

When Recorded Mail To:
Town Clerk
Town of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

ORDINANCE NO. 2-11

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF BUCKEYE, ARIZONA, ADOPTING THAT CERTAIN DOCUMENT ENTITLED "TOWN OF BUCKEYE PROCUREMENT CODE" BY REFERENCE; AMENDING THE BUCKEYE TOWN CODE, CHAPTER 3, PROCUREMENT; PROVIDING PENALTIES FOR VIOLATIONS AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF BUCKEYE, ARIZONA, as follows:

Section 1. That certain document entitled "Town of Buckeye Procurement Code" (the "Procurement Code"), three copies of which are on file in the office of the Town Clerk, which document was made a public record by Resolution No. 16-11 of the Town of Buckeye, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

Section 2. The Town Code of the Town of Buckeye, Arizona (the "Town Code"), Chapter 24, Procurement, is hereby deleted in its entirety and replaced by the Procurement Code, which shall be inserted into the Town Code as a new Chapter 24, Procurement.

Section 3. Unless a penalty is specifically designated otherwise by provisions of this Ordinance or the Procurement Code adopted herein by reference, any person found guilty of violating any provision of the Town Code shall be guilty of a class 1 misdemeanor and shall be punished by a base fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment, in accordance with state law. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

Section 4. Any person who is found or pleads guilty to a misdemeanor criminal offense in the municipal court and who, as a consequence, is incarcerated in any jail facility, may, as a part of any sentence imposed by the municipal court, be required to reimburse the town for any costs of such incarceration charged to the town by the jail facility in which the person was incarcerated.

Section 5. In addition to any other remedy provided by law, the municipal court may, as a part of any sentence imposed by the municipal court, assess fees, surcharges, costs and expenses against any person who is found or pleads guilty to a civil or misdemeanor criminal offense in such amounts as may be determined by the council and adopted by ordinance, resolution or annual budget.

Section 6. No provision of the Procurement Code adopted herein by reference, the Town Code, or this Ordinance, designating the duties of an officer or employee of the Town shall be so construed as to make such officer or employee liable for any fine or penalty provided for a violation of the Town Code, unless the intention of the Town Council to impose such a fine or penalty upon such officer or employee is specifically and clearly expressed in the Town Code or ordinance creating or establishing the duties of such officer or employee.

Section 7. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Procurement Code adopted herein by reference is for any reason to be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 8. In the event of any inconsistency, conflict or ambiguity among any section, subsection, sentence, clause, phrase or portion of the Procurement Code adopted herein by reference, the Town Code, or this Ordinance, the documents shall govern in the order listed herein.

Section 9. The immediate operation of the provisions hereof is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage by the Mayor and Council and it is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona.

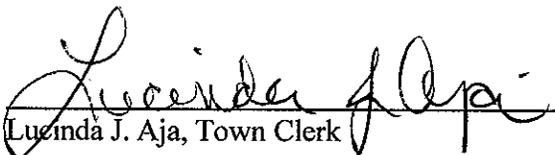
Section 10. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Buckeye, Arizona, this 15th day of February, 2011.



Jackie A. Meck, Mayor

ATTEST:



Lucinda J. Aja, Town Clerk

APPROVED AS TO FORM:



Scott W. Ruby, Town Attorney

**TOWN OF BUCKEYE
PROCUREMENT CODE**

**CHAPTER 24
PROCUREMENT**

ARTICLE 24-1 GENERAL PROVISIONS

Section 24-1-1	Purposes
Section 24-1-2	Policies
Section 24-1-3	Applicability
Section 24-1-4	Compliance with Federal Regulations
Section 24-1-5	Definitions
Section 24-1-6	Supplementary General Principles of Law Applicable
Section 24-1-7	Procurement Agent
Section 24-1-8	Procurement by Dollar Value
Section 24-1-9	Online Bidding

Section 24-1-1 Purposes

The purposes of this chapter are to:

- A. Establish standard policies and practices for the procurement of supplies, materials, equipment and services and permit the continued development of procurement policies and practices.
- B. Serve as an aid in providing all goods 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.
- D. Ensure the proper disposal of property, equipment and materials that are no longer of value to the town.

Section 24-1-2 Policies

- A. The town shall procure all supplies, materials, equipment and services deemed necessary for the delivery of quality services to its residents using competitive procurements, proposals, vendor quotations or direct purchases. A complete history of each purchase of supplies, materials, equipment 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 procurement code. Every effort will be made to obtain all supplies, materials, equipment and services at the most economical prices available.
- B. All procurement contracts shall be reviewed by the town attorney.

Section 24-1-3 Applicability

- A. This procurement code shall apply to the following:

1. Every expenditure of public monies by the town for the acquisition of supplies and services, including, construction, research and development, architect-engineer and commercial items. This article applies to expenditures of public funds irrespective of funding source, including state and federal assistance monies; provided, however, that nothing in this procurement code shall prevent the town from complying with the terms and conditions of any grant, gift, bequest, cooperative agreement or state or federal guideline. In the event of a conflict between the terms of this procurement code and the terms of any federal or state grant, the terms of any such grant shall govern.
2. The disposal of abandoned personal property and surplus town materials and supplies, unless otherwise provided by law.

B. The following are exempt from the provisions of this chapter:

1. Contracts between the town and the federal government, the State of Arizona and political subdivisions of the State of Arizona, except as provided in this procurement code.
2. Contracts for expert services, if the purpose of such services is to provide for professional services relating to an existing or probable administrative or judicial proceeding 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; provided, however, that public infrastructure improvements undertaken by the town through a development agreement with a private corporation shall be subject to the applicable competitive procurement statutes.
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.
6. Contracts for the services and the performance of work for municipal improvement districts or other special taxing districts shall be procured and awarded in accordance with the statutes governing such districts.

Section 24-1-4 Compliance with Federal Regulations

- A. The procurement agent or authorized designee is authorized and directed to conduct the procurement and management of all materials and services for federally funded projects in accordance with all applicable federal standards, orders, or requirements.
1. To the extent necessary to ensure compliance with all applicable federal standards, orders, or requirements, the procurement agent or authorized designee shall take affirmative steps to locate small, minority, disadvantaged and

women-owned business enterprises interested responding to solicitations issued by the town, including:

1. Incorporating such businesses in solicitation lists whenever they are potential procurement sources.
 2. Ensuring that such businesses are solicited when identified as potential sources.
 3. Dividing procurement requirements, when economically feasible, to permit maximum participation of such businesses.
 4. Establishing delivery schedules, where the procurement requirements permit, which encourage participation by small, minority, disadvantaged and women-owned business enterprise firms.
 4. Requiring prime contractors, when subcontracts are utilized, to take affirmative steps to select small, minority, disadvantaged and women-owned business enterprise firms.
 5. Developing and including as part of any solicitation for professional and consultant services a request for firms to indicate whether they have been certified by any jurisdiction in this state as a small, minority, disadvantaged and women-owned business enterprise.
- B. The town shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids, proposals or offers, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference.
- C. Contracts for federally funded projects shall contain all provisions required by federal regulations and require prime contractors ensure that subcontracts for such projects contain all federally required flow down provisions.
- D. Failure to comply with the provisions of this section or applicable federal procurement requirements shall constitute grounds for termination of the contract with the vendor and debarment of the vendor from the procurement process.

Section 24-1-5 Definitions

- A. 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:
1. "Authorized designee" means any agent or employee of the town designated in writing by the town manager or the town council to serve in a particular capacity or perform certain specific acts, provided such service or performance is within the scope of his/her employment.
 2. "Best interests of the town" means advantageous to the town.

3. "Bid or proposal bond/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.
4. "Bid opening" means the date and time set forth in the solicitation for opening of sealed bids.
5. "Bidder" "Offeror" or "Respondent" means any individual, corporation, partnership business, organization or agency which responds to an invitation for bids, request for qualifications, request for proposals, solicitation or any other invitation or request by which the town invites a person to participate in a town procurement solicitation.
6. "Business" means any person duly authorized to do business in the State of Arizona and in the town.
7. "Change order" means a written order executed by an authorized agent of the town which directs the contractor to make changes that are authorized by the town.
8. "Closing date" means the date and time set forth for the receipt of bids, proposals or offers by the town, after which no bid, proposal or offer shall be accepted or considered.
9. "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 (a) such person submits a written statement advising the town of the existence of such confidential information at the time of the submission and (b) the confidential information shall be so identified wherever it appears.
10. "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 or demolition projects costing less than two hundred thousand dollars (\$200,000.00).
11. "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.
12. "Contractor" means any person having a contract with the town.
13. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.
14. "Data" means documented information, regardless of form or characteristic.
15. "Days" shall mean calendar days unless otherwise specified.

16. "Debarment" means the disqualification of a vendor to receive solicitations or the award of a contract by the town for a specified period of time, not to exceed three years, commensurate with the seriousness of the offense resulting from conduct or failure or inadequacy of performance.
17. "Emergency" means a threat to the public health, welfare, property or safety or if a situation exists which makes compliance with the provisions of this procurement code impracticable, unnecessary or contrary to the public interest.
18. "Employee" means an individual drawing a wage or a salary through the payroll process of the town, whether elected or not.
19. "Interested party" means an actual or prospective bidder, offeror or respondent 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, offeror or respondent has an economic interest will depend upon the circumstances of each case.
20. "Invitation for bids" means all documents, including those attached or incorporated by reference, utilized for soliciting bids in accordance with section 24-3-9.
21. "Materials" means all personal property, including equipment, supplies, printing, insurance and leases of personal property.
22. "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. The term "person" shall include a trustee, receiver or similar representative.
23. "Personal property" means all personal property of whatever nature, including bicycles, where the owner thereof or his/her whereabouts is unknown, or which is unclaimed for more than seven days, but the term shall not be interpreted to mean and shall specifically exclude the following:
 - a. Any vehicle, trailer or semi-trailer of a type subject to registration under Title 28, Arizona Revised Statutes.
 - b. Livestock.
 - c. Intangible personal property.
24. "Price" means the total expenditure for a defined quantity of a commodity or service.
25. "Procurement" means the purchasing, renting, leasing or otherwise obtaining of any supply or service. The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

26. "Procurement agent" means the town manager or authorized designee.
27. "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 not be limited to, services provided by architects, attorneys, accountants, clergy, construction and project managers, dentists, design professionals, engineers, geologists, real estate agents, 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.
28. "Proposal" means a written offer, solicited or unsolicited, for consideration as a basis for awarding or modifying a contract.
29. "Request for proposal" means all documents, including those attached or incorporated by reference, utilized for soliciting proposals in accordance with section 24-3-10 below.
30. "Responsible bidder, offeror or respondent" means a bidder, offeror or respondent who has (a) the capability to fully perform the contract requirements and (b) the reliability that will ensure good faith performance.
31. "Responsive bidder, offeror or respondent" means a bidder, offeror or respondent who has submitted a bid, proposal or offer that conforms in all material aspects to the solicitation.
32. "Service" means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term does not include "professional services" provided by those persons as defined in this chapter.
33. "Solicitation" means an invitation for bids, a request for qualifications (technical registrants), a request for proposals, a request for qualifications, a request for quotations, or any other invitation or request by which the town invites a person to participate in a procurement.
34. "Specification" means any description of the physical characteristics, functional characteristics, or the nature of a supply or service item. The term may include a description of any requirements for inspecting, testing, or preparing a supply, or service item for delivery.
35. "Statement of qualifications" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work and its qualifications for performing the work in accordance with section 24-3-11 below.
36. "Subcontractor" means a person who contracts to perform work or render services to a contractor or to another subcontractor as a part of a contract with the town.

37. "Suspension" means an action taken by the procurement agent or authorized designee disqualifying a person or entity from participation in town procurement.
38. "Vendor" means any person doing business with the town.

Section 24-1-6 Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of this article, the principles of law and equity, including the Uniform Commercial Code of this state, the common law of contracts as applied in this state and law relative to agency fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.

Section 24-1-7 Procurement Agent

- A. Except as otherwise provided in this article the procurement agent or authorized designee may adopt operational procedures, consistent with this chapter, governing the procurement and management of all materials and services. The procurement agent shall supervise and administer all procurements in general conformity with practices that promote competitive selection of businesses to provide materials, services and construction for the town. The town's procurement agent shall have general supervision, responsibility and authority to:
1. Centralize procurement, consistent with this procurement code, and supervise the expenditures of all departments, divisions or services of the town government and to supervise the purchase of all supplies, goods, wares, merchandise, equipment and material which may be required for any of such departments, divisions or services.
 2. Procure, contract for and execute agreements in any amount less than one hundred thousand dollars (\$100,000.00) for the acquisition of services and the purchase of supplies, goods, wares, merchandise, equipment, materials, including lease, rental and service agreements, as required by any town department, division or service, in accordance with this procurement code.
 3. Approve and sign change orders to contracts authorized by the town council in an aggregate amount equal to the greater of ten percent (10%) of the amount of the contract or one hundred thousand dollars (\$100,000.00).
 4. To negotiate and execute agreements on behalf of the town for the lease of any real property owned by the town.
 5. Establish and amend, as may be necessary or desirable, all regulations, forms, procedures and rules necessary and proper to implement the provisions of this procurement code.
 6. Have the authority to suspend or debar vendors.
 7. Inform town employees and contractors of the ethical standards for public contracting.
 8. Designate another officer or representative of the town to have the authority to perform any or all of the above tasks.

Section 24-1-8 Procurement by Dollar Value

Any purchase not exceeding one hundred thousand dollars (\$100,000.00) may be made by the procurement agent or authorized designee in accordance with administrative procedures adopted pursuant to this chapter. Contract requirements shall not be artificially divided so as to create purchases of lesser amounts under such procedures. Except as set forth in subsection 24-1-7(A)3 above, any purchase exceeding one hundred thousand dollars (\$100,000.00) shall be authorized by the town council. When it is advantageous to the town, annual contracts should be initiated for services and supplies regularly purchased. The mayor, procurement agent or authorized designee may execute and deliver contracts (A) for purchases not exceeding one hundred thousand dollars (\$100,000.00) and (B) provided the subject matter of such contract has been approved by the town council either as part of the annual budget or such contract has been approved by council as a separate item. The mayor may execute any contracts of any amount as long as such contracts have been approved by the town council.

Section 24-1-9 Online Bidding

- A. The procurement agent or authorized designee may utilize online bidding to obtain bids, proposals or offers electronically for the purchase of goods, services, construction and information services.
- B. An online bidding solicitation must designate an opening date and time.
- C. The closing date and time for an online solicitation may be fixed or remain open depending on the structure of the item being bid online. Information regarding the closing date and time must be included in the solicitation. At the opening date and time, the procurement agent or authorized designee must begin accepting online bids, proposals or offers and must continue accepting bids, proposals or offers until the solicitation is officially closed.
- D. All online bids must be posted electronically and updated on a real-time basis.
- E. The procurement agent or authorized designee may:
 - 1. Require bidders, offerors or respondents to register with the town prior to the opening date and time and, as part of that registration, require bidders, offerors or respondents to agree to any terms, conditions or other requirements of the solicitation.
 - 2. Prequalify bidders, offerors or respondents and permit only such prequalified vendors to submit bids, proposals or offers online.
- F. All bids, proposals, or offers submitted electronically through an online bidding process are public information and subject to the same public disclosure laws that govern bids, proposals or offers received through the competitive sealed procurement process.
- G. All remedies available to the town and to bidders pursuant to the town's conventional sealed bidding practices as described in this chapter are also available to the town and bidders in an online bidding process.

ARTICLE 24-2 ETHICS; VIOLATIONS; UNAUTHORIZED PURCHASES

Section 24-2-1	Ethical Standards
Section 24-2-2	Ethical Violations
Section 24-2-3	Unauthorized Purchases; Violation, Liability, Enforcement

Section 24-2-1 Ethical Standards

All parties involved in the negotiation, performance, or administration of town contracts are required to act in good faith. Additionally, it is the policy of the town for employees to maintain high standards of honesty, integrity, impartiality, courtesy and conduct. The procurement agent or authorized designee is authorized to take steps to ensure compliance with the following ethical standards:

- A. It is an affirmative obligation for town employees to perform their responsibilities in such a manner to assure 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 or authorized designee, would result in a loss of confidence in the integrity of the town's procurement process. Such acts would 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 they will be awarded the contract based on personal knowledge or relationships with town employees without an evaluation of their submittal, (3) failure of a town employee sitting on a review committee to disclose any prior or current conflict or 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 contract award or (5) any acts similar to those outlined in subsections (1)-(4) of this section. For purposes of this procurement code, nominal value is defined as twenty-five dollars (\$25.00) or less from any single party during any single event or gift and not an aggregate amount in excess of two hundred fifty dollars (\$250.00) in any calendar year.
- C. Town employees responsible for participation in procurement by virtue of their positions shall make reasonable efforts to ensure that contractors doing business with the town are aware that such contractors 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 vendor from doing any further business with the town.

Section 24-2-2 Ethical Violations

- A. In addition to any applicable state law, it is a violation of this procurement code:
 - 1. For any person to attempt to or influence any town employee to violate the provisions of ethical conduct set forth in this procurement code.
 - 2. For any person preparing specifications or plans pursuant to this procurement code or any policy or procedure of the town to receive any direct pecuniary benefit from the utilization of such plans or specifications.
 - 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 solicitation 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 their 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.
 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.
 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 selling 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 concerning any matters that the employee participated in during the same procurement process for a period of twelve (12) months following their employment with the town. The human resources department shall advise terminating employees of this provision.
 8. For any employee or former employee of the town to disclose or use confidential information acquired by the employee in the performance of their official duties for anticipated pecuniary benefit, or 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 24-2-3 Unauthorized Purchases; Violation, Liability, Enforcement

- A. Except as provided in this procurement code, it shall be improper for any town employee to purchase supplies or services or to attempt to enter into contracts on behalf of the town other than through the procurement agent or authorized designee. Purchase orders or contracts made contrary to the provisions of this section shall not be approved by the procurement agent or authorized designee and the town shall not be bound

thereby. Further, the procurement agent or authorized designee may impose discipline on employees who violate this procurement code in accordance with the town's codes and personnel administrative regulations.

- B. A person who contracts for or purchases any materials, services or construction in a manner contrary to the requirements of this procurement code or violates the ethical standards contained in this procurement code 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. Additionally, the procurement agent or authorized designee may impose discipline on employees who (1) contracted for or purchased any materials, services or construction in a manner contrary to the requirements of this procurement code or (2) engages in violations of the provisions set forth in section 24-2-1 and 24-2-2 above in accordance with the town's codes and personnel administrative regulations.
- C. No action taken for violations of this section 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.
- D. The town attorney shall assist the procurement agent or authorized designee in enforcing the provisions of this procurement code.

ARTICLE 24-3 FORMAL PROCUREMENT PROCEDURES

Section 24-3-1	Methods of Source Selection; Form of Contracts
Section 24-3-2	Small Purchases
Section 24-3-3	Sole Source Procurement
Section 24-3-4	Emergency Procurements
Section 24-3-5	Construction Contracts
Section 24-3-6	Public Notice
Section 24-3-7	Bid or Proposal Bond/Guarantee
Section 24-3-8	Confidential Information
Section 24-3-9	Competitive Sealed Bidding
Section 24-3-10	Competitive Sealed Proposals
Section 24-3-11	Retention of Professional and Legal Services
Section 24-3-12	Responsibility of Bidders, Offerors and Respondents
Section 24-3-13	Withdrawal or Cancellation of Bids or Proposals
Section 24-3-14	Cooperative Purchasing
Section 24-3-15	Protests; Informal and Formal
Section 24-3-16	Debarments and Suspensions

Section 24-3-1 Methods of Source Selection; Form of Contracts; Preparation of Specifications

- A. All contracts of the town shall be awarded by competitive sealed bidding as set forth in section 24-3-9, except as otherwise provided in sections 24-3-2 (small purchases), 24-3-3 (sole source procurement), 24-3-4 (emergency procurements), 24-3-5 (construction contracts), 24-3-10 (competitive sealed proposals), 24-3-11 (retention of professional and legal services), of this chapter.
- B. Subject to the limitations of this chapter, any type or form of contract which will promote the best interests of this town may be used.

1. The procurement agent or authorized designee may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.
 2. Unless otherwise provided by law, a contract for materials or services may be entered into for any period of time deemed to be in the best interest of the town, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.
 - a. Prior to use of a multi-term contract, it shall be determined that: (i) estimated requirements cover the period of the contract and are reasonably firm and continuing; (ii) the contract will serve the best interests of the town by encouraging effective competition or otherwise promoting economies in town procurement.
 - b. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring actual costs incurred but not amortized in the price of the supplies or services delivered under the contract.
- C. All contracts entered into pursuant to this chapter shall be executed in the name of the Town of Buckeye by the mayor or the town manager and approved as to form by the town attorney. Such contracts are not required to be countersigned by the town clerk.
- D. All procurement specifications, including those prepared by architects, engineers, consultants and others for public contracts, or subcontractors, shall seek to promote overall economy for the purposes intended and encourage maximum practicable competition in satisfying this town's needs and shall not be unduly restrictive. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.
- E. To the extent practicable and unless otherwise permitted by this chapter, all specifications shall describe the town's requirements in a manner that does not unnecessarily exclude a material, service or construction item.
- F. Proprietary specifications shall not be used unless the procurement agent or authorized designee 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. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications shall not justify the use of proprietary specifications.
- G. To the extent practicable, the town shall use accepted commercial specifications and shall procure standard commercial materials.

Section 24-3-2 Small Purchases

- A. Any contract for goods and services not exceeding one hundred thousand dollars (\$100,000.00) annually may be procured, awarded, approved, executed and delivered by the procurement agent or authorized designee in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
- B. Small purchases are those over five thousand dollars (\$5,000.00) but not exceeding one hundred thousand dollars (\$100,000.00). Insofar as it is practical for small purchases in excess of five thousand dollars (\$5,000.00), no less than three (3) businesses or persons shall be solicited to submit quotations. Award shall be made to the responsible bidder submitting the quotation which is most advantageous to the town and conforms in all material respects to the solicitation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.
- C. The procurement agent or authorized designee shall adopt operational procedures for making small purchases of five thousand dollars (\$5,000.00) or less.
- D. Town department directors may request purchasing cards for appropriate employees from the procurement agent. The procurement agent shall establish such terms of use, dollar limits and other provisions relating to the purchasing card, as the procurement agent deems advantageous to the town. No purchasing card shall be issued without the written approval of the procurement agent and countersigned by any one of the following persons, the town manager, finance director or mayor. The procurement agent or authorized designee shall develop rules and regulations as may be necessary to administer use of purchasing cards by the town's elected officials, officers and employees.

Purchasing cards may not be used by employees to avoid provisions of this procurement code.

- E. Town departments may be issued petty cash funds. A petty cash fund must be requested by the respective department head and approved by the procurement agent or authorized designee. Petty cash funds will not exceed one hundred fifty dollars (\$150.00) and can only be used for single transactions of up to twenty-five dollars (\$25.00). The department head or authorized designee shall monitor and reconcile transactions to assure the fund remains in balance and properly and utilized for town expenses. Releases shall be tracked by voucher; receipts will be summarized, totaled and submitted to replenish the fund. Random audits of petty cash funds will be implemented by the finance department to assure the integrity of the respective processes and proper handling of the funds.

Section 24-3-3 Sole Source Procurement

A contract may be awarded without competition upon determination of the procurement agent or authorized designee, in writing, after a good faith review of available sources, that there is only one source for the required material, service or construction item. The department requesting sole source procurement shall provide written evidence to support a sole source determination. The procurement agent or authorized designee may require that negotiations be conducted as to price, delivery and terms. The procurement agent or authorized designee may require the

submission of cost or pricing data in connection with an award pursuant to this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist.

Section 24-3-4 Emergency Procurements

Notwithstanding any other provisions of this article, the procurement agent or authorized designee may make or authorize others to make emergency procurements of materials, services or construction items when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with sections 24-3-5 (construction contracts), 24-3-9 (competitive sealed bidding), 24-3-10 (competitive sealed proposals), or 24-3-11 (retention of professional and legal services), contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

Section 24-3-5 Construction Contracts

All contracts for construction for public improvement projects shall be awarded in accordance with Arizona Revised Statutes, Title 34, as amended. If public competitive bidding is not required pursuant to ARIZ. REV. STAT. § 34-201(C) or (D), as amended, then the requirements of this chapter shall apply. In the event of a conflict between this chapter and Arizona Revised Statutes, Title 34, as amended, the provisions of Title 34 shall govern.

Section 24-3-6 Public Notice

Public notice of a procurement solicitation shall be in a manner that is reasonable in the judgment of procurement agent or authorized designee, given the commercial context of the proposed purchase. The advertisement for solicitation shall specifically state the character of the town improvement or purchase contemplated. Notice may be given in any publication of general circulation that is reasonably available to prospective bidders, offerors or respondents, in the judgment of procurement agent or authorized designee. For purposes of this procurement code, adequate or reasonable publication notice in a newspaper of general circulation in the town shall be defined as not less than twice in a weekly newspaper or five (5) days in a daily newspaper.

Section 24-3-7 Bid or Proposal Bond/Guarantee

The submission of bid or proposal bond/guarantee as security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the procurement agent or authorized designee shall consider the nature of the performance and the need for future protection to the town. The requirement for security must be included in the invitation for bids or request for proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid, statement of qualifications or proposal.

Section 24-3-8 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 or authorized designee of this fact 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 or authorized designee 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 bids, offers or proposals shall be deemed as exempt from public disclosure based upon the town's need to avoid disclosure of contents prejudicial to competing bidders, offerors or respondents during the process of negotiation. Such bids, offers or proposals shall not be open for public inspection until after a contract for the solicited materials, goods or services has been awarded. Except to the extent the bidder, offeror or respondent designates, and the town concurs, trade secrets or other proprietary data contained in the bid, offer or proposal shall remain exempt from public disclosure to the extent permitted by law.

Section 24-3-9 Competitive Sealed Bidding.

- A. All reasonable attempts shall be made to procure materials and services for the town through a competitive sealed bidding process. All contracts of the town shall be awarded by competitive sealed bidding except as otherwise provided in this procurement code.
- B. An invitation for bids shall be issued and shall include specifications, any applicable evaluation criteria, and all contractual terms and conditions specifically applicable to the procurement. Standard contractual terms and conditions may be included within the solicitation document or incorporated by reference.
- C. Adequate public notice of the invitation for bids shall be given not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the town manager. The public notice shall state the place, date, and time of bid opening. Notice of the invitation for bids shall be posted and a copy of the invitation for bids shall be available for public inspection.
- D. Late bids shall be rejected. A bid shall be deemed to be late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. The department's clock is the governing clock. A late bid shall not be opened except as may be necessary for identification purposes. Such bids may be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.
- E. 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 or authorized designee deems appropriate, together with the name of each bidder shall be recorded. The bid tabulation or record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by the town and a "bid" or "no bid" may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets will indicate that there were no attendees present. Unless otherwise determined by the procurement agent or authorized designee, the bids shall not be opened for public inspection until after a contract is awarded. After contract award, the bids shall be available for public inspection, except to the extent that the

withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 24-3-8(A).

- F. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. 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.
- G. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the department prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. 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 if:
1. The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 2. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. 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 town manager.
- H. The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.
1. In evaluating the bids, except for procurement of construction, and for purposes of determining the low bidder, the procurement agent or authorized designee shall include the amount of applicable business privilege tax. The amount of a town's business privilege tax shall not be included in the evaluation except in those instances in which the award is between a town area bidder and an Arizona-based, non-town area bidder. In such event, the applicable town business privilege tax shall be included in the non-town area bidder's price for evaluation purposes only to determine the lowest bidder.
 2. In the event the low responsive and responsible bid for a construction project exceeds available funds and such bid does not exceed such funds by more than five percent (5%), the procurement agent or authorized designee is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

3. After the town issues a notice of intent to award or upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 24-3-8(A).
- I. If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the procurement agent or authorized designee.

Section 24-3-10 Competitive Sealed Proposals

- A. Unless otherwise prohibited, a contract may be entered into by use of the competitive sealed proposals method when the use of competitive sealed bidding is either not practicable or not advantageous to the town.
- B. Competitive sealed 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. Adequate public notice of the request for proposals shall be given in the same manner as provided in section 24-3-9(C).
- E. Late proposals shall be rejected in accordance with section 24-3-9(D). A proposal shall be deemed late if it is received at the location designated in the request for proposals after the time and date set for receipt of proposals.
- F. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after a notice of award is issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 24-3-8(A).
- G. The request for proposals shall state the criteria to be used in the evaluation of the proposals and may include their relative importance. Specific numerical weighting is not required. The procurement agent or authorized designee shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.
- H. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be responsive and potentially selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.
- I. Negotiations may be conducted with responsible offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

1. Negotiations may be conducted concurrently with responsible offerors for the purpose of determining source selection and/or contract award.
 2. Exclusive negotiations may be conducted with the responsible offeror whose proposal is determined in the selection process to be most advantageous to the town. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the town may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.
- J. Contract award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the town taking into consideration price and the other evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

Section 24-3-11 Retention of Professional and Legal Services

- A. For purposes of this section, the term "technical registrant" means a person who provides any of the professional services listed in Arizona Revised Statutes, Title 32, Chapter 1, as amended, and includes, but is not limited to, architects, assayers, engineers, geologists, land surveyors and landscape architects. The town shall procure professional services from technical registrants in the manner prescribed in Arizona Revised Statutes, Title 34, as amended.
- B. The town attorney may be retained in a manner as determined by the council from time to time. For the purpose of procuring the services of legal counsel other than the town attorney, the town manager may procure such services, except that all contracts exceeding one hundred thousand dollars (\$100,000.00) in amount for any fiscal year shall require approval by the mayor and council. No contract for the services of legal counsel may be awarded without the authorization of the town attorney except as otherwise provided by law.
1. Selection Procedure for Services of Legal Counsel. Unless determined by the town attorney that direct selection is in the best interest of the town or except as provided under section 24-3-3 (sole source procurement) or section 24-3-4 (emergency procurements), the services of legal counsel shall be procured in accordance with this section.
 2. Persons engaged in providing the services of legal counsel may submit statements of qualifications and expressions of interest in providing such services. The town may specify a uniform format for statements of qualifications. Persons may amend these statements at any time by filing a new statement.
 3. The town attorney shall give adequate notice of the need for such services. The notice shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

4. The town attorney or a designee may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
 5. Awards in excess of one hundred thousand dollars (\$100,000.00) shall be made by the mayor and council to the offeror determined in writing by the town attorney or a designee to be the best qualified offeror and after negotiation of compensation determined to be fair and reasonable.
- C. Except as provided in subsections 24-3-11(A) and (B) above, the town may procure professional services by soliciting statements of qualifications for providing such services; provided, however, that the town may procure such professional services by direct selection pursuant to the administrative regulations promulgated by the procurement agent. The procurement of professional services through the use of statements of qualifications shall be as follows:
1. Persons engaged in providing the designated types of professional services may submit statements of qualifications in providing such professional services. The town shall supply a uniform format for statements of qualifications based upon department needs.
 2. The procurement agent or authorized designee shall give adequate notice of the need for such services through a notice of request for qualifications or request for proposals. 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.
 3. The procurement agent or authorized designee shall appoint a committee to review qualifications. The committee shall consist of the procurement agent or authorized designee and one or more professionals licensed, registered or admitted to the profession which 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 or authorized designee 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 by the town council 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 or request for proposals and (b) agreement between the town and the offer as to fair and reasonable compensation.

6. If procurement is by direct selection of prequalified technical registrants, a written determination by the procurement agent or authorized designee citing the basis of award and for the selection of the particular technical registrant shall be included in the contract file. The best interests of the town shall be considered in each instance.
7. The procurement agent or authorized designee shall maintain a list of technical registrants who are properly licensed with the State of Arizona Board of Technical Registration, that have expressed an interest in performing work for the town and have provided evidence of their professional qualifications for such work. The list may be categorized to reflect the person or firm's primary field of expertise.
8. The procurement agent or authorized designee will notify each person or firm listed on the register annually of their status and invite updating of their professional qualifications. In addition to publication in the official newspaper of the town, a public advertisement may be placed in a major territorial newspaper of general circulation inviting firms to apply for inclusion on the town's list of prequalified technical registrants.
9. Firms who have failed to provide satisfactory evidence of qualifications or have performed unsatisfactorily during the past twenty-four (24) months may be subject to corrective action in accordance with section 24-3-17 of this chapter.

Section 24-3-12 Responsibility of Bidders, Offerors and Respondents

- A. If a bidder, offeror or respondent who otherwise would have been awarded a contract is found nonresponsible, a written finding of nonresponsibility, setting forth the basis of the finding, shall be prepared by the procurement agent or authorized designee. The failure of a bidder, offeror or respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of nonresponsibility with respect to such bidder, offeror or respondent. The final determination shall be made part of the contract file and be made a public record.
- B. Confidential information furnished by a bidder, offeror or respondent pursuant to this section shall not be disclosed by the town outside of the town's departments, or using agency, without prior written consent by the bidder, offeror or respondent.
- C. Factors to be considered in determining if a prospective contractor is responsible include:
 1. The proposed contractor's financial, physical, personnel or other resources, including subcontracts.
 2. The proposed contractor's record of performance and integrity.
 3. Whether the proposed contractor is qualified legally to contract with the town.
 4. Whether the proposed contractor supplied all necessary information concerning its responsibility.

- D. The procurement agent or authorized designee may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

Section 24-3-13 Withdrawal or Cancellation of Bids or Proposals

- A. An invitation for bids, a request for proposals, a request for qualifications or other solicitation may be cancelled, or any or all bids, proposals or statement of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the town. Each solicitation issued by the town shall state that the solicitation may be cancelled and that any bid, proposal or statement of qualification may be rejected in whole or in part when in the best interests of the town.

B. Prior to Opening.

1. As used in this section, "opening" means the date set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals.
2. Prior to opening, a solicitation may be cancelled in whole or in part when the procurement agent or authorized designee determines in writing that such action is in the town's best interest for reasons including but not limited to:
 - a. The town no longer requires the materials, services, or construction.
 - b. The town no longer can reasonably expect to fund the procurement.
 - c. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
3. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all persons solicited.
4. The notice of cancellation shall (a) identify the solicitation, (b) briefly explain the reason for cancellation and (c) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.

C. After Opening.

1. After opening but prior to award, all bids, proposals or statements of qualifications may be rejected in whole or in part when the procurement agent or authorized designee determines in writing that such action is in the town's best interest for reasons including but not limited to:
 - a. The town no longer requires the materials, services, or construction.
 - b. Ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation.
 - c. The solicitation did not provide for consideration of all factors of significance to the town.

- d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds.
 - e. All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices.
 - f. There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- 2. The notice of rejection shall (a) identify the solicitation, (b) briefly explain the reason for rejection and (c) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.
 - 3. If all bids, proposals or request for qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.
- D. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Section 24-3-14 Rejection of Individual Bids, Proposals or Statements of Qualifications

- A. A bid may be rejected if:
- 1. The bidder is determined to be nonresponsible pursuant to section 24-3-12 (responsibility of bidders, offerors and respondents).
 - 2. The bid is determined to be nonresponsive in accordance with section 24-3-9 (competitive sealed bidding).
- B. A proposal, statement of qualifications or quotation may be rejected if:
- 1. The person responding to the solicitation is determined to be nonresponsible pursuant to section 24-3-12 (responsibility of bidders, offerors and respondents).
 - 2. It is unacceptable.
 - 3. The proposed price, unless prohibited, is unreasonable.
 - 4. It is otherwise not advantageous to the town.
- C. Reasons for rejection shall be provided upon request by unsuccessful bidders, offerors or respondents.

Section 24-3-15 Cooperative Purchasing

- A. The town may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an agreement entered

into between the participants or within existing participatory language contained in agreements and intended for use by other municipal entities (to piggyback on existing agreements as appropriate). An agreement entered into as provided in this article is exempt from ARIZ. REV. STAT. § 11-952, subsections D, E and F. Parties under a cooperative purchasing agreement may:

1. Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.
 2. Cooperatively use materials or services.
 3. Commonly use or share warehousing facilities, capital equipment and other facilities.
 4. Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.
 5. On request, make available to other public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.
- B. The activities described in subsections (1) through (5) do not limit the activities of parties under a cooperative purchasing agreement.

Section 24-3-16 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 an informal protest.
- B. Protests shall be filed with the procurement agent or authorized designee within five (5) days from the time the alleged instance occurred. The procurement agent or authorized designee will make the initial contact to resolve the matter.
- C. The procurement agent or authorized designee shall render a decision in writing within fifteen (15) business 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 or authorized designee fails to render a decision within the required period, a formal protest may be filed.
- D. 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 or (4) debarment from the procurement process of the town, 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 their 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 appeal shall be filed within five business days following (1) the date of the event that is the subject of the formal appeal, (2) the decision of an informal appeal or (3) the end of the fifteen (15) day informal appeal process, if no decision was issued.
- G. The formal appeal shall be heard by a hearing officer appointed by the procurement agent or authorized designee for such purposes within ten (10) business days after filing of the appeal, unless extended by the hearing officer.
- H. The hearing officer (1) may (a) reject the protest in whole or in part or (b) sustain the protest in whole or in part and (2) shall provide for an appropriate remedy as follows:
 - 1. 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 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.
 - 2. An appropriate remedy may include one or more of the following:
 - a. Decline to exercise an option to renew under the contract.
 - b. Terminate the contract.
 - c. Reissue the solicitation.
 - d. Issue a new solicitation.
 - e. Award a contract consistent with town codes and policies.
 - f. Such other relief as is determined necessary to ensure compliance with this procurement code, procurement guidelines and procedures.

Section 24-3-17 Debarments and Suspensions

The procurement agent or authorized designee has the sole authority to debar or suspend a vendor from participating in 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 and private agencies.
- C. The vendor fails to comply with the requests of an investigation.

ARTICLE 24-4 DISPOSITION OF PERSONAL PROPERTY

Section 24-4-1 Sale, Lease or Disposal of Surplus or Obsolete Town or Personal Property

Section 24-4-2 Unclaimed Personal Property

Section 24-4-1 Sale, Lease or Disposal of Surplus or Obsolete Town or Personal Property

The town shall have the right to sell, lease, exchange, donate or otherwise dispose of town personal property in the best interests of the town. The disposal of surplus or obsolete personal property shall be done in as competitive a manner as the procurement agent or authorized designee determines to be practicable including, but not limited to, through competitive sealed bids, public auction, online sales, established markets or posted prices. Procedures shall be prescribed prohibiting the conversion of surplus and obsolete town personal property for personal use by town employees unless the town receives fair market value for such personal property and the personal property is disposed of in a commercially reasonable manner.

Section 24-4-2 Unclaimed Personal Property

- A. Personal property (other than cash) shall be deemed abandoned if, after two years, the owner thereof fails to make satisfactory claim and proof of ownership within thirty (30) days after the giving of notice as provided below.

- B. Any employee having in his/her possession personal property that appears to be abandoned shall promptly notify the procurement agent or authorized designee of such abandoned property. The procurement agent or authorized designee shall from time to time prepare a notice in writing containing the following information:
 - 1. The name, designation and address of the procurement agent or authorized designee giving the notice.
 - 2. A description of the personal property that has come into the possession of the town since giving of the last periodic notice.
 - 3. A demand that all owners of the property described in the notice make claim and proof of ownership satisfactory to the town within thirty (30) days from the date of the notice.
 - 4. A statement that any of the described personal property not so claimed within such thirty (30) day period shall be deemed to be abandoned, and that the same may be sold through competitive sealed bids, public auction, online sales, established markets or posted prices.
 - 5. The notice shall be published in a newspaper of general circulation in the town at least once and copies thereof shall be posted in three (3) public places in the town, and a copy of such notice shall be mailed to the owner, if known, at his/her last known mailing address.

- C. Claim and proof of ownership.

1. Except as provided in this chapter, if the personal property described in the notice in subsection (B) above, remains in the possession of the procurement agent or authorized designee without any person making satisfactory claim and proof of ownership therefor for a period of thirty (30) days from the date of the notice describing it, the personal property shall be deemed to be abandoned, and title thereof shall be deemed to be in the town by reason of abandonment by the owner and possession by the town.
 2. When dealing with property which is lost, found by a person not the owner (hereinafter referred to as the "finder") and then turned over to the procurement agent, then the finder shall be deemed to have made satisfactory claim and proof of ownership to be entitled to possession of the personal property at the end of thirty (30) days from the date of the notice. However, the finder's claim and proof of ownership under this section shall be inferior to and subject to a satisfactory claim and proof of ownership by any owner of the personal property.
 3. Upon delivery of the property to the finder as provided in this section, the town shall have no further interest in, or obligations with respect to, the property. The town shall, however, provide the name and address of the finder and the location of the property, if known, to any person making a satisfactory claim and proof of ownership subsequent to the delivery of the property to the finder.
- D. Unless otherwise required by law, any abandoned personal property may, at the election of the town, be sold through competitive sealed bids, public auction, online sales, established markets or posted prices to the highest bidder or at the posted prices after ten (10) days notice given in the same manner as provided in subsection (B) above, which notice shall contain the following information:
1. The name, designation and address of the procurement agent or authorized designee giving the notice.
 2. A description of the property to be sold.
 3. The manner of sale, date, time, place of the sale and the person to conduct the same.
 4. A statement that the described personal property is deemed to be abandoned and that the same will be sold in the manner selected by the town to the highest responsive bidder or at posted prices for cash.
 5. A statement that the town reserves the right to reject any and all bids.
- E. The sale provided for herein shall be to the highest responsive bidder or at the posted prices for cash, but in no event shall any item be sold for less than the cost of advertising and selling. The town reserves the right to reject any and all bids.
- F. The procurement agent or authorized designee conducting the sale shall maintain a complete and accurate record of the sale which shall include the description of the personal property sold, the name and address of the purchasers, the sale price of each item sold and the costs of the sale.

- G. The procurement agent or authorized designee conducting the sale shall execute and deliver a certificate of sale to the purchaser of each item of personal property, which certificate shall describe the item in the same manner as the notice of sale and shall recite the purchase price paid, the name and address of the purchaser and the date of the purchase. Such certificate shall pass the title to the item to the purchaser.
- H. All moneys received from sales of personal property as provided for in this section, shall be immediately paid over to the town finance department and retained in a separate fund for at least six (6) months. Upon the expiration of such time, unless sooner claimed as herein provided, such moneys may be utilized by the town as general fund of the town.
- I. Should any person within six (6) months from the date of the public sale of any item of personal property make claim thereto and establish ownership, the sum of money for which the item sold shall be paid over to such person, less the costs of advertising and selling. In no event shall any claim be considered unless it shall be presented to the procurement agent in writing under oath and before the expiration of six (6) months from the date of the sale of the item claimed.
- J. The provisions contained in this section relating to the sale of abandoned personal property shall not apply to firearms, weapons and other devices or instruments designed for inflicting bodily injury shall not be sold at public auction. The town may elect to dispose of or retain the same. The police department may sell or trade unclaimed firearms to a federally licensed firearms dealer or apply the value of such unclaimed firearms as a credit with such a federally licensed firearms dealer toward the purchase of equipment by the police department.
- K. Items for which no bids are received may be deemed to be of no intrinsic or monetary value and may be disposed of in any manner deemed appropriate by the town.
- L. Items useful or necessary to the town may be retained by the town for its use.
- M. Each person performing any action provided for in this section shall make affidavit thereof which shall be prima facie evidence of the facts alleged in the affidavit.