

ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA AMENDING THE
PIMA COUNTY CODE, TITLE 11,
PIMA COUNTY PROCUREMENT CODE

WHEREAS, the intent of Pima County Code Title 11 is to ensure full and equitable economic opportunities to persons or businesses that compete for business with Pima County government, including small, minority-owned, and woman-owned business enterprises; and

WHEREAS, based on the findings of the 2008 third generation disparity study, the Board of Supervisors approved the creation of a race and gender neutral Small Business Enterprise Program to encourage contracting with all small businesses, including MWBE businesses; and

WHEREAS, on July 7, 2009, the Board of Supervisors, based upon the factual predicate established in the third generation disparity study, adopted the amendments to Pima County Title 20 and Board Policy D29.8, and

WHEREAS, based on the findings of the 2008 third generation disparity study and the adopted revisions to Pima County Code Title 20 and Board Policy D29.8, the Board of Supervisors hereby implements amendments to Pima County Code Title 11.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

SECTION 1. Ordinance No 1997-45 and Title 11, Sections 11.04.030, 11.08.010, 11.12.040 and 11.16.020 of the Pima County Code are hereby amended to read as follows:

11.04.030 Definitions.

In this title, unless the context otherwise requires:

- A. "Business" shall mean a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity, operated for profit or nonprofit that is properly licensed or otherwise authorized to do business.
- B. "Certification" shall mean completion by a business enterprise of an application procedure as provided by the county Minority/Women and Small Business Enterprise (M/W/SBE) Ordinance.
- C. "Construction" shall mean all work subject to the requirements of Arizona Revised Statutes Title 34 including building, improving, altering, repairing, maintaining or demolishing any public building, highway, bridge or other real property structure.
- D. "Contract" means all types of county agreements, regardless of what they may be called, for the procurement of materials, services or construction.
- E. "Contractor" means any person who receives a bid, proposal or contract in connection with a procurement. This term also includes any person who conducts business as an agent or representative of the contractor.
- F. "Day" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m. excluding holidays, as provided by law.
- G. "Department" means any office, division, or department or other entity of Pima County.
- H. "Designee" means a duly authorized representative.
- I. "Filed" means delivery to the location and by date and time designated in the solicitation or specified in this ordinance. A time and date stamp affixed to a document by the county shall be determinative of the time of delivery for purposes of filing.

- J. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
- K. "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the World Wide Web.
- L. "Invitation for bids" means all documents, whether attached or incorporated by reference, used for soliciting bids.
- M. "Materials" means all property, including, but not limited to, equipment, supplies, insurance and leases of property, but does not include land, an interest in land, or leases of land or buildings.
- N. "Multi-step sealed bidding" means a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the county and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
- O. "On-line bidding" means a procurement process in which public agencies receive vendors' bids for goods and services, construction or information services electronically over the internet in a real-time, competitive bidding event.
- P. "Procurement" means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the acquiring of any material, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- Q. "Procurement officer" means any person to whom the procurement director has delegated procurement authority in writing.
- R. "Professional services" are services involving specialized knowledge, skill and expertise provided by persons with advanced training and experience in a field that requires an extended course of specialized instruction and study.
- S. "Request for proposals" means all documents whether attached or incorporated by reference, used for soliciting proposals through the competitive sealed proposals process.
- T. "Request for quotations" means the documentation or method used in the process of competing for purchases that are lower than the dollar amount requiring submission of sealed bids or proposals.
- U. "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the reliability and integrity that will assure good faith performance.
- V. "Responsive bidder or offeror" means a person who has submitted a bid or proposal that conforms with all material respects to the solicitation.
- W. "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports, plans, or documents and performance. The term includes professional services and construction.
- X. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request by which the county invites a person to participate in a procurement.
- Y. "Specification" means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery. It includes statements or scopes of work often used in solicitations for professional services.
- Z. "Subcontractor" means a company or person who contracts to perform work or render service to a contractor or as a sub-subcontractor as a part of a contract with the county.
(Ord. 2005-44 § 1, 2005; Ord. 2001-131 § 1 (part), 2001; Ord. 1997-45 § 1, 1997)

11.08.010 Authority of the procurement director.

- A. The procurement director shall be appointed by the county administrator to serve as the central purchasing agent of the county.
- B. Unless otherwise provided in this title, the authority, duties and responsibilities of the procurement director shall be as follows:
1. Serve as the exclusive supervisor and manager of the county's procurement system.
 2. Conduct procurement for all county departments except those conducted by departments to whom the procurement director has delegated procurement authority.

3. Prepare or monitor the use of specifications for materials and services required by the county.
4. Issue invitations for bids and requests for proposals for materials, services and construction for all county purchases.
5. Award and execute contracts in an amount up to \$250,000 per year for a maximum term of five years from the effective date of the contract, with the exception of settlement agreements related to lawful claims arising from litigation involving the county. Procurement requirements shall not be artificially divided to circumvent source selection procedures required by this title. Contracts signed by the procurement director shall be reported to the board.
6. Cancel solicitations, including electronic solicitations, for materials, services or construction prior to the time set for receipt of bids, quotes, offers or proposals where it is in the best interests of the County and provide such notice of cancellation as the procurement director may require by procedure.
7. Develop and maintain countywide procurement standards, procedure manuals and standard contract terms and conditions as necessary to carry out the terms of this title.
8. Delegate procurement authority to departments meeting the certification requirements established pursuant to this title.
9. Provide guidance and leadership on procurement matters to the board, the county administrator, departments, and procurement officers.
10. Authorize emergency, limited competition and sole source procurement as specified in this title.
11. Monitor sourcing decisions, procurement of materials and services, contracts awarded, and contract compliance, and report these matters to the board at a regularly scheduled board meeting at least quarterly.
12. Appoint procurement advisory committees to assist with specifications and procurement decisions. Anyone who participates in any aspect of a specific procurement as an advisory committee member shall not receive any benefits directly or indirectly from a contract resulting from such procurement.
13. In accordance with the county M/W/SBE ordinance, develop and administer a program which encourages participation of small, minority, and woman-owned businesses and requires the certification of such businesses and the publication of annual reports reflecting the dollar participation of such businesses in the procurement of goods, services, and construction.
14. Notwithstanding any provision to the contrary in this section, the procurement director or authorized designee may execute contracts for materials in any amount, provided that if the contract amount exceeds the award authority of the procurement director, the board shall make the award.

C. Delegation of Authority.

1. The procurement director may delegate or rescind procurement authority to a department except that the authority delegated to the procurement director under Subsection B.5 of this section may not be delegated to a department.
2. Departments having procurement authority shall comply with this chapter and all implementing procedures, forms and terms established by the procurement director.
3. The procurement director shall consider the following factors in making the decision to delegate or rescind procurement authority:
 - a. The procurement expertise, specialized knowledge and past experience of the department;
 - b. The impact of the delegation of the procurement on efficiency and effectiveness;
 - c. Department adherence to the procurement code, standards, procedures and manuals.
4. The procurement director shall monitor contracts developed and administered by the departments with delegated procurement authority, and shall be available to provide technical assistance.
5. Notwithstanding the delegation of procurement authority the procurement director shall retain all other authority, responsibilities and duties relating to procurement.

(Ord. 2006-90 § 2, 2006; Ord. 2005-44 § 2, 2005; Ord. 2002-94 § 2, 2002; Ord. 2001-131 § 1 (part), 2001; Ord. 1997-45 § 1, 1997)

11.12.040 Small purchases.

A. Conditions for Use. This section applies to the procurement of materials and services costing less than the bid threshold defined by A.R.S. § 41-2535, not including architectural and engineering or construction services. Procurement requirements shall not be artificially divided to circumvent source selection.

B. Purchases from \$5,000 to \$50,000. For purchases of materials and services expected to cost at least \$5,000 and do not exceed the bid threshold defined by A.R.S. § 41-2535, the Procurement Department

shall issue a request for quotations and shall solicit a minimum of three written quotations, including a quotation from at least one certified small business enterprise (SBE) if identified as available for the solicited commodities or services in the Pima County vendor database at the time of the solicitation. A description of the solicited requirements, the names of the businesses submitting quotations, and the date and amount of each quotation, shall be documented and maintained as a public record.

C. Purchases from \$1,000 to \$4,999.99. For purchases of materials and services costing from \$1,000 to \$4,999.99, the procuring department shall solicit a minimum of three verbal quotations including a quotation from at least one SBE if identified as available for the solicited commodities or services in the Pima County vendor database at the time of the solicitation. A description of the solicited requirements, the names of the businesses submitting quotations, and the date and amount of each quotation, shall be documented and maintained as a public record.

D. Purchases less than \$1,000. For purchases costing less than \$1,000, the procuring department shall obtain as much competition as is practicable, including qualified and available SBE firms. However, no quotes will be required for these purchases.

E. As defined in Pima County Code, Title 20.16.010(B) and BOS Policy D29.8III(C), the Procurement Department may "reserve" or restrict its informal solicitations for specific material and general service commodities that do not exceed \$50,000 per contract year to only certified local SBE's.

F. Sole Source Procurement. All sole source procurement is subject to the procedures in Section 11.12.050.

G. Contracts. The procurement director shall establish simplified contract documents for use in procurement for services that do not exceed \$50,000.

(Ord. 2005-44 § 3 (part), 2005; Ord. 2000-75 § 2, 2000; Ord. 2000-24 § 2, 2000; Ord. 2000-23 § 2, 2000; Ord. 1997-45 § 1, 1997)

11.16.020 Outreach.

A. Conditions for Use. In selecting construction firms for projects involving less than the competitive bidding amounts established in Arizona Revised Statutes §§ 18-217 and 34-201, a procurement officer shall request price quotations from as many firms as is practicable, including available, certified M/W/SBE firms. The names of firms submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

B. Publication. As part of the project specifications, a procurement officer shall publish a listing of certified M/W/SBE subcontracting firms that are available and willing to work on each individual project, and describe the portion of work that each M/W/SBE is capable of performing. Such listing shall be accompanied by:

1. A request that the prime contractor obtain price quotes and consider entering into subcontracts with listed M/W/SBE firms; and
2. A request that the prime contractor participate in a post-award conference in order to ascertain why listed M/W/SBE firms received or failed to receive subcontracts.

C. Subcontractor Utilization. Procurement officers shall collect and maintain information regarding actual subcontractor utilization, including a description of firms utilized, work performed, and dollar participation of subcontractors. This information shall be forwarded to the procurement department at the end of each project for purposes of monitoring and reporting.

(Ord. 1997-45 § 1, 1997)

Section 2. This ordinance shall become effective 31 days from the date of adoption.

PASSED AND ADOPTED BY THE Board of Supervisors, Pima County, Arizona, this _____ day of _____, 2009.

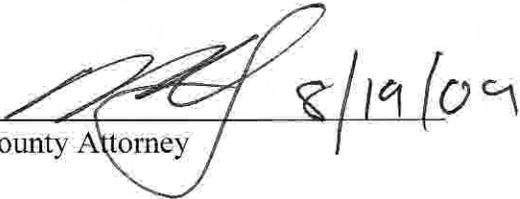
Chairman, Board of Supervisors

Date

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

 8/19/09

Deputy County Attorney