

LAKE HAVASU CITY CODE CHAPTER 3.10, PROCUREMENT

~~May 12, 2020~~

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CHAPTER 3.10: PROCUREMENT

§ 3.10.010 ADMINISTRATIVE PROVISIONS.

§ 3.10.010.1 SHORT TITLE.

This chapter shall be known and may be cited as the “Procurement Code of Lake Havasu City, Arizona.”

§ 3.10.010.2 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A.R.S. Arizona Revised Statutes, as amended.

ADMINISTRATIVE SERVICES DIRECTOR. The person responsible to administer the provisions of this chapter. The Administrative Services Director may delegate duties as necessary.

BID. An offer in response to an informal request, competitive sealed bid solicitation, or a design build solicitation.

CHANGE ORDER. A written order signed by the City, which directs the contractor to make changes to the contract.

CITY. Lake Havasu City, Arizona.

COMPETITION IMPRACTICAL. Procurement when the supplies or services are such that compliance with the requirements of a competitive bid process is impractical, unnecessary, or contrary to the public interest as determined or verified by the procurement officer and approved by the City Council.

CONSTRUCTION. The process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property pursuant to A.R.S. Title 34. Construction does not include the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property or the investigation, characterization, restoration, or remediation due to an environmental issue of existing facilities, structures, buildings, or real property.

CONTRACT. All types of agreements, including purchase orders and change orders, regardless of what they may be called, for the procurement or disposal of goods, services, or construction.

CONTRACT AMENDMENT. A written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

CONTRACT AMOUNT. The aggregate (total) value of compensation, including applicable taxes and delivery charges, included in a contract prior to change orders.

CONTRACTOR/VENDOR/SUPPLIER. Any person or entity who has a contract with the City.

COOPERATIVE PURCHASE CONTRACT. A contract previously solicited through a competitive process by another governmental entity, including purchases from the state bid list or from a purchasing cooperative that solicited contracts using a competitive process consistent with public procurement.

DAY. Calendar days unless otherwise specified by this chapter.

DEBARMENT. The disqualification of a person to submit offers or be awarded a contract by the City for a specified period of time commensurate with the seriousness of the offense.

DISADVANTAGED BUSINESS ENTERPRISE. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages or as otherwise defined or required by state or federal law.

EMERGENCY. Circumstances that could not have been reasonably foreseen which create a substantial risk of loss, damage, interruption of essential services, or threat to the public health or safety and which require prompt execution of a contract to remedy the condition.

EMERGENCY PURCHASE. Procurement when there is an emergency.

ESSENTIAL SERVICES. Basic public needs, such as water, wastewater, or communications, that are vital for public health and safety.

FIXED-PRICE CONTRACT. (1) A contract providing for a firm price; or (2) a price that may be adjusted only in accordance with contract clauses, providing for revisions of the contract price under stated circumstances.

GOODS. Supplies, equipment, or materials, and any other personal property, including tangible, intangible, and intellectual property and rights and licenses in relation thereto.

INTERGOVERNMENTAL AGREEMENT. An agreement entered into pursuant to A.R.S. Title 11, Chapter 7, Article 3.

NON-MATERIAL DEFECT. A component in an offer that does not conform to all of the requirements of a solicitation, but which the Administrative Services Director, in the case of purchases that may be approved by the Administrative Services Director or the City Council, determines will not give a competitive advantage to an offeror and is in the best interest of the City.

OFFER. A response to a solicitation. An offer may be either a bid or a proposal.

OFFEROR/BIDDER/PROPOSER. A person submitting a response to a solicitation.

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

PROCUREMENT. The purchasing, renting, leasing, or otherwise acquiring of any goods, services or construction, including the process of solicitation. Purchasing shall have the same meaning as Procurement.

PROTESTER. A person who files a protest under § 3.10.020.5.

RESPONSIBLE OFFEROR/BIDDER/PROPOSER. A person who has the capability to perform the requirements of a contract and the integrity and reliability that will ensure good faith performance.

RESPONSIVE OFFEROR/BIDDER/PROPOSER. A person who has submitted an offer that conforms to the requirements of a solicitation.

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

~~**SMALL BUSINESS.** A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.~~

SOLE SOURCE. A contract for a good or service entered into without a competition process, based on a justification that only one (1) known capable source exists or that only one single supplier can fulfill the requirements.

SOLICITATION. A request for the purpose of soliciting offers.

SPECIALIZED SERVICES. Services in which the primary effort involved in providing the service is intellectual or conceptual rather than physical and where creativity, innovation, interpretation,

judgment, unusual talent or treatment are involved, including but not limited to lawyers, certified public accountants, auditors, consultants, appraisers, lobbyists, health benefits, medical, insurance and broker services, marketing, advertising, unemployment, and investigative services. Specialized service does not include technical registrants. Questions regarding whether a service is a specialized service shall be referred to the Administrative Services Director.

SPECIFICATION. Any description of the physical or functional characteristics, or of the nature of, a supply, or service item. The term may include a description of any requirements for inspection, testing, delivery, performance requirements, acceptance, licenses and permits.

SUBCONTRACTOR. A person who contracts to render service to a contractor or to another subcontractor as a part of a contract.

TECHNICAL REGISTRANT. A person or firm registered by the state board of technical registration pursuant to A.R.S. Title 32, Chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and persons employed by the registered individual or firm.

TITLE 34 PROCUREMENT. A procurement governed by A.R.S. Title 34.

USING DEPARTMENT. Any City department using or requesting goods, services, or construction.

WORK. The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire contract and successful completion of all duties and obligations imposed by the contract.

WRITTEN or WRITING. Conventional paper documents either hand-written or printed, in contrast to spoken words. It also includes electronic ~~transmissions or facsimile~~ documents when required by applicable law or to the extent permitted by the solicitation document or contract.

§ 3.10.010.3 EXCEPTIONS.

A. *Exceptions to solicitation requirements.* The following purchases are exempt from the solicitation requirements of this chapter to the extent set forth below:

1. Cooperative purchase contracts where the Administrative Services Director has determined a separate bidding process is not likely to result in a lower price for such goods or services.

2. Sole source purchases.

3. Specialized services contracts.

4. Intergovernmental agreements and other contracts with government entities.

5. Purchase, sale, lease, exchange, or development of real property, including but not limited to appraisals, escrow service, title insurance, ~~rentersrenters'~~ insurance or environmental assessments to the extent that they are required to complete the transaction. The exchange, development, lease, purchase, or sale of real property shall comply with A.R.S. Title 9.

~~6. Emergency purchases~~ 6. Development agreements entered into under A.R.S. § 9-500.05.

~~7. The rental or use of real property.~~

~~8. Emergency purchases.~~

~~9. Agreements entered into as legal remedies in the settlement of litigation or of threatened litigation.~~

~~10. Purchases of law enforcement vehicles/equipment for undercover operations.~~

~~11. Federal, state, or local government grants shall comply with federal, state, or local law and authorized regulations which are mandatory and which are not presently reflected in this Code or the City's operating policies and procedures.~~

~~12. Contracts, agreements, or other documents entered into, issued, or established in connection with (i) the incurring of debt by the City, (ii) the making of program loans and similar extensions or advances of funds, aid or assistance by the City to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or (iii)~~

investment of funds by the City as authorized by law, and other financial transactions of the City that by their character cannot practically be established under the competitive contractor selection procedures of A.R.S. Title 41.

~~13.~~ Procurements by a using department from Arizona Industries for the Blind, certified non-profit agencies for disabled individuals, and Arizona correctional industries program.

~~12. Development agreements entered into under A.R.S. § 9-500.05.~~

~~13~~ 14. Goods procured for resale to the public.

~~15.~~ Works of art ~~or~~, entertainment, or performing arts.

~~16.~~ City and employee certification, training, and membership dues.

~~17.~~ Travel costs in accordance with City operating policies and procedures.

~~18.~~ Computer software, computer services, software-as-a-service, hosted solutions, network software, (including cloud-based and on-premises security), software maintenance, and software upgrades.

~~19.~~ Information technology equipment and networking including: servers; data storage; computers; telecommunication ~~and mobile devices~~; wireless and mobile devices; Global Positioning System (GPS) equipment; Supervisory Control and Data Acquisition (SCADA) systems; audiovisual (AV) equipment; and; Data Center support materials and products, ~~which include~~including any services for supporting the City network.

~~20.~~ Competition ~~impractical~~impracticable purchases.

~~21.~~ Water and wastewater treatment plant specialized services, maintenance, and equipment not readily available from more than one manufacturer or manufacturer's authorized supplier and that matches equipment or processes already installed at the water or wastewater treatment plant (does not include treatment chemicals, waterwork supply products, or new water or wastewater treatment construction, rehabilitation, or repairs).

~~22.~~ Equipment repairs in which substantial work must be performed before a precise cost estimate can be made and the equipment provides essential services.

~~23.~~ Public utility purchases and related services where there is no reasonable basis for competitive procurement, including but not limited to, telephonic communications, electric power, water, and sewage.

~~24.~~ Advertisements in magazines, newspapers, or other media including radio television, print or electronic.

~~25.~~ Insurance and bonds.

~~26.~~ Books and periodicals from the publishers or copyright holders thereof.

~~27.~~ Postage costs.

B. *Authority of Administrative Services Director to act in the best interest of the City.* Nothing in this section shall preclude the City from soliciting offers for purchases listed in § 3.10.010.3A if the Administrative Services Director or City Council deems it to be in the best interest of the City to do so.

C. A purchase exempt from the solicitation requirements, but which exceeds \$~~50~~100,000 requires approval by the City Council.

§ 3.10.010.4 ADMINISTRATION OF PROCUREMENT.

Administrative Services Director. The powers and duties of the Administrative Services Director are to administer procurement and contracting in accordance with this chapter and applicable state and federal laws and regulations.

§ 3.10.020 GENERAL PROCUREMENT REQUIREMENTS

§ 3.10.020.1 ANTI-DISCRIMINATION.

No contractor while performing work for the City shall discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or political affiliation in programs, activities, services, benefits, or employment. No contractor shall discriminate against disadvantaged ~~businesses-business~~ enterprises. Contractors shall include a provision in each subcontract requiring subcontractors to comply with the requirements of this chapter.

§ 3.10.020.2 EMERGENCY PURCHASES.

The City may enter into a contract without complying with the requirements for competitive solicitation if an emergency exists. The City Manager may award contracts for emergency purchases less than or equal to ~~\$50100~~,000. If the contract is for more than ~~\$50100~~,000, the City Manager may award the contract and the contract shall be submitted to the City Council at ~~the next~~ a future meeting of the City Council.

§ 3.10.020.3 SOLE SOURCE.

- A. The City may award a sole source contract for procurements less than or equal to ~~\$50100~~,000. For all other procurements the determination shall be made by the City Council. The determination shall be based on written findings that include, where applicable:
1. That the efficient utilization of existing goods or services requires the acquisition of compatible goods and/or services; and
 2. Findings that support the conclusion that the goods or services are available from only one capable source or that only one single supplier can fulfill the requirements.

§ 3.10.020.4 CANCELLED SOLICITATIONS; REJECTED SUBMISSIONS.

A. *Cancellation or rejection of all offers.* Any solicitation or part of a solicitation may be cancelled, or all offers or part of an offer may be rejected, when the cancellation or rejection is in the best interest of the City. The reasons for the cancellation or rejection shall be made part of the purchasing file. The City shall not be liable to any offeror for any loss or expense caused by or resulting from the cancellation of a solicitation or rejection of all offers. Any solicitation may be delayed or suspended when the delay or suspension is in the best interest of the City. The City shall make the reasons for the delay or suspension part of the purchasing file.

B. *Rejection of an offer.* An offer may be rejected for failure to comply with the specifications or the requirements of this chapter. The City may, but is not required to, waive a non-material defect in an offer.

§ 3.10.020.5 PROTESTS.

A. *Applicability.* This section applies to protests of awards of contracts, determinations of debarment, and ranking on a short list for qualifications-based selection. Protests against a determination of debarment shall follow the procedures in § 3.10.020.7 prior to filing a protest pursuant to this section.

B. *Protest by offeror.* Only offerors in the solicitation may file protests pursuant to this section.

C. *Delivery.* Written protests shall be filed with the Administrative Services Director within seven (7) business days of the date of a (i) notice of intent to award a contract, (ii) notice of apparent low bidder, (iii) notice of short list and rankings, as applicable, or (iv) notice of final decision of debarment pursuant to § 3.10.020.7.

D. *Content of protest.* The protest shall include (i) the name, address and telephone number of the protester, (ii) a detailed statement of the legal and factual grounds for the protest, including copies of

relevant documents, (iii) a description of the resulting harm to the protester, (iv) the relief requested, and (v) the signature of the authorized representative of the protester.

E. *Response to protest.* The Administrative Services Director shall review the protest and issue a written disposition of the protest within seven (7) business days of filing, provided however, that if the Administrative Services Director determines more time is required to prepare a response, the Administrative Services Director will notify the protester of the date when a response will be given.

1. If the Administrative Services Director upholds the protest, in whole or in part, the Administrative Services Director may, at the Administrative Services Director's sole discretion, either issue an intent to award to the successful protester or cancel the solicitation.

2. If the Administrative Services Director denies the protest, in whole or in part, the Administrative Services Director may, at the Administrative Services Director's sole discretion, award the contract to the original offeror or cancel the solicitation.

~~3. If the contract award exceeds the threshold for City Manager award of the contract, the protest shall be forwarded to City Council for consideration.~~

§ 3.10.020.6 CONTRACT AMENDMENTS.

A. *General.* A contract may be modified by a contract amendment. If the contract was awarded pursuant to a formal competitive process or pursuant to bid process or alternative procurement method authorized by A.R.S. Title 34, the contract amendment shall not be used to substantially alter the specifications in the solicitation except that a contract amendment may be approved to increase or decrease quantities or scope items contained in the original specifications, change the contract time, comply with unforeseen needs for a project, or comply with applicable laws.

B. *Contract amendments.*

1. All amendments to contracts must be in writing and must be signed by an authorized representative of the contractor and the City. The person or entity authorized by this chapter to approve award a contract on behalf of the City may execute amendments to the contract. ~~Unless unless indicated otherwise authorized in this chapter, if the contract was approved by the City Council, only the City Council may approve an amendment herein.~~

2. Contract amendments that increase the contract amount may be approved by the City Manager if the contract amendment is 510% or less than the contract amount and not more than \$50100,000 for all contract amendments approved for the contract; all other contract amendments that increase the contract amount require the approval of the City Council.

§ 3.10.020.7 DEBARMENT.

A. *Authority.* Upon recommendation of the using department, the Administrative Services Director may debar a prospective offeror after providing notice and a reasonable opportunity to be heard in accordance with this section.

B. *Notice of intent to debar.* The Administrative Services Director shall notify the person in writing of a proposed debarment by registered or certified mail, return receipt requested. This notice shall:

1. State that the City intends to debar the person.
2. Set forth the reasons for the debarment.

3. Include a statement that the person has a right to appeal the notice of intent to debar and have a hearing if the person files a written request with the Administrative Services Director within 10 business days after receipt of the notice.

C. *Hearing procedure.* If a hearing is required under this section, the Administrative Services Director shall appoint a Hearing Officer, who may be an employee of the City. The Hearing Officer shall arrange for a prompt hearing and notify the parties of its time and place. The hearing shall be

conducted in an informal manner without formal rules of evidence or procedure.

D. *Recommendation by the Hearing Officer.* The Hearing Officer shall make a recommendation to the Administrative Services Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The Administrative Services Director may affirm, modify, or reject the Hearing Officer's recommendation in whole or in part, may remand the matter to the Hearing Officer with instructions, or make any other appropriate disposition.

E. *Final decision by Administrative Services Director.* The decision by the Administrative Services Director shall be final. The decision shall be sent to all parties by certified mail.

F. *Costs.* The Administrative Services Director may allocate the hearing costs between the person appealing and the using department who made the recommendation for debarment. The allocation shall be based upon facts found by the Administrative Services Director and stated in the final order that, in the Administrative Services Director's opinion, warrant such allocation of costs.

G. *Limited participation.* The Administrative Services Director may allow a debarred person to participate in solicitations on a limited basis during the debarment period upon written determination that participation is advantageous to the City.

H. *Protest.* A person debarred pursuant to this section may protest such decision pursuant to § 3.10.020.5.

§ 3.10.030 PROCUREMENT [NOT INCLUDING PROCUREMENTS GOVERNED BY A.R.S. TITLE 34].

§ 3.10.030.1 PURCHASES GREATER THAN \$50100,000.

The City Manager shall award or approve contracts for purchases up to \$50100,000. The City Council shall award or approve contracts for purchases greater than \$50100,000. Multi-term fixed-price contracts with an annual amount of \$100,000 or less shall require City Council approval if the total aggregate amount over multiple years exceeds \$100,000. The City Manager is authorized to award or approve multi-term fixed-price contracts with a total aggregate amount of \$100,000 or less.

§ 3.10.030.2 PREFERENCE IN PURCHASING.

When purchasing or awarding contracts for supplies, equipment or contractual services, the purchase or contract shall, if possible, be awarded to vendors who have both a place of business located within the municipal limits of the City and a current business license from the City for a period of not less than twelve (12) months prior to the date of award or purchase. The preference for a local, rather than an out-of-town bidder, shall only apply if the local bid, with quality and suitability considered, is no more than the applicable amount of the City's transaction privilege taxes. When evaluating bids, for the purpose of determining the low bidder, the applicable City transaction privilege taxes shall be included in the non-Lake Havasu City bidder's price and excluded from the Lake Havasu City bidder's price. The preference shall not be used where state law or any applicable federal statute or regulation forbids the granting of such preference, or requires another method for competitive bidding.

§ 3.10.030.3 COMPLIANCE WITH FEDERAL REQUIREMENTS

If a procurement involves the expenditure of federal assistance or monies, the Administrative Services Director shall comply with federal law and authorized regulations which are mandatory and which are not presently reflected in this Code or the City's operating policies and procedures.

§ 3.10.040 PROCUREMENT OF CONSTRUCTION

A. Contracts that fall under Title 34, Public Buildings and Improvements of the A.R.S. shall be

solicited in accordance with the requirements of A.R.S. Title 34 and this Code to the extent it does not conflict with the provisions of A.R.S. Title 34.

1. For job-order-contracting construction services only, the maximum dollar amount of an individual job order shall be two million dollars (\$2,000,000) or such higher or lower amount prescribed by the City in an action noticed pursuant to Title 38, chapter 3, article 3.1.

§ 3.10.050 SALE AND DISPOSITION OF PROPERTY.

The Administrative Services Director may act on behalf of the City and in the best interest of the City in all matters pertaining to the disposition of excess or surplus equipment, materials, and property.