DRAFT RULES AND PROCEDURES FOR 2-1-2016 EFFECTIVITY

Sec. 2-180 Purpose; director's powers and duties; delegation.

(a) Purpose. There is created a centralized purchasing division under the supervision of a purchasing director, which shall have for its purpose the purchase of materials, services, and construction for the city and shall:

(1) Establish efficient procurement and surplus personal property procedures;

(2) Secure for the city materials, services, and construction at the lowest possible cost commensurate with quality needed;

(3) Exercise positive financial control over purchases;

(4) Clearly define authority for the purchasing function;

(5) Assure the quality of purchases.

(b) Purchasing director powers and duties. The purchasing director shall:

(1) Except as otherwise provided in this procurement code, the director may establish rules and procedures consistent with this code, governing the procurement of all materials, services and construction to be procured by the city. Rules and procedures for the procurement of construction shall be consistent with A.R.S. Title 34, as amended.

(2) Except as otherwise provided in this code, procure all materials, services and construction required by any department or agency of the city in accordance with the provisions of this code and such procurement rules as may be established pursuant to this code.

(3) Establish rules and procedures for the management of inventories of material and surplus personal property belonging to the city.

(4) Sell, trade, or otherwise dispose of surplus personal property belonging to the city.

(5) Establish and maintain programs for the inspection, testing and acceptance of materials, services and construction.

(6) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases.

(7) Prepare and recommend to the city council revisions and amendments to this code.

(8) Keep informed of current developments in the field of purchasing, prices, market conditions and new products.

(9) Prescribe and maintain such forms as necessary to the operation of the centralized procurement function.

(10) Maintain email notification, and construction references and all records needed for the efficient operations of the centralized purchasing function.

(c) Delegation of authority. The director may delegate the authority for procurement pursuant to the requirements of this code to a department of the city. Any such delegation shall be in writing and state the reasons for the delegation.

PROCEDURES:

P2-180.1 Director Delegation

The Purchasing Director may delegate the powers and duties of the Purchasing Director authorized by this Code to the Purchasing Manager. In the absence of the Director and Manager, the powers and duties shall be delegated by memo.

P2-180.2 Procurement Delegation

In order to provide the appropriate level of service, the Purchasing Director has delegated the following procurement responsibilities. These delegations remain in effect until terminated in writing by the Director. All delegated procurement authority shall be conducted pursuant to the City's Procurement Code, adopted rules and established procedures.

A. Responsibility for procurement of customary and routine engineering services for traffic and drainage planning/operational purposes, pursuant to Section 2-192 of this Code, is delegated to the Traffic Engineering and Stormwater Management operational areas through the Planning, Neighborhoods & Transportation Executive Director or designee. This delegation does not include the procurement of engineering design services for capital projects.

B. Responsibility for procurement of customary and routine services of Architects, Engineers and Construction Managers, pursuant to Section 2-192 of this Code, for City Capital Projects and Improvement Districts and the responsibility for design and construction services utilizing alternative delivery methods limited to Construction-Manager-At-Risk, Design-Build and Job-Order-Contracting, pursuant to A.R.S. Title 34, Chapter 6, as amended, is delegated to the Capital Project Management (CPM) operational area through the Public Works Executive Director or designee. In the event of conflict between this Code and the provisions of Title 34, Chapter 6, the provisions of Title 34 shall prevail. Improvement District related procurements are also subject to the requirements of State law, as specified in A.R.S. Title 48 Special Taxing Districts, Chapter 4, Municipal Improvement Districts. In the event of conflict between this Code and the provisions of A.R.S. Title 48, State law shall prevail.

C. Responsibility for procurement of customary and routine engineering services, pursuant to Section 2-192 of this Code, for Water Resources planning/operational purposes, is delegated to Water Engineering Services, Water Services and Waste Water Services operational areas through the Water Resources Executive Director or designee. This delegation does not include the procurement of engineering design services for capital projects.

D. Responsibility for procurement of customary and routine human service activities which include but are not limited to, housing, regional homeless shelters, domestic violence-

shelter services, senior services, human service activities provided within City facilities, and legal services provided for low/moderate income families, unless excepted by Federal, State, or County law, is delegated to the Human Services operational area through the Community Services Executive Director or designee.

E. Responsibility for procurement of customary and routine property and liability insurance services, pursuant to Section 2-192 of this Code is delegated to the Risk Management operational area through the Risk Management Director or designee. Payment of services relating to claims processing via check requisitions up to $20,000 is delegated to the Risk Management Director or designee through use of either the City Services Scope of Work (SOW) up to $10,000 or the City Services Contract for over $10,000 and up to $20,000. The Risk Management Director or designee is delegated to sign for the Purchasing Director on the SOW or Contract document.

F. Responsibility for procurement of legal services, including Bond Counsel and Outside Counsel, pursuant to Section 2-192 of this Code is delegated to the City Attorney's office operational area through the City Attorney or designee.

G. Responsibility for procurement of customary and routine parts and services to support the Fleet Division not exceeding $10,000 as per R2-187.5 of this Code is delegated to the Fleet Management operational area through the Fleet Management Director or designee.

P2-180.3 Procurement Delegation by Letter

The Purchasing Director may delegate specific procurement authority to individuals or groups within the City by means of a delegation letter that shall specify the terms and limits of that delegation. The Purchasing Director shall maintain a file of all delegation letters.

P2-180.4 Procurement Ethics

A. All procurement actions whether they be performed by Director Delegation or by procurement agents must abide by all City Administrative Regulations with regards to Ethics. All City personnel who perform any procurement actions should also review and strive to conduct themselves in accordance with the National Institute of Governmental Purchasing (NIGP) Code of Ethics and Guidelines.

Sec. 2-181 Applicability.

A. The provisions of this code apply only to procurements initiated after its effective date.

B. The provisions of this code are applicable to every purchase of materials, services and construction with public monies, including federal assistance monies except as otherwise provided in this section. Nothing in this code or rules established under the code shall prevent the city from complying with the terms and conditions of any grant, gift or bequest accepted by the city council. If the procurement involves the expenditure of federal assistance or contract monies or is subject to state law, the director shall comply with federal and state law and authorized regulations which are mandatory applicable and which may not be reflected in this procurement code.

C. The provisions of this code are applicable to any awards for services when the city is

selecting services that are then provided to or mandated to be used and directly paid for by citizens in the course of city interactions, such as court diversion programs, police directed towing and similar services.

d) Contracts for construction as defined in Section 2-184, and contracts for the services of architects or engineers to be used in connection with construction contracts shall be governed by the provisions of A.R.S. title 34, chapters 1, 2 and 6 as amended. Procedures and other provisions of this code, and rules established pursuant thereto, shall apply to such contracts only to the extent such code provisions, procedures and rules are not inconsistent with A.R.S. title 34, chapters 1, 2 and 6 as amended.

e) The following contracts are not subject to this code:

1. Intergovernmental agreements.

2. Agreements negotiated by the risk management director or the city attorney for the settlement of litigation or threatened litigation.

3. Contracts for professional witnesses or other experts to assist with an existing or probable judicial or administrative proceeding in which the city is or may become a party or for experts to assist with special investigative services requested by the city attorney or for law enforcement purposes. Any department seeking to acquire services under this section must first consult with the city attorney and all contracts made under this exemption to the procurement code shall be approved by the city attorney prior to execution. The city attorney shall inform the city council of any contract in which the total amount of the contract exceeds fifty thousand dollars ($50,000).

RULES:

R2-181.1 Selection Process, Professional Witnesses

Contracts for services under Sec. 2-181(D)(3) shall utilize a selection process which provides for adequate and reasonable competition wherever possible, taking into account the best interests of the city, the needs of the particular case for which the services are acquired and the time constraints imposed on the city.

PROCEDURES:

P2-181.1 Real Property Transactions - Subject to Code

Professional services, such as appraisals, title searches/reports and policies, used in support of Real Property Transactions, are subject to all applicable Sections of the Procurement Code, Chapter 2, Article IV, and Division 4 of the Scottsdale Revised Code. Exception: If the services are procured for condemnation purposes by the City Attorney they are not subject to this Code under the provision of Section 2-181(D)2.

P2-181.2 Real Property Transactions - Not Subject to Code

Real Property Transactions such as buying, selling, leasing, licensing, and exchanges are the responsibility of the Asset-Management Office of the Capital Project Management (CPM)

Division and shall be conducted pursuant to the requirements of the Scottsdale City Charter and Chapter 2, Article IV, Division 5, of the Scottsdale Revised Code. Land Development Requests for Proposals from the Economic Development Department should be coordinated with the CPM Asset Management office and are also not subject to the Procurement Code.

P2-181.3 Unauthorized Purchase

A. The City has required that all purchases shall be made in accordance with the Procurement Code. The following steps shall be included in the procurement process:

1. Submission of a properly completed purchase requisition.

2. Verification by the requestor that funds are available.

3. The buying and receiving of products or authorizing initiation of service by a Procurement Agent or a person duly authorized by the Director to initiate a purchase pursuant to duly adopted purchasing card guidelines. Any purchase made that does not follow this process is considered an unauthorized purchase.

   An employee making a purchase not in conformance with this Code, adopted rules and established procedures is subject to disciplinary action in accordance with the Personnel Ordinance.

B. Any unauthorized purchases shall be reported to appropriate management personnel.

P2-181.4 Compliance with Federal, State Requirements

A. The Director will determine the requirements for processing solicitations, orders and contracts that are funded by Federal, State or other grants that require special regulations and requirements. The determination will specify what, if any requirements are different from the normal City Procurement Code processes and what is necessary to comply with the Federal, State or other grant terms and conditions. Examples are, but not limited to, ADOT/FHWA construction, ARRA, DOE funding.

Sec. 2-182 Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this code, 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 the law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this code.

Sec. 2-183 Determinations.

Written determinations required by this code shall be retained in the appropriate official record file of the purchasing division, in either hard copy form or electronic form, as may be deemed appropriate, from time to time, by the director.

RULES:

R2-183.1 Determinations

A. Determinations shall fully specify reasons.

B. The Director may specify the format for Determinations.

Sec. 2-184 Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this code, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular provision.

Advantageous means in the best interest of the city.

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.

Atypical purchase means infrequent purchases by direct selection from one (1) vendor during the fiscal year as authorized by the director or designee in the best interests of the city.

Best interests of the city means advantageous to the city.

Brand name or approved alternate specification means a specification that uses one (1) or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet city requirements, and that provides for the submission of equivalent products.

Brand name specification means a specification limited to one (1) or more items by manufacturers' name or catalogue numbers.

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

Change order means a written order signed by an authorized agent of the city, which directs the contractor to make changes that are authorized by the changes clause of the original contract.

City means the City of Scottsdale, Arizona.

Code means the procurement code as stated in division 4, article IV, chapter 2 of the Scottsdale Revised Code.

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.

Contract means all types of city agreements, regardless of what they may be called, for the procurement of materials, services, or construction or the disposal of personal property.

Contract administrator means any person duly authorized to manage, supervise, and monitor the execution of the terms and conditions of a contract.

Contract modification means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

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

Cooperative purchasing **contract** means a written agreement with a business for the purchase of goods or services that was bid by another Arizona governmental entity or national consortium of which Scottsdale is a member. This contract must comply with section 2-191 including conforming "with the purpose and spirit of this code."

Cost data means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.

Data means documented information, regardless of form or characteristic.

Days **shall** mean calendar days unless otherwise specified.

Debarment means an action taken by the director, under the provisions of this code, to prohibit a person or its affiliate or subsidiary from participating in city procurements.

Department means a departmental work unit as defined by the City of Scottsdale Organization Chart.

Designee means a duly authorized representative of a person holding a superior position.

Director means the director of the purchasing division or designee, except for purposes of purchasing and contracting for legal services, director shall mean the city attorney.

Employee means a non-elected individual drawing a salary through the payroll process of the city.

Existing contracts means, as related to section 2-191 of this code, a currently existing contract of another governmental agency or a national consortium that conforms to the purpose and spirit of this code.

Governmental agency means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other established or official executive, legislative or judicial branch of the State of Arizona or the United States of America.

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 bids means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in the procurement rules.

Materials means all personal property, including equipment, supplies, printing, insurance and

leases of personal property but does not include land, a permanent interest in real property or leasing space.

May shall be construed as being permissive.

Multi-step sealed bidding means a two-phase process consisting of a technical first phase composed of one (1) 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 priced bid considered.

Person shall include the state, the county, a political subdivision of the state, other governmental agency, a corporation, firm, partnership, association, organization, and any other group acting as a unit, as well as an individual. It includes majority shareholders, officers, directors, trustees, receivers or similar representatives.

Price data means information concerning prices, including profit, for materials, services or construction items 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 purchased.

Procedures mean a set of established forms or methods for carrying out the requirements of the rules and this procurement code. Procedures may only be changed after being posted for thirty (30) days in the same manner as other notices are posted in the city. In the event of a conflict, the code shall control over the rules and procedures, and the rules shall control over the procedures.

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

Procurement agent means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes authorized representatives acting within the limits of their authority, as more particularly defined in R2.184.1.

Professional services means those services requiring special knowledge, education or skill and where the qualifications of persons rendering the services are of primary importance. Professional services shall include, but not be limited to, appraisers, attorneys, architects, engineers, surveyors, accountants, psychologists, physicians, and other health professionals.

Proprietary specification means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.

Purchase description means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to or made a part of the solicitation.

Purchasing manager means an employee designated by the purchasing director who shall have direct supervisory control and responsibility for all purchasing personnel, including buyers, bid and contract staff and clerical staff. The purchasing manager is not responsible for the warehouse, disposal of surplus property, stores, graphics, the copy center or the mailroom.

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

Request for proposals means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in the procurement code and applicable rules and procedures.

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.

Rules mean a directive for conduct that is intended to provide regulations for implementing the requirements of this procurement code. Rules may only be changed after being posted for thirty (30) days in the same manner as other notices are posted in the city. In the event of a conflict, the code shall control over the rules and procedures, and the rules shall control over the procedures.

Services mean the furnishing of labor, time or effort by a contractor which does not involve the delivery of a specific end product other than required reports and performance. Services do not include employment agreements.

Shall is to be construed as being mandatory.

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

Specification means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service or construction item for delivery.

Subsidiary means an affiliate of another person.

Surplus property means any supplies, materials and equipment owned by the city that no longer has any use to the city. This includes obsolete materials, scrap materials, supplies, materials and equipment that have completed their useful life cycle.

Suspension means an action taken by the director 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.

RULES:

R2-184.1 Definitions of Terms Appearing in Rules and Procedures

"Procurement Agent" means the Purchasing Director, Purchasing Manager, Bid and Contract Coordinator, Bid and Contract Specialist, Senior Buyer, Buyers, Buyers Aide or any member of the Purchasing Department Staff authorized by the Director to commit the City to a purchase.

"Specialty/Events Contractor" means an individual or partnership who provides staff assistance or recreational instruction for City sponsored participation programs to non City employees. Specialty/Events contractors include, but are not limited to, entertainers, craft or other recreation class instructors, sports officials, scorekeepers, translation services or event supervisors. A Specialty/Events Contractor cannot be part of a company, LLC or corporation, if they are such they are considered a "City Services Contractor".

"*AR*" means City of Scottsdale Administrative Regulations.

"*Recreational Equipment*" means any rented or leased recreational equipment of any kind, with typical examples including, but not limited to, inflatable slides, obstacle courses, "moonwalks", bouncies, climbing walls and other party and event attractions.

"City Services Contractor" means an individual, partnership, company, LLC or corporation that provides non professional services to the City. A City Services Contractor includes, but is not limited to, instructors, facilitators, speakers and consultants that are providing instruction or direction to City employees and any other contractors providing services of a general nature for the City that are part of a company, LLC or corporation. Any contractor providing services that does not specifically meet the Procurement Code definition of Professional Services or Specialty/Events Contractor is by default considered a City Services Contractor.

"Governmental agency" as used in Section 2-191, R2-191 and P2-191, means a municipal, county, state, federal, or any other governmental entity or branch, office, department, or subgroup thereof, as well as any consortium established to benefit the foregoing through cooperative purchasing.

PROCEDURE:

P2-184.1 Definitions of Terms Appearing in Procedures

"Construction Manager" means a person who provides management and/or technical services required to implement a capital project pursuant to the project guidelines.

"Construction Manager At-Risk" means a project delivery method in which:

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

b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

c) Design and construction of the project may be in sequential phases or concurrent phases.

d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

"Customary and Routine" means services that are not special or unusual, but are ordinary, standard and usual for the type of service sought. It may include an established, regular procedure that is commonly practiced in the City's procurement process for that type of service.

"Design Bid Build" means a project delivery method in which:

a) There is a sequential award of two separate contracts.

b) The first contract is for design services.

c) The second contract is for construction.

d) Design and construction of the project are in sequential phases.

e) Finance services, maintenance services and operations services are not included.

"Design-Build" means a project delivery method in which:

a) There is a single contract that includes design services and construction services.

b) Design and construction of the project may be in sequential phases or concurrent phases.

c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

"Job-Order-Contracting" means a project delivery method in which:

a) The contract is a requirements contract for indefinite quantities of construction.

b) The construction to be performed is specified in job orders issued during the contract.

c) Finance services, maintenance services, operations services, preconstruction services, design services and related services may be included.

"Quotation" means a verbal or written commitment to supply materials, services or construction at a stated price and term.

"Request for Quotation" means all documents, whether attached or incorporated by reference, which are used for soliciting quotations in accordance with procedures prescribed in the informal procurement process.

"Request for Qualifications" (RFQ) - means all documents, whether attached or incorporated by reference, which are used for soliciting Statement of Qualification submittals for Professional or Construction Services that will be evaluated solely upon the basis of the qualifications of the

submitters. RFQ's are used primarily with Title 34 Construction, Architect, and Engineering services.

"Statement of Qualifications" (SOQ) – means all documents submitted by a potential contractor in response to a Request for Qualifications. Used by the evaluation committee to determine the best qualified contractor to provide the City certain Professional and Construction Services.

Sec. 2-185 Informal and formal procurement limits; limit adjustment.

(a) *Informal procurement limit.* Procurements of twenty five thousand dollars ($25,000.00) or less shall be made by informal procedures in accordance with the provisions of section 2-187 of this code and any applicable federal and state laws, rules and regulations except as provided in sections 2-181, applicability; 2-189, sole source; 2-190, emergency purchases; 2-191, procurements from solicitations by other governmental agencies and existing contracts; and 2-192, selection procedures for professional services.

(b) *Formal procurement limit.* Procurements of over twenty five thousand dollars ($25,000.00) shall be made by formal procedures in accordance with the provisions of section 2-188 of this code and any applicable federal and state laws, rules and regulations except as provided in sections 2-181, applicability; 2-189, sole source; 2-190, emergency purchases; 2-191, procurements from solicitations by other governmental agencies and existing contracts; and 2-192, selection procedures for professional services.

(c) *Limit adjustment.* The procurement limits set forth above shall be adjusted only through approval by city council.

RULES:

R2-185.1 Limit Adjustment

A. All requests for proposed limit adjustments will be initiated at the direction of the Purchasing Director.

R2-185.2 Calculation of a Procurement's Estimated Value

A. The calculation of a procurement's estimated value is a necessary pre-requisite to determining if it should be subject to the Informal or Formal limit procurement process. The calculation of the initial estimate is only to direct the procurement agent to the proper process. If after conducting a solicitation that was estimated to be informal, it is found to be over the informal limits the solicitation shall be reissued using the formal process.

B. A single lot/one time buy shall have the estimated value calculated by assessing the total value of the item(s) or service(s) excluding any cost for tax but including a cost for freight, installation and any other miscellaneous costs. Similarly all Scopes of Work (SOWs), Contracts and Micro Purchase values for purposes of determining thresholds also are to be calculated excluding any tax but including any freight, installation or other miscellaneous costs.

C. For a recurring requirement as procured through a Pricing Agreement or an Extendable Contract the estimated value shall be calculated by assessing the expected financial impact for a typical fiscal year period. The calculated value shall not aggregate multiple fiscal years' impact when determining the informal or formal limit.

Sec. 2-186 Available funds.

Unencumbered funds to cover the entire purchase must be available in the appropriate account of the operating budget or other appropriate Fund against which the purchase is to be charged prior to the commitment to purchase except in the case of a multi-year contract only funds for the first year of the contract need be appropriated.

PROCEDURES:

P2-186.1 Available Funds Identification

A. Solicitations pursuant to the formal bidding process may not be issued prior to the request to the City Council for use of undesignated funds, contingency funds, or funds transferred between departments unless approved in writing by the City Treasurer or designee.

B. Solicitations pursuant to the formal bidding process may not be issued prior to the appropriate approval for use of certain funds requiring budget transfers to or from capital and salary accounts.

C. Solicitations pursuant to the formal bidding process may not be issued prior to the acceptance by the City Council of any grant funds, unless approved in writing by the City Treasurer or designee.

D. Requestors are responsible for verifying available funds prior to submitting a Purchase Requisition or requesting the issuance of a formal solicitation. Upon request for the issuance of a formal solicitation, the Contract Administrator shall identify the funding source and estimated amount of the expenditure.

E. Requisitions for personal use items or items to be used by organizations, affiliations or associations that are not directly part of the City are not to be submitted to Purchasing as they are not funded by available City budget or funds. Neither are such requests or requisitions to be processed by any other City employee through any other procurement means.

Sec. 2-187 Informal procurement process; cash purchases.

(a) *Informal procurement process.* Except as otherwise provided in this code, any procurement which does not exceed the informal procurement limit established in section 2-185(A) may be made in accordance with established procedures. The procurements shall be made with such competition as is practicable under the circumstances. Procurement requirements shall not be artificially divided or fragmented so as to constitute a purchase under this section and to circumvent the procedures required by section 2-188, formal procurement process. This section shall not be construed to permit informal purchasing if there exists a federal or state law, regulation or rule to the contrary.

(b) *Cash purchases.* Purchases may be made from petty cash accounts pursuant to established rules.

RULES:

R2-187.1 Informal Procurement Process

Determination as to the use of the informal or formal process shall be based on the cost of the items(s) excluding any cost for tax but including a cost for freight, installation, and any other miscellaneous costs and R2-185.2.

R2-187.2 Purchasing Card Purchases

City staff possessing city issued Purchasing Cards may only purchase goods and services for which they have authorization and that do not exceed their established limits. The use of the Purchasing Card shall be in strict conformance with the requirements stated in the Purchasing Card AR-220.

R2-187.3 Check Requisitions

A. Check requisition purchases:

City staff may only purchase requirements that are listed on the Approved Check Requisition Use List by following the Check Requisition AR-208 and process as established by Financial Services, Accounting Division.

R2-187.4 Petty Cash

A. Materials may be obtained with petty cash funds in accordance with the policy, process and maximum amount available in the current AR-270 governing Petty Cash expenditures. Any petty cash expenditure exceeding the maximum allowable amount stated in the AR must have prior authorization from a procurement agent.

B. Due to their variable operating hours and location these departments are authorized to use their petty cash funds to purchase commodities associated with providing their respective services: Recreation, Human Services, Police, Library, Fire, and Fleet.

C. The following Petty Cash Guidelines are established :

1. Petty cash use shall not exceed $50 without the prior approval of a Procurement agent.

2. Procurement agents may approve use up to $125 if appropriate under the circumstances and in the best interest of the City.

3. Applicable account numbers shall be listed on the petty cash slips.

4. Managers shall review petty cash slips for accuracy before signing their approval. A manager's signature is not required before any petty cash purchases made after normal business hours or on weekends or holidays. The manager is required to review and sign all petty cash slips before they are submitted for processing.

5. Petty cash receipts must be for the approved item(s) and are to be returned to the petty cashier within 3 working days.

6. Petty cash receipts and monies must be given directly to the petty cashier and may not be left at an unattended desk.

7. Only approved petty cash item(s) are to be listed on the receipt with the petty cash slip. Any personal items purchased at the same time must be listed on a separate receipt.

8. Petty cash funds may not to be used for personal loans or for making change.

R2-187.5 Micro Purchases, Not Exceeding $10,000

A. For purchases not exceeding $10,000 the procurement agent may seek competition or directly purchase any commodities/services requested provided it is determined that the price is fair and reasonable.

B. When determining the value for a Micro Purchase threshold, the tax is to be excluded, but any cost for installation, freight or other miscellaneous costs are to be included as per R2-185.2 and R2-187.1. In cases of a lump sum purchase, unless the tax can be properly identified and removed from the lump sum value, the lump sum value shall not exceed $10,000 to qualify as a Micro Purchase.

C. In determining how best to procure goods and services not exceeding $10,000 the procurement agent shall assure that the procurement is fair and reasonable and in the best interest of the City.

D. In determining the best interests of the City, the procurement agent must consider, but is not limited to, the following methodologies for procurement: use of competitive quotes, catalog and published price lists, past history and comparable pricing reviews, past competitive awards, past price analysis from Sole Source or Atypical awards, market knowledge of current pricing in the industry, rotation of purchases to suppliers in a competitive range to insure that a stable, competitive, consistent supply base is available, and other factors present that may influence the procurement.

E. In procuring goods/services, the procurement agent should consider the value added costs of labor and time in performing a competitive quote process versus the timely need for the goods/services being procured and make the proper balance between the two competing processes.

F. The procurement agent may consider the use of Small, Disadvantaged, Women and Minority owned business.

G. Written Quotes (fax, email, etc.) are always preferable, but verbal quotes are acceptable. In accepting a verbal quote, it is necessary to record/document, at a minimum, the suppliers name, price quoted, name of person giving the quote and date of quote.

R2-187.6 Small Purchases, Exceeding $10,000 up to the Formal Bid Limit

A. For purchases exceeding $10,000 and up to the formal bid limit the procurement agent may use either the fax quote method or the informal quote method as the procurement agent believes is fair and reasonable and in the best interests of the City. The procurement agent shall take into account the various aspects of the procurement, including but not limited to: availability of a known competitive supplier base, alternate product implications, delivery requirements, processing time of an informal quote vs. a fax quote and such other procurement aspects as the procurement agent's knowledge and experience may suggest.

B. Fax quote

1. The procurement agent should locate a minimum of three potential sources/suppliers and send a request for a fax quote listing all pertinent requirements and specifications which will enable the suppliers to give a proper quote based on the request. The request for quote should be of sufficient clarity to require no further information from the City.

2. The fax quote should state a closing date and time, after which no further quotes will be accepted, unless the closing time is extended by the procurement agent.

3. The request for a fax quote should be sent out with a response time of 3 to 5 days, depending on the specific procurement, but the procurement agent may use his discretion in setting the response time, so long as it is reasonable.

4. All quotes must be received in writing (letter, fax, e-mail) and signed/sent by an authorized agent of the bidder submitting the quote. It is preferred that the bidder's quote be submitted on the COS fax quote form, but it is not mandatory.

5. An award shall be made to the lowest responsible bidder submitting a responsive quotation. In determining the lowest bidder, the amount of the applicable City Transaction Privilege or Use Tax is not a bid factor if a competing bidder located outside the City is not subject to an equal tax rate.

6. If only one quote is received the procurement agent shall determine if the price is fair and reasonable and in the best interest of the City before making any award. If the procurement agent cannot make that determination, then the procurement agent shall issue a request for informal quotes in accordance with R2-187.6(C).

C. Informal quote

1. The procurement agent should use a request for informal quote when it may be determined that a fax quote is not the appropriate method. Such a determination may be based on any of the following:

   a) The procurement agent cannot locate an acceptable number of potential suppliers;

   b) There are potential issues over alternate products;

c) There is such a complexity to the purchasing requirement that a more in-depth procurement method is required;

d) Such other methods as may be appropriate under the circumstances.

2. A request for informal quote solicitation number shall be issued to track the solicitation, and shall include the "QT" designation in the solicitation system for Informal Quotes.

3. The procurement agent shall provide all the necessary data for the requested informal quote. The request for informal quote shall be uploaded to the City Purchasing web site and shall be available for review and downloading by any supplier.

4. Whenever practicable, Sections 2-202 through 2-205 and applicable rules regarding specifications shall be used in the development of the specifications for the request for informal quote.

5. All suppliers that subscribe to the City's List Server shall be sent notice that the informal quote is available for their review and downloading.

6. A request for informal quote typically will be posted on the web site for 14 to 21 days, depending on the specific procurement. A date for an alternate product submittal, if appropriate, shall be stated in the request for informal quote documents.

7. A request for informal quote shall state a closing date and time, after which no further quotes will be accepted, unless the procurement agent extends the closing date.

8. There shall be no formal opening or public reading of the informal quotes received at the designated closing time. Bid Tabulations are not required to be posted on the City website for such informal quotes.

9. All quotes must be received in writing (letter, fax, email) and signed/sent by an authorized agent of the bidder submitting the quote. While it is preferred that the informal quotes be submitted on the COS informal quote form, it is not mandatory, and is subject to the procurement agents final decision as stated within the solicitation document.

10. Award of the contract shall be made to the lowest responsible bidder submitting a responsive informal quote. In determining the lowest bidder, the amount of the applicable City Transaction Privilege or Use Tax is not a bid factor if a competing bidder located outside the City is not subject to an equal tax rate.

11. If only one quote is received, the procurement agent shall determine if the price is fair and reasonable and in the best interest of the City before making any award. If time permits, the procurement agent may initiate a second solicitation if it is reasonable to believe that additional responses will be received.

12. Informal quotes shall be reviewed for the following information:

a. Quotes qualified in any manner are subject to rejection in whole or in part;

b. Alternate quotes shall not be considered unless specifically permitted in the Request for Informal Quote;

c. In the event of a discrepancy between the unit price and the extension, the unit price shall govern;

d. In the event of tied quotes, the tie shall be broken according to the following factors in order of priority:

1. Business location:

a. Scottsdale

b. Phoenix Metro area

c. State of Arizona

2. Drawing lots.

R2-187.7 Pricing Agreements

A. Pricing Agreements establish pricing for a commodity or service where the City will have repeated but undetermined need for the commodity or service. The pricing agreement is not a commitment to purchase, but rather a basic ordering agreement or undetermined use agreement that facilitates the ordering of commodities or services at the quoted and agreed to pricing. The commodity items are usually similar in nature and are provided by one supplier with fixed line item pricing. Services are usually for a particular skill and established based upon an hourly rate. The initial term of the pricing agreement shall be for 1 year with up to 4 one year options to extend the pricing agreement for each option exercised.

B. The pricing agreement shall be executed by the responsible procurement agent and the vendor signing the pricing agreement.

The pricing agreement shall be given a pricing agreement number, consisting of the pricing agreement solicitation number, including the "PA" designation for pricing agreements. The pricing agreement form shall also be included for execution.

C. Throughout the term of the pricing agreement, PO's shall be issued referencing the pricing agreement number to assure compliance with the prices quoted in the referenced pricing agreement.

D. Pricing agreements up to the formal bid limit shall follow the informal quote requirements for Small Purchases under R2-187.6, except that all references to an informal quote shall be replaced with a pricing agreement.

R2-187.8 Extendable Contracts

A. Extendable contracts are usually 1 year contracts with options to extend up to 4 additional years for goods or services. Tasks and needs are released against the

extendable contract by the purchasing agent and/or the Contract Administrator.

B. Extendable contracts up to the formal bid limit shall follow the informal quote requirements for Small Purchases as provided in R2-187.6, except that all references to an informal quote shall be replaced with Extendable Contracts. If the procurement agent determines that the informal request for proposal process under R2-187.11 is more appropriate due to the circumstances, the procurement agent may substitute that process. Extendable contracts over the informal limit shall follow the Formal bid limit requirements in Section 2-188.

R2-187.9 Multi-Year Contracts

A. Multi-Year contracts are contracts that are for more than 1 year in length and are usually at a firm, fixed price for the initial term of the contract. They can also have additional optional years specified to be exercised at the City's discretion. Multi-year contracts may not exceed 5 years total unless approved by City Council. An example of a multi-year contract is a contract for 3 years with two 1 year options for a total potential of 5 years.

B. All multi-year contracts must have proper justification stating the benefit to the City of the multi-year contract, as opposed to using an extendable contract method. The justification should include, but not be limited to, a comparison of net present value vs. future value and, when determining the lowest bid price, the total costs of all the years including any optional years.

C. Careful review of circumstances, length of contract, industry trends and all other pertinent issues should be considered in determining if a multi-year contract should be forwarded to City Council for review and concurrence.

R2-187.10 Atypical Purchases Not Exceeding $25,000

A. Atypical purchases, as defined in Section 2-184, may be purchased by direct selection from one vendor upon authorization by the director. The procurement agent must determine that the price is fair and reasonable and in the best interest of the City before making any atypical purchase.

B. It is not intended that an atypical purchase shall supersede Sole Source procurements as otherwise provided in Section 2-189.

C. All quotes must be received in writing (letter, fax, e-mail) and signed/sent by an authorized agent of the bidder submitting the quote. It is preferred that the quotes be submitted on the COS fax quote form, but it is not mandatory.

R2-187.11 Professional Services Procurements

A. Professional services not exceeding $15,000:

1. Selecting contractors to provide Professional Services, as defined in Section 2-184, shall be made by the Contract Administrator who may seek competition or directly select the contractor that best meets the City's needs.

2. The Professional Services Scope of Work (SOW) may not exceed 1 year in length.

The contracts may not have any option years and are not extendable. If extendable requirements are required, the Contract Administrator shall contact the Purchasing staff to issue an informal solicitation as per R2-187.11 C.

3. The contractor and Contract Administrator shall be required to sign a priced scope of work statement or other contractual documents approved by the procurement agent. The contractor shall be required to provide a W9 Taxpayer Form and the appropriate insurance certifications. The Professional Services Scope of Work (SOW) template is available on the Purchasing Intranet website for Contract Administrators' use. The standard language in the template is not to be changed without the prior approval of the Purchasing Director or the City Attorney.

B. A.R.S. Title 34 defined Classifications/services, mainly Architect and Engineering services exceeding $15,000 but not exceeding the Formal Bid Limit of $25,000:

1. Only the Capital Project Management Department may use this procurement process as part of the procurement delegation under P2-180.2 (B) to the Public Works Executive Director.

2. Restricted for use only on A.R.S. Title 34 defined "classifications/services" which mainly are Architects and Engineering Services specifically for "Title 34 Public Buildings and Improvements" projects.

3. Selecting Architect and Engineering Services will be made by the Contract Administrator/Project Manager who may seek competition or directly select the contractor that best meets the City's needs.

4. Only a Statement of Qualifications submitted in response to a Capital Project Management (CPM) Request for Qualifications is allowed to be submitted via e-mail.

5. An Architect or Engineering contract may not exceed 1 year in length. A contract for Architect or Engineering services is not extendable. Any extendable informal contract must be issued in accordance with the informal solicitation procedures of R2-187.11 C.

6. The Contractor and Contract Administrator shall be required to sign the priced Engineering or Architect Services Over $15,000 contract documents approved by the procurement agent. The contractor must provide a W9 Taxpayer Form and the appropriate insurance certifications. The Engineering or Architect Services Over $15,000 Contract templates are available on the Purchasing Intranet website for Contract Administrators' use. The standard language in the template is not to be changed without the prior approval of the Purchasing Director or the City Attorney.

   Solely for the purposes of this Contract the final signature page of the Engineering or Architect Services Over $15,000 Contract template may be replaced with the Engineering or Architects SOW Up To $15,000 signature page that does not require the Mayor's, City Engineer's, City Clerk's or City Attorney's signatures.

C. Professional services exceeding $15,000 up to the formal bid limit:

1. Selection of contractors to provide Professional Services exceeding $15,000 up to the formal bid limit shall be made using the informal request for proposal process.

2. The procurement agent shall conduct the informal request for proposal process except for the stated procurement delegations identified in Section P2-180.2.

3. An informal request for proposal solicitation number shall be issued to follow the solicitation, using the "IP" designation for Informal Request for Proposals

4. The procurement agent shall provide all the necessary data, with the assistance of the Contract Administrator, to prepare the informal request for proposal and upload it to the City Purchasing web site.

5. The informal request for proposal typically includes, at a minimum :

    a. The date, time and address where proposals are to be received.

    b. The type of services required including a description of the work involved.

    c. A copy of the type of contract to be used shall be attached (i.e. Engineering, Architectural or Professional Services)

    d. A requirement for the winning contractor to provide a W9 Taxpayer form and the appropriate insurance certification(s).

    e. An estimated duration that the services shall be required or a request of the proposed duration necessary to complete the project, except for technical registrants exempted under ARS §34-603.

    f. Cost and pricing data may be requested, except for technical registrants exempted under ARS 34-603.

    g. The evaluation criteria shall be listed in order of importance.

    h. The minimum information that the proposers submittal documents must contain.

    i. Such other information as the procurement agent or contract administrator considers necessary.

6. Whenever practicable, Sections 2-202 through 2-205 and applicable rules regarding specifications shall be used in the development of the specifications for the informal request for proposal.

7. All suppliers that subscribe to the City's List Server/Email Notification system shall be sent notice that the informal request for proposal is available for their review and downloading.

8. An informal request for proposal typically will be posted on the web site for 14 to 21 days, depending on the specific request for proposal.

9. The informal request for proposal must state a closing date and time. Late

proposals shall not be accepted, unless an extension to the request for proposals is granted by the procurement agent.

10. There shall be no formal opening or public reading of the proposals at the closing date and time of the solicitation,

11. All proposals must be received in writing (letter, fax or as designated in the solicitation documents) and signed by an authorized agent of the bidder submitting the proposal. Only Statements of Qualifications submitted to the Capital Project Management (CPM) Request for Qualifications under R2-187.11B may be submitted via e-mail.

12. Evaluation of all proposals shall be based upon the evaluation criteria established in the informal request for proposal.

13. Best and Final offers and tied proposals shall follow the rules in Section R2-188.20 and R2-188.21.

14. The Contract Administrator shall develop contractual documents after the Purchasing Division concurs with the summary of the contract administration's evaluation.

15. Change orders or modifications that increase the contract from the informal procurement limit to the formal procurement limit are required to conform to Section 2-201.

16. If only one proposal is received, the procurement agent, in conjunction with the Contract Administrator, shall determine if the price is fair and reasonable and in the best interest of the City before making any award. If time permits the procurement agent may initiate a second solicitation.

R2-187.12 Specialty/Events Contractor Services and Recreational Equipment Procurements

A. Specialty/Events contractor services/recreational equipment not exceeding $15,000:

1. Specialty/Events Contractors, for use typically with onetime events, as defined in R2-184, shall be selected by the contract administrator utilizing guidelines established by this Rule.

2. Specialty/Events contractors shall be required to sign a City Specialty/Events contract whose format has been approved by the procurement agent and may proceed to perform the work as directed by the Contract Administrator once the contract and all applicable information is completed and executed. The contractor shall be required to provide a W9 Taxpayer Form. Templates are available on the Purchasing Intranet website for the Contract Administrator's use.

3. Recreational equipment contracts, for use typically with onetime events, as defined in R2-184.1, must be used when renting or leasing recreational equipment of any kind, with typical examples including, but not limited to, inflatable slides, obstacle courses, "moonwalks", bouncies, climbing walls, and other party and event

attractions. Recreational equipment contractors shall be selected by the Contract Administrator utilizing guidelines established by this Rule.

4. Recreational equipment contractors shall be required to sign a City Recreational equipment contract whose format has been approved by the procurement agent and may proceed to perform the work as directed by the Contract Administrator once the contract and all applicable information is completed and executed. The contractor shall be required to provide a W9 Taxpayer Form and all appropriate insurance certifications. The Recreational Equipment contract shall also require the approval of Risk Management. Templates are available on the Purchasing Intranet website for Contract Administrator's use.

5. Selection of specialty/events contractor and recreational equipment contractor guidelines:

   a. The contractor shall be selected by departmental staff having responsibility for the event(s) for which the contractor's services are required.

   b. The selection process may include recruitment, application and interview.

6. Contract Preparation:

   a. Approved contract formats are available for both Specialty/Events and Recreational Equipment Contracts on line at the Purchasing Intranet web site. The most up to date version should always be used. No other format may be used.

   b. Only the Purchasing Director or the City Attorney's office may make revisions to these standard contracts.

   c. These contracts are limited to use in contracting with individuals meeting the definition of Specialty/Events or Recreational Equipment contractor as defined in R2-184.1.

   d. Contracts shall be executed by signature requirements contained on the contract document.

7. Contract Payment and Monitoring:

   a. The Contract Administrator is responsible for insuring the City complies with the Fair Labor Standards Act when contracting with a City employee.

   b. Contract personnel, except those persons who are City employees paid by the payroll process, shall be paid in accordance with the City's check requisition process.

   c. The Contract Administrator shall be responsible for tracking payments and for ensuring contract terms are met.

B. For Specialty/Events Contractor and/or Recreational Equipment contract amounts exceeding $15,000 and up to the formal bid limit, the procurement agent shall follow the

informal request for proposal process as defined in R2-187.11, except that a City Services over $10,000 sample contract shall be used in lieu of the Engineering, Architectural or Professional Services contract.

R2-187.13 Other City Services (Non Professional Services; Non Specialty/ Events Contractor; Non Recreational Equipment) Procurements

For other services that do not meet the Procurement Code definitions of Professional Services, Specialty/Events Contractor, or Recreational Equipment the following rules shall apply up to the Formal limits.

A. For a City Services Contract, as defined in R2-184.1, up to $10,000 the Contract Administrator (CA) may recommend a contractor and may utilize a process that provides for adequate and reasonable competition whenever practicable.

The Contractor and Contract Administrator shall be required to sign priced City Services Scope of Work (SOW) contract documents found on the internal Purchasing web site and approved by Purchasing Staff (Director, Manager, Buyer, Bid & Contract Specialist or designee).

The contract template format may not be altered without the approval of the Purchasing Director, other than to complete and populate the proper information into the template. When determining the value for a City Services SOW threshold, the tax is to be excluded, but any cost for installation, freight or other miscellaneous costs are to be included as per R2-185.2 and R2-187.1. In cases of a lump sum purchase, unless the tax can be properly identified and removed from the lump sum value, the lump sum value shall not exceed $10,000 to qualify as a City Service SOW.

1. A source selection recommendation of a Contractor for the procurement of Services costing ten thousand dollars ($10,000) or less may be made by the Contract Administrator and may utilize a process which provides for adequate and reasonable competition whenever practicable. Documentation describing the selection process and price reasonableness is to be provided with the SOW to Purchasing.

2. The Contract Administrator is to provide a comprehensive Scope of Work Description of Services detailing all of the required tasks, due dates, deliverables and fees associated with them.

3. The Contract Administrator is to prepare and completely fill in the SOW and provide a DRAFT copy to Purchasing Staff (Buyer, Bid & Contract Specialist, Manager or Director) for preliminary editing and review PRIOR to any signatures from the Contractor.

4. After the SOW has been preliminarily edited by Purchasing staff, then the Contractor is to sign the SOW first and the Contract Administrator shall be required to sign the priced SOW second.

5. Once the Contract Administrator has a complete package of information, including, but not limited to, the Contractor and CA signed SOW, all proper and complete Insurance Certificates, Lawful presence affidavit (if required) and Purchase Requisition, etc., the CA shall forward the package to Purchasing Staff.

6. It is the CA's responsibility to record the Smart Stream Purchase requisition number on the SOW prior to submitting the entire package of information to Purchasing. No work is authorized to commence prior to Purchasing Staff reviewing, approving and signing the SOW and listing the Purchase Order number on the signature page of the SOW.

7. The SOW is fully executed when the Purchasing Staff signs the SOW. Purchasing Staff will not execute and sign the SOW until all the required information, including all Insurance Certificates are submitted and correct.

   Once the Purchasing Staff executes and signs the SOW they will provide a signed, executed copy to the CA. The CA at that time may provide a copy of the fully executed SOW to the contractor and may proceed to start work with the contractor.

8. The City Services SOW process up to $10,000 may be used to accommodate instructors, facilitators, speakers, consultants, etc. that are not individuals or partnerships and/or are providing their services to City employees and thus do not qualify for use of the Specialty/Events Contractor process, nor the Professional Services contracts

9. The City Services SOW typically is not to be used for services that exceed 1 year in length. They are not to have any option years and are not extendable. If any of these conditions are required the Contract Administrator should contact Purchasing and use the City Services Contract.

B. For City Services over $10,000 up to $25,000 the Contract Administrator will provide any specifications and other documentation necessary to permit Purchasing to perform an informal Request for Proposal solicitation following the process listed below in Subsection # 4.

1. When determining the value for a City Services SOW or contract threshold, the tax is to be excluded, but any cost for installation, freight or other miscellaneous costs are to be included as per R2-185.2 and R2-187.1. In cases of a lump sum purchase, unless the tax can be properly identified and removed from the lump sum value, the lump sum value shall not exceed $10,000 to qualify as a City Service SOW. When the value exceeds $10,000 a City Services Contract shall be used instead.

2. The City Services Contract process over $10,000 up to $25,000 is to be used for all other services, including instructors, facilitators, speakers, consultants, etc. that are companies, LLC's, corporations and/or are providing their services to City employees and therefore do not qualify for use of the Specialty/Events Contractor process, nor the Professional Services contracts.

3. After the award recommendation the Contract Administrator shall obtain the insurance certificate and provide it to Purchasing for processing. The certificate of insurance must be obtained and on file before any work commences. The Contract Administrator shall obtain all the required approvals and signatures on the City Services Over $10,000 Contract form and distribute copies accordingly.

4. City services exceeding $10,000 up to the formal bid limit:

   a) Selection of contractors to provide City Services exceeding $10,000 up to the formal bid limit shall be made using the informal request for proposal process.

   b) The procurement agent shall conduct the informal request for proposal process.

   c) An informal request for proposal solicitation number shall be issued to follow the solicitation, using the "IP" designation for Informal Request for Proposals.

   d) The procurement agent shall provide all the necessary data, with the assistance of the Contract Administrator, to prepare the informal request for proposal and upload it to the City Purchasing web site.

   e) The informal request for proposal shall include, at a minimum:

      1) The date, time and address where proposals are to be received,

      2) The type of services required including a description of the work involved,

      3) A copy of the City Services contract to be used shall be attached,

      4) A requirement for the winning contractor to provide a W9 Taxpayer form and the appropriate insurance certification,

      5) An Estimated duration that the services shall be required or a request of the proposed duration necessary to complete the project,

      6) Cost and pricing data may be requested,

      7) The evaluation criteria shall be listed in order of importance,

      8) The minimum information that the proposer's submittal documents must contain,

      9) Such other information as the procurement agent or contract administrator considers necessary.

   f) Whenever practicable, Sections 2-202 through 2-205 and applicable rules regarding specifications shall be used in the development of the specifications for the informal request for proposal.

   g) All suppliers that subscribe to the City's List Server/Email Notification system shall be sent notice that the informal request for proposal is available for their review and downloading.

   h) An informal request for proposal typically will be posted on the web site for 14 to 21 days, depending on the specific request for proposal.

i) The informal request for proposal must state a closing date and time. Late proposals shall not be accepted, unless an extension to the request for proposals is granted by the procurement agent.

j) There shall be no formal opening or public reading of the proposals on the closing date and time of the solicitation.

k) All proposals must be received in writing (letter, fax) and signed by an authorized agent of the bidder submitting the proposal.

l) Evaluation of all proposals shall be based upon the evaluation criteria established in the informal request for proposal.

m) Best and Final offers and tied proposals shall follow the requirements of R2-188.20 and R2-188.21.

n) The Contract Administrator may develop contractual documents after the Purchasing Division concurs with the summary of the contract administration's evaluation.

o) Change orders or modifications that increase the contract from the informal procurement limit to the formal procurement limit must conform with Section 2-201.

p) If only one proposal is received, the procurement agent, in conjunction with the Contract Administrator, shall determine if the price is fair and reasonable and in the best interest of the City before making any award. If time permits the procurement agent may initiate a second solicitation.

C. For all Other City Services (Non Professional, Non Specialty/Events Contractor Services, Non Recreational Equipment) over $25,000, the Formal Solicitation process in R2-188 shall be followed.

PROCEDURES:

P2-187.1 Informal Procurement Process - Quote File Requirements

A. The procurement agent may set up a Quote File when they are performing research or obtaining pricing.

B. Quote Files should be set up for all procurements that use the fax quote process.

C. The procurement agent shall set up a Quote File for each procurement that uses the request for informal quote or informal request for proposal process.

D. The procurement agent shall set up Quote Files for all Atypical, Sole Source (SS) and Other Government Entity (GV) purchases that are over $10,000.

E. The Contract Administrators shall maintain their own quote/contract files as appropriate for Professional Services and Specialty Contractors.

Sec. 2-188 Formal procurement process; invitation for bids; requests for proposals.

(a) *Formal procurement process.* Except as otherwise provided in this code, a procurement which exceeds the formal procurement limit specified in section 2-185(b), formal procurement limit, shall be made in accordance with this section and established rules and procedures.

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

(1) Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids, in accordance with established rules. Said notice may include publication one (1) or more times in a newspaper of general circulation, as determined by the director or designee.

(2) Sealed bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as may be specified by rule, together with the name of each bidder shall be recorded. This record shall be open to public inspection at the bid opening in a manner prescribed by rule. The bids shall not be open for public inspection until after a contract is awarded, whether the award is made by the director, his designee or the city council. Except to the extent the bidder designates and the director concurs, trade secrets or other proprietary data contained in the bid documents shall remain confidential in accordance with established rules.

(3) Bids shall be unconditionally accepted without alteration or correction, except as authorized in item (b)(4) of this section. Bids shall be evaluated based on the requirements set forth in the invitation for bids as prescribed in the procurement rules. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

(4) Correction or withdrawal of erroneous bids before or after bid opening, based on bid mistakes, may be permitted in accordance with established rules. After bid opening, no corrections in bid prices or other provisions of bids prejudicial to the best 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 director.

(5) The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids. The amount of any applicable city transaction privilege or use tax is not a factor in determining the lowest bidder to the extent a competing bidder located outside the city is not subject to an equal tax rate.

(6) The multi-step sealed bidding method may be used if the director determines in writing that it is not practicable to initially prepare a definitive purchase description which is suitable to permit an award based on competitive sealed bidding. An invitation for bids may be issued requesting the submission of technical offers to be followed by an invitation for bids soliciting priced offers limited to those bidders whose offers are determined to be technically acceptable

under the criteria set forth in the first solicitation.

(c) *Request for proposals.* If, under established rules, the director determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the city, a contract may be entered into by competitive sealed proposals.

(1) Notice of the request for proposals shall be given in the same manner as provided in subsection (b)(1) above.

(2) Proposals shall be opened publicly at the time and place designated in the request for proposals. The name of each offeror shall be publicly read and recorded. All other information contained in the proposals shall be confidential so as to avoid disclosure of contents prejudicial to competing offerors during the process of evaluation. The proposals shall not be open for public inspection until after contract award, whether the award is made by the director, his designee or the city council. Except to the extent the offeror designates and the director concurs, trade secrets or other proprietary data contained in the proposal documents shall remain confidential in accordance with established rules. The director may release a summary of the evaluation results if determined not to be harmful to the competitive bid process or in the best interests of the city.

(3) The request for proposals shall state the relative importance of price and other evaluation factors. Specific numerical weighting is not required.

(4) As provided in the request for proposals, and under established rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before award for the purpose of clarification. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(5) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The amount of any applicable city transaction privilege or use tax is not a factor in determining the most advantageous proposal to the extent a competing offeror located outside the city is not subject to an equal tax rate. The contract file shall contain the basis on which the award is made.

RULES:

R2-188.1 Invitation for Bids, Format, Content, Public inspection

A. In all competitive sealed bidding procurements, the Purchasing Office shall issue an Invitation for Bids on a format approved by the Director.

B. The Invitation for Bids shall include the following:

1. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for bid opening, the address of the office where bids are to be received, the period that the bid shall remain open, and any other special information.

2. The purchase description, specifications, evaluation criteria, delivery or performance schedule, and inspection and acceptance requirements.

3. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

4. If the Invitation for Bids incorporates documents by reference, the Invitation for Bids shall specify where such documents may be obtained.

5. An Invitation for Bids may require the submission of bid samples, descriptive literature, and technical data and may require inspection or testing of a product before award.

6. Invitations for Bid or Requests for Proposal shall include a clause requiring all bidders to certify when they sign and submit their bid or proposal that they have not directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive proposing in connection with the preparation or submission of their offer.

C. Solicitation Opportunities.

Solicitations currently listed on Purchasing's web site are available for download. Additionally there is a list of all construction related projects.

Interested bidders may subscribe to the City's List Server to receive an e-mail based notification, on a twice weekly basis, of all new solicitation opportunities. Bidders may add to or remove their existing subscription from the web site. Bidders may search other current postings on the City's web site.

D. A copy of the Invitation for Bids shall be made available for public inspection at the Purchasing Office upon request.

E. It is the responsibility of any bidder to give notice, in the form of written questions, prior to bid opening on any item or issue contained in any form of bid solicitation, that it believes should not be included or contained in any amendment thereto, or that the City failed to include in the solicitation that should have been included, and by such notice, the City could have cured the problem if such item or issue had been timely raised or objected to. Failure to give notice may constitute a waiver by the bidder of its right to object to the inclusion or lack of inclusion of the item or issue in the solicitation in any subsequent protest filed by any unsuccessful bidder.

R2-188.2 Pre-Bid Conference

A. A pre-bid conference may be conducted within a reasonable time before bid opening to discuss the procurement requirements and solicit comments from prospective bidders.

Addenda to the IFB may be issued, if necessary, in accordance with R2-188.3.

R2-188.3 Addenda to Invitation for Bids

A. An addendum to an Invitation for Bids shall be issued if necessary to:

1. Make changes in the Invitation for Bids;

2. Correct defects or ambiguities;

3. Furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of the information will prejudice the other bidders; or

4. Inform bidders of alternate materials or services accepted for bid.

B. Addenda to Invitation for Bids shall be so identified and shall be sent by the Purchasing Office via an email notification to all persons who downloaded the Invitation for Bids from the Purchasing web site and are on the downloader's listing.

Addenda shall be issued within a reasonable time before bid opening to allow prospective bidders to consider them in preparing their bids. If the City determines the time and date set for bid opening does not permit sufficient time for bid preparation, the time and date for bid opening shall be extended in the addendum or, if necessary, by fax, e-mail, or telephone and then confirmed in the addendum.

R2-188.4 Pre-Opening Modification or Withdrawal of Bids

A. The bidder may modify or withdraw its bid at any time before bid opening if the modification or withdrawal request is received in writing before the time and date set for bid opening at the location designated in the Invitation for Bids for receipt of bids.

B. All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.

R2-188.5 Late Bids, Late Withdrawals, and Late Modifications

A. A bid, modification or withdrawal is late if it is received at the specific location designated in the Invitation for Bids for receipt of bids after the time and date cited in the solicitation. The City is not responsible for late bids as a result of their being sent U.S. mail and they not being distributed through the City mail couriers in time to the designated location. It is the responsibility of the bidder to make sure their bids are properly received before the due date and time as per R2-188.6 (A).

B. Bidders submitting bids, modifications or withdrawals that are rejected as late shall be notified as soon as practicable.

C. All submissions considered late, regardless of the manner in which they were received by the City, shall be returned to the bidder. All documents concerning a late bid, late modification, or late withdrawal shall be retained in the appropriate procurement file. City staff will refuse to accept late bids delivered in person at the designated location.

R2-188.6 Receipt, Opening, Recording of Bids, and Confidential Information

A. Each bid and modification shall be date and time-stamped upon receipt at the designated location listed in the Invitation for Bid and stored unopened in a secure place until the time and date set for bid opening.

The bidder is solely responsible for making sure their bid submissions are received at the designated location in the Invitation for Bids. U.S. Mail delivery to the City does not ensure this requirement will be met, and the City takes no responsibility for any such submittals if they are received late at the designated location.

B. Bids and modifications shall be opened publicly and in the presence of one or more witnesses at the time, date, and location designated in the Invitation for Bids for bid opening. The name of each bidder, the bid price, and other information deemed appropriate shall be read aloud and recorded on a bid abstract. The name of the required witness shall also be recorded.

The "As Read" bid abstract/tabulation shall be available for public inspection and will be posted on the purchasing web site.

The "As Read" bid abstract/tabulation listing is subject to change as a result of the final comprehensive review of all the bid submittals for accuracy and compliance with the bid specifications.

A "Final Recommended" bid abstract/tabulation will be completed after a detailed review and evaluation of the complete bid submittals. The "Final Recommended" abstract/tabulation will supersede and replace the "As Read" abstract/tabulation and be posted on the purchasing web site.

C. Bids shall be valid for a minimum of 90 days after opening, or as otherwise identified in the solicitation.

D. After contract award, at the Directors discretion, 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 the bid as confidential, disclosure of such portion shall be made in accordance with the following:

1. If a bidder believes that a bid contains information that should be withheld, a statement advising the Director 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 Director makes a written determination. Quoted, bid and proposed pricing is not and will not be considered confidential and will be subject to release to Public Records Requests.

2. The Director shall review the statement and information and shall determine in writing whether the information shall be withheld.

3. If the Director makes the determination to disclose the information, the Director shall inform the bidder in writing of such determination.

R2-188.7 Mistakes in Bids

A. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in R2-188.4A, Pre-Opening Modification or Withdrawal of Bids.

B. After bid opening, a bid mistake based on a bidder's decision or a bidder's error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to the following:

1. After bid opening, the Director may either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the City. Nothing in this section shall be construed as requiring the Director to waive any informality or to allow their correction.

2. After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake and the intended bid are evident on the face of the bid.

3. After bid opening, the Director may permit a bidder to withdraw a bid if:

   A. A mistake not based on a bidder's decision or a bidder's error in judgment is evident on the face of the bid but the intended bid is not evident; or

   B. The bidder establishes by clear and convincing evidence that a mistake not based on a bidder's decision or a bidder's error in judgment was made.

4. In the event of a discrepancy between the unit price and the extension, the unit price shall govern.

5. Mistakes shall not be corrected after bid opening or after award of the contract except where the Director makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

C. If correction or withdrawal of a bid after the bid opening is permitted or denied the Director shall prepare a written determination showing that the relief was permitted or denied under these rules and regulations.

R2-188.8 Bid Evaluation and Award

A. The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids.

B. A product acceptability evaluation, if deemed necessary, shall be conducted solely to determine whether a bidder's product is acceptable as set forth in the Invitation for Bids and not whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as non-responsive.

C. Bids shall be evaluated to determine which bidder offers the lowest cost to the City in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively

measurable criteria that are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost and other identifiable costs or life cycle cost formula. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the Director has available concerning future use.

D. A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless the bidder is also the lowest bidder as determined under Subsection C of this Rule. This Rule does not permit negotiations with any bidder. However under rare circumstances and with a written Director's determination it may be possible to conduct a Best and Final Offer (BAFO) request. This is not a preferred method and should not be used unless all other scenarios have been exhausted.

E. In the event two or more low responsive bids from responsible bidders are identical in price and meet all the requirements and criteria set forth in the Invitation for Bids, the tie shall be broken according to the following factors in order of priority:

1. Business location

    a. Scottsdale

    b. Phoenix Metropolitan area

    c. State of Arizona

2. Draw lots.

F. A record showing the basis for determining the successful bidder shall be retained in the procurement file.

G. In accordance with 2-201 :

1. For Administratively awarded solicitations the Notices of Intent to Award formal awards shall be posted on the Purchasing web site. It is the bidder's responsibility to access this web site to view Purchasing's Notice of Intent to Award listings.

   This is the only notification a bidder shall be given regarding the posting of Notices of Intent to Award. All Notices of Intent to Award shall be posted for at least 7 days prior to the award. At the expiration of the Notice period, Purchasing shall issue a Purchase Order or Notice of Award to the successful bidder.

2. For City Council awarded solicitations the official notice of intent to award is accomplished via the City Council agenda publication 10 days prior to the City Council meeting. Additionally the Purchasing department will also list the Intent to Award and the City Council meeting date on the Purchasing Internet web site as soon as practicable. Final issuance of a Purchase Order, Contract or Notice to Proceed will be completed after City Council approval.

R2-188.9 Only One Bid Received

If only 1 responsive bid is received in response to an Invitation for Bids, an award may be made to the single bidder if the Director determines that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise the bid may be rejected pursuant to the provisions of Section 2-193, Cancellation of Solicitation, and:

1. New bids may be solicited; or

2. The proposed procurement may be canceled; or

3. If the Director determines in writing that the need for the material or service continues and the acceptance of the one bid is not advantageous to the City, the procurement may then be conducted under Section 2-189, Sole Source or Section 2-190, Emergency Purchase, as appropriate.

R2-188.10 Multi-Step Sealed Bidding

A. The multi-step sealed bidding method may be used if the following conditions exist:

   1. Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the City;

   2. Definite criteria exist for evaluation of technical offers;

   3. More than one technically qualified source is expected to be available; and

   4. A fixed-price contract should be used.

B. The Director may hold a conference with bidders before submission or at any time during the evaluation of the unpriced technical offers.

R2-188.11 Phase One of Multi-Step Sealed Bidding

A. Multi-step sealed bidding shall be initiated by the issuance of an Invitation to Submit Technical Offers. The Invitation to Submit Technical Offers shall be issued according to R2-188.1, Invitation for Bids, and shall contain the following information:

   1. Notice that the procurement shall be conducted in two phases;

   2. The best description of the material or services desired;

   3. A statement that unpriced technical offers only shall be considered in phase one;

   4. The requirements for the technical offers, such as drawings and descriptive literature;

   5. The criteria for evaluating technical offers;

   6. The closing date and time for receipt of technical offers and the location where

offers should be delivered or mailed;

7. A statement that discussions may be held; and

8. A statement that only bids based on technical offers determined to be acceptable in phase one shall be considered for award.

B. The Invitation to Submit Technical Offers may be amended after the submission of the unpriced technical offers. The amendment shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend the offers already submitted. If an amendment materially changes the procurement, the Invitation to Submit Technical Offers shall be canceled in accordance with Section 2-193, Cancellation of Solicitations.

C. Unpriced technical offers shall not be opened publicly, but shall be opened in the presence of the Procurement Agent and at least one witness. The contents of unpriced technical offers shall not be disclosed to unauthorized persons.

D. Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the contract file. If the Director determines a bidder's unpriced technical offer is unacceptable, the Director shall notify that bidder of that determination and that the bidder will not be afforded an opportunity to amend their technical offer.

E. The Director may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During discussions, the Director shall not disclose any information derived from one unpriced technical offer to any other bidder. After discussions, the Director will establish a closing date for receipt of final technical offers and shall notify in writing bidders submitting acceptable or potentially acceptable offers of the closing date. The Director shall keep a record of all discussions.

F. At any time during Phase One, offers may be withdrawn in accordance with R2-188.4A, Pre-Opening Modifications or Withdrawals.

R2-188.12 Phase Two of Multi-Step Sealed Bidding

A. Upon completion of Phase One, the Director shall issue an Invitation for Bids and conduct Phase Two under R2-188.3 through R2-188.8, Invitation for Bids, as a competitive sealed bidding procurement, except that the Invitation for Bids shall be issued only to bidders whose technical offers were determined to be acceptable in Phase One.

B. Unpriced technical offers of unsuccessful bidders shall be open to public inspection except to the extent set forth in R2-188.6, Receipt, Opening and Recording of Bids.

R2-188.13 Competitive Sealed Proposals

The Director has made a class determination that under the conditions identified below, a

competitive sealed proposal may be the solicitation process of choice.

Competitive sealed bidding may not be practicable or advantageous if it is necessary to:

A. Use a contract other than a fixed-price type; or

B. Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals; or

C. Afford offerors an opportunity to revise their proposals; or

D. Compare the different price, quality, and contractual factors of the proposals submitted; or

E. Award a contract in which price is not the only determining factor.

R2-188.14 Request for Proposals

A. A Request for Proposals (RFP) shall set forth those factors listed in R2-188.1.B that are applicable and shall also state:

1. The type of services required and a description of the work involved;

2. The type of contract to be used;

3. An estimated duration that the service shall be required;

4. That cost or pricing data is required, or that it may be requested in certain cases when deemed necessary to assure price reasonableness;

5. That offerors may designate as proprietary, portions of the proposals;

6. That discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award;

7. The minimum information that the proposal shall contain

8. The closing date and time for receipt of proposals.

B. Request for Proposal formats shall be approved by the Director. A copy of the Request for Proposals solicitation documents shall be made available for public inspection at the Purchasing Office upon request.

C. Solicitation Opportunities.

Solicitations currently listed on Purchasing's web site are available for download. Additionally there is a list of all construction related projects.

Interested bidders may subscribe to the City's List Server to receive, on a twice weekly basis, an e-mail based notification of all new solicitation opportunities. Bidders may add to or remove their existing subscription from the web site. Bidders may search for other current postings on the City's web site.

D. Prior to the closing date and time, addenda to Request for Proposals shall be issued in accordance with R2-188.3, Addenda. After the closing date and time, revisions may be made in accordance with R2-188.20.

E. It is the responsibility of any offeror to give notice, in the form of written questions, prior to proposal opening on any item or issue contained in the RFP that it believes should not be included or contained in any amendment thereto, or that the City failed to include in the RFP that should have been included, and by such notice, the City could have timely cured the problem if such item or issue had been raised or objected to. Failure to give notice may constitute a waiver by the offeror of its right to object to the inclusion or lack of inclusion of the item or issue in the RFP in any subsequent protest filed by any unsuccessful offeror.

R2-188.15 Pre-Proposal Conferences/ Request for Proposal Addenda

A. Pre-proposal conferences may be convened in accordance with R2-188.2, Pre-Bid Conferences.

B. Addenda to the RFP may be issued, if necessary, in accordance with R2-188.3.

R2-188.16 Late Proposals, Modifications or Withdrawals

A. A proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R2-188.5, Late Bids, Late Withdrawals, and Late Modifications. A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in R2-188.5, Late Bids, Late Withdrawals, and Late Modifications. The City is not responsible for late proposals as a result of their being sent U.S. mail and they not being distributed through the City mail couriers in time to the designated location. It is the responsibility of the proposer to make sure their bids are properly received before the due date and time as per R2-188.17 (A).

B. A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time described in this subsection, the modifications are late and shall not be considered except under the circumstances set forth in R2-188.5, Late Bids, Late Withdrawals, and Late Modifications.

C. A proposal may be modified or withdrawn at any time before proposal opening in accordance with R2-188.4. A proposal may be withdrawn at any time before the closing date and time for receipt of best and final offers. Withdrawal of a proposal after submission of best and final offers is permissible only in accordance with R2-188.22, Mistakes in Proposals.

D. All submissions considered late, regardless of the manner in which they were received by the City, shall be returned to the proposer. All documents concerning a late proposal, late modification, or late withdrawal shall be retained in the appropriate procurement file.

City staff will refuse to accept late proposals delivered in person at the designated location.

R2-188.17 Receipt of Proposals

A. Each proposal received shall be date and time-stamped at the designated location listed in the Request for Proposal and retained in a secure place until the closing date and time for receipt of proposals.

The proposer is solely responsible for making sure their proposal submissions are received at the designated location in the Request for Proposals. U.S. Mail delivery to the City does not ensure this requirement will be met, and the City takes no responsibility for any such submittals if they are received late at the designated location.

B. Proposals shall be publically opened in the presence of 1 or more witnesses. Only the name of the proposer shall be read aloud and recorded at the Opening. An "As Read" proposal abstract/tabulation shall be prepared and shall contain the name of each offeror and the subject of the Request for Proposals for which the proposal was submitted.

During the evaluation process, proposals and modifications shall be shown only to City personnel having a legitimate interest in them or persons assisting the City in evaluation.

C. If only 1 proposal is received in response to a Request for Proposals, the Director may either make an award in accordance with R2-188.19 Only One Proposal received and R2-188.23, Contract Award for Request for Proposals, or if time permits, re-solicit.

D. Proposals shall be valid for a minimum of 90 days after opening, or as otherwise identified in the RFP.

R2-188.18 Evaluation of Proposals

A. Evaluation of proposals shall be based on the evaluation factors set forth in the Request for Proposals.

B. For RFP's over the formal bid limit specified in Section 2-185, the preferred method of evaluation is to use the Committee Review selection process. If the Committee Review selection process is used, the Contract Administrator shall make the selection of committee members and coordinate the process as set forth in R2-188.18(C). The Director may choose to select an alternate method of evaluation, and when doing so will document that decision in a written determination.

C. Appointment of Committee.

1. The Committee shall consist of at least 3 persons. Committee members shall be familiar with the elements contained in the Scope of Work.

2. Committee membership is not restricted to City employees. However, Committee members may not receive compensation, present a proposal, nor be affiliated with a person presenting a proposal.

3. Committee evaluation may be independent or as a group and only criteria set forth

in the RFP may be used to evaluate proposals.

4. The Contract Administrator shall record the evaluation(s) in a document which evidences the Committee selection.

5. Subsequent to evaluating written proposals, oral interviews may be conducted with all of the proposers or a short listed group based on the initial evaluation results to assist in the determination of the final recommendation of award or best and final offers pursuant to Section 2-188 and R2-188.20 of this Code.

6. In the case of certain technical solicitations such as significant software programs, the initial evaluation may yield a short listed group of proposers that appear to best meet the evaluation criteria.

7. Those proposers may be asked to provide a demonstration of their software to a prepared script to be provided by Purchasing.

8. A consensus recommendation based on the evaluations is the desired result from the Committee, however In the event of tied evaluations, the tie shall be broken in accordance with R2-188.21.

E. Contract negotiation, preparation and award shall be in accordance with the provisions of R2-192.3.(E.)

R2-188.19 Only One Proposal Received

If only 1 responsive bid is received in response to a Request for Proposal, an award may be made to the single bidder if the Director determines that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise the bid may be rejected pursuant to the provisions of Section 2-193, Cancellation of Solicitation, and:

A. New proposals may be solicited; or

B. The proposed procurement may be canceled; or

C. If the Director determines in writing that the need for the material or service continues and the acceptance of the one bid is not advantageous to the City, the procurement may then be conducted under Section 2-189, Sole Source or Section 2-190, Emergency Purchase, as appropriate.

R2-188.20 Discussions with Responsible Offerors and Revisions to Proposal

A. For the purpose of clarification to assure full understanding of, and responsiveness to the RFP requirements, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award; offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revision of proposals, and such revisions may only 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. The purpose of such discussions may be to:

1. Determine in greater detail such offeror's qualifications;

2. Explore with the offeror the scope and nature of the project, the offeror's proposed method of performance, and the relative utility of alternate methods of approach;

3. Determine that the offeror shall make available the necessary personnel and facilities to perform within the required time;

4. Once the evaluation committee has requested a clarification meeting of the short-listed proposers or proposers reasonably susceptible of being selected for award, the City will send an invitation letter to the Proposer(s) stating the date, time and place of the meeting, including any additional logistical requirements.

   The invitation will include the questions or clarifications requested of the Proposer(s). In the instance of software solicitations this may include a requested demonstration of the software product using a predetermined script provided by Purchasing.

5. Agree upon compensation which is fair and reasonable, taking into account the estimated value of the required services/equipment, the scope and complexity of proposed projects and nature of such services/equipment.

B. After an evaluation committee has reviewed initial offeror proposals, discussion may be held between the responding offerors and the evaluation committee. Such discussions are conducted to more fully understand the initial proposal of the offerors and provide any necessary clarification for the purpose of properly scoring their proposal.

   Following the initial proposal review, the evaluation committee may either recommend an award to a specific firm, if clear cut superiority of an offeror is proven.

   If clarification of the short listed proposals is determined to be necessary a discussion/demonstration meeting may be organized through Purchasing. After any necessary discussions/demonstrations the evaluation committee may elect to rescore the proposals to determine the best value choice for the City.

   If as a result of the discussions there is need to further define the RFP's requirements within the scope of the original RFP a call for "best and final" offers may be made from the short listed proposers only. A call for “best and final” offers may only be made after approval by the Purchasing Director.

   No offeror's proposal information may be given or disclosed in any manner to any other offeror and each proposal's information and pricing shall be kept under strict security until after an award has been made.

C. Best and Final Offers.

   All responsive and responsible offerors are to be given a fair and equal opportunity to respond to any narrowed scope/specification requirements stated within the written "best and final" offer document that may be issued by the Director.

   If the initial evaluation process clearly establishes (with supportive evidence) that

certain offerors are incapable of meeting the scope and requirements of the RFP in a satisfactory manner, those offerors/proposals may be removed from further consideration during the "best and final" offer phase of the RFP evaluation process. The evidence for removal from "best and final" consideration must be well documented and placed in the bid/contract file. If a short listed group of offerors has already been identified and gone through an interview or demo phase only those offerors will be afforded a "best and final" offer request.

"Best and final" offers shall only be requested in writing by the Purchasing Division and a reasonable time period given to offerors to prepare their responses. Any requested, "best and final" offer should be within the scope of the original RFP and used to further identify and clarify specific service/product needs and appropriate pricing requirements based on the newly clarified requirements.

R2-188.21 Tied Requests for Proposals

In the event there is a tie in the proposals, the tie shall be broken according to the following factors in order of priority:

A. Business location

1. Scottsdale

2. Phoenix Metropolitan area

3. State of Arizona

B. Best and Final Offer when determined by the Director to be applicable.

C . Draw lots.

R2-188.22 Correction of Mistakes in Requests for Proposals

A. Prior to the time and date set for receipt of the proposal, any offeror may withdraw the proposal or correct any mistake by modifying the proposal.

B. After receipt of the proposal, an offeror may withdraw a proposal or correct a mistake in accordance with R2-188.7(B) through R2-188.7(C), regarding mistakes in bids.

R2-188.23 Contract Award for Request for Proposals

A. The contract shall be awarded to the offeror whose proposal is determined in writing to be most advantageous to the City based on the factors set forth in the Request for Proposals. The determination shall explain the basis of the award.

B. In accordance with 2-201 :

1. For Administratively awarded solicitations the Notices of Intent to Award formal awards shall be posted on the Purchasing web site. It is the bidder's responsibility to access this web site to view Purchasing's Notice of Intent to Award listings. This is the only notification a bidder shall be given regarding the posting of Notices of Intent to Award. All Notices of Intent to Award shall be posted for at least 7 days prior to the

award. At the expiration of the Notice period, Purchasing shall issue a Purchase Order or Notice of Award to the successful bidder.

2. For City Council awarded solicitations the official notice of intent to award is accomplished via the City Council agenda publication 10 days prior to the City Council meeting. Additionally the Purchasing department will also list the Intent to Award and the City Council meeting date on the Purchasing Internet web site as soon as practicable. Final issuance of a Purchase Order, Contract or Notice to Proceed will be completed after City Council approval.

C. Once all evaluations are completed and a final award recommendation is submitted to and accepted by Purchasing, Purchasing will proceed to finalize the preparation of the contract documents. Finalization of the contract documents includes but is not limited to the establishment of payments, milestones, ancillary services, etc.

D. After contract award or as otherwise determined by the Director, 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 the proposal as confidential, disclosure of such portion shall only be made in accordance with the following:

1. If an offeror believes that a proposal contains confidential information that should be withheld, a statement advising the City of this fact shall accompany the submission and the information shall be so identified as confidential wherever it appears. The information identified as confidential by the proposer shall not be disclosed until the Director makes a written determination of the confidentially of the information as part of any response to a public records request. Quoted, bid and proposed pricing is not and will not be considered confidential and will be subject to release to Public Records Requests.

2. Upon receipt of a public records request the Director shall review the statement and the alleged confidential information. The Director shall only issue a written determination of the confidentiality of the information if the Director is denying its confidentiality.

3. If the Director makes the determination to disclose the information, the Director shall inform the offeror in writing of such determination.

R2-188.24 Formal Solicitation Advertising for Invitations for Bid and Requests for Proposal

A. The Director may at times advertise formal solicitations subject to Section 2-188, at least one time in a newspaper of general circulation no later than 5 days prior to bid or proposal opening. Certain construction solicitations may require newspaper advertisement.

B. The Purchasing Office shall budget for required advertising. Additional advertising budget shall be the responsibility of the requesting department.

C. Purchasing will make primary use of its City Wide web site to publish and make available solicitations to the public. On a twice weekly basis, the Purchasing Office shall operate

a List Server, e-mail based notification of new solicitation opportunities to those that are subscribed. The City will not maintain a separate bidders or mailing list process.

R2-188.25 Requests for Proposals Multi-Step Sealed Bidding

A. The multi-step sealed bidding method may be used if the Director determines that:

1. Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the City;

2. Definite criteria exist for evaluation of technical offers;

3. More than one technically qualified source is expected to be available; and

4. A fixed-price contract should be used.

B. The Director may hold a conference with bidders before submission or at any time during the evaluation of the unpriced technical offers.

R2-188.26 Proposals Phase One of Multi-Step Sealed Bidding

A. Multi-step sealed bidding shall be initiated by the issuance of an Invitation to Submit Technical Offers. The Invitation to Submit Technical Offers shall be issued according to R2-188.1, Invitation for Bids, and shall contain the following information:

1. Notice that the procurement shall be conducted in two phases;

2. The best description of the material or services desired;

3. A statement that unpriced technical offers only shall be considered in phase one;

4. The requirements for the technical offers, such as drawings and descriptive literature;

5. The criteria for evaluating technical offers;

6. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed;

7. A statement that discussions may be held; and

8. A statement that only bids based on technical offers determined to be acceptable in phase one shall be considered for award.

B. The Invitation to Submit Technical Offers may be amended after the submission of the unpriced technical offers. The amendment shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend the offers already submitted. If an amendment materially changes the procurement, the Invitation to Submit Technical Offers shall be canceled in accordance with Section 2-193, Cancellation of Solicitations.

C. Unpriced technical offers shall not be opened publicly, but shall be opened in the presence of the Procurement Agent and at least one witness. The contents of unpriced technical offers shall not be disclosed to unauthorized persons.

D. Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the contract file. If the Director determines a bidder's unpriced technical offer is unacceptable, the Director shall notify that bidder of that determination and that the bidder will not be afforded an opportunity to amend their technical offer.

E. The Director may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During discussions, the Director shall not disclose any information derived from one unpriced technical offer to any other bidder. After discussions, the Director will establish a closing date for receipt of final technical offers and shall notify in writing bidders submitting acceptable or potentially acceptable offers of the closing date. The Director shall keep a record of all discussions.

F. At any time during Phase One, offers may be withdrawn in accordance with R2-188.4A, Pre-Opening Modifications or Withdrawals.

R2-188.27 Proposals Phase Two of Multi-Step Sealed Bidding

A. Upon completion of Phase One, the Director shall issue a Request for Proposals and conduct Phase Two under R2-188.14 through R2-188.20 Request for Proposals, except that the Request for Proposals shall be issued only to bidders whose technical offers were determined to be acceptable in Phase One.

PROCEDURES:

P2-188.1 Request for Proposals Determination

The Director has determined that the Request for Proposals process is applicable for the selection of all Professional Services with an estimated expenditure exceeding the formal bid limit. Also the Request for Qualifications derivative of this process is applicable when required by A.R.S. Title 34

P2-188.2 Request for Issuance of a Formal Solicitation

A. The Contract Administrator may obtain a bid or proposal number from the Purchasing Department upon providing the description, funding source and estimated expenditure.

B. The Contract Administrator shall provide the bid or proposal specification as soon as possible, but at least four weeks prior to the date established by Purchasing for issuance of the solicitation. If the bid is for construction and an architect or engineer is developing the bid specifications, the Contract Administrator may give the architect or engineer the applicable City bid format.

C. The final draft of the solicitation package shall be provided to the Contract Administrator

who shall review and approve the issuance of the solicitation. The written approval shall be returned to the procurement agent prior to the issuance of the solicitation.

P2-188.3 Formal Solicitation Process, Invitation for Bids, Request for Proposals.

A. All construction related projects and non-construction related solicitations assigned to the Purchasing Division shall be listed on the Purchasing Division's website. Non-construction solicitations shall be listed on the Purchasing Division's website for downloading by any interested bidders.

In addition, interested bidders may subscribe, through the Purchasing Division, to receive an e-mail based notification of all new solicitation opportunities on a twice weekly basis. Any subscriber may start or cancel their subscription to the e-mail service at any time.

B. Any express mail or messenger service shall be the responsibility of the requesting department.

C. Solicitations may be viewed at the Purchasing Division during normal business hours upon request.

D. The Purchasing Division shall be responsible for scheduling bid or proposal openings and required pre-bid or pre-proposal conferences for all solicitations prepared by the Purchasing Division.

E. The Purchasing Division shall issue any required addenda, receive bids or proposals and conduct bid or proposal openings for all solicitations for which it is responsible.

1. Only purchasing staff may supply interested persons with official copies of formal solicitations.

2. Only a procurement agent may issue a Notice of Award or a Notice to Proceed.

Sec. 2-189 Single/sole source.

(a) A contract may be awarded for a material or service without competition if the director determines in writing that there is only one (1) source available and/or that it is in the best interest of the city to only use a single source for the required material or service. The director may require the submission of cost or pricing data in connection with an award under this section. Single/sole source procurement should be avoided, except when no reasonable alternatives exist. The written determination of the basis for the single/sole source procurement shall be included in the contract file.

(b) The city may negotiate with the single supplier, to the extent practicable, a contract advantageous to the city.

(c) Single/sole source purchases authorized by the director, which exceed the formal procurement limit, shall be awarded pursuant to section 2-201.

R2.189.1 Single/Sole Source, Evidence Request

A. Procurement:

If a material, service, or construction is available from only 1 vendor, or it can be shown that it is in the best interests of the City to only procure the requirement from a single source, the Single/Sole Source procurement method set-forth in Section 2-189 shall be used.

B. Single/Sole Source, Evidence Request.

1. Single/Sole Source procurement shall not be used unless the Director has approved a Determination supporting its use that is in the best interest of the City.

2. The Department requesting the Single/Sole Source procurement shall provide written evidence and report of research to support the request.

3. Any final pricing discussions or negotiations for Single/Sole Source purchases shall not commence until the Director has approved the Single/Sole Source purchase.

PROCEDURES:

P2-189.1 Single/Sole Source Justification

A. Justification by a procurement agent for Single/Sole Source purchases of less than $10,000 is not required.

B. Requestors shall forward a Single/Sole Source request to the Purchasing Director which should include written source selection rationale, price reasonableness and documented research for all Sole/Single Source purchase over $10,000 not already covered by an approved determination. Only after approval of the Single/Sole Source request should a Purchase requisition be created.

C. All code sections, including contract clauses, posting of notices and contract awards apply to Single/Sole Source purchases.

D. A Single/Sole Source determination may be approved by the Director for a period up to five years based on City requirements and market conditions. During the award period, it is the responsibility of the using department/division and the assigned contract administrator to monitor market conditions and to notify Purchasing if the criteria utilized in determining the single/sole source award are no longer existing and valid. When notified that such conditions cease to exist the Director will rescind the Single/Sole Source determination.

Sec. 2-190 Emergency purchase.

(a) Notwithstanding any other provision of this procurement code, the director may make or authorize others to make emergency procurements if there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with the procurement process specified in sections 2-187 and 2-188 contrary to the public interest as defined in established rules. Emergency procurements shall be made with

such competition as is practicable under the circumstances.

(b) A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(c) Emergency purchases authorized by the director which exceed the formal procurement limit, shall be reported to the city council.

RULES:

R2-190.1 Conditions for Emergency Purchase

An emergency purchase may be made if:

1. There is a great public calamity; or

2. There is immediate need to prepare for national or local defense; or

3. There is a breakdown in machinery or an essential service which requires the immediate purchase of supplies or services to protect the public health, welfare or safety and an essential departmental operation affecting the public health, welfare or safety would be greatly hampered if the prescribed purchasing procedure would cause an undue delay in procurement of the needed item or service; and

4. The Director determines that compliance with Section 2-187 and Section 2-188 is contrary to the public interest because compliance would seriously impair the City and its employees in the performance of their duties or it would be in the overall best interests of the City and its citizens not to comply with Section 2-187 and Section 2-188. An emergency purchase under this subsection shall be made with such competition as practicable under the circumstances.

PROCEDURES:

P2-190.1 Emergency Purchase Procedure

A. If the emergency occurs during Purchasing Office hours, the requesting department shall contact the Director or Purchasing Manager and shall state the nature of the emergency, the necessary materials, services or construction required to meet the emergency, and an estimate of its cost. The Purchasing Director or Purchasing Manager shall procure or authorize the procurement of the necessary materials, services or construction and fully document the purchase.

B. In the event the emergency occurs after Purchasing Office hours, any City employee may make any necessary procurement after receipt of authorization from the Division's Executive Director if the Director or Purchasing Manager cannot be reached. The Director and Purchasing Manager are listed in City's Emergency Phone List.

    1. On the next working day, a full report of the circumstances of the emergency purchase must be made by the person making the purchase. The report shall be filed with the Director for inclusion in the appropriate Purchasing records. Included in the report shall be a complete statement of the emergency and the necessary

materials, services or construction obtained and their cost.

2. If the purchase exceeded the formal bid limit, the Director shall report the purchase to the City Council by inclusion in the weekly Administrative Award Report.

Sec. 2-191 Procurements from solicitation by other governmental agencies.

The director may enter into contracts for the procurement of materials and services pursuant to specifications, solicitations or contracts issued by other governmental agencies and existing contracts. Such purchases shall be made pursuant to established rules. The rules shall assure that such purchases conform to the purpose and spirit of this Code.

RULES:

R2-191.1 Existing Contracts

A. When making a purchase that conforms to the purpose and spirit of the Procurement Code, but exceeding the formal bid limit, the Director shall approve a written request for the use of a contract issued by or for use by another governmental agency in the City's contract file, provided the contractor is willing to extend the contract to the City.

B. When making a purchase which does not exceed the formal bid limit, the procurement agent shall place a written request for the use of a contract issued by or for use by another governmental agency in the City's contract file provided the contractor is willing to extend the contract to the City.

C. The Director is authorized to make such purchases as he deems necessary from the Strategic Alliance for Volume Expenditures (SAVE) and other established Government agencies purchasing contracts, such as the State of Arizona, Arizona cities and counties, and other Public Entity Cooperative agreements, as well as cooperative purchasing consortiums that are primarily in place for use by Governmental agencies throughout the country and that are advantageous to the City's use. The Director's approval is only given after review of meeting the purpose and spirit of the Code.

D. The procurement agent shall execute a Purchase Order or Notice of Award referencing the applicable contract of or for the soliciting governmental agency.

E. It is not the intent of the City to initiate a new Solicitation for goods or services presently available through an active Other Government agency (GV) contract with the sole purpose of obtaining better pricing. If a new City solicitation is initiated and unsuccessful in obtaining better pricing than an existing GV contract it is not the City's intent to fall back and continue to use the existing GV contract. If circumstances warrant a statement should be included in the new City solicitation indicating that the City reserves the right to not award if pricing is not equal to or better than a specific Other Government agency contract specifically listed by agency name and contract identification number.

R2-191.2 Joint Solicitations

A. The City may join in any solicitation issued by or for use by another governmental agency provided:

1. The procurement officer of the other governmental agency invites the participation or responds positively to a request by the City to participate.

2. The terms and conditions of the lead governmental agency's solicitation is advantageous to the City.

3. The procurement process governing the solicitation substantially conforms to the purpose and spirit of the City's Procurement Code.

B. Another governmental entity may join in any formal solicitation issued by the City provided:

1. The participation is not found by the Purchasing Director and Contract Administrator to be disadvantageous to the City.

C. The provisions of this joint solicitation rule do not apply to the City's participation in solicitations conducted by, but not limited to, the following governmental agencies and consortium:

The State of Arizona, The Western States Contracting Alliance (WSCA), U.S. Communities, The Houston Galveston Area Council (HGAC), Mohave Educational Services Cooperative ,The Cooperative Purchasing Network (TCPN), National IPA and the Strategic Alliance For Volume Expenditures (SAVE). Participation in these procurements shall continue to be subject to the terms and conditions specified in their respective contracts.

R2-191.3 Cooperative Purchasing Contract Awards

Cooperative purchasing contracts shall be awarded as specified in Section 2-201, Contract Award.

PROCEDURES:

P2-191.1 Procedures for Purchases from Existing Contracts

A. Should a Contract Administrator desire to purchase from an existing contract with another governmental entity, he shall submit to the City's Purchasing Director or purchasing agent the required Other Government Entity Purchasing Request Form.

B. The Director or Purchasing Manager shall review the request and if found appropriate, approve it. If approved, the Contract Administrator shall submit a Purchase Requisition. A copy of Purchasing's approval will be made part of the award file.

C. The Director or procurement agent shall make the purchase according to the applicable Code sections.

P2-191.2 Request for Joint Solicitation

A. The Contract Administrator shall request, in writing to the City's Purchasing Director, participation in a joint solicitation.

1. The written request shall include the volume and estimated value of the purchase,

which entity is to conduct the solicitation, and shall state the benefit to the City of the joint solicitation.

2. Upon written approval by the Director, the City's Contract Administrator shall coordinate the preparation of specifications with the other governmental entity.

B. When the City is the lead agency, the procurement activity shall be conducted and coordinated by the City's Purchasing Director or procurement agent.

C. When another governmental entity is the lead entity, the procurement activity shall be coordinated by the City's Purchasing Director or the procurement agent.

P2-191.3 Commitment to Purchase or Participate

For formal individual procurements, only the Director, and for informal individual procurements, either the Director or the procurement agent may commit the City to a purchase pursuant to a contract issued by another governmental entity or to participation in a joint solicitation with another governmental entity, subject to the rules specified in R2-191.1 through 3.

P2-191.4 Report of Activity

The Director will report any purchases, joint solicitations or administrative awards exceeding the formal procurement limits, permitted by this Code to the City Council on the applicable weekly Reports of Solicitations.

P2-191.5. Posting Requirements

Purchases made pursuant to this Section 2-191 shall be posted on Purchasing's web site in accordance with the procedure specified in R2-201.1, Notice of Intent to Award.

Sec. 2-192 Selection procedures for professional services.

Professional services as defined in section 2-184 shall be procured as follows:

(1) Contracts for professional services under the informal procurement limit specified in section 2-185 shall be made in conformance with section 2-187(a), informal procurement process.

(2) Contracts for professional services over the formal bid limit specified in section 2-185 shall be made in conformance with section 2-188(c), request for proposals, except~~,~~ if the director determines in writing that the use of the formal procurement process is not advantageous to the city, the following procedure shall apply:

a. A committee consisting of three (3) or more persons shall be appointed by the designated contract administrator subject to approval by the director.

2. The committee shall solicit statements of qualification from persons interested in rendering the needed professional services to the city. The committee may solicit statements of qualification by mailing notices to persons on lists of interested persons maintained by the city or by public advertising, as is deemed appropriate by the committee under the circumstances. The notice shall contain a description

of the professional services required and such other information as the committee deems appropriate. Notices shall be approved by the director prior to mailing or publication.

c. The committee may request all interested persons to submit such information as the committee may require relating to any interested person's qualifications to render the required services as well as any information relating to the manner in which the interested person proposes to render the requested services.

d. The committee shall use procedures and standards prescribed by regulation to screen and assess the qualifications of interested persons. The committee may, at any time, request such additional information from any interested person as it deems necessary and may require interested persons to participate in interviews.

e. The committee shall select one (1) or more persons deemed qualified to render the services. The committee may rank the qualified persons.

f. A contract for the required professional services, at a fair and reasonable compensation, shall be negotiated with one (1) of the persons deemed qualified by the committee.

g. All contracts made pursuant to this section shall be in writing. Contracts for legal services shall not become binding upon the city until signed by the city attorney.

RULES:

R2-192.1 Determination

Subject to P2-180.2, Delegation, the Director has determined that the Committee Review process is applicable for the procurement of the routine and customary services of:

A. Attorneys

B. Architects

C. Engineers

D. Construction Managers

E. Employees Benefits Programs

F. Property and Liability Insurance

G. All alternative methods of construction including Job Order Contracting, Design Build, and Construction Manager at Risk.

R2-192.2 Request for Use of Committee Review Selection Process

A. For routine and customary services not specified in R2-192.1 above, where the contract amount exceeds the formal bid limit, the Contract Administrator shall submit a request to the Director for the use of the Committee Review Selection Process specified in Section 2-192.(B) in place of the Request for Proposals process set forth in Section 2-188.0 for

the selection of a professional service provider.

B. The request shall include the reasons the Request for Proposals process specified in Section 2-188.(C) is not advantageous to the City. The time required to conduct a formal solicitation shall not be the determining factor in the decision to use the Committee Review Selection Process.

C. The Director shall determine which method shall be used. If Committee Review is used, the Contract Administrator shall coordinate the process following Section 2-192 and the rules established in R2-192.3.

R2-192.3 Guidelines for Committee Review Selection Process

A. Appoint Committee.

The Committee shall consist of at least 3 persons. Committee membership shall be familiar with the elements contained in the Scope of Work and include a peer professional whenever possible.

1. Committee membership is not restricted to City employees. However, committee members may not receive compensation, present a proposal, nor be affiliated with a person presenting a proposal.

B. Solicitation Documents and Evaluation Criteria.

1. Solicitation documents may be utilized. The Committee may choose to issue a Request for Interest or Request for Statement of Qualifications and/or a Request for Proposals, through the Purchasing Department or their own delegation.

2. All written solicitations shall contain a due date for submittal of responses.

3. The contract administrator, when properly delegated, shall be responsible for the issuing or internet posting of any solicitation and receipt of responses. Advertising in a newspaper of any solicitations may be required as provided in A.R.S. § 34-603 for Construction Manager at Risk, Design-Build or Job Order contracts.

4. Evaluation criteria, whether or not solicitation documents are issued, may require demonstration of appropriate knowledge of the local environment, conditions, economy and other local issues where such knowledge is relevant to the work.

5. Price may be included in the evaluation criteria, except as prohibited in those contracts governed by A.R.S. Title 34.

6. Criteria may be weighted.

C. Notification and Advertising.

1. Lists of interested persons maintained by Capital Project Management (for Architects, Engineers and Construction Managers) and/or all types of alternative methods of construction may be considered by the committee to determine

persons to be notified.

2. Notification need not include the entire list nor be restricted to persons on lists.

3. A copy of the list of persons notified shall be retained in the Contract Administrator's file.

4. The Director may require advertising of any committee solicitation.

D. Proposal, Receipt and Evaluation.

1. Information may be received in one or two steps. If the two-step method is used, the first step may consist of interest and qualification statements which shall be used to screen best qualified persons and determine which persons shall be invited to submit proposals in the second step.

2. Late responses shall not be considered.

3. Committee evaluation may be independent or as a group and only criteria set forth in the notification may be used to evaluate proposals.

4. The Contract Administrator shall record the evaluation(s) in a document which evidences the committee selection.

5. Subsequent to evaluating written proposals, oral interviews may be conducted to assist in the determination of best offer pursuant to Section 2-188.0 and R2-188.19 of this Code.

6. In the event of tied evaluations, the tie shall be broken in accordance with R2-188.21.

E. Contract Negotiation, Preparation and Award.

1. Upon receipt of concurrence with the committee selection from the procurement agent, the Contract Administrator may negotiate the final contract.

2. Contract preparation and review shall conform to Section 2-199, R2-199.1 and 2, and P2-199.1 and 2 of this Code.

3. The Contract shall be awarded according to Section 2-201 and R2-201.1 of this Code.

Sec. 2-193 Cancellation of solicitations and rejection of bids.

An invitation for bids, a request for proposals or other formal solicitation may be canceled or all bids or proposals may be rejected by the director if it is in the best interest of the city. The reasons for the cancellation or rejection shall be made part of the contract file.

RULES:

R2-193.1 Solicitation Statement

Each solicitation issued by the City shall state that the solicitation may be canceled or bids or proposals rejected in whole or in part.

R2-193.2 Cancellation of Solicitation Before Bids or Proposals Are Due

A. Before bids or proposals are due, a solicitation may be canceled if the procurement agent determines that cancellation is advantageous to the City.

B. If a solicitation is canceled before bids or proposals are due, notice of cancellation shall be given to all persons to whom the solicitation was distributed. The notice of cancellation shall identify the solicitation and briefly explain the reason for cancellation.

C. Any bids or proposals received by the City for a canceled solicitation shall be returned to the bidder or offeror unopened.

R2-193.3 Cancellation of Solicitation After Bids or Proposals Are Due

A. After opening of bids or proposals, but before award, a solicitation may be canceled if the Director determines that cancellation is advantageous to the City.

B. A notice of cancellation and rejection shall be given to all bidders or offerors submitting bids or proposals.

C. Bids or proposals received shall be placed in a sealed file pending a decision of a rebid of the solicitation. In the event of a rebid of the solicitation, the file, whether hard copy or electronic, shall remain sealed until an award is made.

R2-193.4 Rejection of All Bids or Proposals

A. After receipt, opening and evaluation, but before award, all bids or proposals may be rejected if the procurement agent determines that the bids or proposals received are not advantageous to the City.

B. A notice of rejection shall be given to all bidders or offerors submitting bids or proposals.

C. The notice shall state the reason for rejection and whether or not the City intends to re-issue the solicitation.

D. When the solicitation will not be rebid the files shall be treated in the same manner as any other completed solicitations and available for public records requests.

E. When the solicitation will be rebid the files will be treated as confidential until such time as the completion and award of the rebid solicitation.

PROCEDURES:

P2-193.1 Procurement Procedural Irregularity

The Director shall act to cancel or reject any Invitation for Bids or Requests for Proposals in the event that action is deemed in the best interest of the City due to a procurement procedural

irregularity.

P2-193.2 Council Report

Cancellation of Solicitations and Rejection of Bids shall be reported to the City Council on the Weekly Formal Solicitation Cancelled Report.

P2-193.3 Rejection of Bids for Public Improvements

When it is determined that all bids for a public improvement project shall be rejected purchasing staff shall formally reject the bids and notify bidders of same.

Sec. 2-194 Responsibility of bidders and offerors.

(a) A written determination of non-responsibility of a bidder or offeror shall be made in accordance with established rules. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of non-responsibility with respect to the bidder or offeror. A finding of non-responsibility is not appealable.

(b) Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the office of the director, city attorney or contract administrator without prior written consent by the bidder or offeror except to law enforcement agencies.

RULES:

R2-194.1 Responsibility of Bidder and Offerors

A. Factors to be considered in determining if a prospective contractor is responsible include, but are not limited to:

1. The proposed contractor's or subcontractor's financial, physical, personnel or other resources.

2. The proposed contractor's or subcontractor's record of performance and integrity.

3. Whether the proposed contractor is qualified legally to contract with the City.

4. Whether the proposed contractor supplied all necessary information concerning its responsibility.

5. Whether the proposed contractor or subcontractor holds any required and active valid State of Arizona license(s) for the work proposed.

B. The Director may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

C. If the Director determines that a prospective contractor is non responsible, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the non responsible bidder or offeror. The final determination shall be made part of the procurement file.

PROCEDURES:

P2-194.1 Staff Request for Review of Responsibility

A. In the event a Contract Administrator has cause to question whether the low bidder or offeror is a responsible bidder or offeror, a memo shall be sent to the procurement agent containing all information available, including the specific areas where responsibility evidence is desired.

B. The Director shall determine if there are reasonable grounds to request the information in writing from the bidder or offeror.

C. Information supplied by the bidder or offeror shall be evaluated by the Director, Procurement Agent, and the Contract Administrator.

D. In the event the bidder or offeror is determined to be a non responsible bidder, the Bidder or Offeror shall be notified of the decision.

Sec. 2-195 Cost or pricing data.

(a) The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is reasonable and fair. A contractor shall, when requested, submit current cost or pricing data and shall certify that, to the best of the contractor's knowledge and belief, the cost or pricing data submitted is accurate, complete and current as of a mutually determined specified date.

(b) This certification may also be requested to substantiate requests for price adjustments for contracts with options to extend and any contract modification or change order.

(c) This certification may also be requested to substantiate requests for cost reimbursements pursuant to the specific terms and conditions contained in a city contract.

RULES:

R2-195.1 Cost or Pricing Data

The Director may prescribe the source and format for the data requested.

R2-195.2 Reimbursement

Provisions for reimbursement of costs shall, where applicable, be included in the terms of the contract and it shall be required that written approval of the Contract Administrator be obtained by the Contractor prior to incurring costs to be reimbursed.

Sec. 2-196 Bid and contract security.

The submission of security to guarantee faithful bid and contract performance may be required. In determining the amount and type of security required for each contract, the director shall consider the nature of the performance and the need for future protection for the city. The requirement for security must be included in the solicitation documents.

RULES:

R2-196.1 Bid Bond

The Director shall determine, on a case by case basis, the need for Bid Security and the amount, except where specifically required by Arizona Revised Statutes, Title 34, Chapter 2 and Chapter 6, Public Buildings and Improvements.

A. If required, the security shall be in the form of a Bid Bond issued by a company authorized to issue Surety Bonds in the State of Arizona or a Cashier's Check made payable to the City of Scottsdale in the amount specified.

B. Bid Security will be returned to all but the two lowest responsible and responsive bidders after the intent to award has been posted, and the remaining securities returned within 14 days after final execution of contract.

R2-196.2 Performance Bond

The Director shall determine, on a case by case basis, the need for a Performance Bond, and the amount, in order to protect the interests of the City, except where specifically required by Arizona Revised Statutes, Title 34, Public Buildings and Improvements.

A. If required, the security shall be in the form of a Performance Bond issued by a person authorized to issue Surety Bonds in the State of Arizona, or upon approval of the Director, secured Cashier's Check made payable to the City of Scottsdale in the amount specified. Individual or personal sureties shall not be allowed.

B. The contract number and dates of performance must be clearly indicated in the Bond.

C. The Director may consider other forms of Performance guarantee with the concurrence of the Risk Management Division.

PROCEDURES:

P2-196.1 Collection of Bid Bonds

The Director shall notify Contractors, in writing, who fail to execute required contracts and are terminated for default of their bond forfeiture and shall act through the City Attorney's Office to collect the bond amount if a Surety was posted. If a Cashier's Check was posted, the Director shall deposit the check in the general revenue account of the City.

P2-196.2 Enforcement of Performance Bond

A. The Director shall notify Contractors, in writing, who fail to provide Performance Bonds of their default, initiate action to award the contract to the second low bidder or re-bid the project, and shall act through the City Attorney's Office to collect any amounts due the City from the defaulted Contractor.

B. In the event the performance deficiency cannot be resolved with the contractor, the Contract Administrator shall notify the Director of any performance deficiency in order that the Director, with the assistance of the City Attorney, may initiate a claim against the

Performance Surety.

Sec. 2-197 Multiterm contracts.

(a) Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time up to five years, as deemed to be in the best interest of the city, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal year period at the time of contracting. A contract may be entered into for a period of time exceeding five years if, under established rules, the director determines in writing that such a contract would be advantageous to the city and the city council approves the contract term.

(b) Multi-term contracts shall contain provisions for cancellation by the city in the event funds are not appropriated for the continuance of the contract.

RULES:

R2-197.1 Determination of Contract Periods Over 1 or 5 Years

A. Written requests for contracts exceeding 5 years must justify the advantage to the City and indicate why more frequent competition is not practicable.

1. The using department shall provide adequate rationale to support any request for contracts exceeding 5 years. Each request will be required to have a determination issued by the Director for a contract term in excess of 5 years and shall require City Council approval.

B. Informal threshold Contracts for Professional Services covered by A.R.S. § 34-103 and § 34-603, as amended, and issued under the informal requirements of R2-187.11 shall not exceed 1 year in length without the Purchasing Director's written approval. Formal threshold Contracts for Professional Services covered by A.R.S. § 34-103 and § 34-603, as amended, and issued under the requirements of R2-188 or delegation P2-180.2 shall not exceed 5 years unless approved by City Council.

PROCEDURES:

P2-197.1 Establishment of Contract Period

A. When submitting the specifications, the Contract Administrator shall recommend a contract period. The Director shall determine the appropriate contract period based on market conditions, nature of the material or service, and applicable contract administration factors.

B. Contracts due to expire prior to commencement of the new contract term may be extended on a month-to-month basis to maintain organizational service levels.

Sec. 2-198 Right to inspect, audit.

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

(b) *Right to audit.* The city may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data to the extent that the books and records relate to the cost or pricing data, or audit the books and records of any person under any contract to the extent that the books and records relate to the performance of the contract. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the city auditor.

PROCEDURES:

P2-198.1 City Auditor Requirement

In appropriate cases, the City Auditor may require specific audit terms be added to City contracts subject to this Code.

Sec. 2-199 Contract clauses.

(a) Subject to the provisions of this code, the director may require inclusion in all contracts provisions including, but not limited to, appropriate remedies, time of performance, insurance, assurance, price increase limits, options to renew, cost reimbursement and any other terms and conditions advantageous to the city.

(b) All contract clauses shall be consistent with the provisions of this code~~,~~ and applicable rules and procedures.

RULES:

R2-199.1 Standard Clauses

The Director shall prepare and make available standard contract language for contracts subject to this Code.

Any modification, deletion, or addition to established contract language may only be made at the direction of the Director with the approval of the City Attorney. From time to time, the City Attorney, in conjunction with the Director, may make such modifications, deletions, additions, or updates to the standard contract language as the City Attorney may deem appropriate and in the best interests of the City.

R2-199.2 Effective Dates

All contracts shall state an effective date and, if applicable, performance dates or notice requirements for implementation date.

PROCEDURES:

P2-199.1 Contract Preparation Process

A. Contracts shall include Standard Clauses as provided by the Director and City Attorney's Office and shall name a Contract Administrator by name and title.

B. Contracts under the formal bid limit shall be referenced by a number assigned by the

procurement agent.

C. Contracts over the formal bid limit resulting from a formal solicitation process, and not for construction or professional services, shall be referenced by a number assigned by the procurement agent.

D. Contracts over the formal bid limit, resulting from a formal solicitation process, shall either be referenced by a number which corresponds to the number issued for the solicitation or provided by the City Clerk's Office.

E. Contracts over the formal bid limit resulting from a Committee Review Process shall be referenced by a number supplied by the City Clerk's Office or by a number which corresponds to the number issued for the solicitation.

F. Contracts shall be awarded according to Section 2-201 and R2-201.1.

G. Formal contracts shall be prepared and signed as follows:

1. If the contract is not required to be approved by the City Council, contracts shall be prepared and signed, with copies given to the Contractor, the Contract Administrator, and the Director.

2. In all cases where the contract is to be approved by the City Council, 1 original of the contract shall be signed and held by the City Clerk. The City Clerk's Office shall issue copies of the contract when necessary.

P2-199.2 Contract Review Process

A. All contracts subject to this Code shall be reviewed and approved by Purchasing Director and, where applicable, the City Attorney and the Risk Management Director, to assure that all applicable contract clauses advantageous to the City are included in the contract before signing by the Contractor .

B. All public works contracts shall be prepared by the Director or as delegated in P2-180.2 and signed by the Contractor, Purchasing, Risk Management, and the City Attorney. If approved by the City Council the contracts shall be signed by the Mayor and City Clerk.

C. When deemed appropriate, the Director may also require review and approval by other City Staff.

Sec. 2-200 Change orders; contract modifications; council approval.

(a) *Change orders*. Change orders to contracts may be executed, according to established rules, when provided for in the original contract.

(b) *Contract modifications*. Contracts may be modified pursuant to established rules if the director determines in writing that such modification is advantageous to the city, except contracts originally awarded by the city council may be modified only with the approval of the city council, except if the city council approves a contract provision permitting modification or renewal by recommendation of the contract administrator and concurrence of the purchasing director.

RULES:

R2-200.1 Change Orders

1. Change orders shall be in a written format prescribed by the City and supported by written justification.

2. Contractor may proceed with approved work only upon receipt of a fully executed Change Order and direction of the Contract Administrator. A fully executed change order requires both the Contractor Administrator's and Purchasing's approval on the Change Order form. If the percentage thresholds of R2-200.1(4) are exceeded additional approvals are also required.

3. Change Orders that increase the total expenditure commitment from the informal to formal procurement limit are subject to approval through the formal contract award process as required in Section 2-201.

4. No individual change order or the aggregate change orders of a contract shall exceed 25% of the original contract amount for a professional services contract or 10% of the original contract amount for a construction project, or 25% of the original contract amount for all other types of contracts without additional review and approvals by the Contract Administrator's Executive Director or designee.

5. The change must be within the scope of the original contract. Scope is defined as "an outcome, range or limit, a desired intention."

6. For Architect and Engineering Scopes of Work (SOWs) not exceeding $25,000 the Capital Project Management Department may make Adjustments in lieu of Change Orders following the same thresholds for approvals as detailed in R2-200.1(4).

7. Contracts for master planning and conceptual design may not be amended to include preparation of specific project construction documents, unless the original contract was prepared with the reasonable expectation that a specific project would be identified and the original contract contains a clause authorizing the issuance of change orders. Otherwise, the City Council must authorize the work as a contract modification if over the formal procurement limit or the Purchasing Director must authorize the work if under the procurement limit?

8. Change orders to design contracts cannot authorize work that requires involvement of a different discipline, i.e., an engineering services contract cannot be changed to include designs requiring architectural services, unless the original contract scope included work by multiple disciplines. Additionally, the new work should be confined to the geographic limits of the original contract. Except as provided in subsection 10, a change order may add work within immediate adjacent geographic areas, or a remote or non-adjacent location, if there is a prevailing and logical relationship to the original work. Otherwise, a contract modification is required.

   The value of any single change order or the aggregate amount of multiple design contract change orders may not exceed 25% of the original contract amount without the approval of the appropriate Executive Director

9. The total accumulated amount of construction contract change orders may not exceed 10% of the original contract amount unless specific authorization is received from the appropriate Executive Director. The additional signature requirements apply whether it is a one-time change order or the aggregate of change orders of a contract that exceeds these thresholds. These change orders must be confined to the general nature and character of the original contract work and must be within the geographic location of, or have some logical relationship to, the original contract, except as otherwise allowed under this Regulation.

10. A change order for addition of work to a construction contract for work at anon-adjacent location for which there is not a logical relationship to the original work may be permissible under the following circumstances:

A. The additional work falls entirely within the classification of construction elements required with the original contract; and,

B. The additional work represents an incremental portion (not exceeding 100%) of the original contract amount and will not exceed the statutory bid exemption limit in ARS 34-201, which is adjusted annually for inflation.

C. One copy of the completed and approved change order will be included in the contract file maintained by the Contract Administrator. A copy of the change order will be sent to Purchasing.

R2-200.2 Contract Modification

A. Modifications to contracts subject to this Code shall include signatures of all parties signing the original contract, except where personnel changes have been made to authorized agents of a business entity or the positions of authority within the City. Contract modifications shall be reviewed and approved by the Purchasing Director and where applicable the City Attorney's office and Risk Management Director prior to the signing by the Contractor.

B. When specified in the original City Council approved contract, renewals can be executed administratively by Purchasing without further City Council review or action.

C. Modifications that increase the total expenditure commitment from the informal to formal procurement limit are subject to approval through the formal contract award process as required in Section 2-201.

D. Contract modifications may not alter the terms and conditions or scope of work to the extent that, had the contract been bid in the modified state, the resulting low bidder could have changed, or to the extent that the bid participation could reasonably have been expected to have increased.

R2-200.3 Alternate Delivery Methods - Construction

A. <u>Job Order Contract Change Orders/Contract Modifications/Job Order Adjustments</u>

Job Order Contracts (JOC) allow for an indefinite delivery of work or services and are approved by Council for a specific duration, a maximum total contract amount and a

maximum single Job Order amount (if specified). Job Orders for work or services by the Contractor are prepared by the Contract Administrator and approved by the senior official (typically the City Engineer) designated in the original Council approved JOC.

a. Change Order policy does not apply for the JOC due to the indefinite delivery nature of the contracts. Change Orders will not be issued for the original Council approved JOC.

b. Contract Modification policy is modified for the JOC as follows:

(1) Any change in the contractual dollar limits of the original JOC requires a Contract Modification.

(2) Any change in the term or duration of the original JOC, other than as specified or allowed within the contract, requires a Contract Modification.

(3) Any change in the clauses or other legal terms of the original JOC requires a Contract Modification.

c. Job Orders are not considered Change Orders or Contract Modifications to the JOC. Additional work required under a Job Order issued pursuant to the terms of a JOC, and within the limits of the original Council approved JOC, may be authorized by issuing a Job Order Adjustment. The Job Order Adjustment requires the approval of the senior official (typically the City Engineer) designated in the original Council approved contract.

B. Construction Manager at Risk (CM@Risk) Change Orders/Contract Modifications

a. Change Order policy applies for CM@Risk contracts as detailed for standard contracts in R2-200.1

b. Contract Modification policy applies for CM@Risk contracts as detailed for standard contracts in R2-200.2

C. Design/Build Change Orders/Contract Modifications

a. Change Order policy applies for Design/Build contracts as detailed for standard contracts in R2-200.1

b. Contract Modification policy applies for Design/Build contracts as detailed for standard contracts in R2-200.2

PROCEDURES:

P2-200.1 Change Order Guidelines

A. When provided for in the original contract, contracts may be changed by the Change Order process to increase or decrease the total compensation, or time allowed for completion, provided the change is within the context of the original Scope of Work.

B. Non Construction Change Order(s) not exceeding the amounts specified in R2-200.1(4), shall be approved by the Contract Administrator, and the Purchasing Director. Design

and Construction Change Order(s) not exceeding the amounts specified in R2-200.1(4) shall be approved by the Contract Administrator and the responsible Administrator or Department Director. Projects utilizing CIP Budget Funds must also have the review and approval of the CIP Coordinator.

C. Change order(s) exceeding the amounts specified in R2-200.1(4), shall receive additional review and approval by the Contract Administrator's Director and the Division's Executive Director or designee. Design and Construction Change Order(s) exceeding the amounts specified in R2-200.1(4) will also require the City Manager's approval.

D. Change Orders and justifications shall be executed on forms prescribed by the Director. All Change Orders shall have justifications attached.

P2-200.2 Change Order Processing

A. One (1) copy of the completed and approved Change Order(s) shall be included in the contract file maintained by the Contract Administrator. Copies shall be sent to Purchasing immediately after all applicable reviews and approval.

B. A copy of any Change Order shall be sent to the Purchasing Office for inclusion in the procurement file. When applicable, a memo citing the original Purchase Order number shall be attached to the Change Order to authorize increase/decrease to the encumbrance by the amount needed to make the new contractual commitment.

P2-200.3 Contract Modification Preparation

A. Contract modifications shall be prepared when no City Council Action is required, and distributed to the Contractor, the Contract Administrator, and the Purchasing Director. Contract modifications requiring City Council Action shall be prepared with 1 original contract to be held by the City Clerk. The City Clerk's Office shall issue copies of the contract modification when necessary. All contract modifications shall be prepared using the standard format and shall be numbered as the original contract, followed by an "A-1, A-2, etc." as appropriate.

B. Contract modifications shall be signed by all parties signing the original contract.

C. When specified in the original City Council approved contract, renewals can be executed administratively by Purchasing without further City Council review or action.

P2-200.4 Contract Modification Process

A. Changes not within the context of the original Scope of Work, require a Contract Modification and may not be accomplished with a Change Order.

B. Contract Modifications shall be reviewed and approved prior to the signing by the Contractor by the following staff as applicable:

1. Purchasing

2. Risk

3. Legal

C. See R2-201.1.(B) for processing of modifications requiring Council Action.

D. A copy of any modification shall be sent to the Purchasing Office for inclusion in the procurement file. When applicable, a memo citing the original Purchase Order number shall be attached to the modification to authorize an increase or decrease in the encumbrance by the amount needed to meet the new contractual commitment.

Sec. 2-201 Award of contract.

The city council shall award all contracts for construction and professional services exceeding the formal procurement limit set forth in section 2-185(b). All other contracts exceeding the formal procurement limit shall be awarded by the director.

RULES:

R2-201.1 Notice of Intent to Award

A. Contracts awarded administratively shall be summarized on the Notice of Intent to Award and posted on Purchasing's web site for at least 7 days prior to award. At the expiration of the Notice Period, Purchasing shall complete execution of the offer/acceptance form submitted by the offeror in response to the City's solicitation request, and issue a Purchase Order or Notice of Award.

It is the bidder's responsibility to access this web page to view Purchasing's Notice of Intent to Award listings. This is the only notification the bidder shall be given regarding the posting of Notices of Intent to Award. Failure to access this web site page in a timely manner shall not excuse a bidder or offeror's failure to file a bid protest in a timely manner in accordance with the provisions of Section 2-213(A) of this Code.

B. Contracts requiring Council award shall be summarized on a Council Study Agenda notice and posted in accordance with rules established by the City Clerk.

1. After Council award, Purchasing shall issue a Purchase Order, Notice of Award, or Contract as appropriate.

2. The Director shall issue any required Notice to Proceed for Construction and Service Contracts upon receipt of the signed Contracts, Insurance Certificates and any applicable Performance and Payment Bonds.

C. Posting of awards shall be made at their actual value or their estimated annual Fiscal Year value, depending on the award type.

D. Extendable Contracts, Other Governmental Agency Contracts, Sole Source Contracts and Open Purchase Orders shall be posted at their estimated annual Fiscal Year impact. Subsequent Purchase Orders that are issued under the original contract authority that have been previously posted shall not be separately posted.

E. Reposting of an extendable contract for recurring fiscal year annual requirements shall occur when an original contract's previously posted estimated value is exceeded in total

for a fiscal year by 25% or $100,000, whichever is less. The reposting shall state the new estimated Fiscal Year value. The Purchase Order that resulted in exceeding the total contract value shall be issued simultaneously with the reposting of the original contract

Sec. 2-202 Specifications guidelines.

The director shall establish guidelines governing the review and approval of specifications for materials, services and construction required by the city as secured through the formal or informal procurement process.

RULES:

R2-202.1 Content of Specifications

The Director shall establish guidelines governing the content of specifications used in City procurements to ensure adequate competition.

R2-202.2 Samples

A. Samples of materials, when required during the solicitation process, shall be submitted in accordance with the instructions in the solicitation.

B. Samples shall be furnished free of charge to the City, shall be submitted with the solicitation, and must be accompanied by descriptive memorandum packing slips and / or invoices or other documentation indicating they are samples.

C. Bid samples may be held for comparison with deliveries pursuant to a contract award.

D. Samples should be returned according to the time frame included in the solicitation at the bidder's risk and subject to his expense. The City shall not reimburse the vendor for any expendable/consumable items that were consumed during the bid evaluation process.

PROCEDURES:

P2-202.1 Specification Approval

The procurement agent retains the authority to approve or disapprove all specifications to be used in a solicitation.

P2-202.2 Specifications Guidelines

A. To the extent practicable, a specification may provide alternate descriptions of materials, services, or construction items where two or more design, functional, or performance criteria would satisfactorily meet the City's requirements.

B. To the extent practicable, a specification should not include any solicitation term or condition or any contract term or condition.

C. To the extent practicable, if a specification for a common or general use item has been developed, or a qualified products list has been developed for a particular material,

service, or construction item, it shall be used.

D. To the extent practicable, specifications shall emphasize functional or performance criteria. It is preferred that the solicitation include the Approved Alternate Product language to address potential alternate products. All Requests for Alternate Products reviews will be received by the Purchasing Department and transmitted to the Contract Administrator for review. All alternate products that are determined by the Contract Administrator to be acceptable for bidding will be added to the specification by an addendum to the solicitation. When using performance specifications all brands bid shall be evaluated after receipt of bids to determine those meeting specifications unless the alternate products clause is part of the solicitation. In such cases all alternate products must be submitted in advance of the bid opening according to the required date listed in the Alternate Products clause of the solicitation.

E. To the extent practicable, specifications shall be written as minimum standards.

F. Unless otherwise specifically stated in the solicitation, any equipment or materials specified shall be standard, new, and state of the art in quality and design and shall comply fully with all applicable Federal and State Laws and Regulations.

Sec. 2-203 Maximum practicable competition; brand name or approved alternate; qualified products list.

(a) *Maximum practicable competition.* All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs and shall not be unduly restrictive.

(1) To the extent practicable and unless otherwise permitted by this section, all specifications shall describe the city's requirements in a manner that does not unnecessarily exclude a specific material, service or construction item.

(2) Proprietary or brand name specifications shall not be used unless the director determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification.

(3) To the extent practicable, the city shall use accepted commercial specifications and shall procure standard commercial materials and avoid proprietary specifications whenever practicable.

(b) *Brand name or approved alternate.* A brand name or approved alternate specification shall only be used when the director determines in writing that use of a brand name or approved alternate specification is advantageous to the city and the solicitation provides for the submission of equivalent products.

(1) A brand name or approved alternate specification shall designate as many different brands as are practicable as “or approved alternate” references.

(2) A brand name or approved alternate specification shall include a description of the particular design, functional, or performance characteristics that are required, unless the director determines in writing that the essential characteristics of the

brand names designated in the specifications are commonly known.

(3) A solicitation that uses a brand name or approved alternate specification shall explain that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.

(c) *Qualified products list.* A qualified products list may be prepared and utilized if the director determines in writing that testing or examinations of the material or construction items prior to the issuance of the solicitation is desirable or necessary in order to best satisfy the city's requirements. As many potential suppliers as practicable shall be solicited to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose. The qualified products list shall not be modified after the solicitation is issued.

RULES:

R2-203.1 Prior Approval

A. Whenever a brand name or approved alternate specification is used, brands determined by any bidder/offeror to be equivalent shall be submitted to the City for prior approval per instructions in the solicitation document.

B. Bids for approved alternate brands without prior approval shall be deemed nonresponsive.

R2-203.2 Inspections and Tests

A. The inspection or testing of any material to verify specification adherence or qualification for a products list shall be performed in a manner established on a case-by-case basis.

B. If testing is required, the requirements shall be included in the solicitation.

C. The City reserves the right to require testing or analysis by a recognized testing laboratory or consultant selected by the City.

D. The cost of testing or analysis shall be borne by the bidder/offeror making the proposal or the contractor supplying the materials.

R2-203.3 Proprietary Specifications

Proprietary specifications are not justified by past success in performance, the inconvenience of writing specifications, or the desire to maintain a single brand that is not supported by technological or economical justification.

PROCEDURES:

P2-203.1 Product Testing Guidelines

City Staff may test materials or services in a manner agreed upon with the material or service supplier provided the following guidelines are applied:

A. City Staff is not required to test solely for supplier's benefit.

B. City Staff may not accept materials or services for testing or trial unless those materials or services have been purchased through purchasing procedures provided by this Code.

C. Under certain circumstances the Purchasing Director may issue a determination that would exempt the City from having to purchase an item for testing purposes. The Director shall insure that this exemption maintains a level playing field for all suppliers and does not give any supplier an advantage over another supplier.

D. If any product testing is being considered, the using department should consider seeking out various potential products in order to conduct comparative testing.

E. Any testing shall be at the direction and convenience of the City staff.

F. The City's name may not be used by any person in connection with any advertising sale, or promotion of any product tested by the City Staff.

G. Any materials testing shall be pursuant to a written testing agreement between the City and the supplier. The Purchasing Director must be notified of all testing agreements prior to commencement of testing.

Sec. 2-204 Specifications prepared by architects; engineers; consultants.

All specifications prepared for city contracts shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs and shall not be unduly restrictive. In the event that suitable specifications cannot be developed by city staff, the director may retain a specification consultant for the purpose of assisting with ~~the~~ writing of the specifications.

RULES:

R2-204.1 Preparation of Specifications by Persons Other Than City Personnel

A. The Director may contract for the preparation of specifications with persons other than City personnel including, but not limited to, consultants, architects, engineers, designers, manufacturers.

B. The requirements of Sections 2-202, through 2-205 regarding specifications shall apply to all specifications prepared by contractors, including, but not limited to, those prepared by consultants, architects, engineers, designers, and other draftsmen of specifications for public contracts. Contracts for the preparation of specifications by other than City personnel shall require the specification writer to adhere to such requirements.

C. The preparer of specifications is not eligible to submit a bid or proposal on the solicitation for which the specification was prepared nor is the preparer eligible to supply

any product to a bidder or offeror on the solicitation for which the specification was prepared; provided however, the Director may make an exception to this provision when justified by the business practices of the applicable industry or if otherwise in the best interest of the City. The procurement agent shall place in the solicitation file a written determination, including all relevant facts, in any case where an exception is made.

D. The terms and conditions of contracts for preparation of specifications shall reference the rule in Subsection C.

Sec. 2-205 Recycled and energy consumptive materials; life cycle costing; environmental procurement.

The purchasing director shall establish guidelines governing the review and approval of specifications for the procurement of selected materials based on considerations of recycling, energy conservation, life cycle costing and other environmental considerations.

RULES:

R2-205.1 Environmental Procurement Guidelines

A. To ensure the fair and equal review to purchase products that are less toxic, conserve resources, are recyclable and have recycled content, the following guidelines should be considered :

1. Departments shall review the products and services they purchase to identify and allow for environmentally responsible products and services available for the intended purpose that meet the performance requirements;

2. Product testing and trial service is encouraged to evaluate environmentally responsible alternatives pursuant to established testing guidelines;

3. Specifications are not to exclude, without justification, environmentally responsible products such as recycled products, reusable products or products designed to be recycled and products consuming less resources;

4. City projects shall attempt to incorporate energy efficient fixtures, appliances and mechanical equipment in any new construction, remodel and retrofit of City Facilities.

B. Additional procedures and guidelines may be established as necessary to ensure the continuation of a strong Environmental Procurement Program.

PROCEDURES:

P2-205.1 Hazardous Materials Procurement Guidelines

A. The purpose of this Section is to minimize hazardous material purchases and hazardous waste generation throughout City operations, manage necessary hazardous materials and waste and eliminate all acutely hazardous waste streams. The City's Health and Safety Policy Manual includes examples and lists of the following categories of waste and a list of approved alternate materials.

B. The following categories describe various types of materials that may only be purchased pursuant to the restrictions stated in each category:

Category 1: Includes all acutely hazardous materials and/or chemicals which result in the generation of acutely hazardous waste. Under unusual circumstances, a material from the category could be purchased, but only if a WRITTEN EXCEPTION is granted by the Environmental Preservation Office. Materials in this category include, but are not limited to, radioactive materials, 24-D pesticide, and paints containing fungicides.

Category 2: Includes materials for which there are no viable alternatives at present. The City commits to review these materials and replace them with non-toxic or less toxic alternatives when available. Each time a material from this Category is purchased, the end user through the Purchasing Department is responsible to determine that no acceptable substitutes have been developed. Materials in this category include, but are not limited to, asbestos containing materials, freons, lead containing paints, and refrigerant gases, especially CFC gases.

Category 3: Includes materials that can be recycled. The City commits to recycling as many materials as possible. The materials in this category may only be purchased if a method for recycling exists or is developed upon purchase. Materials in this category include, but are not limited to, antifreeze, fluorescent lamps and ballasts, photographic chemicals and tires.

Category 4: Includes materials which are a necessity for certain City operations, but are not approved for use by any departments or staff other than those specifically designated. Materials in this category include, but are not limited to, fertilizers and soil conditioners, reagent grade chemicals, agricultural poisons and ammonia.

SURPLUS PERSONAL PROPERTY

Sec. 2-206 Disposition; declaration of surplus personal property.

(a) *Disposition.* The director may sell, trade, transfer between departments or otherwise dispose of surplus personal property pursuant to established rules, except property defined as lost or abandoned in chapter 23, article III of the Scottsdale Revised Code, and property seized during the course of a police investigation shall not be subject to this code until such time as any state and federal laws have been complied with and the property declared surplus by the police department.

(b) *Declaration.* Departments shall be responsible for property in their possession and as necessary may declare such property surplus and notify the Director of any such declaration. No department shall transfer, sell, trade, loan, give away or otherwise dispose of property owned by the City.

(c) *Police officer duty weapon.* If the city manager so designates, the city manager or the chief of police~~,~~ may at the time of normal retirement of a police officer with twenty (20) or more years of service, or upon a disability retirement of a sworn officer, allow the officer to purchase a specified duty weapon for one dollar ($1.00).

RULES:

R2-206.1 Public Art Collection

The provisions of this Section shall not apply to items in the City's public art collection which shall be disposed of by deaccession in accordance with American Museum Standards and established procedures.

R2-206.2 Police and Fire Department Equipment Donation to the City's Sister City's located internationally

When recommended by the respective Police/Fire Chief and concurred to in writing by the Director, low value/high risk police and fire equipment such as, but not limited to, ballistic vests, uniforms, holsters, helmets, jackets, etc. that have been properly declared as surplus material can be donated directly "as is" to the City's Sister City's located internationally. Such material will not be subject to the informal 2-208 or formal 2-209 disposal process. No material can be donated or shipped prior to the written agreement of the Purchasing Director. All material shall have all City reference /logos /badges, etc. removed and then be provided to the warehouse with a complete manifest that will accommodate shipment and clearly indicate that it is being donated in an "as is "condition and the City is not responsible for any further maintenance, parts, supplies or any other expenses or liabilities associated with the equipment or its ongoing use. The Department donating the equipment shall be responsible for any shipping/duty/export fees and expenses incurred by the donation.

PROCEDURES:

P2-206.1 Organizational Need

Prior to pursuing any method for disposal of surplus property, the Director shall first determine that it is of no use to any department. Departments shall review inventories and property to determine the existence of excess or obsolete items that could be declared surplus property and shall notify the Director.

Sec. 2-207 Surplus property listing.

A listing of surplus property shall be maintained by purchasing and such property shall be transferred between departments as needed prior to pursuing any disposal method.

PROCEDURES:

P2-207.1 Listing Availability

The listing of surplus property shall be available to all departments and the Director shall transfer any surplus property requested at no charge to the department. The physical transfer of the property after it has been deemed surplus and in the possession of the Purchasing warehouse staff will be accomplished in an informal manner.

Sec. 2-208 Informal disposal process for surplus property.

(a) Any surplus property which does not have a fair market value exceeding the informal procurement limit specified in section 2-185(a) may be disposed of in accordance with established rules.

(b) After determining that the surplus property is not needed by any department the director may:

(1) Hold the property for auction.

(2) Trade the property for credit against new purchases.

(3) Establish the fair market value and sell the property through an advertisement in appropriate publications.

(4) Contact persons dealing in the property for consignment consideration or other interested persons and take written offers, disposing of the property to the person making the most advantageous offer.

RULES:

R2-208.1 Donations of Surplus Property in Times of Declared Disasters

With the approval of the City Manager, the Director may donate surplus property to other governmental entities which are located in areas that have been declared to be disaster areas. The City Manager may elect to have the City of Scottsdale pay the costs of shipping or seek reimbursement from the affected governmental entity, as circumstances may require.

PROCEDURES:

P2-208.1 Trade

Prior to trading for credit against a new purchase or service, the Director shall determine the fair market value and document the disposal in the surplus item file with reference to the Purchase Order for the new goods or services.

P2-208.2 Individual Sale

A. Surplus property shall be sold when it is more advantageous than holding it for auction and trading is not available as an option, or when required by law.

B. The Offers to Purchase process in 2-209(c) may be the preferred method of sale in certain circumstances for sales required by law even though the value is below the formal procurement limit.

C. All aspects of the sale shall be fully documented and placed in the surplus items file.

D. The disposal of police dogs and horses shall be in accordance with the best interests of the City and in the most humane manner taking into account the animal's valuable service to the community.

Sec. 2-209 Formal disposal process-auction; offers to purchase.

(a) *Formal disposal process.* Any single item of surplus property which has a fair market value equal to or greater than the formal procurement limit specified in section 2-185(b) shall be disposed of only by public auction or through solicitations of offers to purchase pursuant to this section, and established rules. In the event of a declared disaster, the

city manager may recommend that the surplus property be donated to a governmental entity located in a disaster area within the United States.

(1) Upon approval of the city council, the surplus property may be donated to the governmental entity at such time and in such manner as the city council may direct. The costs of shipping shall be paid as directed by the city council.

(2) If the city council elects to donate the surplus property, the provisions of this section requiring an auction or solicitation of offers to purchase shall not be applicable.

(b) *Auction.* The director may conduct a public auction for the sale of surplus property of any value to the highest bidder, upon determining that there is sufficient surplus property and that the property is of such a nature as to make the auction advantageous to the city.

(1) The director shall give reasonable notice of any auction by publishing said notice in a newspaper of general circulation.

(2) All appropriate means to increase attendance, including but not limited to an advertising campaign, may be pursued.

(c) *Offers to purchase.* The director may solicit offers to purchase upon determining that the surplus property is of such a nature as to make the solicitation advantageous to the city.

(1) Offers to purchase shall be issued pursuant to established rules and shall include a description of the property for sale and all terms and conditions applicable to the sale.

(2) Reasonable notice of the solicitation shall be given before the date set forth in the offer to purchase for final acceptance of offers. Said notice stating the general property description shall be published in a newspaper of general circulation.

(3) All appropriate means to increase responses, including, but not limited to an advertising campaign, may be pursued.

(4) The property shall be sold to the person making the offer most advantageous to the city.

RULES:

R2-209.1 Auction Schedule

The Director may, whenever practicable, hold an auction to dispose of bicycles, unclaimed personal property, any passenger vehicles, and miscellaneous, excess and obsolete City supplies.

R2-209.2 Offers to Purchase

Offers to Purchase shall be processed in a manner substantially similar to the rules and

procedures established for the Formal Procurement Process in Section 2-188.

Sec. 2-210 Proceeds from sales of surplus property.

All proceeds from the sale of surplus property shall be deposited in the appropriate revenue account of the city.

PROCEDURES:

P2-210.1 RICO Proceeds

The proceeds from any items auctioned that were originally recovered through RICO related activity or purchased with RICO funds shall be identified on the auction records and deposited in the RICO account.

P2-210.2 Fleet Proceeds

The proceeds from any items auctioned that were originally purchased with Fleet funds shall be identified on the auction records and deposited in the Fleet account.

Sec. 2-211 Rule making and procedures.

(a) Any rules and procedures established pursuant to authority granted in this code shall become effective upon the date such rule is filed with the city clerk or upon such later date as may be specified in such rule.

(b) At least thirty (30) days before filing any rule or procedure with the city clerk, the director shall post such proposed rule in one or more of the places customarily used by the city for the posting of public notices. The posting shall solicit written comments upon the proposed rule from any interested persons. The director shall review and consider such comments before filing the proposed rule or procedure with the city clerk.

RULES:

R2-211.1 Posting

Proposed rules and procedures shall be reviewed by the City Attorney and posted by the City Clerk's office.

Sec. 2-212 Hearings

Hearings required or permitted by this code shall be conducted by the city manager or designee pursuant to established rules. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The Arizona rules of evidence shall not apply, and the hearing officer shall have no authority to issue subpoenas for the production of evidence or the appearance of witnesses.

PROCEDURES:

P2-212.1 Hearing Procedures

A. If a hearing is required or permitted under this Code, the Hearing Officer shall arrange

for a hearing within such reasonable period of time as may be determined by the circumstances, and notify the parties of the time and place of the hearing.

B. The hearing shall be continuous until the Hearing Officer closes the record. The party requesting the hearing may be heard in person or by his authorized representative at such hearing. Hearings shall be conducted informally as to the order of proceeding and presentation of evidence. The Arizona Rules of Evidence shall not apply. The Hearing Officer shall admit evidence over hearsay objections where the offered evidence has substantial probative value and reliability.

The Hearing Officer shall have no authority to issue subpoenas for the production of evidence or the appearance of witnesses. Copies of records and documents prepared in the ordinary course of business may be admitted, without objection as to foundation, but subject to argument as to weight, admissibility, and authenticity. Summary records may be admitted subject to satisfactory proof of the reliability of the summaries. In all cases, the decision of the Hearing Officer shall be made solely upon clear and convincing evidence. Each party shall bear its own hearing expenses.

C. The decision by the Hearing Officer shall be final. The decision shall be sent to all parties by personal service or certified mail, return receipt requested, within 20 days after the conclusion of the hearing.

D. If the hearing involves a protest, the procurement shall not proceed any further, nor shall the supplier continue with any work, until after the completion of the hearing procedure and the final decision is rendered.

Sec. 2-213 Protests.

(a) An aggrieved person may protest any aspect of a solicitation prior to award of a contract. As used herein, the phrase "any aspect of a solicitation" shall be limited to mean an alleged violation of this procurement code as it relates to the bid solicitation, its evaluation, or a proposed award. Notice of awards shall be given in accordance with the provisions of R2-201.1(A) and (B). Awards of contracts shall be final and no protest pursuant to this section may be filed after award. Nothing contained herein shall require that the protest hearing be held prior to the award, because evidence from the solicitation, its evaluation or its award cannot be released to the public until after the award in order to protect the competitive process or in the best interests of the city.

(b) A protest must be in writing and shall:

(1) State the name and address of the aggrieved person.

(2) Identify the contracting activity and the number of the solicitation.

(3) Contain a statement of all the grounds for the protest that the protestor then knows or should know based upon the exercise of reasonable diligence.

(4) Include supporting exhibits, evidence or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

(c) A protest must be filed within ten (10) days after the protestor, exercising reasonable diligence, knew or should have known of facts and circumstances upon which the protest is based. Failure to protest any issue, fact or circumstance the protestor knew or should have known upon the exercise of reasonable diligence within said ten (10) day period shall forever preclude a hearing based upon that issue, fact or circumstance.

(d) If the director determines a hearing is appropriate, the director shall notify the protestor of the time and place set for a hearing on the protest. The director may also give notice of the hearing to any other persons involved in the solicitation whose interests may be affected by the ruling requested from the director. Any person whose interest is affected shall be permitted to intervene and participate in such hearing.

(e) If a protestor fails to appear and participate in the hearing, the manager or designee may summarily rule upon the protest based upon information then available to the city manager or designee.

(f) The city manager or designee shall issue a written ruling within a reasonable time after conclusion of the hearing. Such ruling shall be final.

RULES:

R2-213.1 Confidential Information

A. Material submitted by a protester shall not be withheld from an interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to code provisions for confidential material.

B. If the protester believes the protest contains material that should be withheld, a statement advising the Director of this fact shall accompany the protest submission. The Director has the right to make a final determination as to whether to release or not to release any materials. .

R2-213.2 Remedies

A. If the City Manager or designee sustains the protest in whole or part and determines that a solicitation or proposed contract award does not comply with the procurement Code, rules or procedures the Director shall implement an appropriate remedy.

B. In determining an appropriate remedy, the Director 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, costs to the City, the urgency of the procurement and the impact of the relief.

C. An appropriate remedy may include one or more of the following:

1. Reissue the solicitation;

2. Issue a new solicitation;

3. Award a contract consistent with procurement Code, rules or procedures or

4. Such other relief as is determined necessary to ensure compliance with this Procurement Code and its Rules and Procedures.

R2-213.3 Dismissal Before Hearing

The Director may dismiss a protest, upon a written determination, before scheduling a hearing if:

1. The protest does not state a valid basis for protest under Section 2-213; or

2. The protest is untimely pursuant to Procurement Code Section 2-213.

Sec. 2-214 Suspension; debarment.

(a) The director shall establish rules and procedures providing for the suspension and debarment of any person from consideration for award of a contract pursuant to this code. Suspension of any person shall not exceed one (1) year. A debarment shall not exceed three (3) years.

(b) The causes for debarment or suspension may include, but are not limited to, the following:

(1) Conviction of any person or any subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(2) Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a city contractor.

(3) Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.

(4) Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, such as either of the following:

a. Knowingly failing without good cause to perform in accordance with the specifications or within the time limit provided in the contract.

b. Failure to perform or unsatisfactory performance in accordance with the terms of a contract, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment or suspension.

(5) Any other cause deemed to affect responsibility as a city contractor, including suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity for any cause listed in this section or the

established rules.

(c) Before imposing a suspension or debarment, the director shall give the affected party written notice of the grounds for suspension or debarment and shall afford such person an opportunity for hearing. Suspension or debarment of a person shall include any subsidiary or affiliate of such person.

Sec. 2-215 Resolution of contract controversies-construction, material and service contracts.

(a) The contract administrator shall have the authority and responsibility to enforce all contract terms and performance. Under no circumstances will contract administrators have the responsibility or authority to enforce or resolve claims raised by non-parties to the contract.

(b) If a contract term or performance issue cannot be resolved by mutual agreement, contract administrators have the authority to pursue and resolve the dispute through any affirmative remedy as provided in the terms of the contract or under applicable law, including arbitration or litigation, subject to the prior approval of the city manager and the city attorney and city council, if applicable.

RULES:

R2-215.1 Resolution of Contract Controversies

A. The Contract Administrator shall have the authority to pursue and resolve any performance or term issues as provided in Sec. 2-215(B) up to the limitations of the Contract Administrator's change order authority as authorized in R2-200.1(4), and subject to the approval of the City Manager and the City Attorney.

B. For resolution of controversies that are over the Contract Administrator's change order authority, or are not the result of mutual agreement, or deal with contractual terms and conditions other than performance scope and period of performance, the Contract Administrator should pursue further direction through the Purchasing Department.

C. For resolution of claims, arbitration or litigation the Contract Administrator should pursue further direction through the City Attorney office.

PROCEDURES:

P2-215.1 Resolution of Contract Controversies-Material and Service Contracts

A. When within the Contract Administrator's change order authority, if any issue regarding performance scope or period of performance under the contract cannot be resolved by mutual agreement between the Contractor and Administrator in a reasonable period of time, such as 10 calendar days, the Contract Administrator shall prepare a written decision memo contemporaneous to the impasse and not after the fact, documenting the following issues:

1. Internal written decision memo shall include:

a. A description of the controversy;

b. A reference to the pertinent contract provision;

c. A statement of the factual areas of agreement or disagreement;

d. A statement of the decision, with supporting rationale;

e. List a reasonable period of time, usually 10 days, for the Contractor to reply and show cause as to how they will comply with the decision;

f. Instructions for appeal, if any.

2. After preparation of the decision memo, the Contract Administrator shall send the decision memo to Purchasing who shall prepare a formal decision letter and deliver the decision to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

3. If the Contractor fails to comply with all terms of the notice of final decision letter, the Contractor may be declared in default and may be suspended or debarred under the provision of Section 2-214. Any such debarment or suspension actions would be then initiated and executed by the Purchasing Department.

B. When over the Contract Administrator's change order authority, or not the result of mutual agreement, or dealing with contractual terms and conditions other than specific performance scope and period of performance, the Contract Administrator shall prepare a written recommendation memo documenting the issues.

1. The recommendation memo should include all of the information detailed in P2-215.1(A), (1).

2. The Contract Administrator should send the recommendation memo to Purchasing who then shall prepare a formal decision letter and deliver it to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

3. If the Contractor fails to comply with all terms of the notice of final decision letter, the Contractor may be declared in default and may be suspended or debarred under the provision of Section 2-214. Any such debarment or suspension actions would be then initiated and executed by the Purchasing Department.

C. When the Contract Administrator is dealing with claims, arbitration or litigation the Contract Administrator shall prepare a memo of the issues and provide that to the City Attorney office.

D. When a Capital Projects Management (CPM) Project Manager (Contract Administrator) is dealing with issues that concern alternate methods for Construction delivery, such as JOC's, CM@R, Design Build, etc. the CPM Project Manager should consult with the City Attorney's Office on all controversies or disputes. All matters relating to claims, arbitration and litigation shall be directed to the City Attorney office to process and resolve.

Sec. 2-216 Severability.

If any article, paragraph, sentence, clause, or phrase of this chapter or its application to a particular set of persons or circumstances is for any reason declared invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter which will remain in full force and effect.

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