

## **Chapter 3.65 PURCHASING**

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**Prior legislation:** Ord. 09-02.

## **Article I. Generally**

### **3.65.010 Scope of chapter.**

This chapter shall govern the purchase of supplies, materials and equipment at the lowest possible cost commensurate with the quality needed. All purchases shall be in accordance with appropriate standards and specifications as promulgated by the purchasing director in city of Maricopa purchasing policy. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-201.]

### **3.65.020 Definitions.**

“Lowest responsive bid or offer” shall mean the bid or offer that adheres to the established needs of the city, as expressed in the solicitation for products or services, at the lowest net cost to the city.

“Most advantageous bid or offer” shall mean the submitted proposal, offer or bid that conforms most favorably in terms of the requirements for price, delivery, quality or other evaluation criteria as set forth in the solicitation for products or services.

“Services” means any and all services, including, but not limited to, the repair or maintenance of equipment, machinery and other city owned or operated property, and other technical services. The term does not include public works projects or services rendered by city officers or employees, or professional services, as set forth in MCC [3.65.120](#), and other contractual services which are in their nature unique or not subject to competition, as set forth in MCC [3.65.060](#). [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-202.]

## **Article II. Purchasing Policy**

### **3.65.030 Council approval – When required.**

The city manager may make purchases (A) where prior city council approval is not required by this code; (B) for purchases not exceeding fifty thousand dollars (\$50,000); and (C) in any amount after such purchase has been approved by the city council either as part of the annual budget or as a separate item. In all other instances, council approval must be obtained prior to the purchase being made. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-211.]

### **3.65.040 Purchasing director – Duties.**

- A. The city manager shall be designated as purchasing director.
- B. The city manager may delegate to department directors portions of these responsibilities as they relate to purchasing as set forth above. The city manager is specifically authorized to delegate contracting authority to bind the city for all legal purposes as follows:
  - 1. The assistant city manager is authorized to execute contracts for the departments he/she is responsible for provided the costs of such agreements are authorized in the current budget.
  - 2. Department directors are authorized to execute contracts in amounts of twenty-five thousand dollars (\$25,000) or less, provided the costs of such agreements are authorized in the current budget.
- C. The purchasing director, or the purchasing director's designee, shall:
  - 1. Maintain sufficient documentation of all purchase transactions to provide evidence of compliance with the requirements of state and federal law, and the provisions of this code;
  - 2. Approve or deny all purchase requests and shall report to the council on any purchase requiring council approval;
  - 3. Have the authority to resolve solicitation and contract award protests.

D. No purchase or contract for services of any kind or description, payment for which is to be made from funds of the city, shall be made by the purchasing director, or any officer, employee or agent of the city, except in the manner set forth in this chapter, and unless said purchase is in accordance with the adopted city budget. [Res. 21-30; Ord. 21-09 § 2; Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-212.]

### **3.65.050 Purchases in general.**

A. *Purchases under Ten Thousand Dollars (\$10,000)*. Whenever any contemplated purchase or contract for services is for the sum of less than ten thousand dollars (\$10,000), the purchasing director, or the purchasing director's designee, may order the item as needed without further formality, subject to MCC [3.10.140](#), if applicable.

B. *Purchases from Ten Thousand Dollars (\$10,000) to Fifty Thousand Dollars (\$50,000)*. Whenever any contemplated purchase or contract for services is for the sum of at least ten thousand dollars (\$10,000) but not more than fifty thousand dollars (\$50,000), the purchasing director, or the purchasing director's designee, shall obtain at least three written quotes on vendor letterhead, if possible. The purchasing director may solicit quotes or advertise for quotes using the procedure provided in this chapter. Upon review of the quotes, the purchasing director shall award the purchase or contract to the most advantageous bidder.

C. *Purchases in Excess of Fifty Thousand Dollars (\$50,000)*. No single purchase or contract in an amount in excess of fifty thousand dollars (\$50,000), where the purchase was not approved by council in the budget or as a separate item, shall be awarded without prior council approval. Unless otherwise exempted under this chapter, all such purchases shall be made in accordance with MCC [3.65.070](#).

D. *Purchases of Utilities*. Purchases of water, sewer, electrical, and telephone services where the purchasing manager has determined that the services can only be obtained from one provider under MCC [3.65.060](#) are exempt from the requirements of this section. [Ord. 18-09 § 1; Res. 18-24; Ord. 11-04; Code 2004 § 3-213.]

### **3.65.060 Exclusive service.**

A. In the event that there is only one firm or company or individual capable of reasonably providing a particular service or commodity and such services or commodities cannot be secured from other persons or companies, the requirement of this chapter concerning bidding procedures shall not be applicable. The purchasing director shall make a determination of exclusive service following extensive research and shall maintain documentation of such determination.

B. The use of this chapter may be considered unreasonable if the purchasing director determines, after a good faith review of available resources, that there may be more than one source for the required good or service but:

1. The firm, company or individual is the single provider of goods or services which have unique characteristics essential to the operational needs of the city and no other product or service will be suitable for use; or
2. The firm, company or individual has unique historical, institutional knowledge and experience which will provide a continuity of service, efficiency and cost effectiveness not available from any other vendor; or
3. The unique and specialized expertise of one source of services is unlikely to be obtained from any other source. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-214.]

### **3.65.070 Bidding procedure.**

Except as provided in MCC [3.65.060](#), [3.65.120](#), and [3.65.150](#), the purchasing director shall follow the procedure set forth in this section for all purchases and contracts subject to the bidding process:

A. A notice or solicitation for bids shall state the date, time and place of opening, and the place and time period within which bids shall be submitted.

B. The notice shall state with particularity the goods or services required and shall state the place where specifications may be examined.

C. Bids shall be submitted as designated in the notice or solicitation for bids. Any bid not received within the time period allowed shall be rejected. E. The purchasing director or the council shall have

the right to reject any and all bids and parts of bids and to readvertise or resolicit for bids. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-215.]

### **3.65.080 Award of bid.**

Unless the council or the purchasing director, as appropriate, shall exercise the right of rejection, all goods and services in an amount in excess of fifty thousand dollars (\$50,000) shall be awarded to the lowest responsive bidder or most advantageous offeror. In determining the lowest responsive bidder or most advantageous offeror, the council or the purchasing director may consider:

- A. The ability, capacity and skill of the bidder to perform the contract or provide the service required in a timely manner as specified in the scope of services.
- B. The quality of performance in previous contracts with the city together with previous and existing compliance with the ordinances of the city.
- C. The financial resources and ability of the bidder.
- D. The quality, availability and adaptability of the goods or service.
- E. Qualities and/or characteristics that the city deems highly desirable which are (1) not offered by another lower bidder and (2) will result in advantages not previously realized and, therefore, not called out in the bid specification form. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-216.]

### **3.65.090 Performance bond.**

The purchasing director shall have the authority to require a performance bond, in such amount as it may find reasonably necessary to protect the interests of the city, and the form and amount of such bond shall be specified in the notice inviting bids, or if none is specified in the notice inviting bids, the usual and customary form of bond for the contract to be awarded. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-217.]

### **3.65.100 Emergency purchases.**

In case of an emergency which requires immediate purchases of supplies, materials, equipment or services the city manager may delegate the authority to secure, by informal procedure, at the lowest obtainable or advantageous price, any supplies, materials, equipment or services regardless of the amount of the expenditure. An emergency shall be deemed to exist if:

- A. There is a great public calamity;
- B. There is immediate need to prepare for national or local defense;
- C. 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 and safety; or
- D. An essential departmental operation affecting the public health, welfare and safety would be greatly hampered if the prescribed purchasing procedure would cause an undue delay in procurement of the needed item or service. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-218.]

### **3.65.110 Forms.**

The purchasing director shall prescribe and maintain such forms as may be necessary for the proper administration of this chapter, including but not limited to the following:

- A. *Bid Specification Form*. The bid specification form shall state the specifications for the goods or service required and shall be available for inspection by prospective bidders as of the first publication of the notice of bid.
- B. *Notice to Bidders*. The notice to bidders shall set forth the goods or services sought, the day, time and place when bids will be opened, the dates and times within which bids will be received, when specifications may be reviewed and where available and such other information as may be required to secure the most advantageous bids. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-219.]

### **3.65.120 Professional and technical services.**

- A. The provisions of MCC [3.65.070](#), unless required by law or contract, shall not apply to the procurement of professional or technical services, but the purchasing director, or the purchasing director's designee, shall determine the scope of the services required and may, at the purchasing director's option, require the submission of proposals prior to engaging such services. For the purposes of this chapter, "professional or technical 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 and technical services shall include, but not be limited to, services provided by architects, attorneys, accountants, construction and project managers, dentists, design professionals, engineers, geologists, physicians, nurses, psychologists, teachers, veterinarians and health care providers, which provide a combination of professional and paraprofessional services or any other professions and services defined as professional services by state law.
- B. No person or firm practicing in a professional or technical field for which a license is required by state law shall be engaged by the city unless possessing a current license in good standing.
- C. Upon engagement the city shall enter into a written agreement or memorandum of understanding for the performance of the services for which engaged, setting forth the scope of services and the unit or total price therefor.
- D. Professional and technical services shall be procured in accordance with federal or state law whenever applicable. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-220.]

### **3.65.130 Local preference.**

- A. All purchases of supplies and equipment where the estimated value of the transaction does not exceed fifty thousand dollars (\$50,000) shall be evaluated under the local vendor preference criteria under this section. As used in this section, a "local vendor" shall be defined as a business that has an established physical location within the city limits.
1. For purchases with a value between ten thousand dollars (\$10,000) and fifty thousand dollars (\$50,000) where the informal bidding procedure is followed, a local vendor shall be given a credit of one percent of its submitted bid in the determination of lowest responsible bidder.

2. There shall be no local vendor preference for purchases where the formal bidding procedure is followed.
3. To qualify for credit under this section, the local vendor must comply with all applicable provisions of this chapter, and the local vendor's price quote or informal bid must be found to be responsive.
4. The purchasing director, or the purchasing director's designee, shall make all reasonable efforts to solicit price quotations and informal bids from local vendors.

B. This preference shall not be used where state law or any applicable federal statute or regulation forbids the granting of such preference, or requires another method for competitive bidding. This section shall not apply to contracts for professional services pursuant to this chapter, nor to purchases made pursuant to MCC [3.65.150](#). [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-221.]

### **3.65.140 Purchase orders.**

A. *In General.* The purchasing director shall provide forms of purchase order which shall be used for the purchase of all goods and services for or on behalf of the city.

B. *Open Purchase Orders.* An open purchase order shall be limited to a single source. All open purchase orders shall expire at the end of the fiscal year of issuance and the expiration date shall be plainly stated on the face thereof. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-222.]

### **3.65.150 Cooperative purchasing.**

This chapter shall not apply to purchases made by, through or with agencies of the United States Government, the state of Arizona or its political subdivisions. The city may make purchases or award contracts for services without a formal bidding process whenever other governmental units have completed a formal bidding process, or updated the underlying contract, for the same item or service within 12 months of the proposed award date and if, in the opinion of the purchasing director, a separate bidding process is not likely to result in a lower price for such items or services. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-223.]

### **3.65.160 Promotion of maximum practicable competition.**

A. *Maximum Competition Encouraged.* All specifications for bids or proposals shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs. Specifications 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. To the extent practicable, the city shall use accepted commercial specifications and shall procure standard commercial materials and, absent significant justification, avoid proprietary specifications.

B. *Brand Name or Approved Alternate.* Proprietary or brand name specifications shall not be used unless the purchasing director determines, in writing, that such specifications are required by demonstrable technological justification, that it is not practicable or advantageous to use a less restrictive specification, that the use of such a specification is in the best interests of the city, and if 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 "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 purchasing 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.*

1. A qualified products list may be prepared and utilized, if the purchasing 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.

2. 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.
3. Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose.
4. The qualified products list shall not be modified after the solicitation is issued. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-224.]

### **3.65.170 Construction projects.**

- A. Provided the cost of the project exceeds the statutorily established amount, the procurement of both horizontal and vertical construction projects shall be governed by state law. The purchasing director shall consult and adhere to the Arizona Revised Statutes when procuring goods and services related to construction.
- B. When the cost of a construction project falls below the statutorily established amount, the project shall be procured pursuant to the provisions of this code.
- C. Alternative delivery methods, such as design bid build, construction manager at risk, design build, and job order contracting, may be utilized for applicable purchases. These purchases must be in compliance with Arizona Revised Statutes. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-225.]

## **Article III. Bid Protest – Procedures and Resolution**

### **3.65.180 Protest procedure.**

- A. Any interested party may protest a determination of not susceptible for award or the award of a contract.

B. The interested party shall file a protest in writing with the purchasing director including the following minimal information:

1. The name, address and telephone number of the interested party;
2. The signature of the interested party or the interested party's representative;
3. Identification of the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

C. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.

D. In cases other than those covered in subsection (C) of this section, the interested party shall file the protest within 10 days after the purchasing director makes the purchasing file available for public inspection.

E. The interested party may submit a written request to the purchasing director for an extension of the time limit for protest filing set forth in subsection (D) of this section. The written request shall be submitted before the expiration of the time limit set forth in subsection (D) of this section and shall set forth good cause as to the specific action or inaction of the city that resulted in the interested party being unable to submit the protest within the 10 days. The purchasing director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.

F. If the interested party shows good cause, the purchasing director may consider a protest that is not timely filed.

G. The purchasing director shall immediately give notice of a protest to all offerors. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-241.]

### **3.65.190 Stay of purchase during protest.**

A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, and a stay is requested by an offeror the purchasing director shall make a written determination to either:

1. Proceed with the award or contract performance; or
2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the city.

B. The purchasing director shall provide the protestor and other interested parties with a copy of the written determination. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-242.]

### **3.65.200 Resolution of solicitation and contract award protests.**

A. The purchasing director shall issue a written decision within 14 days after a protest has been filed under MCC [3.65.180](#). The decision of the purchasing director shall contain the basis for the decision and a statement that the decision shall be final and binding on the parties.

1. Such decision shall be delivered to the appellant by certified U.S. Mail or by any other method that provides evidence of receipt.

B. If the purchasing director fails to issue a decision within the time limits set forth in this chapter, the interested party may proceed as if the purchasing director had issued an adverse decision. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-243.]

### **3.65.210 Remedies by the purchasing director.**

A. If the purchasing director sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with state statutes, this code, or purchasing policies and procedures, the purchasing director shall implement an appropriate remedy.

B. In determining an appropriate remedy, the purchasing director shall consider all the circumstances surrounding the procurement or proposed procurement including:

1. The seriousness of the procurement deficiency;
  2. The degree of prejudice to other interested parties or to the integrity of the purchasing system;
  3. The good faith of the parties;
  4. The extent of performance;
  5. The costs to the city;
  6. The urgency of the purchase;
  7. The impact on the city's mission; and
  8. Other relevant issues.
- C. The purchasing director may implement any of the following appropriate remedies:
1. Decline to exercise an option to request a renewal of the contract;
  2. Recommend that the city council terminate the contract;
  3. Amend the solicitation;
  4. Issue a new solicitation;
  5. Recommend the award of a contract consistent with this code; or
  6. Render such other relief as determined necessary to ensure compliance with this code. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-244.]

## **Article IV. Disposal of Surplus Property**

### **3.65.220 Surplus supplies and equipment.**

- A. All departments and offices shall submit to the purchasing director, at such time and in such form as shall be prescribed, reports showing all supplies and equipment which are no longer used or

which have become obsolete or worn out. The purchasing director, or the purchasing director's designee, shall dispose of such supplies and equipment pursuant to the provisions of A.R.S. § [9-402](#).

B. Surplus supplies may be leased or donated pursuant to a written contract approved by the council; provided, that the city receives adequate consideration for the surplus supplies, as determined by the purchasing director.

C. The amount received for any property sold pursuant to this chapter shall be deposited in the general fund or other fund so designated by the purchasing director. [Ord. 18-09 § 1; Res. 18-24; Code 2004 § 3-251.]

**The Maricopa City Code is current through Ordinance 22-02, passed January 18, 2022.**

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