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**CITY COUNCIL REPORT**

CITY CLERK DEPT.

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2011 JUN 17 AM 7:46

SUBJECT: CITY PROCUREMENT METHODS

This report provides a high level overview of the City's procurement methods, their appropriate use, the regulations that govern them, a new process the City is piloting for use on some complex procurements, and other considerations of the procurement process.

THE ISSUE

The City's procurement process is based upon the principle of open and fair competition. Open and fair competition saves the City and its taxpayers money, improves vendor performance, curbs fraud, provides accountability for results, and instills confidence in the City and the public about the integrity and cost effectiveness of public procurement. Competition also ensures that all vendors desiring to conduct business with the City are given a fair and reasonable opportunity to do so. The procurement processes are established to reflect the requirements and desired outcome of the City and ensure that all vendors and participants are subject to equivalent terms, conditions and requirements.

DISCUSSION

Following is a discussion of City of Phoenix procurement regulations, responsibilities, current methods, and a new process that is being piloted for complex procurements.

Procurement Regulations

City Administrative Regulation (A.R.) 3.10 regulates City of Phoenix procurements and establishes uniform procurement procedures for all commodities and services for the City of Phoenix. Federally funded procurements also may have additional requirements. Additional City, State, and Federal guidelines are required for construction projects and are not discussed in this report. The procurement process outlined in A.R. 3.10 is established by case law, Federal law and regulations, the Arizona State Constitution and Arizona Revised Statutes; as well as local law and regulation including A.R. 3.10 and the Phoenix City Charter and Code.

Procurement Responsibilities

As outlined in AR 3.10, various departments have responsibility for procurement in the City of Phoenix.

### **Finance Procurement Division (Centralized)**

- All procurement of commodities and general services (nonprofessional) costing \$1,000 or greater
- Develop requirements contracts for citywide use (requirements contracts are developed for City goods and services that require frequent purchases on a departmental or Citywide basis)

### **City Departments (Decentralized)**

- Petty Cash (up to \$100)
- Any procurement costing \$1,000 or less
- Professional services (all amounts)
- Procure items using requirements contracts developed by Finance Procurement

### **City Engineer**

- Construction, architectural, and landscaping contracts (usually involves plans, designs, and drawings).

Responsibility for professional service procurements is decentralized, while general (nonprofessional) service procurement is centralized. Professional services are technical in nature and meet more specialized needs; work is predominantly intellectual and varied. General services are distinguished as more repetitive, routine or mechanical in nature, following established or standardized procedures as contrasted with customary and regular exercise of discretion or independent judgment.

City Council approval is required for all procurements expected to exceed \$50,000. This approval is also required for requirements contracts where purchases are expected to exceed \$50,000 over the life of the contract. Emergency procurements (discussed below are an exception).

### Current Procurement Methods

In accordance with A.R. 3.10, procurement personnel are required to make competitive purchases whenever possible. Depending on the size and nature of the procurement, various methods are authorized as described below.

### **Procurement of Goods and Services Exceeding \$50,000 - IFB**

Procurements which will exceed an aggregate dollar amount of \$50,000 and which are primarily price driven will be solicited through an Invitation for Bid (IFB). The Invitation for Bid is the primary, and preferred, procurement process utilized by Finance Procurement as it is the most objective and quickest method for large dollar purchases. Minimum qualifications can be set forth in the specifications and must be adhered to by the bidders. The Invitation for Bid solicitation results in the contract award recommendation to the "lowest responsive, responsible" bidder. IFBs must be submitted to the City in a "sealed bid" prior to the advertised bid opening. Bids are opened in a public process and bid amounts are read to all bidders.

The IFB is useful in both simple and complex procurements when the items or services required can be clearly specified. All terms and requirements are specified in the IFB. Deviations in cost or service level are not allowed. For example, the City can specify in

a janitorial service IFB that the floors must be mopped at least once per day and ask for a price for this service. Bidders that agree to mop the floor more often will not get any kind of price adjustment or credit for this extra service. The bid will be awarded to the lowest cost vendor that is both responsive and responsible.

### **Procurement of Goods and Services Exceeding \$50,000 - RFP**

If solicitation through an IFB is either not practicable or not advantageous to the City, a contract may be entered into by competitive sealed proposals using a Request for Proposal (RFP) process. This method is used when the City wishes to: (1) use a contract other than a fixed price type; or (2) conduct interviews with proposers concerning technical aspects of their proposals; or (3) compare the quality and contractual factors of the proposals submitted; or (4) award a contract in which price is not the determining factor or when factors in addition to price are considerations or (5) when the City isn't clear as to what exactly it wants and wishes for vendors to propose options.

The "highest rated Proposer" is the Proposer with the best over-all proposal based on additional factors in addition to price such as technical ability and customer service. The pricing portion is objectively calculated; other portions of the RFP are graded by a team of unbiased evaluators carefully chosen to have technical knowledge in the area. The RFP document sets forth the relative importance of factors, in addition to pricing, that will be considered in awarding the contract.

### **Procurement of Goods and Services Exceeding \$50,000 – RFQ**

The Request for Qualifications (RFQ) method is most often used to develop a Qualified Vendor List (QVL). In most cases, the RFQ process is used when the City wants to have a list of vendors readily available that have certain qualifications, such as professional certifications or experience or when the scope of work is not clearly defined, when a service is frequently used, or when the departments/functions are expected to have a need for the same type of service. Common examples of QVLs are for attorneys, IT professionals, and financial advisors. The RFQ solicitation has a general description of requirements, certifications, or experience. Vendors that respond to the RFQ process are evaluated by a team in a process similar to the RFP process, but rather than picking one qualified vendor, this process results in either a pass/fail list or else a ranked list of potential vendors.

### **Procurement of Goods and Services Exceeding \$50,000 – Cooperative Contracts**

Cooperative Procurement can be an exception to competitive bidding. Local municipalities, County, and State governments all benefit from cooperative procurement by pooling and consolidating their requirements.

Cooperative procurement (sometimes known as "piggybacking") is the combining of the requirements of two or more government entities or non-profits to obtain the advantages of volume purchases, reduction in administrative expenses or other public benefits. A procurement cooperative is set up by a lead government agency for use by government entities. Government entities then participate in cooperative procurement through inter-local agreements. Cooperative procurements reduce administrative costs and also encourage the sharing of information and expertise in specific commodity and service areas, resulting in solicitations that are more attractive to vendors. When the City

“piggybacks” on a contract, it is basically relying on the third party contractor’s procurement process and the terms of that procurement, including the final contract. The City cannot change the terms of the contract. Therefore, if the third party contract doesn’t have necessary terms, such as required Federal terms because of the City’s funding source, the City can’t “piggyback.”

### **Procurement of Goods and Services Exceeding \$50,000 – Noncompetitive**

Procurement other than competitively (such as a sole source) must be justified or authorized pursuant to A.R. 3.10. The Deputy Finance Director may authorize exceptions to the A.R 3.10 selection process if special circumstances exist for goods and nonprofessional services. For professional service procurements, Deputy City Manager approval is required. Circumstances that would warrant noncompetitive procurements may include, but are not limited to, sole source procurements, time restrictions, unusual nature of a specific project or service, and emergency procurements.

An emergency procurement is defined in City regulations as the procurement of goods and services needed for emergency situations where health, safety or welfare of the public is endangered; the City is exposed to serious cost consequences if immediate corrective or preventive action is not taken; or the department/function identifies an immediate and critical operational need. All emergency purchases are handled through the Procurement Division of Finance. If the procurement is greater than \$50,000, the department director is responsible for obtaining Deputy City Manager’s approval prior to the purchase. Within one working day after the emergency procurement, the department must notify the City Manager (or delegate) in writing of the procurement actions taken.

### **Procurement of Goods and Services under \$50,000 – Quotes**

When the goods or service procurement is expected to be under \$50,000, buyers request written quotes from all known vendors. The process begins by the buyers requesting quotes from Phoenix businesses. Buyers expand the quote process as necessary to make sure there is adequate competition, leading to the best price or service. The buyers contact at least three vendors for quotes.

Unlike the other competitive processes, the bids are not sealed, but can be faxed or submitted through e-mails. When the amount is expected to be between \$5,000 and \$50,000, the quote process is advertised and quotes are solicited for a period of at least ten days.

### **New Procurement Method**

The City recently added a new method of procurement, a process developed by the Performance Based Studies Research Group (PBSRG) at Arizona State University known as ASU Best Value Procurement. The City is currently learning this process from ASU and has recently completed one RFP using the process (Materials Recycling Facility Operations).

The ASU Best Value Procurement process uses the City’s RFP process, but adds additional documents to evaluate past vendor performance, additional measurement

criteria, and additional documentation of risks and actions to mitigate the risks. The process also includes several additional meetings and interviews with vendors throughout the process.

While the process is longer and more time consuming, the theory is that more work up front will lead to a more successful contract and less work in the long term. The City is working with ASU to identify a list of potential procurements that will work best for this method. Currently, complex procurements and procurements where vendor ideas or new innovations can improve the results appear to be the best fit. As the city gains more experience with this process, we will be looking for ways to use elements of this process to improve all of our procurement methods.

### Other Procurement Considerations

The Phoenix City Charter provides that all contracts must be drafted under the supervision of the City Attorney's Office. Contracts and amendments must be filed with the City Clerk's Office.

The City provides certification services for small businesses interested in participating in the Small Business Enterprise (SBE) program as a means of expanding and growing their firms. The SBE Reserve Contract Program includes opportunities for goods and general services providers to participate in city procurement opportunities. Contracts are reserved by the Finance Department when three or more certified SBEs exist that could provide the service. The competition is then restricted to include only certified SBE firms.

The City supports environmentally preferred procurement. Environmentally preferred procurement means purchasing products or services that have a reduced effect on human health and the environment when compared to competing products or services that serve the same purpose. Over the years, a number of directives and policies have been developed to encourage staff to purchase goods and services more responsibly and with the least negative environmental impact as practicable.

Arizona law currently prohibits a local preference as being unconstitutional. In *Big D Construction v. Court of Appeals*, the Arizona Supreme Court ruled in 1990 that Arizona's bid preference for Arizona construction firms was unconstitutional under the Arizona Constitution. Big D involved the construction of the Cardinals' training facility in the City of Tempe. As a result of this ruling, any local purchasing preferences are not allowed and programs such as community outreach to encourage more local vendors are pursued.

The City encourages the City itself, as well as its residents, to shop locally which supports the local economy, increases the City's tax base, supports local businesses, and helps increase and maintain jobs in Phoenix. The City strives to legally and effectively promote the "Shop Phoenix" philosophy (City Council Policy Session approval Oct 14, 2008). To this end, the Procurement Division of Finance developed a number of initiatives to promote the "Shop Phoenix" philosophy. Procurement staff developed and implemented a community outreach initiative to legally and effectively increase local vendor interest and opportunity to bid on and successfully win City

contracts to supply needed goods and services.

Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder

### RECOMMENDATION

This report is for information only.