Staff Summary Report

REVISED

Council Meeting Date: 10-16-2008 **Agenda Item Number: _____**

SUBJECT: This is the introduction and first public hearing to amend Chapter 26A of the Tempe City Code relating to Procurement. The second public hearing is scheduled for November 6, 2008.

DOCUMENT NAME: 20081016fsmg17 **BID ADMINISTRATION/POLICY (1004-03)**
ORDINANCE NO. 2008.63

SUPPORTING DOCS: Yes

COMMENTS: N/ A

PREPARED BY: Michael Greene, Central Services Administrator, 480-350-8516

REVIEWED BY: Jerry Hart, Financial Services Manager, 480-350-8516
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LEGAL REVIEW AS TO CONTRACT FORM ONLY: David Park, Assistant City Attorney, 480-350-8907

FISCAL NOTE: N/A

RECOMMENDATION: Adoption of Ordinance 2008.63

ADDITIONAL INFO: Financial Services' **s**taff and the City Attorney's Office have undertaken a review of the City's procurement ordinance in a effort to identify changes and updates for Council consideration.

Staff presented these recommended changes at the September 11, 2008 City Council Issue Review Session and received direction to move forward with the public hearing phase of the adoption of these proposed procurement ordinance changes.

ORDINANCE NO. 2008.63

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 26A, TEMPE CITY CODE, RELATING TO PROCUREMENT BY AMENDING SECTIONS 26A-1, 26A-2, 26A-4, 26A-5, 26A-6, 26A-8, 26A-9, 26A-11, 26A-12, 26A-14, 26A-15, 26A-16, 26A-17, 26A-21 AND 26A-52; AND ADDING NEW SECTION 26A-13.1 RELATING TO REVERSE AUCTION BIDDING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 26A-1 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-1. General procurement applicability.

(a) Except as otherwise provided, this chapter applies to all expenditures of public monies irrespective of their source, including federal assistance monies to this city, for the purchase of materials, goods and services, under any contract, except that this chapter does not apply to either grants, or contracts between the city and other governments. Nothing in this chapter shall prevent the city from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

(b) The provisions of this chapter are not applicable to the following types of procurements that by their nature are not applicable to the competitive process and therefore exempt from the procurement code. However, any procurements at or in excess of ~~thirty~~ FIFTY thousand dollars ~~($30,000)~~ ($50,000) require formal council approval.

(1) Professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which the city is or may become a party or to contracts for special investigative services for law enforcement purposes;

(2) Agreements negotiated by the city attorney or risk manager in settlement of a claim or litigation or threatened litigation are exempt from the provisions of this chapter;

(3) Worker's compensation payments for medical and related expenses;

(4) Works of fine art which are not physically a part of functional construction features, and performing art entertainment;

(5) The purchase of miscellaneous books, magazines, newspapers, subscriptions, on-line library reference services, film, videos and assorted materials for library customer check-out purposes for which contracts by competitive bid solicitation is not practicable. Does not include major book provider contracts which are competitively bid;

(6) Intergovernmental payments, purchases and agreements;

(7) Public utility purchases of water, power and related services;

(8) Specialized seminar, training and educational classes;

(9) Magazine and media advertisement;

(10) Financial advisory and investment broker/dealer and related services;

(11) Election services;

(12) Council initiated contracts;

(13) Memberships in organizations; or

(14) Political lobbyist services.

(c) The determination of procurements considered exempt shall be made by the procurement administrator.

(d) The provisions of this chapter are not applicable to the types of procurement described in this paragraph. However, any procurements at or in excess of ~~thirty~~ FIFTY thousand dollars ~~($30,000)~~ ($50,000) require formal council approval. Procurement of architect services, construction, construction services, construction-manager-at-risk construction services, design-build construction services, engineer services, job-order-contracting construction services, landscape architect services, assayer services, geologist services, and land surveying services shall comply with Title 34 of the Arizona Revised Statutes. These provisions will also be utilized for the following services: construction program management, construction management, feasibility studies, materials testing, mapping, related data collection and analysis, infrastructure system analysis or other related services. The public works department, engineering division shall act as the city procurement agency and administrator for the above listed services.

Section 2. That Section 26A-2 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-2. Chapter definitions, unless the context otherwise requires.

Adequate evidence means more than mere accusation but less than substantial evidence. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration and other inferences that may be drawn from the existence or absence of affirmative facts.

Administrative directive means the document issued by the city manager to establish administrative policy and procedures for city departments and employees.

Affiliate means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.

Assignment of rights and duties means the rights and duties of a city contract are not transferable or otherwise assignable without the written consent of the procurement office.

Authorized formal contract signer means the mayor or procurement administrator, as appropriate under the city charter and city code, once the contract has been reviewed and approved by the city procurement office, city risk management and the city attorney's office and awarded by the city council, if necessary.

AWARD MEANS A DETERMINATION BY THE CITY THAT IT IS ENTERING INTO A CONTRACT WITH ONE OR MORE OFFERORS.

BID MEANS AN OFFER IN RESPONSE TO A SOLICITATION.

BIDDER MEANS "OFFEROR" WHO IS A PERSON WHO RESPONDS TO A SOLICITATION.

BRAND NAME OR EQUAL SPECIFICATION MEANS A WRITTEN DESCRIPTION THAT USES ONE OR MORE MANUFACTURERS' PRODUCT NAME OR CATALOG ITEM TO DESCRIBE THE STANDARD OF QUALITY, PERFORMANCE AND OTHER CHARACTERISTICS THAT MEET CITY REQUIREMENTS AND PROVIDES FOR SUBMISSION OF EQUIVALENT PRODUCTS OR SERVICES.

BRAND NAME SPECIFICATION MEANS A WRITTEN DESCRIPTION LIMITED TO A LIST OF ONE OR MORE ITEMS BY MANUFACTURERS' PRODUCT NAME OR CATALOG ITEM TO DESCRIBE THE STANDARD OF QUALITY, PERFORMANCE AND OTHER CHARACTERISTICS THAT MEET CITY REQUIREMENTS.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Central services administrator means the person designated by the financial services manager to administer the activities of the city procurement office, including the duplicating and mail center and surplus property.

Change order means a written order signed by the procurement administrator or the mayor, as necessary, who directs the contractor to make changes that are authorized by the original city solicitation and any resulting contract.

City means the municipal corporation now existing and known as the City of Tempe.

Confidential information means that if a person believes that a bid, proposal, offer, specification or protest contains information that should be withheld, a statement advising the procurement officer of this fact shall accompany the submission and the information shall be so identified wherever it appears. The information identified by the person as confidential shall not be disclosed until the procurement officer makes a written determination. The procurement officer shall review the statement and information and shall determine in writing whether the information shall be withheld. Such determination statement may be reviewed by the city attorney's office and shall be approved by the procurement administrator; and if the procurement officer determines to disclose the information, the procurement officer shall inform the person in writing of such determination.

Construction means 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. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property. Procurement responsibility for construction and related architectural and engineering services are delegated to the manager directing the activities of the public works department and set apart from the procurement of goods and services.

Contract means all types of city agreements, regardless of what they may be called, for the procurement of goods and services.

Contract administrator means any person authorized to manage, supervise, and monitor compliance with the requirements of a contract.

Contract amendment means a written modification of ~~the terms and conditions of a contract signed by the parties to the contract~~ A CONTRACT OR A UNILATERAL EXERCISE OF A RIGHT CONTAINED IN THE CONTRACT.

Contract value means the dollar value or estimated dollar value of single-requirement procurement or for the initial period of a term contract.

Contractor means any person who has a contract with the city.

Cooperative procurement means procurement conducted by, or on behalf of, more than one eligible public procurement unit.

COST-PLUS-A-PERCENTAGE-OF-COST CONTRACT MEANS THE PARTIES TO A CONTRACT AGREE THAT THE FEE WILL BE A PREDETERMINED PERCENTAGE OF THE COST OF WORK PERFORMED AND THE CONTRACT DOES NOT LIMIT THE COST AND FEE BEFORE AUTHORIZATION OF PERFORMANCE.

Cost-reimbursement contract means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this chapter, and a fee, if provided for in the contract.

Days means calendar days unless otherwise specified as business days and shall be computed pursuant to A.R.S. § 1-243.

Debarment means the disqualification of a vendor to receive bid solicitations or the award of a contract by the city for a specified period of time, not to exceed three (3) years, commensurate with the seriousness of the offense resulting from conduct, failure or inadequacy of contract performance or causing harassment to the award or performance of a city contract.

DESCRIPTIVE LITERATURE MEANS INFORMATION AVAILABLE IN THE ORDINARY COURSE OF BUSINESS THAT SHOWS THE CHARACTERISTICS, CONSTRUCTION OR OPERATION OF AN ITEM OR SERVICE OFFERED AND IS SUFFICIENT IN DETAIL TO ALLOW FOR THE FULL EVALUATION OF A PRODUCT.

Designee means a duly authorized representative of a responsible party.

Discussions means ~~an exchange of information or any form of negotiation~~ NEGOTIATIONS.

Eligible procurement unit means a public procurement unit or a nonprofit educational or public health institution which follows a procurement process comparable to the process set forth in this code.

Emergency procurement means the procurement of goods, materials, supplies or services which are required to remedy a situation where the health, safety, welfare or quality of welfare of the public or public property is endangered or severely reduced if immediate corrective or preventive action is not taken.

Evaluation committee means a selected group of people representing the city in evaluating bid, proposal or qualifications responses for the purpose of making a contract award; and whose responsibility is to make fair and impartial decisions. AN EVALUATION COMMITTEE MAY CONSIST OF ONE OR MORE QUALIFIED INDIVIDUALS.

Filed means delivery to the procurement officer or to the procurement administrator, whichever is applicable. A time/date stamp affixed to a document by the office of the procurement officer or the procurement administrator, whichever is applicable, shall be determinative of the time of delivery for purposes of filing.

Financial services manager means the person responsible for directing the activities of the city's financial services department.

Formal contract means a written contract resulting from a formal solicitation issued by the city procurement office and, if necessary, has been formally approved and awarded by city council.

Governing instruments means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

Grant means the furnishings by the city of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of goods, materials, supplies or services. A contract resulting from such an agreement is not a grant but a procurement contract.

Gratuities means gifts, services or money offered or given to any officer or employee of the city or to any of their family members with a view toward securing an unfair advantage of obtaining an order or favorable treatment with respect to an award or contract.

Interested party means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.

Invitation for bid means all documents, whether attached or incorporated by reference, which are used for soliciting bids.

Late bid means a bid or proposal response that is received by the city procurement office after the due date and time stated in the city's solicitation document or as may be modified by any supplemental addendum; and such late bids or proposals shall be rejected and not considered.

Legal counsel means a person licensed as an attorney pursuant to rules of the Supreme Court, Title 17A, Arizona Revised Statutes.

Manager means a person directing the activities of a city department.

Materials means all personal property, including, but not limited to, equipment, supplies, printing, insurance and leases of personal property but does not include purchase of land, acquiring a permanent interest in land or real property or leasing land or real property.

May denotes the permissive.

Minor informality means a mistake, excluding judgmental errors, that have negligible material effect on price, quantity, delivery or contractual terms and waiver or correction of such mistake does not prejudice other bidders or offerors.

Model procurement code means the comprehensive plan or "model" for the fundamental principles of public procurement as developed by the American Bar Association, Section of Urban, State and Local Government Law.

Multi-step sealed bidding means a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the city and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

Multiple award means an award of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.

Must ~~denotes the imperative~~ MEANS SOMETHING IS MANDATORY.

NEGOTIATION MEANS AN EXCHANGE OR SERIES OF EXCHANGES BETWEEN THE CITY AND AN OFFEROR OR CONTRACTOR THAT ALLOWS THE CITY, THE OFFEROR OR CONTRACTOR TO REVISE AN OFFER OR CONTRACT, UNLESS REVISION IS SPECIFICALLY PROHIBITED BY THIS CHAPTER OR STATUTES.

NEWSPAPER MEANS A PUBLICATION REGULARLY ISSUED FOR DISSEMINATION OF NEWS OF A GENERAL AND PUBLIC CHARACTER AT STATED SHORT INTERVALS OF TIME. SUCH PUBLICATION SHALL BE FROM A KNOWN OFFICE OF PUBLICATION AND SHALL BEAR DATES OF ISSUE AND BE NUMBERED CONSECUTIVELY. IT SHALL NOT BE DESIGNED PRIMARILY FOR ADVERTISING, FREE CIRCULATION OR CIRCULATION AT NOMINAL RATES, BUT SHALL HAVE A BONA FIDE LIST OF PAYING SUBSCRIBERS.

Nonprofit educational or public health institution means any educational or public health institution, no part of the income of which is distributable to its members, directors or officers.

OFFER MEANS A RESPONSE TO A SOLICITATION.

OFFEROR MEANS A PERSON THAT RESPONDS TO A SOLICITATION.

Person means any corporation, business, individual, union, committee, club, other organization or group of individuals.

Price analysis means the evaluation of price data.

Price data means information concerning prices, including profit and overhead, for goods, materials and services substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices or current selling prices of the items being procured.

Procurement means buying, purchasing, renting, leasing or otherwise acquiring any materials, supplies or services. Procurement also includes all functions that pertain to the obtaining of any material or service,

including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement administrator means the central services administrator.

Procurement officer means any buyer, duly authorized to enter into and administer contracts and make written determinations with respect to city contracts; and includes an authorized representative acting within the limits of the officer's authority.

Professional services means those services requiring specialized knowledge, education or skill and where the qualifications of the person(s) rendering the services are of primary importance. Professional services shall include but not be limited to appraisers, land surveyors, attorneys, architects, engineers, psychologists, physicians, health practitioners, auditors, systems and software analysts and professional consultants.

PROPOSAL MEANS AN OFFER SUBMITTED IN RESPONSE TO A SOLICITATION.

PROSPECTIVE OFFEROR MEANS A PERSON THAT EXPRESSES AN INTEREST IN A SPECIFIC SOLICITATION.

Public procurement unit means a political subdivision, the city, the State of Arizona or an agency of the United States.

Purchase requisition means that document, or electronic transmission, whereby a department requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, estimated cost, delivery schedule, transportation data, criteria for evaluation, and suggested sources of supply.

Qualified products list means an approved list of materials, goods or services described by model or catalogue numbers, that, prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

Qualified providers list means a list of service firms which have been pre-qualified to provide a service in a specific field. Such list may be established by a competitive sealed proposals or request for qualifications.

Requirement of good faith means that all parties involved in the negotiation, performance or administration of city contracts are required to act in good faith.

Request for proposals means all documents whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed within this chapter.

Request for qualifications means a request by the city for detailed information concerning the qualifications of firms to provide professional services.

Responsible bidder or offeror means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

Responsive bidder or offeror means a person who submits a bid which conforms in all material respects to the invitation for bids or request for proposals.

Services means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance. Services shall include but not be limited to repair and maintenance, trades and crafts work, clerical and machine operating functions, concession operations, food catering, etc.

Shall ~~denotes the imperative~~ MEANS SOMETHING IS MANDATORY.

Single requirement procurement means the purchase, lease, or rental of materials or services without a known pattern of recurring need by the city.

Solicitation means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, a request for qualifications or any other invitation or request by which the city invites a person to participate in a procurement process.

Spot market means a short lived market where specific materials are subject to limited purchase availability; or where a significantly reduced price offer requires the material's immediate procurement to secure and obtain the item.

Subcontractor means a person who contracts to perform work or render services to a contractor or to another subcontractor as a part of a contract with the city.

Substantial evidence means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

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

Suspension means an action taken by the financial services manager temporarily disqualifying a person from participating in city procurements.

Technical offer means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.

Term contract means a contract for the supply of materials or services for a specified period of time as stated within the solicitation document and has provisions for contract cancellation, and for additional contract renewal periods.

Term contract administration means the monitoring of term contracts to ensure compliance with the city's contract award and any term contract exceeding its estimated value shall be resubmitted for review and approval by city council.

Vendor means a person or firm in the business of selling or otherwise providing products, materials or services.

Void contract means a contract that contains unlawful language or a contract that conflicts with the requirements of the city's solicitation.

Section 3. That Section 26A-4 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-4. Procurement procedures by dollar value.

(a) *Small purchases under $5,000*. The single requirement procurement of materials and services, of less than five thousand dollars ($5,000) shall be made in accord with those rules and regulations set forth and published by the city procurement administrator.

(b) *Small purchases $5,000 to ~~$29,999~~ $49,999*. The single requirement or term contract procurement of materials and services, of less than ~~thirty~~ FIFTY thousand dollars ~~($30,000)~~ ($50,000) and greater than or equal to five thousand dollars ($5,000) shall be made in accord with § 26A-11(b).

(c) *Formal procurements ~~$30,000~~ $50,000 and over*. Materials, goods and services, except as otherwise provided herein, when the single requirement or estimated value during an initial term contract period shall be equal or exceeding ~~thirty~~ FIFTY thousand dollars ~~($30,000)~~ ($50,000) shall be procured by formal, written solicitation.

Section 4. That Section 26A-5 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-5. Procurement authorization levels.

(a) The procurement administrator shall have the authority to approve and sign, if necessary, procurements up to and including ~~twenty-nine~~ FORTY-NINE thousand nine hundred ninety-nine dollars ~~($29,999)~~ ($49,999).

(b) Except for formal contracts requiring the signature of the mayor, the financial services manager or designee shall have the authority to enter into city council approved procurements equal to or exceeding ~~thirty~~ FIFTY thousand dollars ~~($30,000)~~ ($50,000).

(c) The city council shall award contracts with a value equal to or exceeding ~~thirty~~ FIFTY thousand dollars ~~($30,000)~~ ($50,000).

(D) DURING THOSE MONTHS WHEN THE CITY COUNCIL MEETS ONLY ONCE, THE CITY MANAGER OR DESIGNEE SHALL HAVE THE AUTHORITY TO AWARD AND SIGN CONTRACTS EXCEEDING FIFTY THOUSAND DOLLARS ($50,000). ANY AWARD ACTION TAKEN SHALL BE PRESENTED FOR RATIFICATION AT THE NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING.

Section 5. That Section 26A-6 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-6. Competitive sealed bidding.

(a) *Conditions for use*. All contracts of the city shall be awarded by competitive sealed bidding except as otherwise provided in this chapter.

(b) *Invitation for bids*. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.

(c) *Public notice*. The procurement office shall develop and maintain a method for providing adequate notice of public bid solicitations, which shall identify the place, date and time of bid opening. Notice of the bid solicitation shall be posted for public inspection and a copy of the bid solicitation shall be available for public inspection review in the procurement office. IF THE SOLICITATION IS FOR SERVICES OTHER THAN THOSE DESCRIBED IN A.R.S. §§ 41-2513 AND 41-2578, THE NOTICE SHALL INCLUDE PUBLICATION ONE OR MORE TIMES IN A SINGLE NEWSPAPER WITHIN THIS STATE. THE PUBLICATION SHALL BE NOT LESS THAN TWO (2) WEEKS BEFORE SOLICITATION OPENING AND SHALL BE CIRCULATED WITHIN THE CITY. BIDS SHALL BE OPENED NO EARLIER THAN TWO (2) WEEKS FROM DATE OF ISSUE. A SHORTER TIME PERIOD MAY BE ESTABLISHED WHEN UNIQUE CIRCUMSTANCES DEEM IT APPROPRIATE. A WRITTEN DETERMINATION SHALL BE SIGNED BY THE PROCUREMENT OFFICER AND THE PROCUREMENT ADMINISTRATOR CITING THE REASONS WHY A SHORTER TIME FRAME IS NECESSARY.

(D) *SOLICITATION AMENDMENT*. IF A SOLICITATION IS CHANGED BY A SOLICITATION AMENDMENT, THE PROCUREMENT OFFICER SHALL NOTIFY SUPPLIERS TO WHOM THE PROCUREMENT OFFICER DISTRIBUTED THE SOLICITATION. IT IS THE RESPONSIBILITY OF THE OFFEROR TO OBTAIN ANY SOLICITATION AMENDMENTS. AN OFFEROR SHALL ACKNOWLEDGE RECEIPT OF AN AMENDMENT IN THE MANNER SPECIFIED IN THE SOLICITATION OR SOLICITATION AMENDMENT ON OR BEFORE THE OFFER DUE DATE AND TIME. A PROCUREMENT OFFICER SHALL ISSUE A SOLICITATION AMENDMENT TO DO ANY OR ALL OF THE FOLLOWING:

(1) MAKE CHANGES IN THE SOLICITATION;

(2) CORRECT DEFECTS OR AMBIGUITIES;

(3) PROVIDE ADDITIONAL INFORMATION OR INSTRUCTIONS; OR

(4) EXTEND THE OFFER DUE DATE AND TIME, IF THE PROCUREMENT OFFICER DETERMINES THAT AN EXTENSION IS IN THE BEST INTEREST OF THE CITY.

(~~d~~ E) *Late bids*. A bid, MODIFICATION OR WITHDRAWAL is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. A late bid, MODIFICATION OR WITHDRAWAL shall be rejected ~~and not considered, regardless of the reason for lateness, including circumstances beyond the control of the bidder~~ UNLESS THE BID, MODIFICATION OR WITHDRAWAL WOULD HAVE BEEN TIMELY RECEIVED BUT FOR THE ACTION OR INACTION OF CENTRAL SERVICES PERSONNEL AND IS RECEIVED BEFORE CONTRACT AWARD. A late bid shall not be opened, except (if necessary), for identification purposes. Delivery and return of late bids shall be handled in the following manner:

(1) If hand delivered, a late bid shall be TIME AND DATE STAMPED, refused and returned to the bidder with a late bid notice placed in the bid file. A COPY OF THE FRONT ENVELOPE OR BOX COVER SHOWING THE TIME AND DATE STAMP SHALL BE MADE AND RETAINED IN THE PROCUREMENT FILE;

(2) If ~~not hand delivered and electronically delivered, if available, record the time and date of receipt and bid shall be~~ DELIVERED BY MAIL OR ELECTRONICALLY DELIVERED (PROVIDED THIS DELIVERY METHOD HAS BEEN APPROVED), THE BID SHALL BE TIME AND DATE STAMPED AND filed unopened within the procurement ~~office~~ FILE for thirty (30) days. The procurement administrator may discard the document within thirty (30) days after the recorded date unless the offeror requests the document be returned;

(3) A late bid notice shall be mailed or electronically sent to the late bidder; and

(4) The procurement office shall determine the method for bid issuance and for acceptable response delivery and so state in the invitation for bids document.

(~~e~~ F) *Bid opening*. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the procurement administrator deems appropriate, together with the name of each bidder shall be recorded. This record shall be open to public inspection. The bids shall not be opened for public inspection until after a contract is awarded. After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with procedures set forth in this chapter, but the city remains subject to the Arizona public records law requirements. PRIOR TO THE SCHEDULED OPENING, THE PROCUREMENT DEPARTMENT MAY OPEN AN UNIDENTIFIED OFFER TO IDENTIFY THE OFFEROR. IF THIS OCCURS, THE STAFF MEMBER SHALL RECORD THE REASON FOR OPENING THE OFFER, THE DATE AND TIME THE OFFER WAS OPENED, AND THE SOLICITATION NUMBER. THE OFFER SHALL BE SECURED AND RETAINED FOR PUBLIC OPENING.

(~~f~~ G) *Bid acceptance and bid evaluation*. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth

in the invitations for bids. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(~~g~~ H) *Correction or withdrawal of bids~~; cancellation of awards~~ PRIOR TO AWARD.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening~~, or cancellation of awards or contracts based on such bid mistakes,~~ may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the procurement office prior to the time set for bid opening. After bid opening corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made~~, the nature of the mistake, and the bid price actually intended~~ AND THAT THE MISTAKE AND THE INTENDED OFFER ARE EVIDENT IN THE UNCORRECTED OFFER; FOR EXAMPLE, AN ERROR IN THE EXTENSION OF UNIT PRICES. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids~~, or to cancel awards or contracts based on bid mistakes,~~ shall be supported by a written determination made by the procurement officer and approved by the procurement administrator. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(I) *MISTAKES DISCOVERED AFTER AWARD - CONTRACTOR RESPONSIBILITY.* IF A MISTAKE IN THE OFFER IS DISCOVERED AFTER THE AWARD, THE OFFEROR 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 OFFER 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.

(J) *MISTAKES DISCOVERED AFTER AWARD – CITY'S RESPONSIBILITY.* BASED ON THE CONSIDERATIONS OF FAIR COMPETITION AND THE BEST INTEREST OF THE CITY, THE PROCUREMENT ADMINISTRATOR MAY:

(1) ALLOW CORRECTION OF THE MISTAKE, IF THE RESULTING DOLLAR AMOUNT OF THE CORRECTION IS LESS THAN THE NEXT LOWEST OFFER;

(2) CANCEL ALL OR PART OF THE AWARD; OR

(3) DENY CORRECTION OR WITHDRAWAL.

(K) *MISTAKES DISCOVERED AFTER AWARD – RE-AWARD OPTION.* AFTER CANCELLATION OF ALL OR PART OF AN AWARD, IF THE OFFER ACCEPTANCE PERIOD HAS

NOT EXPIRED, THE PROCUREMENT ADMINISTRATOR MAY AWARD ALL OR PART OF THE CONTRACT TO THE NEXT LOWEST RESPONSIBLE AND RESPONSIVE OFFEROR, BASED ON THE CONSIDERATIONS OF FAIR COMPETITION AND THE BEST INTEREST OF THE CITY. ANY DECISION THAT ALLOWS FOR THE CORRECTION OF A MISTAKE OR THE CANCELLATION OF A CONTRACT SHALL BE SUPPORTED BY A WRITTEN DETERMINATION MADE BY THE PROCUREMENT OFFICER AND APPROVED BY THE PROCUREMENT ADMINISTRATOR.

(L) *EXTENSION OF OFFER ACCEPTANCE PERIOD.* TO EXTEND THE OFFER ACCEPTANCE PERIOD, A PROCUREMENT OFFICER SHALL NOTIFY OFFERORS IN WRITING OF AN EXTENSION AND REQUEST WRITTEN CONCURRENCE FROM ALL OFFERORS. TO BE ELIGIBLE FOR A CONTRACT AWARD, AN OFFEROR SHALL SUBMIT WRITTEN CONCURRENCE TO THE EXTENSION. THE PROCUREMENT OFFICER SHALL NOT CONSIDER THE OFFER FROM AN OFFEROR WHO FAILS TO RESPOND TO THE NOTICE OF EXTENSION.

(~~h~~ M) *Contract award*. The contract shall be awarded by THE CITY COUNCIL ON THE RECOMMENDATION OF THE PROCUREMENT ADMINISTRATOR WITH appropriate written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids:

(1) In evaluating the bids, and for purposes of determining the low bidder, the procurement office shall include the amount of applicable business privilege tax, except that the amount of city business privilege tax shall not be included in the evaluation. Tempe privilege tax that is to be paid (returned) to the city shall be considered as a pass-through cost and calculated as zero expense to the city for evaluation purposes;

(2) In the event the low responsive and responsible bid for a purchase exceeds available funds as certified by the procurement officer and budget office, and such bid does not exceed such funds by more than five percent (5%), the procurement office is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids;

(3) After contract award, bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions as designated in the definition of confidential information, but the city remains subject to the Arizona public records law. MATERIAL PORTIONS OF THE BID BEING RECOMMENDED FOR AWARD WILL BE PUBLISHED TO THE CITY'S EXTERNAL WEB SITE UP TO FIVE (5) DAYS PRIOR TO COUNCIL REVIEW. ALL OTHER BIDS INCLUDING EVALUATION INFORMATION SHALL REMAIN CONFIDENTIAL UNTIL AFTER AWARD;

(4) The city, at its option, may not recommend for award the bid of a vendor who is in default on the payment of city taxes, licenses or other monies due the city at the time of bid opening;

(5) The city, at its option, may not recommend for award the bid of a vendor who has defaulted on a previous contract with the city; or has defaulted on a similar contract with another jurisdiction or public entity during a past three (3) year period;

(6) If there are two (2) or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by a coin toss; and

(7) The procurement office shall procure recycled materials in accord with ordinances, resolutions and administrative directives of the city.

Section 6. That Section 26A-8 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-8. Competitive sealed proposals.

(a) *Conditions for use*. When the procurement officer with the approval of the procurement administrator, determines that the use of an invitation for bids is either not practicable or not advantageous to the city, a contract may be entered into by use of a request for proposals.

(b) *Request for proposals*. Request for proposals shall be issued and shall include desired specifications, and all contractual terms and conditions applicable to the procurement.

(c) *Public notice*. Adequate public notice of the request for proposals shall be given in the same manner as provided in § 26A-6(c).

(D) *SOLICITATION AMENDMENTS*. SOLICITATION AMENDMENTS SHALL BE HANDLED IN THE SAME MANNER AS DESCRIBED IN § 26A-6(D).

(~~d~~ E) *Receipt of proposals*. Proposals shall be opened publicly in the presence of one or more witnesses at the time and place designated in the request for proposals. The name of each offeror shall be read. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the negotiation process. Proposals shall be open for public inspection only after contract award. A proposal, ~~received after the closing date and time set for receipt of proposals is late and shall not be considered~~ MODIFICATION OR WITHDRAWAL IS LATE IF IT IS RECEIVED AT THE LOCATION DESIGNATED IN THE REQUEST FOR PROPOSAL AFTER THE TIME AND DATE SET FOR PROPOSAL OPENING. A LATE PROPOSAL, LATE MODIFICATION OR LATE WITHDRAWAL SHALL BE REJECTED, UNLESS THE PROPOSAL, MODIFICATION OR WITHDRAWAL WOULD HAVE BEEN TIMELY RECEIVED BUT FOR THE ACTION OR INACTION OF CENTRAL SERVICES PERSONNEL AND IS RECEIVED BEFORE CONTRACT AWARD. PRIOR TO THE SCHEDULED OPENING, THE PROCUREMENT DEPARTMENT MAY OPEN AN OFFER TO IDENTIFY THE OFFEROR. IF THIS OCCURS, THE STAFF MEMBER SHALL RECORD THE REASON FOR OPENING THE OFFER, THE DATE AND TIME THE OFFER WAS OPENED, AND THE SOLICITATION NUMBER. THE OFFER SHALL BE SECURED AND RETAINED FOR PUBLIC OPENING.

(F) *CORRECTION AND WITHDRAWAL OF PROPOSALS PRIOR TO AWARD*. CORRECTION AND WITHDRAWAL OF PROPOSALS PRIOR TO AWARD SHALL BE HANDLED IN THE SAME MANNER AS PROVIDED IN § 26A-6(G).

(G) *MISTAKES DISCOVERED AFTER AWARD*. MISTAKES DISCOVERED AFTER AWARD SHALL BE HANDLED IN THE SAME MANNER AS PROVIDED IN § 26A-6(I), (J) AND (K).

(~~e~~ H) *Evaluation factors*. The request for proposals shall state the relative importance of price and other evaluation factors. Specific numerical weighing is not required. EVALUATION FACTORS MAY INCLUDE BUT ARE NOT LIMITED TO CATEGORIES SUCH AS PRICE, QUALITY, EXPERIENCE, EXPERTISE, QUALIFICATIONS, METHOD OF APPROACH, RESPONSIVENESS, FINANCIAL STRENGTH, ETC.

~~(f) *Discussion with responsible offerors and revisions to proposals*. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.~~

~~(g) *Best and final offers*. If discussions are conducted, the procurement officer shall issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the procurement officer makes a written determination that it is advantageous to the city to conduct further discussions or change the city's requirements. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.~~

(I) *EXTENSION OF THE OFFER AND ACCEPTANCE PERIOD*. EXTENSION OF THE OFFER AND ACCEPTANCE PERIOD SHALL HANDLED IN THE SAME MANNER AS DESCRIBED IN § 26A-6(L).

(J) *CLARIFICATIONS OF OFFERS*. THE PURPOSE FOR CLARIFICATIONS IS TO PROVIDE FOR A GREATER MUTUAL UNDERSTANDING OF THE OFFER. CLARIFICATIONS ARE NOT NEGOTIATIONS AND MATERIAL CHANGES TO THE REQUEST FOR PROPOSAL OR OFFER SHALL NOT BE MADE BY CLARIFICATION. THE PROCUREMENT OFFICER MAY REQUEST CLARIFICATIONS FROM ANY OFFEROR(S) AT ANY TIME AFTER RECEIPT OF OFFERS. CLARIFICATIONS MAY BE REQUESTED ORALLY OR IN WRITING. IF CLARIFICATIONS ARE REQUESTED ORALLY, THE OFFEROR SHALL CONFIRM THE REQUEST IN WRITING. A REQUEST FOR CLARIFICATIONS SHALL NOT BE CONSIDERED A DETERMINATION THAT THE OFFEROR IS SUSCEPTIBLE FOR AWARD. ANY CLARIFICATIONS SHALL BE RETAINED IN THE PROCUREMENT FILE.

(K) *DETERMINATION OF NOT SUSCEPTIBLE FOR AWARD*. A PROCUREMENT OFFICER MAY DETERMINE AT ANY TIME DURING THE EVALUATION PERIOD AND BEFORE AWARD THAT AN OFFER IS NOT SUSCEPTIBLE FOR AWARD. THE PROCUREMENT OFFICER SHALL NOTIFY THE OFFEROR IN WRITING OF THE FINAL DETERMINATION THAT THE OFFER IS NOT SUSCEPTIBLE FOR AWARD UNLESS THE PURCHASING OFFICER DETERMINES THAT NOTIFICATION TO THE OFFEROR WOULD COMPROMISE THE CITY'S ABILITY TO NEGOTIATE WITH OTHER OFFERORS. A DETERMINATION OF NON-SUSCEPTIBILITY SHALL BE BASED ON THE FOLLOWING (BUT NOT LIMITED TO):

(1) A LEGAL OFFER HAS NOT BEEN SUBMITTED DUE TO THE LACK OF AN AUTHORIZED SIGNATURE ON THE DESIGNATED OFFER FORM; OR

(2) THE OFFER IS NOT WITHIN THE COMPETITIVE RANGE IN COMPARISON TO OTHER OFFERS BASED ON THE SCORING OF EVALUATION CRITERIA AS SET FORTH IN THE SOLICITATION;

(L) *NEGOTIATIONS WITH RESPONSIBLE OFFERORS*. IF NEGOTIATIONS ARE CONDUCTED, NEGOTIATIONS SHALL BE CONDUCTED WITH ALL OFFERORS DETERMINED TO BE REASONABLY SUSCEPTIBLE FOR AWARD. NEGOTIATIONS MAY BE CONDUCTED ORALLY OR IN WRITING. IF ORAL NEGOTIATIONS ARE CONDUCTED, THE OFFEROR SHALL CONFIRM THE NEGOTIATIONS IN WRITING. OFFERORS MAY REVISE OFFERS BASED ON NEGOTIATIONS PROVIDED THAT ANY REVISION IS CONFIRMED IN WRITING. THE CITY MAY CONDUCT NEGOTIATIONS WITH RESPONSIBLE OFFERORS TO IMPROVE OFFERS IN SUCH AREAS AS COST, PRICE, SPECIFICATIONS, PERFORMANCE OR TERMS, TO ACHIEVE BEST VALUE FOR THE CITY BASED ON THE REQUIREMENTS AND THE EVALUATION FACTORS SET FORTH IN THE SOLICITATION. ONCE NEGOTIATIONS ARE INITIATED, AN OFFEROR MAY WITHDRAW AN OFFER AT ANY TIME BEFORE THE FINAL PROPOSAL REVISION DUE DATE AND TIME BY SUBMITTING A WRITTEN REQUEST TO THE PROCUREMENT OFFICER. THE PROCUREMENT OFFICER SHALL ENSURE THERE IS NO DISCLOSURE OF ONE OFFEROR'S PRICE OR ANY INFORMATION DERIVED FROM COMPETING OFFERS TO ANOTHER OFFEROR.

(M) *FINAL PROPOSAL REVISIONS.* THE PROCUREMENT OFFICER SHALL REQUEST WRITTEN FINAL PROPOSAL REVISIONS FROM ANY OFFEROR WITH WHOM NEGOTIATIONS HAVE BEEN CONDUCTED. FINAL PROPOSAL REVISIONS SHALL BE REQUESTED ONLY ONCE, UNLESS THE CITY PROCUREMENT ADMINISTRATOR MAKES A WRITTEN DETERMINATION THAT IT IS ADVANTAGEOUS TO THE CITY TO CONDUCT FURTHER NEGOTIATIONS OR CHANGE THE CITY'S REQUIREMENTS. THE PROCUREMENT OFFICER SHALL INCLUDE IN THE WRITTEN REQUEST:

(1) THE DATE, TIME AND PLACE FOR SUBMISSION OF FINAL PROPOSAL REVISIONS; AND

(2) A STATEMENT THAT IF OFFERORS DO NOT SUBMIT A WRITTEN NOTICE OF WITHDRAWAL OR A WRITTEN FINAL PROPOSAL REVISION, THEIR LAST REVISION SHALL BE ACCEPTED AS THEIR FINAL PROPOSAL REVISION.

(~~h~~ N) *Contract award*. Award shall be made by the CITY COUNCIL ON THE RECOMMENDATION OF THE procurement administrator to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. After contract award, the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions, but the city remains subject to the Arizona public records law. MATERIAL PORTIONS OF THE RECOMMENDED FIRM'S PROPOSAL SHALL BE PUBLISHED TO THE CITY'S EXTERNAL WEB SITE UP TO FIVE (5) DAYS PRIOR TO COUNCIL REVIEW. ALL OTHER OFFERS NOT RECOMMENDED FOR AWARD INCLUDING EVALUATION INFORMATION SHALL NOT BE REVEALED UNTIL AFTER AWARD BY COUNCIL. IN THE

EVENT THE CITY MANAGER OR CITY COUNCIL REJECTS THE RECOMMENDED AWARD, ALL SUBMITTED OFFERS WILL BECOME AVAILABLE FOR PUBLIC REVIEW NO MATTER IF THE CITY PLANS TO RESOLICIT WITHIN SIX (6) MONTHS.

Section 7. That Section 26A-9 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-9. Contracting for professional services.

(a) A contract for professional services may be awarded by means of competitive sealed proposals, by an invitation for bids or by limited source selection if the manager of the using department determines in writing that the nature of the service presents such limited competition that a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the city, will otherwise impair the city's financial interests or will substantially impede the city's administrative functions or the delivery of services to the public; or if only one provider has the experience and capability to successfully perform the contract~~; or if the need was not known in sufficient time to allow for competitive procurement and time is of the essence~~. The manager of the department shall be responsible for making a limited source determination, prepare and sign a written limited source justification for not seeking competition and transmit the justification to the procurement office for review.

(b) Unless the manager of the department makes a limited source determination THAT IS APPROVED BY THE PROCUREMENT OFFICER AND PROCUREMENT ADMINISTRATOR, the procurement office shall issue competitive solicitations for professional services.

(c) Professional and personal service contracts requiring formal city council approvals shall be reviewed by the city risk management division and city attorney's office before signing.

Section 8. That Section 26A-11 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-11. Small purchases.

(a) *General*. Any contract not exceeding the dollar value requiring formal bidding may be made by the procurement office in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

(b) *Small purchases ~~over~~ BETWEEN $5,000 AND $49,999*. Insofar as it is practical for small purchases equal to or in excess of five thousand dollars ($5,000), but less than ~~thirty~~ FIFTY thousand dollars ~~($30,000)~~ ($50,000) no less than three (3) businesses shall be solicited to submit quotations. Award shall be made to the responsible bidder submitting the quotation that is most advantageous to the city and conforms in all material respects to the solicitation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record. VERBAL OR WRITTEN QUOTES SHALL BE RECEIVED FROM VENDORS WHEN THE TOTAL QUOTE VALUE IS UNDER FIFTEEN THOUSAND DOLLARS ($15,000). WRITTEN QUOTES SHALL BE RECEIVED FROM VENDORS WHEN THE TOTAL QUOTE VALUE IS OVER FIFTEEN THOUSAND DOLLARS ($15,000) BUT UNDER FIFTY THOUSAND DOLLARS ($50,000).

(c) *Small purchases under $5,000*. The procurement administrator shall adopt operational procedures for making small purchases of less than five thousand dollars ($5,000). Such operational procedures shall provide for obtaining adequate and reasonable competition for the materials, goods and services being purchased.

Section 9. That Section 26A-12 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-12. Sole source procurement.

(a) A purchase may be made or contract awarded by the procurement office without competition when a department manager, PROCUREMENT OFFICER AND PROCUREMENT ADMINISTRATOR determines in writing, after conducting a good faith review of available sources, that there is only one reasonable and practicable source for the required material or service. The department requesting the sole source procurement shall provide written evidence to support a sole source determination. The procurement officer will participate with the department in the conduct of negotiations, as appropriate, to price, delivery and terms. The procurement officer may require the submission of cost or pricing data in connection with a purchase or award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.

(b) The following items may be approved for sole source procurement:

(1) Interface upgrades, add-on parts and components to existing, city owned equipment which requires total compatibility assurance; license renewals for city owned software, and repair and maintenance for city owned equipment and software for which it is technologically and cost effective to procure from the original seller or manufacturer;

(2) Materials for resale in city concession operations which are purchased in response to customer demands;

(3) Spot market purchases which are evidenced to provide a substantial savings to the city and which are approved by the procurement administrator or a party delegated by the procurement administrator to review the justification for spot market purchase requests. Such spot market purchases to be requisitioned and obtained through the procurement office. Any purchase of a dollar amount requiring council approval shall be submitted for review at the next scheduled council meeting date;

(4) Specialized computer software for network infrastructure applications which have been technically reviewed, tested and justified by the city's information technologies division, and which are obtainable from a single source. This shall not apply to individual PC software obtainable from multiple suppliers; or

(5) Professional services, as determined by the department manager, shall be reviewed by the procurement administrator and the city attorney.

Section 10. That Chapter 26A of the Tempe City Code is hereby amended by adding new Section 26A-13.1 as follows:

SEC. 26A-13.1. REVERSE AUCTION BIDDING.

(A) *CONDITIONS FOR USE*. WHEN THE PROCUREMENT OFFICER, WITH THE APPROVAL OF THE PROCUREMENT ADMINISTRATOR DETERMINES IT IS ADVANTAGEOUS TO THE CITY, A CONTRACT FOR GOODS, SERVICES, OR INFORMATION SERVICES MAY BE SUBJECT TO REVERSE AUCTION BIDDING. REVERSE AUCTION BIDDING COULD INCLUDE ELECTRONIC BIDDING, OVER THE INTERNET IN A REAL-TIME, COMPETITIVE BIDDING EVENT. REVERSE AUCTION BIDDING MAY BE USED FOR ANY OF THE SOLICITATION

PROCESSES DESCRIBED WITHIN THE PROCUREMENT ORDINANCE INCLUDING REQUEST FOR QUOTATIONS, INVITATION FOR BIDS, AND REQUEST FOR PROPOSALS.

(B) *PUBLIC NOTICE.* THE PROCUREMENT OFFICE SHALL SELECT A SOLICITATION PROCESS AND FOLLOW THE PROCEDURES PROVIDED FOR IN THIS CHAPTER. ANY PUBLIC NOTICE OF A SOLICITATION PROCESS UTILIZING THE REVERSE AUCTION OPTION WILL CLEARLY INDICATE THAT PRICING WILL BE ESTABLISHED SEPARATELY VIA AN INDEPENDENT BIDDING EVENT. FIRMS WILL BE DIRECTED TO NOT INCLUDE PRICING WITH INITIAL SUBMITTALS. QUALIFIED FIRMS WILL BE INVITED TO PARTICIPATE IN A SEPARATE REVERSE AUCTION BIDDING EVENT TO BE ANNOUNCED AS TO TIME AND DATE AFTER OFFER SUBMISSION.

(C) *BID OPENING.* OFFERS SHALL BE RECEIVED AND RECORDED IN ACCORDANCE WITH THE PROCEDURES PROVIDED FOR IN THIS CHAPTER FOR THE SOLICITATION PROCESS SELECTED BY THE PROCUREMENT OFFICER.

(D) *BID ACCEPTANCE, BID EVALUATION AND CONTRACT AWARD.* THE PROCEDURE FOR BID ACCEPTANCE, BID EVALUATION AND CONTRACT AWARD SHALL FOLLOW THE PROCEDURES FOR THE SELECTED PROCUREMENT PROCESS AS OUTLINED IN THIS CHAPTER EXCEPT:

(1) WHEN USING AN INVITATION FOR BID PROCESS, THE SUBMITTED OFFERS WILL BE REVIEWED TO DETERMINE THOSE FIRMS THAT ARE CONSIDERED RESPONSIBLE AND RESPONSIVE TO THE PUBLISHED SOLICITATION. ONLY THOSE FIRMS DETERMINED TO BE RESPONSIVE AND RESPONSIBLE WILL BE MOVED FORWARD TO THE PRICING STEP USING THE REVERSE AUCTION BIDDING EVENT. THE QUALIFIED FIRMS WILL RECEIVE DIRECTION FROM THE CITY ON HOW THE PRICING STEP WILL BE ACCOMPLISHED. THE REVERSE AUCTION BIDDING EVENT WILL BE CONDUCTED BY THE CITY OR VIA A QUALIFIED REVERSE AUCTION CONTRACTOR. ONCE THE REVERSE AUCTION BIDING EVENT IS COMPLETED THE CITY WILL FINALIZE THE EVALUATION PROCESS BY DETERMINING THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER; OR

(2) WHEN USING A REQUEST FOR PROPOSAL PROCESS, THE SUBMITTED OFFERS WILL BE EVALUATED AND SCORED IN ACCORDANCE WITH PUBLISHED EVALUATION CRITERIA WITH THE EXCEPTION OF COST. ONCE THE INITIAL SCORING HAS BEEN FINALIZED THE CITY WILL DETERMINE WHICH FIRMS ARE CONSIDERED SUSCEPTIBLE FOR AWARD. ONLY THOSE FIRMS DETERMINED SUSCEPTIBLE FOR AWARD WILL BE INVITED TO PARTICIPATE IN THE REVERSE AUCTION BIDDING EVENT TO DETERMINE THE PRICE COMPONENT. ONCE THE REVERSE AUCTION BIDDING EVENT IS COMPLETE THE CITY WILL FINALIZE THE SCORING MATRIX. THE CITY WILL HAVE THE OPTION OF ENTERING INTO DISCUSSIONS WITH THOSE FIRMS DETERMINED SUSCEPTIBLE FOR AWARD. INTERVIEWS MAY BE CONDUCTED AS WELL TO ENSURE FULL UNDERSTANDING OF OFFERS. BEST AND FINAL OFFERS MAY ALSO BE REQUESTED AS OUTLINED IN THIS CHAPTER. AWARD WILL BE MADE TO THE MOST ADVANTAGEOUS OFFER.

Section 11. That Section 26A-14 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-14. Cancellation of solicitations.

(a) *Cancellation of solicitation*. An invitation for bids, a request for proposals or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation at any time before award, when it is in the best interests of the city. Each solicitation issued by the city shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part when in the best interests of the city. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited; identify the solicitation; briefly explain the reason for cancellation; and where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar materials or services. IF THE SOLICITATION HAS BEEN CANCELED PRIOR TO OPENING, THE CITY SHALL NOT OPEN ANY OFFERS RECEIVED. THE CITY MAY DISCARD THE OFFERS AFTER THIRTY (30) DAYS FROM THE NOTICE OF SOLICITATION CANCELLATION, UNLESS THE OFFEROR REQUESTS THE OFFER BE RETURNED.

(b) *Cancellation of solicitation prior to opening*. As used in this section, "opening" means the date and time set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals. Prior to opening, a solicitation may be cancelled in whole or in part when the procurement officer with the approval of the procurement administrator determines in writing that such action is in the city's best interest for reasons including, but not limited to:

(1) The city no longer requires the materials or services;

(2) The city no longer can reasonably expect to fund the procurement;

(3) Proposed amendments to the solicitation would be of such importance that a new solicitation is desirable; or

(4) It is in the best interests of the city.

Section 12. That Section 26A-15 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-15. Rejection of bids or proposals after opening.

(a) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the procurement officer with the approval of the procurement administrator determines in writing that such action is in the city's best interest for reasons including, but not limited to:

(1) The materials or services being procured are no longer required;

(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 bids or proposals received are at clearly unreasonable prices;

(6) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or

(7) Necessary or proposed amendments to the solicitation would be of such importance that a new solicitation may be desirable and is in the best interests of the city.

(b) When a solicitation is rejected or cancelled after opening, notice of rejection or cancellation shall be provided to all businesses that submitted bids or proposals, and may be separately sent or included as an explanation in a subsequent solicitation of the need. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection. THE CITY SHALL RETAIN OFFERS RECEIVED UNDER THE CANCELED SOLICITATION IN THE PROCUREMENT FILE. IF THE CITY INTENDS TO ISSUE ANOTHER SOLICITATION WITHIN SIX (6) MONTHS AFTER CANCELLATION OF THE PROCUREMENT AND PROVIDED AN AWARD RECOMMENDATION WAS NOT PUBLISHED TO THE CITY'S EXTERNAL WEB SITE, THE CITY SHALL WITHHOLD THE OFFERS FROM PUBLIC INSPECTION. AFTER AWARD OF A CONTRACT UNDER THE SUBSEQUENT SOLICITATION, THE CITY SHALL MAKE OFFERS SUBMITTED IN RESPONSE TO THE CANCELLED SOLICITATION AVAILABLE FOR PUBLIC INSPECTION EXCEPT FOR INFORMATION DETERMINED TO BE CONFIDENTIAL AS ALLOWED HEREIN.

(c) A bid or proposal may be rejected if:

(1) The bidder is determined to be non-responsible; or

(2) The bid is non-responsive.

(d) A proposal or quotation may be rejected if:

(1) The person responding to the solicitation is determined to be non-responsible;

(2) It is unacceptable;

(3) The proposed price is unreasonable; or

(4) It is otherwise not advantageous to the city.

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

Section 13. That Section 26A-16 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-16. Responsibility of bidders and offerors.

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

(b) *Right of non-disclosure*. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the city outside of the department, or using agency, without prior written consent by the bidder or offeror, to the extent allowed by law.

(c) *Factors used to demonstrate bidder or offeror responsibleness*. For a bidder or offeror to be considered responsible, the bidder or offeror shall demonstrate to the satisfaction of the city, its capability to perform an awarded contract in a satisfactory and timely manner, based on requirements stated in the city's bid solicitation which may include but not be limited to whether the proposed bidder or offeror:

(1) Has ~~the~~ SUFFICIENT AND ACCEPTABLE financial, ~~physical,~~ BUSINESS, personnel or other resources, including ~~subcontracts~~ SUBCONTRACTORS;

(2) Has a successful record of performance and integrity, which may include past contracts with the city or other public agencies;

(3) Is legally licensed, certified or otherwise legally qualified to contract with the city at the time of the response to the solicitation; and

(4) Has supplied all necessary information concerning its responsibility to meet city requirements for contract responsibleness.

(d) *Procurement responsibility criteria.* The procurement officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

(e) *Pre-qualification*. Prospective contractors may be pre-qualified for particular types of materials, goods or services. Prospective contractors have a continuing duty to provide the procurement office with information on any material change affecting the basis of pre-qualification.

(f) *Bid and contract security, material or service contracts*. The procurement officer may require the submission of security to guarantee faithful bid and contract performance. Security shall be in the form specified within the city's bid solicitation, and may include but not be limited to a performance bond, fidelity bond or irrevocable letter of credit. In determining the amount and type of security required for each contract, the procurement officer shall consider the nature of the performance and the need for future protection to the city. The requirement for security must be included in the invitation for bids or request for proposals. Failure to timely submit security in the amount and type of security required may result in the rejection of the bid or proposal.

Section 14. That Section 26A-17 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-17. Types of contracts.

(a) *General.* Subject to the limitations of this section, any type of contract which will promote the best interests of this city may be used~~, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited~~. COST-PLUS-A-PERCENTAGE-OF-COST CONTRACTS SHALL NOT BE USED UNLESS UNIQUE CIRCUMSTANCES SUPPORT THE USE OF THIS TYPE OF CONTRACT MECHANISM. A cost-reimbursement contract may be used only if a determination is made in writing by the procurement officer that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the materials, goods or services required except under such a contract.

(b) *Contract administration*. A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

(c) *Approval of accounting system*. Except with respect to firm fixed-price contracts, the procurement officer may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

(d) *Multi-term contracts*. Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time as deemed to be in the best interest of this city, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

(e) *Right to inspect plant*. The city may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the city.

(f) *Right to audit records*. The city may, at reasonable times and places, audit the books and records of:

(1) Any person, vendor or contractor who submits cost or pricing data to the extent that the books and records relate to the cost or pricing data. Any person, vendor or contractor who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the procurement officer; and

(2) Any contractor or subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the financial services manager.

(g) *Reporting of anti-competitive practices*. If for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the procurement administrator and the city attorney. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the procurement administrator.

(h) *Prospective bidders notice*. The following pertains to bidder notices:

(1) The procurement office shall provide for the issuing of public bid solicitation notices as may be compiled and maintained on a prospective bidders list, placed for electronic inquiry, or placed for public advertisement. Inclusion of the name of a person on a bidders list shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a city contract;

(2) Persons desiring to be included on the prospective bidders list shall notify the procurement office. Upon notification, the procurement office shall provide the person with a bidder

registration form. The person shall complete the bidder registration form and return it to the procurement office. Within thirty (30) days after receiving the bidder registration form, the procurement office shall add the person to the prospective bidders list unless the procurement administrator makes a written determination that inclusion is not advantageous to the city; and

(3) Persons that fail to respond to invitations for bids or requests for proposals for two (2) consecutive solicitations of similar material, goods or services may be removed from the applicable bidders list after mailing a notice to the business. Persons may be reinstated upon written request.

(i) *Contract form and execution*. All contracts entered into under this chapter shall be executed in the name of the city by the procurement office or the mayor, as necessary, and may be approved as to form by the city attorney. When necessary, some contracts are required to be countersigned by the city clerk.

(j) *Efficient resource procurement and utilization*. It shall be encouraged that printed material produced by a contractor in the performance of a contract shall, whenever practicable, be printed on recycled paper, labeled as printed on recycled paper and printed on both sides.

Section 15. That Section 26A-21 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-21. Protest procedure.

(a) *Right to protest*. Any actual or prospective bidder, offeror or contractor who believes they are aggrieved in connection with the solicitation or award of a contract may file a protest with the procurement office. ~~At least five (5) days before award of a contract, the procurement office shall post recommendations regarding the award of a contract. A protest may be made regarding such recommendations and filed with the procurement officer and copy to the procurement administrator.~~ All protests shall be filed with the procurement officer, with a copy of the protest being delivered to the procurement administrator. The procedures for filing the protest are set forth herein.

(b) *Resolution of bid protests*. The procurement officer shall have the authority to resolve protests. Appeals from the decisions of the procurement officer may be made to the procurement administrator as set forth herein.

(c) *Filing of a protest*. Any protest shall be in writing and shall include the following information:

(1) The name, current address and telephone number of the protester;

(2) The signature of the protester or its 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; and

(5) The form of relief requested.

(d) *Time for filing protests.* The time for filing protests shall be as follows:

(1) If a protest is based upon any alleged improprieties occurring in a solicitation prior to the deadline date of a solicitation response, such a protest must be filed prior to the deadline date. Otherwise, any protests based on any alleged improprieties in a solicitation during this time frame will be deemed waived;

(2) If a protest is based upon any alleged improprieties occurring upon or after the deadline date for a solicitation response, such protest must be filed prior to the award of the contract. Otherwise, any protests based on any alleged improprieties during this time frame will be deemed waived;

(3) Protests concerning alleged improprieties that do not exist in the initial solicitation but that allegedly exist in the subsequently incorporated addendum to the solicitation shall be filed by the next deadline date for receipt of addendum responses; ~~and~~

(4) PROTESTS CONCERNING AWARDS SHALL BE FILED WITHIN TEN (10) BUSINESS DAYS AFTER THE CONTRACT HAS BEEN AWARDED. THE CITY TYPICALLY PUBLISHES AWARD RECOMMENDATIONS FIVE (5) DAYS PRIOR TO COUNCIL REVIEW; AND

(5) The procurement officer may grant any written requests for extensions of time to file a protest if the request for an extension of time sets forth good cause as to why the extension is necessary; why the protest could not be filed within the times set forth herein; and the request is submitted prior to the expiration of time for filing the original protest. If the extension of time request is not filed prior to the expiration of time for filing the original protest, the extension and protest will be deemed to be denied and/or waived. The ruling on the request for extension shall be set forth in writing setting forth the basis for the grant or denial and, if granted, setting forth the deadline by which the protest must be filed.

(e) *Notice of protest*. The procurement officer shall immediately give notice of the protest to ~~the recommended offereor~~ ALL INTERESTED PARTIES.

(f) *Stay of procurements during the protest*. In the event of a timely protest as set forth herein, the procurement administrator shall make a written decision to:

(1) Proceed or not proceed with the SOLICITATION PROCESS, award or contract execution or performance; OR

(2) Stay or not stay all or part of the procurement award or contract performance, based upon the best interests of the city~~; and~~.

~~(3)~~ The procurement administrator shall provide the protestor, procurement officer and any other interested party with a copy of the written decision as to whether or not to stay the award or contract execution or performance.

(g) *Decision by the procurement officer*. The procurement officer shall:

(1) Unless extended as provided herein, issue a written decision no later than ten (10) business days after a protest has been filed. The decision shall contain an explanation of the basis of the decision;

(2) Transmit a copy of the decision to the protester, by certified mail, return receipt requested or by electronic transmission that provides evidence of receipt; and

(3) Extend the time limit for a decision by the procurement officer for a reasonable time not to exceed thirty (30) calendar days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued. If the procurement officer fails to issue a timely decision, the protester may proceed as if the procurement officer had issued an adverse decision.

(h) *Remedies*. Remedies shall be addressed as follows:

(1) If the procurement office sustains the protest in whole or part and determines that a solicitation, proposed contract award or awarded contract does not comply with the procurement code, the procurement office shall implement an appropriate remedy;

(2) In determining an appropriate remedy, the procurement office shall consider all the circumstances surrounding the procurement or proposed 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 system, 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 using department's mission and other relevant issues;

(3) An appropriate remedy may be to decline an option to renew the contract, to terminate the contract and reissue the solicitation, to issue a new solicitation and award a contract consistent with the procurement code, or to seek relief as determined to be in the best interests of the city and in conformity with city procurement; and

(4) If the procurement officer denies the protest, then the procurement office may lift any stays previously placed on the award or contract execution or performance and may continue with the solicitation, awarding the contract or allowing the successful bidder or respondent to begin executing the contract previously awarded.

(i) *Appeals to the procurement administrator*. A written appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the procurement administrator no later than ten (10) business days from the date the decision of the procurement officer is sent by certified mail, return receipt requested or by electronic transmission that provides evidence of receipt and the appellant shall also file a copy of the appeal with the procurement officer.

(j) *Content of appeal*. The appeal shall contain:

(1) The information set forth in subsection (c) above;

(2) A copy of the decision of the procurement officer; and

(3) The precise alleged factual or legal error in the decision of the procurement officer from which an appeal is taken.

(k) *Notice of appeal*. The procurement office shall immediately give notice of the appeal to the recommended or awarded offeror. Interested parties shall have the right to request copies of the appeal. The recommended or awarded offeror has the right to participate in the proceedings.

(l) *Stay of procurement during appeal*. In the event of a timely appeal as set forth herein, the procurement administrator shall make a written decision to:

(1) If a stay has already been issued, continue the stay. The stay can be lifted if the procurement administrator makes a written determination that the award of a contract or a notice to proceed with contract performance is necessary to protect the best interests of the city; and

(2) If a stay was not previously issued, the procurement administrator may, after reviewing the procurement officer's decision and the appeal, stay the procurement if it is determined that a stay is in the best interests of the city.

(m) *Procurement administrator report*. The financial services manager shall require the procurement administrator to file a final report on the appeal within ~~thirty (30) calendar~~ FIFTEEN (15) BUSINESS days from the date the appeal is filed and provide copies of the administrator's REPORT ~~decision~~ to the appellant by certified mail, return receipt requested and the recommended or awarded offeror. The report may contain copies of:

(1) The appeal;

(2) The bid or proposal submitted by the appellant;

(3) The bid or proposal of the firm that is being considered for award;

(4) The solicitation, including the specifications or portions relevant to the appeal;

(5) The abstract of bids or proposals or relevant portions;

(6) Any other documents that are relevant to the protest; and

(7) A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

(n) *Extension for filing of report*. The procurement administrator may make a request to the financial services manager in writing for an extension of the time period setting forth the reason for the extension request. The financial services manager's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the procurement administrator's report. The procurement administrator shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

(o) *Response to report*. The appellant may file a response to the report with the procurement administrator no later than ten (10) business days after certified receipt of the report. Copies of the response shall be provided by the appellant to the procurement officer and the financial services manager.

(p) De*cision of procurement administrator*. Unless extensions are provided as set forth herein, the procurement administrator shall issue a written decision no later than fifteen (15) business days after appellant's certified receipt of report if no response is filed or no later than fifteen (15) business days after the procurement office receives a response.

(q) *Extension for filing of decision*. The procurement administrator may make a request to the financial services manager in writing for an extension of the time period setting forth the reason for the extension request. The financial services manager's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the procurement administrator's decision. The procurement administrator shall notify the appellant in writing that the time for the issuance of the decision has been extended and the date by which the decision will be issued.

(r) *Appeals to financial services manager*. A protester wishing to appeal a decision of the procurement administrator shall file an appeal with the financial services manager no later than ten (10) business days from the date the procurement administrator decision is delivered by certified mail, return receipt requested to the protester/appellant. The appellant may request that the financial services manager or his designee hold a hearing on the appeal before a hearing panel. The financial services manager shall have the sole discretion to decide whether to hold a hearing before a hearing panel.

(s) *Dismissal before hearing*. The financial services manager or his designee shall dismiss, upon a written decision, an appeal before scheduling a hearing if:

(1) The appeal does not state a valid basis for protest;

(2) The appeal is filed in an untimely manner; or

(3) The appeal attempts to raise issues not raised in the original protest.

(t) *Hearing*. The financial services manager may decide to allow a hearing on the appeal of the decision of the procurement administrator. The hearing shall be conducted by a panel consisting of the financial services manager or his designee, a representative from the city attorney's office and representatives from one or more city departments as determined appropriate by the city. The protester and the recommended or contract awarded firm(s) may be invited to attend the hearing. The decision made by a majority of the panel after the protest hearing shall be final. The panel shall issue a written decision no later than ten (10) business days after the conclusion of the panel hearing, unless the financial services manager agrees in writing to an extension of time.

(u) *Remedies*. If, after the hearing, the hearing panel sustains the appeal in whole or part and determines that a solicitation, proposed award or award does not comply with procurement requirements and this chapter, remedies shall be implemented as appropriate and consistent with the law.

Section 16. That Section 26A-52 of the Tempe City Code is hereby amended to read as follows:

Sec. 26A-52. Methods of disposal for surplus or excess materials.

(a) Surplus or excess materials may be offered for sale or lease through competitive sealed bidding, spot bidding, trade-in, sale at posted prices, auction, negotiated sale, or trade, to another public entity, retail sales outlet, or transferred for public purpose as designated by city rules, regulations and procedures.

(b) Competitive sealed bidding shall be advertised and conducted in accordance with city ordinances, rules and regulations.

(1) Copies of the invitation for bid sales shall be available at the city procurement office. The notice for invitation for bid sales shall list the materials offered for sale, their location, availability for inspection, the terms and conditions of sale and instructions to bidders including the place, date, and time for bid opening. Bids shall be opened and read in public; and

(2) The award shall be made in accordance with the invitation for bid sales to the highest responsive and responsible bidder if the price offered by such bidder is acceptable to the financial services manager or his designee. If the financial services manager or his designee determines that the bid is not advantageous to the city, the bids may be rejected in whole or in part. The financial services manager may again solicit bids or may negotiate the sale if the negotiated sale price is higher than the highest responsive and responsible bidder's price.

(c) No employee of a disposing department shall directly or indirectly purchase or agree with another person to purchase surplus or excess materials if the employee is, or has been, directly or indirectly involved in the purchase, disposal, maintenance, operation or preparation for sale of the surplus or excess material. SWORN POLICE OFFICERS ARE EXEMPT FROM THIS REQUIREMENT SOLELY FOR WHEN THEY ELECT TO PURCHASE THEIR DUTY GUN AS STIPULATED IN SUBSECTION (E) BELOW.

(d) No employee, nor agent or relative of an employee, of the city's financial services department shall purchase or acquire, directly or indirectly, any city surplus or excess or scrap property.

(E) SWORN POLICE OFFICERS MAY PURCHASE THEIR DUTY HANDGUN FOR ONE DOLLAR ($1) UPON RETIRING IN GOOD STANDING WITH TWENTY (20) OR MORE YEARS OF SERVICE WITH THE CITY.

Section 17. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2008.

_____
MAYOR

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney