

RESOLUTION 2016-37

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED "AMENDMENTS TO TOWN CODE CHAPTER 3, ARTICLE 3, PROCUREMENT, DATED DECEMBER 1, 2016."

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. That certain document entitled "Amendments to Town Code, Chapter 3, Article 3, Procurement, dated December 1, 2016," of which one paper copy and one electronic copy maintained in compliance with ARIZ. REV. STAT. § 44-7041 are on file in the office of the Town Clerk and open for public inspection during normal business hours, is hereby declared to be a public record, and said copies are ordered to remain on file with the Town Clerk.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, Arizona, December 1, 2016.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:



Linda M. Kavanagh, Mayor



Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:



Grady E. Miller, Town Manager



Andrew J. McGuire, Town Attorney

**Amendments
To Town Code
Chapter 3, Article 3
Procurement**

December 1, 2016

Article 3-3

PROCUREMENT

PARTS:

- Part I GENERAL PROVISIONS**
- Part II ETHICS; VIOLATIONS; UNAUTHORIZED PURCHASES**
- Part III BIDDING PROCEDURES**

Part I GENERAL PROVISIONS

Sections:

- 3-3-1 Purposes**
- 3-3-2 Policies**
- 3-3-3 Application; Exclusions**
- 3-3-4 Definitions**
- 3-3-5 Budgeting**
- 3-3-6 Procurement Agent**
- 3-3-7 Procurement by Dollar Value; Execution**
- 3-3-8 On-line Bidding**
- 3-3-9 Purchase Orders**
- 3-3-10 (Reserved)**

Section 3-3-1 Purposes

The purposes of this Article are to:

- A. Establish standard policies and practices for the Procurement of Materials and Services and permit the continued development of Procurement policies and practices.
- B. Serve as an aid in providing all Materials and Services at the appropriate time, place, quantity, purpose and Price to meet the operational requirements of the Town.
- C. Ensure the fair and equitable treatment of all Persons who participate in the Procurement system of the Town and foster effective broad-based competition within the free enterprise system.

Section 3-3-2 Policies

The Town shall procure all Materials and Services deemed necessary for the delivery of quality service to its residents using competitive Bids, Proposals, Vendor quotations or direct purchases. A complete history of each purchase of Materials or Services will be maintained through the use of purchase requisitions, purchase orders, check requests, petty cash vouchers and any other appropriate forms as authorized by this Article and as set forth in the Procurement Policy. Every

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effort will be made to obtain all Materials and Services at the most economical prices available. All Procurement Contracts shall be drawn by or under the supervision of the Town Attorney.

Section 3-3-3 Application; Exclusions

- A. This Article shall apply to every expenditure of public monies by the Town relating to Procurement of Materials and Services, except as otherwise specified in this Article. Nothing in this Article shall prevent any Town department from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. In the event of a conflict between the terms of this Article and the terms of any federal or state grant, the terms of any such grant shall govern.
- B. This Article shall not apply to the following:
 - 1. Contracts between the Town and the federal government, the State of Arizona and political subdivisions of the State of Arizona.
 - 2. Contracts for expert services, if the purpose of such services is to provide for Professional Services relating to an existing or probable lawsuit in which the Town is or may become a party or to Contracts for special investigative Services for law enforcement or administrative investigation purposes.
 - 3. Agreements negotiated by legal counsel representing the Town in settlement of pending litigation or threatened litigation.
 - 4. Development agreements, as defined in ARIZ. REV. STAT. § 9-500.05, as amended.
 - 5. Contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals or environmental assessments to the extent that they are negotiated in connection with a Contract for purchase or sale of real property.

Section 3-3-4 Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. “Best Interests of the Town” means advantageous to the Town.
- B. “Bid” means a price-based Proposal that is submitted in response to an Invitation for Bids.
- C. “Bid or Proposal Guarantee” means a form of security that indemnifies the Town against a successful bidder’s failure to execute the Contract documents and proceed with performance.

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- D. “Bid Opening” means the date and time set forth in the Solicitation for opening of sealed Bids.
- E. “Business” means any Person authorized to do business in the State of Arizona.
- F. “Change Order” means a written order signed by an authorized agent of the Town that directs the Contractor to make changes that are authorized by the Town, but which does not change the Contract amount by more than as authorized in Section 3-3-6 below.
- G. “Closing Date” means the date and time set forth in a Solicitation for the receipt of Bids or Proposals by the Town, after which no Bid or Proposal shall be considered.
- H. “Confidential Information” means that portion of a Bid, Proposal, offer, Specification or protest that contains information that the Person submitting the information believes should be withheld, provided (i) such Person submits a written statement advising the Town of this belief at the time of the submission and (ii) the information is so identified wherever it appears.
- I. “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, but does not include the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
- J. “Contract” means all types of Town agreements, regardless of what they may be called, for the Procurement of Materials and Services, the demolition or Construction of public facilities, or the acquisition and disposal of real and personal property.
- K. “Contractor” means any Person having a Contract with the Town.
- L. “Cooperative Purchasing” means Procurement conducted by, or on behalf of, more than one public Procurement unit.
- M. “Data” means documented information, regardless of form or characteristic.
- N. “Days” means calendar days unless otherwise specified.
- O. “Debarment” means disqualification by the Procurement Agent of a Vendor to receive the award of a Contract with the Town for a specified period of time, not to exceed three years, commensurate with the seriousness of the offense causing the disqualification, which may result from misconduct or failure or inadequacy of performance.
- P. “Emergency” means a threat to the public health, welfare, property or safety.
- Q. “Employee” means an individual drawing a wage or a salary through the payroll process of the Town, whether elected or not.

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- R. “Exempt Construction” means:
1. For any building, structure, addition or alteration, Construction with a total cost of work that does not exceed the limitations in ARIZ. REV. STAT. § 34-201(C).
 2. For any street, road, bridge, water or sewer work, Construction with a total cost of work that does not exceed the limitations in ARIZ. REV. STAT. § 34-201(D).
 3. For recreational projects, including trails, playgrounds, ball parks and other similar facilities, excluding buildings, structures, building additions and alterations to buildings, structures and building additions, when such improvements are completed by workers provided by a non-profit organization, Construction with a total cost of the work that does not exceed the limitations in ARIZ. REV. STAT. § 34-201(F).
 4. Contributions to finance public infrastructure made pursuant to a development agreement if such contribution to a single development does not exceed the limitations in ARIZ. REV. STAT. § 34-201(G)
- S. “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.
- T. “Invitation for Bids” means all documents including those attached or incorporated by reference, utilized for soliciting Bids in accordance with Section 3-3-20 below.
- U. “Materials” means all personal property, including equipment, supplies, printing, insurance and leases of personal property.
- V. “Offeror” or “Respondent” means any Person that responds to an Invitation for Bids, Request for Proposals, Solicitation, offer, or any other invitation or request by which the Town invites a Person to participate.
- W. “Open Market Purchase” means procedures used for Procurement of Materials and Services readily available to the general public on the open market which, by their nature, are subject to competition from multiple competing Vendors.
- X. “Payment Bond” means a form of security required to be provided by a Contractor for the protection of claimants supplying labor and/or Materials to the Contractor or its Subcontractors.
- Y. “Performance Bond” means a form of security provided by a Contractor that secures the Contractor’s obligation to properly complete its work in accordance with the Contract.

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- Z. “Person” means any individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, limited liability company or any other private legal entity, governmental entity, union, committee, club, other organization or group of individuals. It includes a trustee, receiver or similar representative.
- AA. “Price” means the total expenditure for a defined quantity of a Material or Service.
- BB. “Procurement” means the purchasing, renting, leasing or otherwise obtaining any Material or Service. The term includes all functions that pertain to the obtaining of any Material or Service, including description of requirements, selection and Solicitation of sources, preparation and award of Contract, and all phases of Contract administration.
- CC. “Procurement Agent” means the Town Manager or authorized designee.
- DD. “Procurement Policy” means the administrative policy created by the Town Manager to assist with the implementation of this Article.
- EE. “Professional Services” means those services requiring specialized knowledge, education, skill or expertise and where the qualifications of the Person(s) rendering the services are of primary importance. Professional Services shall include, but are not limited to, services provided by architects, attorneys, accountants, financial advisors, construction and project managers, dentists, design professionals, planning professionals, engineers, assayers, geologists, land surveyors, mediators, human resources consultants, plan review and/or inspection professionals, translators, election services, materials testing firms, water quality testing firms, fee consultants, revenue study consultants, physicians, nurses, psychologists, teachers and facilitators, veterinarians and health care providers, that provide a combination of professional and paraprofessional services or any other professions and services defined as Professional Services by state law. Professional Services do not include Construction or Exempt Construction.
- FF. “Proposal” means a written offer, solicited or unsolicited, for consideration as a basis for awarding or modifying a Contract.
- GG. “Request for Proposal” means all documents, including those attached or incorporated by reference, utilized for soliciting Proposals in accordance with Section 3-3-21 below.
- HH. “Request for Qualifications” means all documents, including those attached or incorporated by reference, utilized for soliciting qualifications-based Proposals in accordance with Section 3-3-23 below.
- II. “Responsible Bidder” or “Responsible Offeror” means a bidder or Offeror who has (i) the capability to fully perform the Contract requirements and (ii) the reliability that will ensure good faith performance.
- JJ. “Responsive Bidder” or “Responsive Offeror” means a bidder or Offeror who has submitted a Bid or Proposal that conforms in all material aspects to the Solicitation.

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- KK. “Service” means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. This term does not include “Professional Services” provided by those Persons as defined in this Section.
- LL. “Solicitation” means an Invitation for Bids, a Request for Proposals, a Request for Qualifications or any other invitation or request by which the Town invites a Person to participate in a Procurement.
- MM. “Specification” means any description of the physical characteristics, functional characteristics, or the nature of a Material or Service item. The term may include a description of any requirements for inspecting, testing, or preparing a Material or Service item for delivery.
- NN. “Subcontractor” means a Person that contracts to perform work or render Services to a Contractor or to another Subcontractor as a part of a Contract with the Town.
- OO. “Suspension” means an action taken by the Procurement Agent disqualifying a Person or entity from participation in Town Procurement.
- PP. “Technical Registrant” means a Person who provides any of the Professional Services listed in ARIZ. REV. STAT., Title 32, Chapter 1, as amended, and includes, but is not limited to, architects, assayers, engineers, geologists, land surveyors and landscape architects.
- QQ. “Town” means the Town of Fountain Hills, an Arizona municipal corporation.
- RR. “Vendor” means any Person operating a Business that has, or proposes to, provide a Material or Service to the Town.

Section 3-3-5 Budgeting

- A. Procurements shall be contracted for or made only where sufficient funds have been budgeted in the year in which funds have been appropriated.
- B. Budgeted line items specifically identifying one-time operational or recurring Materials or Services that have been approved by the Council in the review and adoption of the annual Town budget, and for which an award is within the allocated expenditure set forth in the budget, may be approved by the Procurement Agent without further Council approval. Awards that exceed the allocated expenditure or deviate from the identified description and/or scope shall require Council approval.

Section 3-3-6 Procurement Agent

The Procurement Agent shall (i) serve as the Contract administrator for the Town and as such shall supervise the execution and completion of all Contracts entered into by or on behalf of the Town and (ii) have general supervision, responsibility and authority to:

- A. Procure, contract for and execute agreements in any amount less than \$50,000.00 for Materials and Services, including rentals, Service agreements, and leases needed by any Town department, in accordance with this Article.
- B. Approve and sign Change Orders to Contracts authorized by the Council in an amount equal to the lesser of 10% of the Contract amount or \$50,000.00; provided that Change Orders that increase the Contract amount shall be approved by a Contract amendment in the form approved by the Town Attorney.
- C. Establish and amend the Procurement Policy and all regulations, forms, procedures and rules necessary and proper to implement the provisions of this Article. Modifications to the Procurement Policy shall be made with the concurrence of the Town Attorney.
- D. Have the authority to suspend or debar Vendors.
- E. Centralize Procurement, consistent with this Article, by which Materials and Services for all Town departments are purchased.
- F. Inform Town Employees and contractors of the ethical standards for public contracting.
- G. Designate another representative of the Town to have the authority to perform any or all of the above tasks.

Section 3-3-7 Procurement by Dollar Value; Execution

- A. Any purchase not exceeding \$50,000.00 may be made by the Procurement Agent in accordance with this Article and the Procurement Policy adopted pursuant to this Article. Contract requirements shall not be artificially divided so as to create multiple purchases of lesser amounts. Except as set forth in Subsections 3-3-5(B) and 3-3-6(B) above, any purchase exceeding \$50,000.00 shall be authorized by the Council. When it is advantageous to the Town, annual Contracts should be initiated for Services and Materials regularly purchased.
- B. The Procurement Agent may sign Contracts (1) for purchases not exceeding \$50,000.00 without Council approval and (2) in any amount after such Contract has been approved by the Council either as part of the annual budget or as a separate item. The Mayor may sign any Contracts of any amount as long as such Contracts have been approved by the Council.

Section 3-3-8 On-line Bidding

- A. If the Procurement Agent determines that electronic, on-line bidding is in the Best Interests of the Town and the competitive Procurement process is facilitated thereby, the Procurement Agent may use on-line bidding to obtain Bids electronically for the purchase of Materials and Services.
- B. An on-line bidding Solicitation must designate an opening date and time.
- C. The Closing Date and time for an on-line Solicitation may be fixed or remain open depending on the structure of the item being bid on-line. Information regarding the Closing Date and time must be included in the Solicitation. At the opening date and time, the Procurement Agent must begin accepting on-line Bids and must continue accepting Bids until the Bid is officially closed.
- D. All on-line Bids must be posted electronically and updated on a real-time basis.
- E. The Procurement Agent may:
 - 1. Require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the Solicitation.
 - 2. Prequalify bidders and allow only those bidders who are prequalified to submit Bids on-line.
- F. All Bids submitted electronically through an on-line bidding process are public information and are subject to the same public disclosure laws and timelines that govern Bids received through the sealed Bid process.
- G. All remedies available to the Town and to bidders through the sealed Bid process under this Article are also available to the Town and to bidders in an on-line bidding process.

Section 3-3-9 Purchase Orders

The Procurement Agent shall provide forms of purchase orders that shall be used for the purchase of all Materials and Services for or on behalf of the Town. Open purchase orders may be utilized for the routine purchase of regularly-supplied items, provided that an open purchase order shall be limited to a single source and shall not be valid for more than \$10,000 in the aggregate.

Section 3-3-10 (Reserved)

Part II ETHICS; VIOLATIONS; UNAUTHORIZED PURCHASES

Sections:

- 3-3-11 Ethical Standards**
- 3-3-12 Ethical Violations**
- 3-3-13 Unauthorized Purchases; Violation, Liability, Enforcement**
- 3-3-14 (Reserved)**
- 3-3-15 (Reserved)**

Section 3-3-11 Ethical Standards

It is the policy of the Town for Employees to maintain high standards of honesty, integrity, impartiality, courtesy and conduct. These standards apply to Town Employees internally as well as when interacting with citizens and Vendors. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to providing the Town with Materials or Services. To further this policy, the Town has promulgated ethical standards as set forth below. The Procurement Agent is authorized to take steps to ensure compliance with the following standards:

- A. It is an affirmative obligation for Town Employees to perform their responsibilities in such a manner to ensure fair competitive access to governmental Procurement by responsible Vendors.
- B. No Employee of the Town shall engage in acts that, in the reasonable judgment of the Procurement Agent, would result in a loss of confidence in the integrity of the Town's Procurement operation. Such acts include, but are not limited to (1) receipt of gifts or services of more than a nominal value from a prospective Vendor, (2) statements to a Vendor that it will be awarded the Contract based on personal knowledge or relationships with Town Employees without an evaluation of its submittal, (3) failure of a Town Employee sitting on a review committee to disclose any prior or current business or financial relationship with a proposed Vendor, (4) criticism of one Vendor to another Vendor who is competing for the same Procurement prior to Bid or Proposal award or (5) any acts similar to those outlined in clauses (1) through (4) of this Subsection. For purposes of this Article, "nominal value" is defined as \$25.00 or less from any single party during any single calendar year.
- C. Town Employees responsible for participation in Procurement by virtue of their positions shall take reasonable efforts to ensure that Contractors doing business with the Town are expected to observe these same ethical standards. Violation of these standards shall constitute grounds for termination of a Contract with the Town and Debarment of the Contractor from doing any further business with the Town.

Section 3-3-12 Ethical Violations

- A. In addition to any applicable state laws, it is a violation of this Article:
1. For any Person to attempt to or influence any Town Employee to violate the provisions of ethical conduct set forth in this Article.
 2. For any Person preparing Specifications or plans pursuant to this Article or any policy or procedure of the Town to receive any direct pecuniary benefit from the utilization of such plans or Specifications, other than compensation owed for preparation of the Specifications or plans.
 3. For any Employee or agent acting on behalf of the Town to directly or indirectly participate in or benefit or receive any pecuniary benefit from a Procurement in violation of state or federal law.
 4. For any Person to offer, give or agree to give any Employee or former Employee of the Town or for any Employee or former Employee of the Town to solicit, demand, accept, or agree to accept from another Person, any valuable thing or valuable benefit that would not accrue in the performance of his official duties or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing content of any Specification or Procurement standard, rendering of advice, investigation, auditing or in any advisory capacity in any proceeding or application request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement of a Contract or subcontract, or to any Solicitation or Proposal therefore. No action taken for violations of this Subsection shall be construed to preclude criminal prosecution of an Employee or former Employee or any other Person under the provisions of state or federal law.
 5. For any payment, gratuity or offer of employment to be made by or on behalf of a Subcontractor under a Contract to the prime Contractor or higher tier Subcontractor or any Person associated therewith, as an inducement for the award of a subcontract or order. Violation of this standard shall constitute grounds for termination of a Contract with the Town and Debarment of the Vendor from doing any further business with the Town. This information shall be included as a term and condition of all Town Contracts.
 6. For a Person to be retained, or to retain a Person, to solicit or secure a Town Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide established sales and brokerage agencies for the purpose of securing business.
 7. For any Employee who is participating directly or indirectly in a Procurement process to become the Employee of any Person under Contract with the Town

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concerning any matters that the Employee participated in during the same Procurement process for a period of twelve months following his employment with the Town.

8. For any Employee or former Employee of the Town to disclose or use Confidential Information acquired by the Employee in the performance of his official duties for the actual or anticipated pecuniary benefit of any Person.
- B. It is no defense to a violation of this Section that the Employee to whom a benefit or offer of employment was made, or agree to be made, was not qualified to act in the desired manner.
- C. An Employee or Person may violate this Section by intentionally or knowingly engaging in a violation or by recklessly or negligently engaging in a violation. The Person's state of mind shall only be considered in imposing the penalty for such violation.

Section 3-3-13 Unauthorized Purchases; Violation, Liability, Enforcement

- A. Except as provided in this Article, it shall be improper for any Town Employee to order the purchase of Materials or Services or to attempt to enter into Contracts within the purview of this Article other than through the Procurement Agent. Purchase Orders or Contracts made contrary to the provisions hereof shall not be approved by the Procurement Agent and the Town shall not be bound thereby. Further, the Procurement Agent may impose discipline on Employees who violate this Article in accordance with the Town's codes and personnel administrative regulations.
- B. A Person who knowingly contracts for or purchases any Materials, Services or Construction in a manner contrary to the requirements of this Article violates the ethical standards contained in this Article shall be personally liable for the recovery of all public monies paid, together with legal interest and all costs, attorney's fees and damages arising out of the violation. Further, the Procurement Agent may impose discipline on Employees who (1) contracted for or purchased any Materials, Services of Construction in a manner contrary to the requirements of this Article or (2) engaged in violations of the provisions set forth in Sections 3-3-11 and 3-3-12 above in accordance with the Town's codes and personnel administrative regulations.
- C. The Town Attorney shall assist the Procurement Agent or authorized designee in enforcing the provisions of this Article.

Sections 3-3-14 – 3-3-15 (Reserved)

Part III BIDDING PROCEDURES

Sections:

3-3-16	Applicability
3-3-17	Public Notice
3-3-18	Bid or Proposal Guarantee
3-3-19	Confidential Information
3-3-20	Invitation for Bids
3-3-21	Request for Proposals
3-3-22	Withdrawal or Cancellation of Bids or Proposals
3-3-23	Retention of Professional Services; Requests for Qualifications
3-3-24	Construction Contracts
3-3-25	Emergency Procurements
3-3-26	Sole Source Procurement
3-3-27	Cooperative Purchasing
3-3-28	Protests; Informal and Formal
3-3-29	Debarments and Suspensions
3-3-30	Acceptance of Work Completed
3-3-31	Attestation of Contracts by Town Clerk

Section 3-3-16 Applicability

The bidding process set forth in this Article shall be utilized for all purchases not designated as eligible for purchases under petty cash, Open Market Purchase or small purchase in the Procurement Policy; provided, however, that the bidding process set forth in this Part may be supplemented by the Procurement Policy. Informal purchases (petty cash, Open Market Purchase and small purchases) shall be governed solely by the Procurement Policy; the Procurement Policy shall also designate the process for determining which bidding process will be required for all Procurements.

Section 3-3-17 Public Notice

- A. Public notice of Invitations for Bids, Requests for Proposals or Requests for Qualifications shall be in a manner that is reasonable in the judgment of Procurement Agent given the commercial context of the Solicitation. The advertisement shall specifically state the character of the Town purchase contemplated. Notice may be given in any publication that is reasonably available to prospective bidders in the judgment of Procurement Agent. For purposes of this Article, reasonable notice shall be defined as (1) not less than five business days for an Invitation for Bids and (2) not less than 21 Days for a Request for Proposals or a Request for Qualifications; provided, however, that any such notice shall comply with the ARIZ. REV. STAT. § 9-812 and 34-201, as amended.
- B. Public notice shall also be provided in a manner that is reasonable in the judgment of the Procurement Agent in publications of limited circulation, with the intent to encourage

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participation of as many qualified Businesses as reasonably possible, including disadvantaged business enterprise firms.

Section 3-3-18 Bonds

- A. The Procurement Agent may require a Bid or Proposal Guarantee be submitted with any Bid or Proposal. The Procurement Agent may waive the Bid or Proposal Guarantee requirement if he finds that the requirement will have a significant negative impact on the ability of disadvantaged business enterprises to compete for Town purchases or if he determines, in his reasonable discretion, that such waiver is in the Best Interests of the Town. The Procurement Agent shall require a Bid or Proposal Guarantee for Construction Contracts pursuant to ARIZ. REV. STAT. § 34-201(A), as amended.
- B. Performance Bonds and Payment Bonds shall be submitted prior to execution of any Contract for Construction or Exempt Construction.

Section 3-3-19 Confidential Information

- A. If a Person believes that a Bid, Proposal, Offer, or Specification contains information that should be withheld from public disclosure, a statement advising the Procurement Agent of this belief and the basis for exemption from such disclosure shall accompany this submission and the information shall be specifically identified wherever it appears.
- B. The Procurement Agent shall make a determination whether the information shall be subject to public disclosure and shall advise in writing the party submitting the information of the final determination.
- C. All information contained in the Proposals shall be deemed as temporarily exempt from public disclosure based on the Town's need to avoid disclosure of contents prejudicial to competing Offerors during the process of negotiation. The Proposals shall not be open for public inspection until after Contract award. Except to the extent the Offeror designates, and the Town concurs, trade secrets or other proprietary Data contained in the Proposal shall remain exempt from public disclosure only to the extent permitted by law.

Section 3-3-20 Invitation for Bids

- A. When the Procurement Policy directs that an Invitation for Bids shall be utilized for Procurement, the Invitation for Bids shall include Specifications and all contractual terms and conditions applicable to the Procurement.
- B. Bids shall be by sealed Proposals only and under such regulations as may be prescribed by the Procurement Agent. The Procurement Agent shall have the power to reject any or all Bids, and to advertise for Bids again.

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- C. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each Bid, and such other relevant information as the Procurement Agent deems appropriate, together with the name of each bidder, shall be recorded; the record of Bids shall be open to public inspection immediately, but individual Bids shall be open to public inspection only after the Contract is awarded.
- D. Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Article. Bids shall be evaluated based upon the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the Bid Price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in Bid evaluation that is not set forth in the Invitation for Bids, this Article or the Procurement Policy.
- E. Correction or withdrawal of inadvertently erroneous Bids before or after Bid Opening, or cancellation of awards or Contracts based on such Bid mistakes, may be permitted where appropriate at the Town's sole discretion. After Bid Opening, no changes in Bid Prices or other provisions of Bids prejudicial to the interest of the Town or fair competition shall be permitted. In lieu of Bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its Bid in the sole discretion of the Town and only if one of the following occurs:
1. The mistake is clearly evident on the face of the Bid document but the intended correction Bid is not similarly evident.
 2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of Bids, or to cancel award or Contracts based on Bid mistakes, shall be supported by a written determination made by the Procurement Agent.
- F. The Contract shall be awarded to the Offeror that is determined to be a Responsive Bidder and a Responsible Bidder and whose Bid (1) is the lowest cost and (2) meets the requirements and criteria set forth in the Invitation for Bids. The amount of applicable transaction privilege or use tax of the Town shall be included in the Bid prices and shall not be a factor in determining the net lowest Bid. In the event the lowest responsive and responsible Bid for a Construction project exceeds available funds as certified by the Procurement Agent, and such Bid does not exceed such funds by more than five percent, the Procurement Agent is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the Bid Price with the low Responsive Bidder and Responsible Bidder in order to bring the Bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the Invitation for Bids.

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- G. When it is considered impractical to initially prepare a purchase description to support an award based on Price, an Invitation for Bids may be issued requesting the submission of unpriced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first Solicitation.
- H. All Vendors and contractors must be in compliance, at the time set for opening the Bid, with all applicable (1) state, federal and county laws, rules and regulations and (2) Town codes, ordinances and regulations.

Section 3-3-21 Request for Proposals

- A. When the Procurement Agent determines that the use of an Invitation for Bids is either not practicable or not advantageous to the Town, a Contract may be entered into by use of the competitive sealed Proposals or other approved methods that are defined as a Request for Proposals.
- B. Proposals shall be solicited through a written Request for Proposals.
- C. Proposals shall be submitted at the time and place designated in the Request for Proposals.
- D. As provided in the Request for Proposals, 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 ensure 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 the 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 proposers.
- E. The award shall be made to the Offeror that is determined to be a Responsible Offeror and a Responsive Offeror whose Proposal is determined, in writing, to be the most advantageous to the Town and best meets the overall needs of the Town taking into consideration only the evaluation factors set forth in the Request for Proposals. The Request for Proposals shall state the relative importance of Price and other evaluation factors; specific numerical weighing is not required. The amount of applicable transaction privilege or use tax of the Town shall be included in the Bid prices and shall not be a factor in determining the net lowest Bid.
- F. The Contract file shall contain the basis upon which the award is made.
- G. All Vendors and Contractors must be in compliance, at the time set for opening the Proposal, with all applicable (1) state, federal and county laws, rules and regulations and (2) Town codes, ordinances and regulations.

Section 3-3-22 Requests for Qualifications

- A. The Town may procure Professional Services by soliciting statements of qualifications for providing such services. The Town may procure such Professional Services by direct selection pursuant to the Procurement Policy, subject to the limitations in ARIZ. REV. STAT., Title 34, as amended. If determined by the Procurement Agent to be inappropriate for direct selection, Professional Services shall be procured through the use of statements of qualifications as follows:
1. The Procurement Agent shall give adequate notice of the need for such services through a Request for Qualifications. The request shall describe the services required, list the types of information and Data required of each Offeror and state the relative importance of particular qualifications.
 2. Persons engaged in providing the designated types of Professional Services may submit statements of qualifications in providing such Professional Services.
 3. The Procurement Agent may appoint a committee to review qualifications. If appointed, the committee shall consist of the Procurement Agent and one or more professionals licensed, registered or admitted to the profession that is the subject of the Procurement. Discussions with Offerors who submit Proposals may be conducted to determine qualifications for further consideration. Award shall be made to the Offeror determined, in writing, to be the best qualified. Compensation shall be negotiated after an award is made.
 4. The Procurement Agent shall conduct negotiations with the Offeror determined to be the most qualified to establish fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified Offeror, then negotiations will be formally terminated with the selected Offeror. If Proposals were submitted by one or more other Offerors determined to be qualified, negotiations may be conducted with such other Offeror or Offerors, in the order of their respective qualification ranking, and the Contract may be awarded to the Offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.
 5. The Contract award shall be made to the Offeror determined in writing by the Procurement Agent or authorized designee to be best qualified based upon (a) the evaluation factors set forth in the Request for Qualifications and (b) agreement between the Town and the Offeror as to fair and reasonable compensation.

Section 3-3-23 Construction Contracts

All Construction Contracts for public improvement projects shall be awarded in accordance with ARIZ. REV. STAT., Title 34, as amended. Public competitive bidding is not required for Exempt Construction Contracts; the requirements of this Article shall apply. In the event of a conflict

between this Chapter and ARIZ. REV. STAT., Title 34, as amended, the provisions of Title 34 shall govern.

Section 3-3-24 Withdrawal or Cancellation of Bids or Proposals

- A. Prior to opening of the Bids or Proposals, the Invitation for Bids or the Request for Proposals may be delayed or canceled, or any or all Bids or Proposals may be rejected, in whole or in part, by the Procurement Agent, when determined to be in the Best Interests of the Town.
- B. After opening of the Bids or Proposals, the Procurement Agent may reject all Bids or Proposals.
- C. A bidder or proposer may withdraw its Bid at any time prior to Bid Opening or the deadline for receipt of the Bid or Proposal by delivering written notice to the Procurement Agent.

Section 3-3-25 Emergency Procurements.

Notwithstanding any other provisions of this Article, in the event of an Emergency, the Procurement Agent may make or authorize Emergency Procurements based upon a threat to the public health, welfare, property or safety. Such Emergency Procurements shall be made with such competition as is practicable under the circumstances and in conformance with the Procurement Policy. The written determination for the Emergency and the selection of the Contractor shall be included in the Contract file.

Section 3-3-26 Non-Competitive Procurement

A Procurement may be made or Contract awarded by the Procurement Agent without competition only pursuant to the process set forth in the Procurement Policy. Non-competitive Procurement shall be avoided, except when no reasonable alternatives exist. A record of non-competitive Procurements shall be maintained as a public record.

Section 3-3-27 Cooperative Purchasing

- A. The Procurement Agent shall have the authority to (1) participate with a state, other political subdivisions of a state and the federal government for the Procurement of Materials or Services with Cooperative Purchasing agreements including through on-line Procurement processes and (2) directly enter into agreements with Vendors who have been awarded Contracts with other governmental entities for Materials and Services, provided the Procurement methods of the other party comply with the intent of this Article.
- B. If a Procurement under this Section involves the expenditure of state or federal assistance or Contract monies, the Procurement Agent shall comply with state or federal law and regulations which are mandatory and which are not reflected in this Article or guidelines adopted by the Town. It shall be the responsibility of the requesting department to

provide the Procurement Agent with the applicable acquisition requirements concurrent with its requisition.

Section 3-3-28 Protests; Informal and Formal

- A. Any Interested Party to a Contract may protest (1) a Solicitation issued by the Town, (2) a proposed award of a Town Contract, (3) the rejection of a request for changes, including a Change Order or (4) Debarment from the Procurement process of the Town, by filing a written informal protest containing the protestor's name, address and telephone number, identification of the Contract, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.
- B. Protests shall be filed with the Procurement Agent within five Days from the time the alleged instance occurred. The Procurement Agent will make the initial contact in an attempt to resolve the matter.
- C. The Procurement Agent shall render a decision in writing within 15 Days from the date the informal protest is filed. Copies of the decision shall be furnished to all interested parties by first class mail at the last address on file with the Town. If the Procurement Agent fails to render a decision within the required period, the informal protest shall be deemed denied and a formal protest may be filed.
- D. After conclusion of the informal protest process, any Interested Party to a Contract may file a formal appeal protesting (1) a Solicitation issued by the Town, (2) a proposed award of a Town Contract, (3) the rejection of a request for changes, including a Change Order, (4) Debarment from the Procurement process of the Town or (5) denial of an informal protest, by filing a formal protest in the manner provided by this Section.
- E. A formal protest shall be in writing signed by an authorized party, containing the protestor's name, address and telephone number, identification of the Contract, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.
- F. The formal protest shall be filed within five business days following (1) the decision of the Procurement Agent on an informal protest or (2) the end of the 15-Day informal protest process, if no decision was issued.
- G. The formal protest shall be heard by a hearing officer appointed by the Procurement Agent for such purposes within 10 business days after filing of the formal protest, unless extended by the hearing officer.
- H. The hearing officer (i) may (a) reject the protest in whole or in part or (b) sustain the protest in whole or in part and (ii) shall provide for an appropriate remedy. In determining an appropriate remedy, the hearing officer shall consider 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

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integrity of the Procurement system, the good faith of the parties, the extent of performance, costs to the Town, the urgency of the Procurement and the impact of the relief upon the Town.

Section 3-3-29 Debarments and Suspensions

The Procurement Agent has the sole authority to debar or suspend a Vendor from participating in a Town Procurement. The Vendor may be suspended or debarred based upon the following factors:

- A. The Vendor does not have sufficient financial ability, equipment or personnel to perform the Contract.
- B. The Vendor has repeatedly breached contractual obligations to public or private agencies.
- C. The Vendor fails to comply with the requests of a background investigation.

Section 3-3-30 Acceptance of Work Completed

- A. Notice of Acceptance. When a contracting party providing Materials or Services to the Town makes a request for acceptance by the Town of work as completed, the Procurement Agent or authorized designee shall indicate acceptance on behalf of the Town on a certificate of final completion or other form designated for that purpose. Until the notice of acceptance is issued, no public work completed on behalf of the Town shall be considered as the property of the Town, and the Town shall assume no responsibility therefore.
- B. Release of Retainage; Conditions. The Town shall not release any funds due but which are held as retainage until the Contract administrator is satisfied that the work has been completed in accordance with the Specifications of the Contract.

Section 3-3-31 Attestation of Contracts by Town Clerk

All Contracts entered into by the Town shall be attested to by the Town Clerk and shall not be binding on the Town until so attested. The Town Clerk shall retain the original of all Contracts and agreements according to the retention schedule adopted by the Council and shall provide to the Procurement Agent such documents as are necessary for orderly administration of the Town's business.