloud at the Solicitation Opening and recorded on an abstract. The abstract will be available for public inspection. All other information contained in the Responses will 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 Contract execution.
 - C. An evaluation may be conducted to determine whether a Respondent's product is acceptable as set forth in a Request for Bids which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose; however such an evaluation may not be used to determine whether one Respondent's product is superior to another Respondent's product. Any Response that does not meet the acceptability requirements will be rejected as Non-Responsive.
 - D. Responses will be evaluated to determine which Respondent 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 will be applied in determining the lowest Respondent. Examples of such criteria include, but are not limited to: delivery cost, energy cost, ownership cost, life cycle costs, and other identifiable costs. Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation criteria will be reasonable estimates based upon information the Procurement Officer has available concerning future use.
 - E. The Procurement Officer may seek clarification of a Response, but this rule does not permit any change to the Response as submitted.
 - F. Award will be recommended to the lowest, Responsive, Responsible Respondent, unless all Responses are rejected. 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, whichever is in the best interests of the City.
 - G. The City may recommend Award to multiple Vendors with the intention to reevaluate price based on a pre-determined basis or through the use of a Task Order as identified in the Solicitation.
 - H. A record showing the basis for determining the successful Respondent will be retained in the Procurement File.
 - I. 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/federal law or regulation, City Charter or Code, or customarily included in City Contracts.
 - J. Notice of the City's intent to Award a Contract will be published on the City's website at least seven (7) Days prior to Award of the Contract.
 - K. Responses received by the City will 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.

- L. Additional Contractors may be added to the Contract if stated in the Solicitation or if the City determines the currently listed Contractors are:
 - 1. Of insufficient number or skill set to satisfy the City's needs;
 - 2. Necessary to ensure adequate competition on any project or Qualified Vendor List;
 - 3. Needed to address contract items or services not awarded or removed from a previously awarded Contractor; or
 - 4. Necessary to address additions to the scope of services or commodities purchased under the agreement.

4.4 Multi-Step Request for Bids

A Multi-Step Request for Bids is used when the Award will be to the lowest Responsive and Responsible Respondent, but information is needed from Respondents to define the final Specifications.

The Multi-Step Request for Bids method may be used if the Procurement Officer determines 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 Respondent and the City;
- 2. Definite criteria exist for evaluation of Technical Offers;
- 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 Request for Bids

- A. A Multi-Step Request for Bids will contain all of the following information:
 - 1. Notice that the Procurement will be conducted in two phases and priced Responses will be considered only in the second phase and only from those Respondents whose unpriced Responses are found acceptable in the first phase.
 - 2. Instructions and information concerning the submission requirements, including the Due Date and location where Responses are to be received, the period the Response will remain open, and any other appropriate information.
 - 3. The description of the Material or Service desired.
 - 4. The requirements for the Response, such as drawings and descriptive literature, submission of samples, technical data, and inspection or testing of a product before Award.
 - 5. The criteria for evaluating Responses.
 - 6. Acknowledgement by the Respondent of the receipt of any addenda issued.
- B. The name of each Respondent and other information deemed appropriate by the Procurement Officer will be read aloud at the Solicitation Opening and recorded on an abstract. The abstract will be available for public inspection. All other information contained in the Response will be kept confidential so as to avoid disclosure of contents prejudicial to competing Respondents during the process of evaluation and Negotiations.

- C. The Multi-Step Request for Bids Solicitation may be amended after the submission of the Responses. The amendment will be distributed only to Respondents who will be permitted to submit new unpriced Responses or to amend the Responses already submitted.
- D. Unpriced Responses will be evaluated in accordance with the criteria set forth in the Solicitation and will be determined to be either acceptable, potentially acceptable for further consideration, or unacceptable. A record showing the basis for determining that a Response is unacceptable will state the basis of the decision, and be retained in the Procurement File. If the Procurement Officer determines a Response is unacceptable, the Procurement Officer will notify that Respondent of the decision and that the Respondent will not be afforded an opportunity to amend its Response.
- E. The Procurement Officer may conduct Discussions with any Respondent who submits an acceptable or potentially acceptable Response, at any time during the evaluation of the Responses. During Discussions, the Procurement Officer will not disclose any information derived from one Response to any other Respondent. After Discussions, the Procurement Officer will establish a closing date for receipt of final Responses and will notify in writing Respondents submitting acceptable or potentially acceptable Responses of the closing date. The Procurement Officer will keep a record of all Discussions.
- F. After receipt of final, unpriced Responses, the Procurement Officer will determine whether the Responses are acceptable for consideration in phase two or are unacceptable. A record showing the basis for determining a Response is unacceptable will be retained in the Procurement File.
- G. At any time during phase one, a Response may be withdrawn by a Respondent.
- H. Responses received will 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 Request for Bids

Upon completion of phase one, the Procurement Officer will issue a Request for Bids or Reverse Auction and conduct phase two with only the Respondents whose Responses were determined to be acceptable in phase one.

4.5 Request for Proposals

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

- A. If the Procurement Officer determines the use of a Request for Bids is either not practicable or advantageous to the City, a Request for Proposals may be used.
- B. The Request for Proposals will be prepared in a format approved by the Chief Procurement Officer. The Request for Proposals will include all of the following:
 - 1. Instructions and information concerning submission requirements, including the Due Date and location where Responses are to be received, the period that the Response will remain open, and any other appropriate information.

2. The purchase description, Specifications, delivery or performance schedule, and inspection and acceptance requirements.
 3. 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 will specify where such documents may be obtained.
 6. Acknowledgement by the Respondent 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 Respondent will be read aloud at the Solicitation Opening and recorded on an abstract. The abstract will be available for public inspection. All other information contained in the Responses will 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 Negotiations.
- D. Responses will be evaluated against the evaluation criteria set forth in the Solicitation. The Procurement Officer will approve an evaluation committee to evaluate the Responses. A person who serves on an evaluation committee will 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 will 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.
- E. The Procurement Officer may determine at any time during the evaluation period and before Award that a Respondent is not eligible for Award based on one or more of the following:
1. The Response fails to substantially meet one or more of the mandatory requirements of the Solicitation;
 2. The Response fails to comply with any eligibility criteria identified in the Solicitation;
 - or
 3. The Response is not within the competitive range in comparison to other Responses based on the criteria set forth in the Solicitation.
 4. A written record of a decision that a Respondent is not eligible for Award will be placed in the Procurement File. The Procurement Officer will promptly notify the Respondent in writing of the final decision that the Response is not eligible for Award unless the Procurement Officer determines notification to the Respondent would compromise the City's ability to negotiate with other Respondents. The Respondent will not be afforded an opportunity to modify its Response.
- F. The Procurement Officer may seek clarification of a Response at any time after receipt of the Response, but this rule does not permit change to the substance of the Response as submitted.

- G. The committee may, at any time, request such additional information from a Respondent as it deems necessary. In conducting clarifications, there will be no disclosure of any information derived from Responses submitted by other Respondents.
- H. Discussions and presentations may be conducted with one or more Respondents determined to be reasonably eligible for Award for the purpose of clarification to assure full understanding of and Responsiveness to the Solicitation requirements. In conducting Discussions and presentations, there will be no disclosure of any information derived from Responses submitted by competing Respondents.
- I. Following the preliminary evaluation of Responses, the Procurement Officer may issue a written request for Best and Final Offers. The request will include any revised Specifications and will set forth the date, time, and place for the submission of Best and Final Offers. Best and Final Offers will 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 Offers will inform Respondents that, if they do not submit a notice of withdrawal or a Best and Final Offer, their immediate previous Response will be construed as their Best and Final Offer.
- J. A determination that a Response is unacceptable will state the basis of the decision and be retained in the Procurement File. The Procurement Officer will notify that Respondent of the determination.
- K. A record showing the scoring for each Respondent will be retained in the Procurement File.
- L. During the evaluation and Negotiation of the Contract, evaluation team members, consultants hired for the purposes of assisting the City in the project, Government Agencies or Government Organizations participating in the Solicitation, and City staff may be utilized to assist in Vendor discussions or Negotiations.
- M. Award will be recommended to the Respondent(s) determined to be in the best interests of the City as defined in the Solicitation unless all Responses be rejected.
- N. The Solicitation will indicate the method of Award process which may include creating a Qualified Vendor List.
- O. If selecting from a Qualified Vendor List for recurring Materials or Services purchases, at the time Materials or Services are needed, the City Department will review the list and select the Vendor best qualified for the Materials or Services needed or may request quotes or issue a Request for Bids or Proposals to the Vendors on the list. The basis for the selection will be approved by the head of the City Department and will be recorded in the Procurement File.
- P. Additional Contractors may be added to the Contract if stated in the Solicitation or if the City determines the currently listed Contractors are:
 - 1. Of insufficient number or skill set to satisfy the City's needs;
 - 2. Necessary to ensure adequate competition on any project or Qualified Vendor List;
 - 3. Needed to address contract items or services not awarded or removed from a previously awarded contractor; or
 - 4. Necessary to address additions to the scope of services or commodities purchased under the agreement.

- Q. 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/federal law or regulation, City Charter or Code, or customarily included in City Contracts.
- R. Notice of the City's intent to Award a Contract will be published on the City's website at least seven (7) Days prior to Award of the Contract.
- S. Responses received will 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 a Solicitation method used when Award will be determined by evaluation factors primarily based on qualifications and experience.

- A. If the Procurement Officer determines the use of a Request for Bids is either not practicable or advantageous to the City, a Request for Qualifications may be used for the acquisition of Services.
- B. The Request for Qualifications will be prepared in a format approved by the Chief Procurement Officer. The Request for Qualifications will include all of the following:
 1. Instructions and information for Respondents concerning the Response submission requirements, including the Due Date and location where Responses are to be received, the period the Response will remain open, and any other appropriate information.
 2. A description of the Services required.
 3. Any other pertinent information requested by the Procurement Officer.
 4. The required Response elements which may include, 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 will be read aloud at the Solicitation Opening and recorded on an abstract. The abstract will be available for public inspection. All other information contained in the Response will 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 will be evaluated against the evaluation criteria set forth in the Solicitation. Following the preliminary evaluation of Responses, the Procurement Officer may issue a written request for Best and Final Offers. The request will include any revised Specifications and will set forth the date, time, and place for the submission of Best and Final Offers. Best and Final Offers will 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 Offers will inform Respondents that, if they do not submit a notice of withdrawal or a Best and Final Offer, their immediate previous Response will be construed as their Best and Final Offer.

- E. The Procurement Officer will approve an evaluation committee to evaluate the Responses. A person who serves on an evaluation committee will sign a statement before reviewing the Responses stating that they have no potential conflict of interest in the Procurement, that they will refrain from any contact related to the Solicitation with Respondents 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 will 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 and convene a new evaluation committee to review the responses.
- F. The Procurement Officer may seek clarification of a Response at any time after receipt of the Response, but this rule does not permit change to the substance of the Response as submitted.
- G. The committee may, at any time, request such additional information from a Respondent as it deems necessary. In conducting clarifications, there will be no disclosure of any information derived from Responses submitted by other Respondents.
- H. Discussions and presentations may be conducted with one or more Respondents determined to be reasonably eligible for Award for the purpose of clarification to assure full understanding of and Responsiveness to the Solicitation requirements. In conducting Discussions and presentations, there will be no disclosure of any information derived from Responses submitted by competing Respondents.
- I. Following the preliminary evaluation of Responses, the Procurement Officer may issue a written request for Best and Final Offers. The request will include any revised Specifications and will set forth the date, time, and place for the submission of Best and Final Offers. Best and Final Offers will 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 Offers will inform Respondents that, if they do not submit a notice of withdrawal or a Best and Final Offer, their immediate previous Response will be construed as their Best and Final Offer.
- J. A determination that a Response is unacceptable will state the basis of the decision and be retained in the Procurement File. The Procurement Officer will notify that Respondent of the determination.
- K. A record showing the scoring for each Respondent will be retained in the Procurement File.
- L. During the evaluation and Negotiation of the Contract, evaluation team members, consultants hired for the purposes of assisting the City in the project, Government Agencies or Government Organizations participating in the Solicitation, and City staff may be utilized to assist in Vendor discussions or Negotiations.

- M. Award will be recommended to the Respondent(s) determined to be in the best interests of the City as defined in the Solicitation unless all Responses be rejected.
- N. The Solicitation will indicate the method of Award process which may include creating a Qualified Vendor List.
- O. If selecting from a Qualified Vendor List for recurring Services, at the time Services are needed, the City Department will review the list and select the Vendor best qualified for the Services needed or may request quotes or issue a Request for Bids or Proposals to the Vendors on the list. The basis for the selection will be approved by the head of the City Department and will be recorded in the Procurement File.
- P. Additional Contractors may be added to the contract if stated in the Solicitation or if the City determines the currently listed contractors are:
 - 1. Of insufficient number or skill set to satisfy the City's needs;
 - 2. Necessary to ensure adequate competition on any project or Qualified Vendor List;
 - 3. Needed to address contract items or services not awarded or removed from a previously awarded contractor; or
 - 4. Necessary to address additions to the scope of services or commodities purchased under the agreement.
- Q. 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/federal law or regulation, City Charter or Code, or customarily included in City Contracts.
- R. Contracts for legal services will not become binding upon the City until approved by the City Attorney.
- S. Respondents will be notified of the City's intent to Award a Contract at least seven (7) Days prior to Award of the Contract.
- T. Responses received will be open to public inspection once the City cancels the Solicitation, 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 Sole Source Procurements

A Sole Source Procurement is conducted when there is only one source for the required Material, Service, or Concession.

- A. Generally, Procurements become a Sole Source Procurement because they use a Brand Name Only Specification. When only one manufacturer or distributor sells/provides the name brand only Material or Service this is a Sole Source Procurement. Sole Source Procurements should be avoided, unless there is only one source for the required Material or Service and no other type of Material or Service will satisfy the requirements of the City.
- B. A Contract may be Awarded for a Material or Service without competition if the Procurement Officer determines there is only one source for the required Material or Service.
- C. City Departments seeking a Sole Source Procurement will prepare a written memo documenting why there is only one source for the required Material or Service,

including: (i) why no other type of Material or Service will satisfy the needs of the City; (ii) why a specific Material or Service must be purchased to the exclusion of others; and (iii) the specific efforts made to determine the availability of any other source. The memo shall be approved by the appropriate unit or City Department head, pursuant to the approval thresholds set forth in Management Policy 200, and the memo submitted to the Chief Procurement Officer for approval of the request.

- D. City departments seeking a Sole Source Procurement must submit a letter from the manufacturer/distributor of the Material, or the provider of the Service, indicating the identified Vendor as the sole source of the Material or Service being purchased.
- E. The Procurement Officer may require the submission of cost or pricing data in connection with an Award under this Section.
- F. The Procurement Officer will 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.
- G. The Procurement Officer will review and recommend to the Chief Procurement Officer approval or denial of the written request stating the basis for the Sole Source Procurement which will be included in the Procurement File.
- H. For Sole Source procurements exceeding \$25,000, publication on the City's website notifying the public and inviting comment will be given not less than seven (7) Days before the Award.
- I. The provisions of this Section apply to all Sole Source Procurements unless emergency conditions exist as defined in Section 4.10.

4.8 Competition Impractical

A Competition Impractical Procurement is conducted when there is only one source for the required Professional Service.

- A. A Contract may be Awarded for a Professional Service over \$50,000 without competition if Competitive Selection is not practical or advantageous to the City, but in any case, in a manner consistent with sound business practices that ensure the City receives the best value and service.
- B. City departments seeking a Competition Impractical Procurement will prepare a written request approved by the City Department head documenting the existence of a Competition Impractical condition, including why no other provider will meet the needs of the City and the specific efforts made to determine the availability of any other source. The City Manager must approve the request.
- C. The Procurement Officer may require the submission of cost or pricing data in connection with an Award under this Section.
- D. The City will negotiate with the single provider of the Professional Service to achieve a Contract advantageous to the City. The City's standard terms and conditions will be part of the Contract document to the extent negotiated by the City and the Vendor.

4.9 Cooperative Procurements

A Cooperative Procurement is an Agreement conducted by, on behalf of, or utilized by more than one Governmental Agency or Governmental Organization.

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

4.10 Emergency Procurements

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.

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

- A. A City Department seeking an Emergency Procurement will prepare a statement documenting the existence of an emergency condition. The statement will include the nature of the emergency. The City Manager must approve the statement. The statement must be submitted to the Procurement Officer as soon as practicable and will 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 will 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 or Non-Professional Contract Services exceeding the dollar threshold for City Council approval will be scheduled for discussion and ratification at the next reasonably available City Council meeting.

4.11 Reverse Auction

A specialized auction that allows the organization to procure goods from sellers competing to provide a Material or Service.

- A. Reverse Auctions must be conducted using Competitive Selection based on the requirements of City Code or City Management Policy.
- B. Responses may be required to be submitted prior to the auction event. In such a case, the Solicitation will identify this requirement.
- C. The identification of Vendors who have submitted Responses will be withheld until the completion of the Reverse Auction event.
- D. An evaluation may be conducted prior to or following the Reverse Auction to determine whether a Respondent's Material, Service, or Response meets the requirements set forth in the Solicitation.
- E. Reverse Auctions may be conducted through a third party and the responding Vendor may be required to adhere to the third parties separate terms and conditions to participate in the Reverse Auction.
- F. The City reserves the right at any time to request competitive sealed pricing instead of conducting a Reverse Auction, if it is determined in the best interests of the City to employ.

4.12 Best Value Reverse Auction

A Reverse Auction event that utilizes evaluation criteria or weighting, as well as price, in determining the most advantageous Respondent to provide the requested Service or Material.

- A. Best Value Reverse Auctions must be conducted using Competitive Selection based on the requirements of City Code or City Management Policy.
- B. Respondents identified by the City as acceptable will be invited to participate in the Best Value Reverse Auction.
- C. The identity of Vendors who submit Responses will be withheld until the completion of the Best Value Reverse Auction event.
- D. For Request for Bids or Multi-Step Request for Bids:
 - 1. The Respondents weighted scores will be incorporated into the Best Value Reverse Auction event to determine which Vendor is the most advantageous Respondent.
 - 2. The criteria in determining the weights assigned to the Responses will be incorporated into the Solicitation.
- E. For Request for Proposals or Request for Qualifications:
 - 1. The Respondents evaluated scores will be incorporated into the Best Value Reverse Auction event to determine which Vendor is the most advantageous Respondent.
 - 2. The City reserves the right to conduct further Negotiations after the close of the Best Value Reverse Auction event.
- F. Best Value Reverse Auctions may be conducted through a third party and the responding Vendor may be required to adhere to the third parties separate terms and conditions to participate in the auction.

- G. The City reserves the right to request competitive sealed pricing instead of conducting a Best Value Reverse Auction, if it is determined in the best interests of the City to employ.

4.13 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.

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) will be provided. Requests for Information may be submitted by Vendors through 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.

4.14 Solicitation Addenda

- A. An addendum to a Solicitation will be issued if necessary to:
1. Make changes in the Solicitation;
 2. Correct defects or ambiguities; or
 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 will be posted on the City's Purchasing's website or the Vendor Self Service portal.
- C. Addenda will require Respondents acknowledge receipt of the addendum in their Response. Failure to acknowledge addenda that make material changes to the terms of the Procurement, may result in the Response being deemed non-Responsive.
- D. Addenda will be issued a reasonable time in advance of the Due Date. If the Due Date does not permit reasonable or sufficient time for the Vendors to receive and consider the addendum, the Due Date will be extended. If the addendum is released within seven (7) days prior to the Due Date, the solicitation will be extended to provide not less than seven (7) days between the addendum and the Due Date to allow Vendors adequate time to receive and consider the addendum in preparing their Responses.
- E. It is the responsibility of the Respondent to obtain any Solicitation addenda.

4.15 Solicitation Conference

A Solicitation Conference is held by the City at its discretion in order to explain the requirements of a Solicitation to Vendors. The City may conduct a Solicitation Conference within a reasonable time before the Due Date, but not less than seven (7) Days before the Due Date. Verbal statements made at the Solicitation Conference will not be binding upon the City unless a written addendum is issued.

4.16 Modification or Withdrawal of Responses Prior to Due Date

- A. A Respondent may modify or withdraw its Response at any time before the Due Date if the request for modification or withdrawal is received in writing before the Due Date.

A Respondent may withdraw a Response in person if, before the Due Date, the Respondent or their authorized representative requests withdrawal from the City Purchasing Office and signs a receipt for the withdrawn Response. A Response may not be withdrawn or modified after the Due Date. Responses withdrawn prior to the Due Date will be returned to the Respondent and no copies of the Response will be retained by the City.

- B. When the City requests Best and Final Offers, a Response may be withdrawn at any time before the date and time for submission of Best and Final Offers. Withdrawal of a Response after submission of Best and Final Offers is permissible only in accordance with Section 4.18.

4.17 Receipt, Opening, and Recording of Responses

- A. Each Response and modification will be time-stamped upon receipt by the City and stored unopened in a secure place until the time and date set for the Solicitation Opening.
- B. An envelope that is not marked as a Response or modification, or does not identify the Respondent or Solicitation, may be opened for the purpose of identification. Record will be made on the envelope of the reason for opening the envelope, the date and time it was opened, the Solicitation for which the Response or modification was submitted, and the signature of the person who opened the envelope. The envelope will be resealed and filed with any other Responses to the Solicitation.
- C. Responses and modifications will be opened publicly in the presence of one (1) or more witnesses at a Solicitation Opening at the time, date, and location designated in the Solicitation.

4.18 Late Responses, Modifications, and Withdrawals

- A. A Response, modification or request for withdrawal is late if it is received by the City after the Due Date.
- B. A late Response or modification will be rejected unless it would have been timely received but for the action or inaction of City personnel. Late Responses and modifications will be rejected, returned unopened, and no copies will be retained by the City.
- C. A late request for withdrawal of a Response or modification will be rejected unless it would have been timely received but for the action or inaction of City personnel. A late request for withdrawal of a Response may be a factor used in determining Responsibility of a Vendor for the Solicitation for which the Response was submitted, future Solicitations, and Debarment.

4.19 Mistakes in Responses

- A. A Respondent may correct mistakes in a Response discovered before the Due Date by withdrawing or modifying the Response as provided in Section 4.16.
- B. After the Due Date, a mistake may not be corrected or a Response withdrawn based on mistake except:
 - 1. In the case of a mathematical error. The unit cost will prevail and any correction(s) required due to that error will 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. A minor informality is a mistake that has negligible effect on a Response and the waiver or correction of which does not materially prejudice other Respondents.
 3. The Procurement Officer may permit a Respondent to furnish information called for in the Solicitation, but not supplied, if the Response demonstrates evidence Respondent intended to furnish the information.
 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 the Due Date is permitted or denied under this Section, a record showing the relief was permitted or denied will be retained by the City in the records related to the Solicitation
- D. This Section will not preclude any Response modifications requested or allowed as part of a Best and Final Offer process.

4.20 Only One Response Received

If only one Response is received from a Solicitation, after analysis of Responsiveness and Responsibility, an Award may be made to the single Respondent if the Procurement Officer determines the price submitted in the Response is fair and reasonable, and that either: (i) other Vendors had reasonable opportunity to respond; or (ii) there is not adequate time for the City to resolicit the Solicitation. Otherwise the Response may be rejected and new Responses may be solicited if the need for the Material or Service continues.

4.21 Tie Responses

- A. Tie Responses are those from Responsive and Responsible Respondents that either: (i) in the case of a Request for Bids, are identical in price; or (ii) in all other types of Competitive Selection, receive the same evaluation score.
- B. Tie Responses may be decided by:
1. A Mesa Respondent will be given preference over a nonresident Respondent.
 2. An Arizona Respondent will be given preference over a nonresident Respondent.
 3. Using an element of the Solicitation unrelated to price, (by way of example delivery time, warranty, return charges, percent discount for other items, etc.) that is advantageous to the City, then Award may be made to the Respondent most advantageous to the City.
 4. Awards may be split if advantageous to the City, if: (i) splitting is feasible given the type of Materials, Services or Concessions requested; (ii) overall pricing would not increase; (iii) delivery would be better ensured; or (iv) it would be 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 will be made by a drawing of lots. The drawing of lots must be witnessed by at least one (1) person other than the Procurement Officer supervising the drawing of lots.
- C. Documentation of the resolution of tied Responses will be retained in the Procurement File.

4.22 Cancellation of Solicitation Before the Due Date

- A. A Solicitation may be cancelled before the Due Date if the Procurement Officer determines cancellation is in the best interest of the City.
- B. If a Solicitation is cancelled before the Due Date, notice of cancellation will be posted on the City Purchasing Division website or Vendor Self Service portal. The notice of cancellation will identify the Solicitation and briefly explain the reason for cancellation.
- C. Any Responses received for a cancelled Solicitation will be returned unopened and no copies will be retained by the City.
- D. A written record of the reason a Solicitation was canceled will be made a part of the Procurement File and will be made available for public inspection except to the extent set forth in Section 6.13.

4.23 Cancellation of Solicitation After Due Date

- A. After Due Date, but before Award, a Solicitation may be cancelled and all Responses may be rejected if the Procurement Officer determines cancellation is in the best interest of the City for reasons including, but not limited to:
 - 1. The City no longer requires the Materials, 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 are at clearly unreasonable prices;
 - 6. There is reason to believe 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 City may cancel a Solicitation or Award prior to execution of a Contract.
- C. A notice of cancellation or rejection will be posted on the City Purchasing Department website or Vendor Self Service portal and sent to all Respondents.
- D. Responses received under the cancelled Solicitation will be retained in the Procurement File. If the City intends to issue another Solicitation within six (6) months after cancellation for the same Materials, 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 the information would prevent fair competition in the new Solicitation. After execution of a Contract under the new Solicitation, Responses submitted in response to the cancelled Solicitation will 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 will be made a part of the Procurement File and will be available for public inspection except to the extent set forth in Section 6.13.

4.24 Rejection of Individual Responses

- A. The Procurement Officer may reject a Response for any of the following reasons:

1. The Response is not Responsive pursuant to Section 4.25.
 2. The Respondent is determined to not be Responsible pursuant to Section 4.26.
 3. The price submitted is unreasonably high.
 4. The price submitted is higher than the budgeted amount for the Material or Service.
- B. Record of the rejection will be made part of the Procurement File and will be available for public inspection except to the extent set forth in Section 6.13.

4.25 Responsiveness

- A. Factors to be considered in determining if a Response is Responsive include, but are not limited to:
1. Whether the Respondent completed all Response requirements in the Solicitation.
 2. Whether the Respondent met the minimum qualification requirements stated in the Solicitation.
 3. Whether the Response contains material deviations, exceptions, or omissions from the Specifications or the City's Standard Terms and Conditions in the Solicitation.
 4. The unreasonable failure of a Respondent to promptly supply information requested by the City for clarification or as a part of a Best and Final Offer.
- B. If the Procurement Officer determines a Response is non-Responsive, a record showing the basis for this determination will be made part of the Procurement File.
- C. A notice will be sent to any non-Responsive Respondent. The notice will state:
1. The basis for the decision; and
 2. That the decision may be protested as provided in Article 6.

4.26 Responsibility of Respondents

- A. Factors to be considered in determining if a Respondent is Responsible include, but are not limited to:
1. The Respondent's financial, physical, personnel or other resources, including subcontracts named by Respondent.
 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 to the City in connection with the Solicitation.
- B. If the Procurement Officer determines a Respondent is non-Responsible, a written record of the decision will be placed in the Procurement File and a notice will be sent to the non-Responsible Respondent. The notice will state the basis for the decision and that the decision may be protested as provided in Article 6.

4.27 Extension of Response Firm Time

After the Due Date, the Procurement Officer may request from any or all of the Respondents that they extend the time for the Response to remain firm in order for the City to have additional time to evaluate and Award a Contract. A Respondent may withdraw their Response without penalty if they submit a written request subsequent to

the notification of a request for an extension. No modifications of extended Responses are permitted.

4.28 Solicitation Performance and Security

- A. The City may require the submission of a security to guarantee the Response, faithful performance, or Subcontractor and Vendor payments. In determining the amount and type of security required for each Contract, the Procurement Officer will consider the nature of the performance and the need for protection of the City as well as any statutory requirements. The requirement for security will be stated in the Solicitation and all Respondents are required to submit the necessary security with their Response.
- 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 within 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; or certificate of deposit or any other form of deposit issued by a financial institution and acceptable to the City.
- C. A Solicitation security will be forfeited to the City should the Respondent Awarded pursuant to Solicitation fail to execute a Contract when requested. If a Response is withdrawn at any time before the Due Date, any Solicitation security will be returned to the Respondent. Following execution of a Contract with the successful Respondent, the security of all other Respondents will be returned.
- D. If the Contractor fails or refuses to fully comply with the terms and conditions of the Contract, the City will 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 State of Arizona Procurement Code.
- F. Securities will not be used as a substitute for a determination of Responsibility.

4.29 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 the price is reasonable and fair. A Respondent must, when requested, submit current cost or pricing data and will certify that, to the best of the Respondent's knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined date.
- B. A pricing certification by a Contractor may be requested by the City 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.

4.30 Mistakes Discovered After Award

- A. If a mistake in a Response is discovered after the Award, but before a Contract is signed, the Awarded Respondent 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 highest ranked Response;
 2. Terminate all or part of the Award; or
 3. Deny correction or withdrawal.
- C. Documentation of the resolution of the mistake will be retained in the Procurement File.

4.31 Negotiations

Respondents will be accorded fair and equal treatment in conducting Negotiations and there will be no disclosure of any information derived from Responses submitted by other Respondents. The City reserves the right to negotiate any terms, conditions, pricing, or other related item prior to Award or entering into of a Contract.

- A. Concurrent Negotiations may be conducted with multiple Respondents for the purpose of determining 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 will not constitute a contract Award nor will it confer any rights upon the Respondent with whom the City is conducting exclusive Negotiations. 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.

4.32 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 must 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 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 the use of such Contract is advantageous to the City.
- D. Time and Materials Contract; Labor Hour Contract. Time and Materials Contracts and Labor Hour Contracts will, to the extent possible, contain a stated ceiling on cost/price or an estimate of a contractual amount that will not be exceeded without prior written approval of the Procurement Officer. A Time and Materials Contract 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 a Contract, and no other Contract type is practicable.
- E. Recovery Contract. Contracts may provide for payment to the Contractor of a percentage of the amount the Contractor recovers or collects on behalf of the City. The percentage may be fixed or may vary depending on the amount of recovery or other factors; the percentage may be paired with a fixed-price or Cost-Reimbursement Contract method.

4.33 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 Procurement Contract may contain additional or more detailed contractual terms and provisions appropriate to the Procurement, or as required by state/federal law or regulation, City Charter or Code, or customarily included in City Contracts.
- C. All Procurement Contracts will incorporate standard terms and conditions as approved by the Chief Procurement Officer except the Procurement Officer may modify standard terms and conditions for inclusion in any particular City Procurement Contract, provided the circumstances justify the variation.
- D. All Procurement Contract clauses will be consistent with the provisions of these Rules.

4.34 Multiple Award Contracts

- A. If the Procurement Officer anticipates that a Multiple Award will be made, the Solicitation will 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, in whole or in part, by line item or groups of items, if it is in the best interest of the City to do so. Multiple Awards will be made only if the Procurement Officer determines a single Award is not advantageous to the City. A Multiple Award will be

limited to the least number of Vendors necessary to meet the requirements of the using City department.

4.35 Multi-Year Contracts

- A. Unless otherwise provided, a Contract for Materials, Services or Concessions may be entered into for a period of time up to five (5) years, as deemed to be in the best interest of the City, if the term of the Contract is 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, 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 (5) years at the recommendation of the City Department if the Chief Procurement Officer agrees that such a Contract would be advantageous to the City.
- C. Multi-year Contracts will contain provisions for cancellation by the City in the event funds are not appropriated for the continuance of the Contract.

4.36 Contract Renewals and Extensions

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

4.37 Demonstration Projects

- A. A Demonstration Project may be undertaken at the recommendation of a City Department head if the Chief Procurement Officer agrees the project is innovative, unique, and a demonstration would be advantageous to the City. The City Department head will submit a request in writing to the Chief Procurement Officer for approval of the Demonstration Project. The request and approval will be documented and retained in the Contract file.
- B. Under a Demonstration Project, the City cannot be obligated to pay the Contractor any funds or be required to Procure from the Contractor at a later date the Materials or Services supplied. The Contract term for a Demonstration Project cannot exceed two (2) years.
- C. A Contract to Procure Materials or Services previously supplied during a Demonstration Project must be conducted in accordance with the provisions of these Rules.
- D. Except as otherwise provided by law, a Contractor for a Demonstration Project will not be precluded from participating as a Respondent in a Procurement for the Materials or Services supplied during a Demonstration Project.
- E. Any Contract resulting from a Demonstration Project cannot lead to a Sole Source or Competition Impractical determination for future purchases.

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 a Sole Source Procurement (4.7) or Emergency Procurement (4.10) exist.

4.39 Change of Name

If a Contractor requests to change the name under 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 Contract Amendment will provide that no other terms and conditions of the Contract are changed.

4.40 Assignment of Rights and Duties

- A. The rights and duties under 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 may enter into a written Contract Amendment with the Contractor to effect the assignment. The Contract Amendment will provide that no other terms and conditions of the Contract are changed.
- D. All requests for assignment must be made of the City before the date the assignment becomes effective.

4.41 Contract Amendments/Termination

- A. The City may enter into a written Contract Amendment with the Contractor to affect changes to the terms and conditions of a Contract. Amendments cannot so significantly amend material terms and conditions of a Contract as to warrant termination and resolicitation.
- B. The City may terminate a Contract for reasons set forth in the Contract including non-appropriation, cause, or convenience upon the recommendation of the City Department head and approval of the City Manager.

4.42 Awarding of a Contract Following Termination

If a Contract is terminated within one (1) year of the Solicitation's Due Date, the City may Award all or part of the Contract to: (i) the next lowest priced, Responsible and Responsive Respondent under a Request for Bids; or (ii) the next highest-scored Responsible and Responsive Respondent under a Request for Proposals or Request for Qualifications. The decision to Award a Contract to another Respondent must be based on the considerations of fair competition and the best interest of the City. Award will be subject to City Council or City Manager's approval.

4.43 Addition of Contractors to a Qualified Vendor List Contract Award

In the case of a Qualified Vendor List Contract Award, additional Respondents may be added to the Qualified Vendor List throughout the term of the contract if the Procurement Officer determines that Awarded Contractors are of an insufficient number or skillset to

satisfy the City's needs or to ensure adequate competition on any project or Task Order work. Adding Contractors to the Qualified Vendor List will be subject to City Council or City Manager approval.

4.44 Collusion and Anticompetitive Practices

- A. Upon submitting a Response, the Respondent must certify 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 will be transmitted to the Chief Procurement Officer and the City Attorney.
- C. Any Respondent deemed to have colluded or committed any anticompetitive practices in relation to the submission of a Response shall be deemed ineligible for Award of the Contract and may be subject to Debarment in accordance with these Rules.

4.45 Prequalification

- A. 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. 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.
- B. Prequalification does not represent a determination of Responsibility or guarantee a Vendor any work under a Contract.
- C. The existence of a Qualified Products List pursuant to Section 5.4 does not constitute Prequalification of any Vendor of that product.

4.46 Prospective Vendors List

Purchasing will maintain a prospective Vendors list. Any Person desiring to be included on the list must register with the City. Inclusion of a Person on the list will not indicate whether the Person is Responsible or otherwise capable of successfully performing under a City Contract. It will be the Person's sole responsibility to ensure that registration information is current and active. The Procurement Officer may remove Persons from the list if a notice sent to the Person is returned as undeliverable.

4.47 Compliance with State or Federal Requirements

Some Procurements involve the expenditure of state or federal funds (ex: grant funds) that are provided to the City for a particular purpose and require their use to be in compliance with specific state or federal law/regulation that may not be reflected in the Rules; such Procurements must meet the mandatory state and federal requirements for compliance in the Procurement.

ARTICLE 5: SPECIFICATIONS

5.1 Duties of the Chief Procurement Officer

The Chief Procurement Officer will 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 will not be unduly restrictive.

5.3 Requirements of Non-restrictiveness and Standardization

- A. Unless otherwise permitted herein, all Specifications must 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, quality, or workmanship.
- B. Design Specification. A complete and detailed description of an item that may include the composition of materials, size, shape, capacity, dimensions, tolerances, and method of manufacture.
- C. Performance Specification. A Specification detailing 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, the nature of the product or the City's requirements makes use of a Brand Name or Equal Specification suitable for the Procurement, and:
 - a. No common or general use specification or Qualified Products List is available;
 - b. Time or resources do not permit the preparation of another form of Specification; or
 - c. The use of the 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 or through "or-equal" Materials or Services.

2. A Brand Name or Equal Specification determination may be made for categories of Materials or Services or, in appropriate circumstances, for an entire Procurement even though a number of different items are being procured.
 3. A Brand Name or Equal Specification must designate as many different brands as are practicable as "or equal" references.
 4. A Brand Name or Equal Specification must include a description of the particular design, functional, or performance characteristics required unless the Procurement Officer determines 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 must 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 will state that products substantially equivalent to those brands designated will qualify for consideration.
- E. Brand Name Only Specification
1. A Brand Name Only Specification may be prepared and utilized only if 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 will, to the extent practicable, identify sources from which the designated Brand Name item can be obtained and 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 pursuant to Section 4.7.
- F. Qualified Products List
1. A Qualified Products List may be utilized when 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 will be based on results of tests or examinations conducted in accordance with requirements established by Governmental Agencies, Governmental Organizations, or the City.
 3. The Procurement Officer will solicit as many potential suppliers as practicable to submit products for testing and 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 will not be modified after a Solicitation is issued.
 4. Products may be removed from the Qualified Products List when it is determined 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 Protest 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, email, telephone and fax 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 Solicitation Opening must be Filed with the Protest Officer no later than 6:00 p.m. four (4) Days before Solicitation Opening.
- B. Protests that only become apparent after the deadline in Subsection (A) above must be Filed within the earlier of seven (7) 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) Days after the Protestor knows or should have known the basis of the protest; however, no protest may be Filed later than seven (7) Days after Contract execution.

6.3 Protest Decision by the Protest Officer

- A. The Protest 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 Protest 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 Protest 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) Days from receipt of the decision by the Protestor.

6.4 Appeals of the Protest Officer's Decision

- A. An appeal from a decision entered by the Protest Officer issued pursuant to Section 6.3 must be Filed with the Chief Procurement Officer within seven (7) 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 Protest 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 has the authority to decide appeals. The City Manager 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'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 Chief Procurement Officer or the City Manager 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 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 based on the evidence presented. The hearing officer's written decision will be provided to all parties.
- F. The City Manager 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 Protest Officer sustains a protest or the City Manager sustains an appeal in whole or part, the Protest Officer, or City Manager will implement an appropriate remedy.
- B. In determining an appropriate remedy, the Protest Officer or City Manager 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 Protest Officer or City Manager 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) 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.

6.9 Appeals of a Debarment

- A. An appeal from a Debarment must be Filed with the Chief Procurement Officer within seven (7) 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 has the authority to decide appeals of a Debarment. The City Manager 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'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 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 a Solicitation, 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 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.
- 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 6.14 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 their conduct will not violate the public trust placed in them. They must make certain their conduct does not raise suspicion or give the appearance they are in violation of the 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 of interest.
 - 8. Report corruption and unethical practices, wherever and whenever discovered, to the appropriate official, and 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 is 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.
 - D. Non-Discrimination. It is the policy of the City of Mesa to promote non-discrimination in the procurement of materials and services. As such, the City shall not discriminate in the Procurement process because of a person's race, color, national origin, age, disability, religion, sex, sexual orientation, gender identity and expression, veterans' status, marital status, or genetic information.

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 related to Procurement activities (A.R.S. Title 38, Chapter 3, Article 8, as may be amended).