

Town of Florence



POLICY TITLE: PROCUREMENT POLICY		EFFECTIVE DATE: May 3, 2021
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APPROVAL: <input type="checkbox"/> TOWN MANAGER SIGNATURE: <u>Brent Billingsley s/s</u> <input checked="" type="checkbox"/> TOWN COUNCIL DATE APPROVED: _____		REFERENCES:

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SECTION I. PURPOSE

The underlying purpose of this Policy is to simplify, clarify, and modernize the law governing procurement by the Town; to permit the continued development of procurement policies and practices; to make as consistent as possible the procurement laws among the various jurisdictions; to provide for increased public confidence in the procedures followed in public procurement; to ensure the fair and equitable treatment of all persons who deal with the procurement system of the Town; to provide increased economy in Town procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Town; to foster effective broad-based competition within the free enterprise system; to provide safeguards for the maintenance of a procurement system of quality and integrity; and to obtain in a cost-effective and responsive manner the materials, services, and construction required by the Town in order for those departments to better serve the Town's businesses and residents.

SECTION II. SCOPE

This Policy shall apply to agreements, revenue generating contracts and every expenditure of public funds irrespective of their source, including federal assistance monies except as otherwise specified in compliance with Federal Requirements, by this Town, acting through a government body as defined herein, under any contract, except that this Policy shall not apply to either grants, or contracts between the Town or other governments, except as provided herein, It shall also apply to inventory and disposal of materials and equipment. Nothing in this Policy or in the procurement guidelines shall prevent the Town from complying with terms and conditions of any grant, gift, bequest, or cooperative agreement.

SECTION III. RESPONSIBILITIES

The Finance Department is responsible for the development, coordination, and enforcement and documentation of the Purchasing Policy. All Town Personnel with supervisory responsibility will have knowledge of and be responsible for the communication, enforcement and adherence to the Purchasing Policy. The responsibility for purchasing resides with the Town Manager, Finance Director and Department Directors.

SECTION IV. POLICY

ARTICLE 1 - GENERAL PROVISIONS

1-101 PROCUREMENT: GENERAL POLICY

- A. The Town shall procure all supplies, materials, equipment, and services, deemed necessary for the delivery of quality services to its citizens, using best procurement practices. A history of each procurement transaction will be maintained through the use of purchase requisitions, purchase orders, petty cash vouchers, procurement cards and/or automated procurement system. Every effort will be made to obtain all supplies, materials, equipment, and services at the most economical prices available.
- B. Use of electronic transmissions is authorized when applicable. The use of electronic media, including acceptance of electronic signatures, is authorized consistent with best business practices, applicable statutory, regulatory, or other guidance for use of such media, so long as such guidance provides for: (a) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

1-102 WRITTEN DETERMINATION

- A. Each written determination shall specify the reasons for the determination.
- B. Finance Director, or designee, is authorized to prescribe methods and operational procedures to be used in preparing written determinations.
- C. Each written determination shall be stored in the applicable solicitation or contract file.
- D. Written determinations required by this Policy shall be retained in the appropriate official contract file of the Town Clerk's Office.

1-103 CONFIDENTIAL INFORMATION

- A. If a person believes that a bid, proposal, offer, specifications, or protest contains trade secrets or other proprietary data that should remain confidential and withheld from public disclosure, a statement advising the Finance Director, or designee, of this fact and precisely why it should be withheld shall accompany the submission and the information.
- B. The information identified by the person as confidential shall not be disclosed until the Finance Director, or designee, makes a written determination, or until after award of contract.
- C. The Town Attorney and Town Clerk shall review the statement and information and shall determine in writing whether the information shall be withheld.

- D. All person providing records to the Town related to a bid, proposal, offer, specifications or protest does so agreeing that the Town is a public entity subject to Arizona's public records requests, subpoena, or other judicial process and the Town may disclose confidential and proprietary information without being subject to penalty or recourse.

1-104 MINORITY, DISADVANTAGED AND WOMAN BUSINESS ENTERPRISES

- A. The Finance Director, or designee, shall take reasonable affirmative steps to locate small, minority, disadvantaged and women business enterprises interested in doing business with the Town. These steps may include notification in appropriate publications for solicitations as deemed reasonable and feasible by the Finance Director.
- B. It is the Policy of the Town that suppliers of goods or services adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire and promote regardless of race, color, religion, gender, national origin, age or disability.

1-105 AUTHORITY TO CONTRACT FOR LEGAL SERVICES

This Policy is not applicable to contracts for professional witnesses or legal services.

1-106 EXEMPTIONS FROM THE PROCUREMENT CODE

- A. This Policy does not apply to contracts between this Town, other political subdivisions and the State of Arizona, except as provided in this Policy.
- B. This Policy does not apply to development agreements, as defined in Arizona Revised Statutes or contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals or environmental assessments.

1-107 SPECIFICATIONS PREPARED BY OTHER THAN TOWN PERSONNEL

- A. The requirements of this Article regarding the purposes and non-restrictiveness of specifications shall apply to all specifications assisted in or prepared other than by Town personnel, including, but not limited to, those prepared by architects, engineers, and designers.
- B. Anyone participating in the preparation of plans and/or specifications for solicitations cannot be a party to the bidding or proposing on that particular solicitation where those plans and specifications are included.

1-108 LOCAL PREFERENCE

When purchasing or awarding contracts for supplies, equipment, or services with an estimated value of less than \$10,000 the purchase or contract shall, if possible, be awarded to vendors who have both a place of business located within the municipal limits of the Town and a current business license from the Town for a period of not less than 12 months prior to the date of award or purchase. The preference for a local bidder shall only apply if the local bid, with quality and suitability considered, is not more than 10 percent higher than the non-local bid. This preference shall not be used where state law or any applicable federal statutes or regulation forbids the granting of such preference or requires another method for competitive bidding.

1-109 BUSINESS LICENSES REQUIRED

All vendors, excluding those not required by law, shall be required to have a Town of Florence Business License at the time of contract award.

1-110 COMPUTER HARDWARE AND SOFTWARE

All computer hardware and software purchases as well as all system configurations or modifications shall have the participation and recommendation of the IT Director.

1-111 PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a public record to the extent provided in A.R.S. Title 39 and shall be available to the public as provided in such statute.

1-112 COMPLIANCE WITH FEDERAL REQUIREMENTS

Where a procurement involves the expenditure of federal assistance or contract funds, the Finance Director, or designee, shall comply with such federal law and authorized regulations which are mandatorily applicable, and which may not presently be reflected in this Policy and the procurement guidelines.

1-113 FEDERAL GRANT PROCUREMENTS

Any public procurement made by the Town using federal funds, in whole or part, must meet the requirements of the Common Grant Rule (Code of Federal Regulations) and/or federal transit law.

1-114 ASSIGNMENT OF RIGHTS AND DUTIES

The rights and duties of a Town contract are not transferable or otherwise assignable without the written consent of the Finance Director, or designee.

1-115 INTERNAL CONTROLS (MAIL ROOM)

- A. The Finance Director, or designee, oversees the operation of all mailroom activities:
 - 1. For financial and auditing control purposes, no department shall receive their own mail or install their own mailbox for deliveries or for mail to be delivered directly to them at any location other than at Town Hall, PO Box 2670, Florence, AZ 85132
 - 2. Delivery of supplies shall use the department address for shipments

1-116 PETTY CASH PURCHASES AND PROCUREMENT CARDS

- A. Petty cash may be made as outlined under the Finance Petty Cash Procedures.
- B. Procurement cards can be used for purchase of goods or services according to Procurement card procedures.

1-117 MISSING RECEIPTS

- A. Every attempt shall be made to obtain a duplicate of lost or missing receipt prior to filing an Expense Certification for Missing Receipts form. Expense Certification for missing receipts forms are approved by the Finance Director up to \$150. Any amounts \$150 or above requires Town Manager authorization.

ARTICLE 2 - OFFICE OF THE FINANCE DIRECTOR

2-101 ESTABLISHMENT AND APPOINTMENT

- A. Establishment of the Position of Finance Director. There is hereby related the position of Finance Director, who shall be the Town's principal public purchasing official.
- B. Appointment. The Finance Director is appointed the principal public purchasing official.

2-102 AUTHORITY AND DUTIES

Procurements shall not be made by other Town Officials ("Agent") independent of the Finance Director unless otherwise authorized in writing by the Town Manager, or in cases of emergency.

- A. Except as otherwise provided in this Policy, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, and disposal of supplies, services, and construction now vested in, or exercised by the Town are hereby transferred to the Finance Director, or designee, as provided in this Policy.
- B. Town Council shall approve:
 - 1. Items not budgeted over \$50,000
 - 2. Items budgeted but over \$50,000
- C. The Town Manager shall have the authority to:
 - 1. Authorize purchases to \$49,999.99 and enter into contracts/agreements related thereto
 - 2. Execute small dollar and other administratively executed contracts on behalf of the Town
 - 3. Budgeted line items specifically identifying products or services, which have been approved by the Town Council in the formal review and adoption process of the annual budget of the Town, and for which an award is within the allocated expenditure, may be administratively executed by the Town Manager, or designee.
 - 4. To enter into contracts/agreements that are less than \$50,000
 - 5. Based upon the best interest of the Town, considering factors such as need, confidentiality, and Town requirements to enter contracts/agreement that shall be exempt from the competitive procurement requirements of this Policy
 - 6. Enter into contacts/agreements where expressly delegated authority by the Town Council
- D. The Finance Director shall have the authority to:
 - 1. Authorize purchases up to \$9,999
 - 2. Establish and amend, all guidelines, forms and rules authorized by this Policy and any others necessary to its operation
 - 3. Provide signature authority for Town generated purchase orders

4. Refuse an award to any vendor or contractor who is in default on the payment of taxes, licenses or other moneys due the Town, state, or federal government or that has litigation or threatened litigation at the time set for opening the bid or proposal. All vendors and contractors must comply, at the time set for opening the bid or proposal, with all applicable state licensing laws, rules and regulations
 5. Procurements shall not be made by Agent independent of Finance Director unless otherwise authorized in writing by the Town Manager, or in cases of emergency
 6. Assist departments in completing procurement activities
 7. Maintain Town bidder's list
- E. Agent. The Agent shall under the supervisor of, and in consultation with the Finance Director.
1. Identify its procurement needs and the availability of funding
 2. Submit to the purchasing department specifications for the required supplies goods and services
 3. Participate in the evaluation of bids and proposals
 4. Ensure all original solicitation documents and agreements, contracts for projects, construction, leases, contracts for goods and services shall be forwarded to the Town Clerk for record retention upon completion of the bidding and awarding of the projects, construction, leases, goods and services
 5. Inspect the supplies or goods delivered and services performed to determine conformity with the requirements set forth in the bid or proposal documents and with contractual obligations
 6. Authorize payment for conforming supplies, goods or services or notify the Finance Director of nonconforming supplies, goods or services
 7. Reports to the Finance Director all property available for disposal
- F. Finance Director. Except as otherwise provided herein, the Finance Director shall serve as the principal public purchasing official for the Town of Florence, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Policy, as well as the management and disposal of supplies. The Finance Director shall:
1. Procure or supervise the procurement of all supplies, services, and construction needed by the Town
 2. Ensure a copy of all solicitation documents, agreements, leases or contracts will be forwarded to the Town Attorney for review prior to adding to the Council agenda or returning the contract, lease or agreement to the vendor for delivery of goods and/or services
 3. Exercise direct supervision over the Town's central stores and general supervision over all other inventories of supplies belonging to the Town
 4. Sell, trade, or otherwise dispose of surplus supplies belonging to the Town
 5. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the department using the supplies, services, and construction
- G. Operation Procedures. Consistent with this manual, and with the approval of the Town Manager, the Finance Director may adopt operational procedures relating to the execution of its duties.

2-103 TOWN COUNCIL

The Town Council shall be the awarding authority for procurements that are either not budgeted or when the cost to the Town is \$50,000 or more. The Town Council may delegate signature authority for contracts of \$50,000 or more as outlined in Article 5 Part A.

2-104 DELEGATIONS TO OTHER TOWN OFFICIALS

With the approval of the Town Manager, the Finance Director may delegate authority to purchase supplies, services, or construction items to other Town employees, if such delegation is deemed necessary for effective procurement of those items. Notwithstanding the provisions of Section 2-102 Authority and Duties. Procurement authority for supplies, services, or construction may be delegated to the Agent or other Town employees by the Town Manager, when such delegation is deemed necessary for the effective procurement of supplies, services, or construction.

2-105 PURCHASING REQUESTS

- A. If a Town Purchasing Officer has the need for a material or service, it shall prepare a purchase request or other acceptable form.
- B. Upon receipt of a purchase request from a Town Purchasing Officer, the Finance Director, is authorized to determine the form and manner in which the procurement shall be solicited, except as otherwise provided in this Section.
- C. The Finance Director shall reject the purchase request, if after consultation with the requesting Town Purchasing Officer, the Finance Director, determines that it is not advantageous to the Town or that the purchase request is outside the Town Purchasing Officer's adopted budget authority. The determination shall state the reasons for the rejection and shall accompany the returned purchase request.
- D. Disagreements between the Town Purchasing Officer and the Finance Director, or designee, concerning actions taken shall be brought to the Town Manager for resolution.
- E. Purchase requests for capital outlay will follow the guidelines established by the Budget Department.
- F. Town Purchasing Officer shall provide a requisition stating the requirements for supplies and services. Requisitions for capital outlay shall be in accordance with the Town's adopted budget guidelines and codes. The approval shall certify that there is sufficient unencumbered appropriation balance to defray the amount of such order Town Purchasing Officer may not issue an order for delivery until the requisition requirement.

2-106 UNAUTHORIZED PURCHASES

No Town employee shall order the purchase of supplies or services or enter a contract on behalf of the Town other than through the purchasing procedures and the guidelines set forth in this Policy and the Town shall not be bound thereby.

- A. Except as provided in this Policy, it shall be improper for any Town employee to order the purchase of supplies or services or to attempt to enter into contracts within the purview of this Policy other than through Finance Director. Purchase orders or contracts made contrary to the provisions hereof shall not be approved by the Finance Director. Further, the Town Manager or their designee may impose discipline on employees who violate this Policy in accordance with the Town's Codes and personnel administrative regulations.

- B. The Town Manager or their designee may impose discipline on employees who contracted for or purchased any materials, services, or construction in a manner contrary to the requirements of this Policy or engages in violations of the ethical standards contained in this Policy in accordance with the Town's Codes and personnel administrative regulations. The Town Attorney shall assist the Finance Director in enforcing the provisions of this Policy.

2-107 BIDDER'S LIST

The Town Procurement Office will maintain a bidder's list for vendors who have request consideration.

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

PART A - METHODS OF SOURCE SELECTION

3-101 INFORMAL COMPETITIVE BIDS OR PROPOSALS

Procurements costing less than Twenty-Five Thousand Dollars (\$25,000) may be made by informal bid or proposal solicitations in accordance with the provisions of this section. Procurements or procurement requirements shall not be artificially divided so as to avoid the competitive bidding requirement. Where possible, a minimum of three bidders should be solicited.

- A. \$0 - \$4,999 No competition required
- B. \$5,000 - \$9,999 Three (3) email quotes
- C. \$10,000 - \$24,999 Minimum three (3) written quotes on Town's Informal Quote Request Form, and attached vendor's quote sheet or letterhead with, vendor's name, address, email and phone contact information

Any amounts in excess of \$24,999 will follow bidding procedures as follows:

3-102 ALTERNATIVE SOURCE SELECTION

A. Cooperative Procurement:

Purchases may be made by, through or with the State of Arizona or its political subdivisions or through utilization of cooperative solicitations used for the purpose of cooperative purchasing. The Town may make purchases or award contracts for goods and services without a formal bidding process whenever other governmental units have done so for the same item or service if, in the opinion of the Finance Director, a separate bidding process is not likely to result in a lower price for such items or services.

B. Sole Source Procurement:

1. A contract may be awarded without competition when the Finance Director determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Finance Director shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the purchase order number and amount
2. The Finance Director shall negotiate with the single supplier, to the extent practicable, to derive a contract advantageous to the Town
3. The provisions of this regulation apply to all single/Limited source procurement unless emergency conditions exist as defined in this Policy
4. Notwithstanding any other provision of this Policy, the Finance Director, or designee, may initiate a procurement where the officer determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this section shall be made with such competition as is practicable

under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Finance Director, or designee, in the contract file

C. Emergency Procurements:

Notwithstanding any other provisions of this Policy, the Finance Director may make or authorize others to make emergency procurements of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition, as is practicable under circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, purchase order and the amount. In the event that the cost of the emergency is greater than \$50,000, the purchase shall be taken to Council for notification and the opportunity for ratification thereafter.

D. Job Order Contracting (JOC):

1. Job Order Contracting (JOC) is a project delivery method utilized by organizations to get numerous, commonly encountered construction projects done quickly and easily through multi-year contracts for a wide variety of renovation, repair, and minor construction projects. JOC is most commonly used to clear deferred maintenance backlog, perform rapid response recurring project needs, and construct renovation projects.
2. A Job Order Contract is a competitively bid, fixed price, multi-year construction contract based on established or published unit prices via a unit price book (UPB) or a price list with a multiplier (termed coefficient) applied to the unit prices. The unit prices are used to price construction tasks associated with the scope of work. These are often referred to as construction catalogs or automated cost databases. The contract is an IDIQ or indefinite delivery indefinite quantity contract for on-call construction services. The contract serves as an umbrella contract with a potential maximum amount of work over a specified term such as annual or multi-year term.
3. The maximum dollar amount of an individual project for work accomplished under a job-order contract (JOC) shall not exceed One million five hundred thousand dollars (\$1,500,000).

3-103 FORMAL SOLICITATIONS

A. Competitive Sealed Bidding:

1. Condition for Use. All contracts of the Town shall be awarded by competitive sealed bidding except as otherwise provided in Sections 3-101 (Informal Competitive Bids or Proposals), or otherwise exempted expressly by this Policy or by operation of law 3-103-C (Competitive Sealed Proposals), 3-106 (Contracting for Designated Professional Services), 3-107 (Small Purchases), 3-102-B (Sole Source Procurement), 3-102-C (Emergency Procurements), and 3-108 (Exempt Procurements) of this Policy.

2. Invitation for Bids. An invitation for bids shall be issued and shall include specifications, and all contractual terms and conditions applicable to the procurement.
3. Public Notice. Adequate public notice of the invitation for bids shall be given a reasonable time, not less than 15 calendar days prior to the date set forth therein for the opening of bids. A notice inviting bids shall be published at least once in a newspaper of general circulation, printed and published in the Town or as others designated by the Finance Director. The public notice shall state the place, date, and time of bid opening.
4. Bid Opening. 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 may be specific by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.
5. Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.
6. Correction or Withdraw of Bids, Cancellation of Awards. Correction or withdraw of inadvertently erroneous bids before opening, or cancellation of awards is permitted. Mistakes discovered before bid opening may be modified or withdrawn by written or e-mail notice received in the office designated in the invitation for bids 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 to the Finance Director that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended and that the purpose for the Town's solicitation is not hindered or defeated with such determination made in the sole discretion of the Finance Director. 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, low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - a. The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
 - b. The bidder submits evidence, which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the corrections or withdraw of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by written determination made by the Finance Director.

7. Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the Finance Director, and such bid does not exceed such funds by more than ten percent, the Finance Director 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. Any such negotiated adjustments shall be based only upon eliminating independent deductive items specified in the invitation for bids.

8. Multi-Step Sealed Bidding. When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

B. Multi-Step Sealed Bidding:

1. The multi-step sealed bidding method may be used.

2. The Finance Director may hold a conference with bidders before submission or at any time during the evaluation of the unpriced technical offers.

3. Phase One of Multi-Step Sealed Bidding:
 - a. Multi step sealed bidding shall be initiated by the issuance of an Invitation to Submit Technical Offers. The Invitation to Submit Technical Offers shall be issued according to (Invitation for bid) with the following additional information:
 1. Notice that the procurement shall be conducted in two phases
 2. The best description of the material or services desired
 3. A statement that unpriced technical offers only shall be considered in phase one
 4. The criteria for evaluating technical offers
 5. A statement that discussions may be held; and
 6. A statement that only bids based on technical offers determined to be acceptable in phase one shall be considered for award.

 - b. Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. The contents of unpriced technical offers shall not be disclosed to unauthorized persons.

 - c. Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable for further consideration or unacceptable.

4. Phase Two of Multi-Step Sealed Bidding:

- a. Upon completion of phase one, the Finance Director shall issue an Invitation for Bids and conduct Phase Two as a competitive sealed bidding procurement, except that the Invitation for Bids shall be issued only to bidders whose technical offers were determined to be acceptable in Phase One.
- b. Unpriced technical offers of unsuccessful bidders shall be open to public inspection except to the extent of confidentiality.

C. Competitive Sealed Proposals:

1. Conditions for Use. When the Finance Director determines that it is either not practicable or not advantageous to the Town, a contract may be entered into by use of the competitive sealed proposals method. Competitive sealed bidding may not be practicable or advantageous if it is necessary to:
 - a. Use a contract other than a fixed price type; or
 - b. Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals; or
 - c. Afford offerors an opportunity to revise their proposals; or
 - d. Compare the different price, quality, and contractual factors of the proposals submitted; or
 - e. Award a contract in which price is not the determining factor
2. Bidder's lists, if applicable, and/or public notices compiled and maintained in accordance with 2-107 shall serve as a basis for soliciting competitive sealed proposals. The internet may also be utilized.

D. Request For Proposals:

1. Proposals shall be solicited through a request for proposals.
2. Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3-103-A.3 (Competitive Sealed Bidding, Public Notice); provided, the minimum time shall be 15 calendar days.
3. Receipt of Proposals. No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror. The register of proposal shall be open for public inspection after the proposal closing.
4. Evaluation Factors. The request for proposals shall state the relative importance of price and other evaluation factors.
5. Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there

shall be no disclosure of identity of competing offerors or of any information derived from proposals submitted by competing offerors.

E. Receipt of Bids or Proposals:

1. Receipt of Bids. Bids less than ten thousand dollars may be submitted by email, provided that the names of all bidders and the date and amount of each bid is recorded by the Finance Director or Agent and maintained as a public record.
2. Informal Competitive Bids and Proposals. Bids and proposals which are submitted in response to informal competitive bids and proposal solicitations shall be in writing and may be delivered to the Finance Director by facsimile, mail, electronically over the Internet or any other means of delivery. Bids or proposals received prior to the date and time designated in the solicitation documents shall be retained in confidence by the Finance Director or Agent until the date and time set for the receipt of bids or proposals.
3. Formal Competitive Bids and Proposals. Sealed bids and proposals submitted in response to formal competitive bid or proposal solicitations must be delivered to the place designated on the bid or proposal prior to the time and date designated in the bid or proposal documents.
4. Public Opening. Formal competitive bids or proposals, timely received, will be publicly opened by the Finance Director or designee in the presence of one or more witnesses at the location designated in the bid notice. If members of the public are present, the names of those submitting bids and the aggregate bid pricing shall be read aloud during the bid opening process, or the name of the offeror shall be read aloud during the proposal opening process.
5. Late Receipt. Formal competitive bids or proposals received after the deadline for receipt shall not be accepted and shall be returned to the bidder unopened. The purchasing department shall submit written notification to the bidder stating what the deadline was, when the bid or proposal was actually received, and that it is being returned because it was received too late. If necessary, the bid or proposal may be opened for identification purposes.

3-104 TIED AMONG SOLICITATIONS

- A. In the event that two (2) or more offerors submit identical offers for a quote or bid, the Finance Director shall award by drawing lots among the identical offers. The offerors that submitted the identical offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
- B. In the event that two (2) or more proposals received in response to a Request for Proposal achieved equal scores when scored in accordance with the evaluation criteria set forth in the RFP, then the Finance Director shall award by drawing lots among the identical offers. The vendors that submitted the identical scores subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

- C. If the Town is selecting a consultant on the basis of qualifications alone and determines after the ranking that two (2) or more proposers are equally qualified, the selected consultant shall be subject to the drawing of lots. The consultants that have identical rankings shall be given notice and an opportunity to be present when the lots are drawn.
- D. Procedure for drawing lots. In any instance where this section calls for the drawing of lots, the Finance Director shall draw lots by a procedure that affords each offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one offeror over another.

3-105 BEST AND FINAL OFFERS

- A. If discussions are conducted, the Finance Director, may issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the Finance Director, or designee, makes a written determination that it is advantageous to the Town to conduct further discussions or change the Town's requirements. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.
- B. Award. 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 evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis in which the award is made.

3-106 CONTRACTING FOR DESIGNATED PROFESSIONAL SERVICES

- A. Authority. The procurement of services from certain professional classifications, is exempt from the competitive bid process (3-103-A); however, the selection of professional services shall be based on qualifications. Procedures for negotiating Professional Service Contracts are described in detail below.
- B. For purposes of this Policy, Professional Services as determined by the Town Council are: engineers, construction management, architects, geologists, hydrologists, land surveyors, landscape architects, assayers, and alternative methods of construction including job order contracting, design build, and construction manager at risk; technical registrants as defined by Arizona Revised Statutes; experts for claims, proceedings and litigations; real estate, accounting, actuaries, personnel and insurance consultants; psychologist, medical doctors and attorneys-at-law.

C. Selection Procedure:

1. Statement of Qualifications. Persons engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. The Agent using such professional services may specify uniform format or statement qualifications. Persons may amend these statements at any time by filing a new statement.
2. Public Announcement and Form of Request for Proposals. Adequate notice of the need for such services shall be given by the Agent requiring the services through a request for proposals. The request for proposals 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. Discussions. The director of an Agent procuring the required professional services, or a designee of such officer 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.
4. Award. Award shall be made to the offeror determined in writing by the director of the Agent procuring the required professional services or a designee of such officer to be best qualified based on the evaluation factors set forth in the request for proposals, and negotiation of compensation determined to be fair and reasonable. 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.

- D. Notwithstanding the foregoing, the Town Council or Town Attorney may hire lawyers and other experts deemed necessary in their discretion from related to claims, investigations, litigations or administrative proceedings by direct selection without competitive bidding process.

3-107 SMALL PURCHASES

- A. General. Any contract not exceeding \$5,000 may be made in accordance with the small purchase procedures authorized in this Section. Purchases and contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.
- B. Small Purchases Under \$5,000. The Finance Director shall adopt operational procedures for making small purchases under \$5,000. Such operational procedures shall be made using simplified and cost-effective operational procedures and forms without the use of formal or informal bids. Such operational procedures shall require the preparation and maintenance of written records adequate to documents that the proper account for the funds expended and facilitate an audit of the small purchase made.

3-108 EXEMPT PROCUREMENTS

The following procurements are exempt from the competitive bidding provisions of this Policy and from the requirements of a purchase order before the purchase takes place. A purchase order may still be required in order to process a check to the vendor for the goods and/or services:

- A. Specialized or Professional services as defined in Section 3-106
- B. Emergency procurements, as defined in Section 3-102-C
- C. Sole source procurements, as defined in Section 3-102-B
- D. Insurance and bonds
- E. Procurements funded by grants, donations or gifts when the special conditions attached to the grants, donations or gifts require the procurement of particular goods and/or services
- F. Works of art, entertainment or performance
- G. Property owned by another governmental entity
- H. Used equipment
- I. Membership dues, subscriptions, employee reimbursement, conventions, training and travel arrangements
- J. Advertisements in magazines, newspapers or other media
- K. Goods procured for resale to the public
- L. Cooperative procurement, as defined in Section 3-102-A
- M. Water, sewer, gas, electrical, telephone and other utility services
- N. Land purchases, leases, licenses
- O. Refunds
- P. Postage
- Q. Recreations program instructor services
- R. On-going payments for fees for maintenance and existing software/technology

Nothing in this section shall preclude the solicitation of the competitive bids or proposals, when deemed in the best interest of the Town by the Finance Director.

PART B - CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

3-201 CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

An invitation for bid, a request for proposal, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part whether specified in the solicitation or not, when it is for good cause and in the best interests of the Town. The reason therefore shall be made part of the contract file. Each solicitation issued by the Town may be cancelled and any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the Town. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements or similar items. Reason for rejection shall be provided upon request by unsuccessful bidders or offerors.

PART C - QUALIFICATIONS AND DUTIES

3-301 RESPONSIBILITY OF BIDDERS AND OFFERORS

- A. Determination of Non-responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Finance Director. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

3-302 COST OR PRICING DATA

The Finance Director may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable, If the price is not:

- A. Based on adequate price competition
- B. Based on established catalogue or market prices; or
- C. Set by law or regulations; and
- D. The price or cost exceeds an amount established in the regulations

3-303 COSTS OR PRICE ANALYSIS

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than the one awarded under Section 3-103-A (Competitive Sealed Bidding). A written record of such cost analysis or price analysis should be made a part of the contract file.

- A. Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data, as well as any available historical comparative data, to evaluate:
 - 1. Specific elements of cost
 - 2. The necessity of certain costs
 - 3. The reasonableness of amounts estimated for the necessary costs
 - 4. The reasonableness of allowances for contingencies
 - 5. The basis used for allocation of indirect costs
 - 6. The appropriateness of allocations of particular indirect costs to the proposed contract; and
 - 7. The reasonableness of the total cost or price

- B. Price analysis is used to determine if a price is reasonable and acceptable. It involves an evaluation of prices for the same or similar items or services. Examples of price analysis criteria include, but are not limited to:
 - 1. Price submissions of prospective bidders or offerors in the current procurement
 - 2. Prior price quotations and contract prices charged by the bidder, offeror, or contractor
 - 3. Prices published in catalogues or price lists
 - 4. Prices available on the open market; and
 - 5. In-house estimates of cost

In making a price analysis, consideration must be given to any differing terms and conditions.

3-304 BID PERFORMANCE BONDS ON SUPPLY OR SERVICE CONTRACTS

Bid and performance bonds or other security may be requested for supply contracts or service contracts as the Finance Director or Agent, or director of an Agent deems advisable to protect the Town's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

PART D - CONTRACT AUTHORITY, TYPES OF CONTRACTS AND CONTRACT ADMINISTRATION

3-401 CONTRACT AUTHORITY

- A. Except for contracts under a Delegation Resolution as outlined in Article 5 Part A, all contracts and agreements \$50,000 and greater: Shall be approved by Town Council and signed by the Mayor or designee.
- B. All contracts and agreements less than \$50,000: Shall be signed by the Town Manager or designee.
- C. Any amendments or change orders to a contract that are within an approved 10% contingency shall be signed by Town Manager.
- D. Any amendments or change orders to a contract or agreement which cause the total value of the agreement or contract to exceed fifty thousand dollars (\$50,000) requires Council approval unless prior authorization was granted.
- E. Any amendment or change order to an agreement or contract previously approved by Council which causes the total accumulated amount of the amendments or change orders to exceed ten percent (10%) of the agreement or contract amount originally approved by the Council action requires prior Council approval.

3-402 TYPES OF CONTRACTS

- A. General Authority. Subject to limitations of this Section, any type of contract which is appropriate to the procurement, and which will promote the best interests of the Town may be used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the Town than any other type or that it is impracticable to obtain the goods, service, or construction item required except under such a contract.
- B. Multi-Term Contracts:
 - 1. Specified Period. Unless otherwise provided by law, a contract for goods or services may be entered into any period of time deemed to be in the best interests of the Town, provided the term of the contract and conditions of renewal or extension, if any are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds, therefore. This Section permits multi-term procurement in order to enable the Town to procure larger quantities of goods, expanded services and/or obtain the benefits of volume discounts. A multi-term contract should be used only for supplies or services needed on a continuing basis with annual quantity requirements which can be reasonably estimated in advance. Multi-term procurements should attract more competitors to submit bids or offerors for the large contract awards and thereby provide the jurisdiction with the benefits of increased competition.

2. Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - a. That estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b. That such a contract will serve the best interests of the Town by encouraging effective competition or otherwise promoting economies in Town procurement
 3. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled, and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.
- C. Multiple Source Contracting:
1. General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the Town's actual requirements is limited by the provision of Uniform Commercial Code Section 2-306(1).
 2. Limitations on Use. A multiple source award may be made when the award is to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 3-103-A (Competitive Sealed Bidding), Section 3-103-C (Competitive Sealed Proposals), Section 3-107 (Small Purchases), and Section 3-102-C (Emergency Procurements), as applicable. Multiple source awards shall not be made when a single award will meet the Town's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available products or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.
 3. Contract and Solution Provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:
 - a. The Town shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirements, or an amount specified in contract; and
 - b. The Town shall reserve the right to take bids separately if the Finance Director approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the Town.
 4. Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the Town shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

5. Determination Required. The Finance Director shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.
 - a. The term “multiple source award” is to identify purchase arrangements which establish more than one source of supply. It is recognized, however, that such contracts have been variously referred to as “open-end contracts,” “term contracts,” blanket contracts,” “blanket orders,” “serial awards,” “progressive awards,” and “purchase agreements.” Competitive sealed bidding is the conventional procurement method for establishing such contracts, although competitive sealed proposals, small purchase procedures, and emergency procurements may be used.

3-403 CONTRACT CLAUSES AND THEIR ADMINISTRATION

- A. Contract Clauses. All Town contracts for goods, services, and construction shall include provisions necessary to define the responsibility and rights of the parties to the contract. The Finance Director, after consulting with the Town Attorney, may issue clauses appropriate for goods, service, or construction contracts, addressing among others the following subjects:
 1. The unilateral right of the Town to order in writing changes in the work within the scope of the contract
 2. The unilateral right of the Town to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract
 3. Variations occurring between estimated quantities of work in contract and actual quantities
 4. Defective pricing
 5. Liquidation damages
 6. Specified excuses for delay or nonperformance
 7. Termination of the contract for default
 8. Termination of the contract in whole or in part for the convenience of the Town
 9. Suspension of work on a construction project ordered by the Town; and
 10. Site conditions differing from those indicated in the contract, or ordinarily encountered.
- B. Price Adjustments:
 1. Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:
 - a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable
 - b. By unit prices specified in the contract or subsequently agreed upon
 - c. By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon
 - d. In such other manner as the contracting parties may mutually agree; or
 - e. In the absence of agreement by parties, by a unilateral determination by the Town of the costs attributable to the events or situations under such clauses with adjustments of profit or fee as computed by the Town, as accounted for

in accordance with reference to cost principles and subject to the provisions of Article 8 (Appeals and Remedies).

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-302 (Cost or Pricing Data).

C. Standard Clauses and Their Modification. The Finance Director , after consulting with the Town Attorney, may establish standard contract clauses for use in Town contracts. If the Finance Director establishes any standard clauses addressing the subjects set forth in Subsection (1) of this Section, such clauses may be varied provided that any variations are supported by a written analysis that states the circumstances justifying such variations and provided that notice of determination that states the circumstances justifying such variations.

3-404 CONTRACT ADMINISTRATION

The Finance Director shall maintain a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained. The Town Engineer shall be responsible for the solicitation, award, and administration of construction contracts. With respect to the administration of goods and service contracts, the Agent will have prime responsibility but will need the close cooperation of the Finance Director acquiring the requested goods or services.

3-405 APPROVAL OF ACCOUNTING SYSTEM

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Finance Director Finance Director that:

- A. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- B. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

3-406 RIGHT TO INSPECT PLANT

The Town may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the Town.

3-407 RIGHT TO AUDIT RECORDS

- A. Audit of Cost or Pricing Data. The Town may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to Section 3-302 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost, or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for five years from the date of final payment under the contract.

- B. Contract Audit. The Town shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract, Such books and records shall be maintained by the contractor for a period of five years from the date of final payment under the prime contract and by the subcontractor for a period of five years from the date of final payment under the subcontract.

3-408 REPORTING OF ANTICOMPETITIVE PRACTICES

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General, Finance Director, Town Attorney, and the Town Manager.

3-409 TOWN PROCUREMENT RECORDS

- A. Contract File. All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the Town in a contract file by the Finance Director or the Agent.

- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the Town in accordance with records retention guidelines and schedules approved by Arizona State Library, Archives and Public Records.
 - 1. If a contract is being funded in whole or in part by assistance from federal agency then Attachment O {Procurement Standards} to OMB Circular A-102 (Uniform Administrative Requirements for Grants-in-aid to State and Local Governments), and any implementing regulations issued by individual federal agencies require that all procurement records pertaining to that contract shall be maintained for three years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistant agreement.

3-410 NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS

If the contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public Policy requirements, such as:

- A. Equal employment opportunity
- B. Fair labor standards
- C. Energy conservation
- D. Environmental protection; or
- E. Other similar socioeconomic programs

then, the Finance Director shall give the contractor notice of these requirements, and where appropriate, include the contract provisions the requirement that the contractor give a similar notice to its entire subcontractors.

ARTICLE 4 - SPECIFICATIONS

4-101 MAXIMUM PRACTICABLE COMPETITION

All specifications shall be drafted so as to promote overall economy for the purpose intended and encourage competition in satisfying the Town's needs and shall not be unduly restrictive. The Policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the Town by architects, engineers, designers, and draftsmen.

- A. Specifications/scope of work for Common or General Use Items. To the extent practicable, a specification/scope of work for common or general use item shall be prepared and utilized when:
 - 1. A material, service or construction item is used in common by several ~~using~~ Purchasing Officer's or used repeatedly by one Purchasing Officer, and the characteristics of the material, service, or construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurement is significant
 - 2. The Town's recurring needs require uniquely designed or specially produced items;
or
 - 3. The Finance Director, or designee, finds it to be advantageous to the Town

4-102 BRAND NAMES OR EQUAL SPECIFICATION

- A. Use. Brand name or equal specifications may be used when the Finance Director determines in writing that:
 - 1. No other design or performance specification or qualified products list is available
 - 2. Time does not permit the preparation of another form of purchase description, not including a brand name specification
 - 3. The nature of the product or the nature of the Town's requirements makes use of a brand name or equal specification suitable for the procurement; or
 - 4. Use of brand name or equal specification is in the Town's best interests
- B. Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- C. Required Characteristics. Unless the Finance Director determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristic which are required.

- D. Nonrestrictive Use of Brand Name or Equal Specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

4-103 BRAND NAME SPECIFICATION

- A. Use. Since use of a brand name specifications is restrictive of product competition, it may be used only when the Finance Director makes a written determination that only the identified brand name item or items will satisfy the Town's needs.
- B. Competition. The Finance Director shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirements, the procurement shall be made under Section 3-108 (Sole Source Procurement).

4-104 ENERGY CONSERVATION

If a contract is being funded in whole or in part by assistance from federal agency, then the Town's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

ARTICLE 5 - PROCUREMENT OF CONSTRUCTION, ARCHITECT, ENGINEER AND LAND SURVEYING SERVICES

Article 5 of this Policy defines the requirements and authorities for Procurement and Contract activities associated with the design, construction, reconstruction, and remodel of Town facilities, structures and capital improvement projects.

PART A - MANAGEMENT OF CONSTRUCTION AND RELATED ARCHITECT, ENGINEERING CONTRACTING

The procurement of both horizontal and vertical construction projects is governed by state law, provided the cost of the project exceeds the statutorily established amount. All Agents responsible for procuring construction services shall conform to applicable state law, including, but not limited to, public works projects subject to A.R.S. Title 34.

5-101 DELEGATION RESOLUTION FOR CAPITAL IMPROVEMENT PROJECTS

A Delegation Resolution may be approved by the Town Council for a Capital Improvement Project that authorizes the Town Manager and/or a designee to enter into necessary contracts, services and/or agreements for the delivery of a specific Capital Improvement Project.

5-102 RESPONSIBILITIES AND AUTHORITY

- A. All contracts and agreements of \$50,000 or more shall be approved by the Town Council and signed by the Mayor or designee unless a Delegation Resolution for a Capital Improvement Project has been authorized.
- B. The Town Council may authorize a Delegation Resolution for a specific project that will have the following delegated authority:
 - 1. Any Change Order or Amendment to an existing contract or agreement which causes the total cost of the Contract or Agreement to exceed \$100,000 may be signed by the Town Manager
 - 2. Any Change Order or Amendment to an existing contract or Agreement, or any new Contract or Agreement, which causes the total cost of the Capital Improvement Project to exceed the Council approved budget under the Delegation Resolution requires Council action and approval

PART B - BID SECURITY AND PERFORMANCE BONDS

5-201 BID SECURITY

- A. When Bid Security is Required. When deemed necessary by the Finance Director, bid performance and payment security or specific types and amounts of insurance coverage for specific procurements may be necessary to the extent required by state law or upon determinations that is in the best interest of the Town to do so.

- B. Bid security. Bid security shall be a bond provided by a surety company authorized to do business in the State of Arizona, or the equivalent in cash, or otherwise supplied in a form satisfactorily to the Town.
- C. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.
- D. Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in Section 3-103-A.6 (Competitive Sealed Bidding: Correction or Withdrawal of Bids, Cancellation of Awards), no action shall be had against the bidder or the bid security.

5-202 CONTRACT PERFORMANCE AND PAYMENT BONDS

- A. When Required. The Finance Director shall have the authority to require a performance or payment bond before entering into a contract in such amount as it shall find reasonably necessary to protect the interest of the Town, and if the Finance Director requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids or as set by the Finance Director and Agent depending on the circumstances best for the Town:
 - 1. A performance bond satisfactory to the Town, executed buy a surety company authorized to do business in the State of Arizona or otherwise secured in a manner satisfactory to the Town, in an amount equal to 100% of the price specified in the contract; and
 - 2. A payment bond satisfactory to the Town, executed by a surety company authorized to do business in the State of Arizona or otherwise secured in a manner satisfactory to the Town, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in the amount equal to 100% of the price specified in the contract, or as set by the Finance Director and Agent depending on the circumstances best for the Town
 - 3. Payment Bonds requires that the bidder agrees to pay expensed incurred pertaining to the contracted job, including subcontractors
- B. Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the Town to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.
- C. Suits on Payment Bonds - Where and When Brought. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the county or district in which the construction contract was to be performed.

5-203 COPIES OF BOND FORMS

Any person may request and obtain from the Town a certified copy of a bond upon payment of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

PART C – ARCHITECT, ENGINEER AND LAND SURVEYING SERVICES

5-301 SELECTION PROCESS

In the procurement of professional services or construction services, the Agent shall conform to applicable state law, including, but not limited to, public works projects subject to A.R.S. Title 34. The Agent may negotiate with the highest qualified firms for a contract for architect, engineer or land surveying services at compensation which the Finance Director determines in writing to be fair and reasonable to the Town. In making such determination, the purchasing agent shall consider, in the following order of importance, the professional competence of offerors, the technical merits of offers, and the price for which the services are to be rendered.

ARTICLE 6 - DEBARMENT OR SUSPENSION

6-101 AUTHORITY TO DEBAR OR SUSPEND

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Finance Director, after consulting with the Town Attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the Town Attorney, the Finance Director is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

- A. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- B. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Town contractor.
- C. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
- D. Violation of contract provisions, as set forth below, of a character which is regarded by the Finance Director to be so serious as to justify debarment action:
 - 1. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in one or more contracts; or
 - 2. A recent record or failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment
- E. Any other cause the Finance Director determines to be so serious and compelling as to affect responsibility as a Town contractor, including debarment by another governmental entity; and
- F. For violation of the ethical standards set forth in Article 11 (Ethics in Public Contracting).

6-102 DECISION TO DEBAR OR SUSPEND

The Finance Director shall issue a written decision to debar or suspend. The decision shall state the reason for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.

6-103 NOTICE OF DECISION

A copy of the decision required by Section 6-102 (Decision to Debar or Suspend) shall be mailed or otherwise furnished in a reasonably prompt time period to the debarred or suspended person.

6-104 FINALITY OF DECISION

A decision under Section 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 5 business days after issuance of the decision files an appeal to the Town Council with the Town Clerk and Finance Director or commences a timely action in court in accordance with applicable law.

ARTICLE 7 - SUPPLY MANAGEMENT
[RESERVED]

ARTICLE 8 - APPEALS AND REMEDIES

8-101 PROCEDURES

The Finance Director will consider protests regarding the Town's procurement actions for Town of Florence projects in accordance with the following procedures. All protests will be evaluated and finally decided by the Finance Director. The Town's primary concern is the timely procurement of needed capital equipment, goods or services. The Town will not allow the filing of a protest to unnecessarily delay the procurement process, especially if the protest involved is vexatious or frivolous in nature.

8-102 RIGHT TO FILE BID PROTEST

An "aggrieved party" means any person who is an actual bidder or prospective bidder in the procurement involved; whose direct economic interest would be affected by the award of the contract or by a failure of the award of the contract; and who demonstrates compliance with these procedures and the terms of the solicitation involved.

8-103 FILING BID PROTESTS

Any aggrieved party may file a protest on the basis that the Town has failed to comply with applicable Federal or State law or the local regulations. The protest must include all of the following:

- A. The name, mailing address, email address and telephone number of the protestor
- B. The number of the solicitation
- C. All information establishing that the protestor is an aggrieved party
- D. A written statement of the grounds for the protest and in particular the Federal, State or local regulation alleged to have been violated. This statement should be accompanied by any relevant supporting documents
- E. All information establishing timeliness of the protest
- F. The course of action the protestor desires the Finance Director to take
- G. The signature of the protestor on the written protest

A protest is deemed filed when physically received by the Finance Director, or designee, and the Town Clerk, or designee.

The Town will consider these types of protests:

- A. **Protest regarding solicitation (Pre-Bid Protest):** A protest of a solicitation shall be filed in the Town's Finance Office and Town Clerk's Office no later than **5 working days before** opening of bids (if bid) or the due date for submittals or proposals (if RFP or RFQ), as applicable. Any protest filed after that date will not be considered.
- B. **Protest regarding evaluation of bids, qualifications or proposals (Pre-Award Protest):** Any protest regarding the evaluation of bids, qualifications or proposals shall be filed in the Town's Finance Office and Town Clerk's Office no later than **5 working days after** the opening of bids (if bid) or due date (if RFP or RFQ). Any protest filed after that date will not be considered.
- C. **Protest regarding award (Post-Award Protest):** Any protest regarding the award of the contract must be filed **no later than 5 working days after** the date of award. Any protest regarding the award filed after such date will not be considered.

If the protest does not comply with the time or content requirements, the Finance Director may, at her option, reject the protest or allow the protestor a reasonable time to remedy the deficiencies of the protest. The Finance Director shall not be obligated to postpone contract awards to allow a protestor an opportunity to correct a deficient or untimely protest, unless otherwise required by law.

8-104 TOWN RESPONSES

A. Types of Protest:

Upon timely receipt of a protest, the Town will notify the protestor and may, where appropriate, request additional information from the protestor. The Town may, in its discretion, meet with the protestor to review the matters raised in the protest. The Town's consideration of the particular types of protests will be in accordance with the following provisions:

- 1. **Protest regarding solicitation (Pre-Bid Protest):** Upon receipt of a timely and properly filed protest regarding the solicitation, the Town may postpone the opening of bids, qualifications or proposal packages until the resolution of the protest, unless, otherwise decided by the Finance Director where the item to be procured is urgently required, where the Finance Director determines the protest is vexatious or frivolous, or harm will occur by failure to make the award promptly.
- 2. **Protest regarding evaluation of bids, qualifications or proposals (Pre-Award Protest):** Upon receipt of a timely and properly filed protest regarding the evaluation of bids, qualifications or proposals, the Town may suspend its evaluation of bids, qualifications or proposals submitted until resolution of the protest, unless, otherwise decided by the Finance Director where the item to be procured is urgently required, where the Finance Director determines the protest is vexatious or frivolous, or harm will occur by failure to make the award promptly.

3. **Protests regarding award (Post-Award Protest):** Upon receipt of a timely and properly filed protest regarding the award of a contract, the Town will not issue a notice to proceed or submit an order for goods to the contractor until the protest has been resolved, unless, otherwise decided by the Finance Director where the item to be procured is urgently required, where the Finance Director determines the protest is vexatious or frivolous, or harm will occur by failure to make the award promptly.

8-105 DECISIONS BY THE FINANCE DIRECTOR

- A. **Continue Process during Protest Resolution:** A decision on a protest will be made as expeditiously as possible after receiving all relevant information. The Finance Director reserves the right, notwithstanding the pendency of a protest, to proceed with the appropriate action in the procurement process or under the contract in the following cases:
 1. Where the item to be procured is urgently required
 2. Where the Finance Director determines that the protest was vexatious or frivolous;
or
 3. Where delivery or performance will be unduly delayed, or other undue harm will occur by failure to make the award promptly
- B. **Informal Conference:** The Finance Director may, at her option, hold an informal conference on the merits of the protest with all aggrieved and available parties. All aggrieved parties shall be given at least 48-hours' notice of the informal conference.
- C. **Final Determination:** Upon receipt of a timely and properly filed protest and review by the Finance Director, the Finance Director will provide a written decision to the protestor **within 10 calendar days**. The basis of the decision will be the information submitted by the protestor, the result of any meetings with the protestor, and the Finance Director's own investigation. The Finance Director will respond to each substantive issue on the protest submitted with the level of detail deemed appropriate by the Finance Director. The Finance Director's decision is final.
- D. **Action after the Finance Director's Decision:** After a written decision is issued by the Finance Director, the appropriate actions will take place. If the protest is upheld, the Finance Director's actions may include but are not limited to any appropriate steps to correct the procurements process, such as: re-solicitation of bids, revising evaluation of bids, Finance Director's determination, or termination of award or contract. If the protest is denied, the Finance Director will lift any imposed suspension and proceed with the procurement process or the contract.

8-106 REMEDIES FOR SOLUTIONS OR AWARDS IN VIOLATION OF LAW

- A. **Prior to Bid Opening or Closing Date for Receipt of Proposals.** If prior to the bid opening or the closing date for receipt of proposals, the Finance Director after consulting with the Town Attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.

- B. Prior to Award. If after bid opening or the closing date for receipt of proposals, the Finance Director , after consulting with the Town Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be cancelled.

- C. After Award. If, after an award, the Finance Director, after consulting with the Town Attorney determines that a solicitation or award of a contract was in violation of applicable law, then:
 - 1. If the person awarded the contract has not acted fraudulently or in bad faith
 - a. The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Town; or
 - b. The contract may be determined, and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
 - 2. If the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of the Town

ARTICLE 9 – DISPOSITION OF PERSONAL PROPERTY

9-101 AUTHORITY

The Finance Director authorizes the sale or disposal of personal property pursuant to the provisions of the Arizona Revised Statutes. No Town personal property shall be disposed of unless an approval for disposal form has been signed by the director or manager of the using department and the Finance Director.

9-102 ELIGIBILITY OF DISPOSAL

Town personal property is eligible for disposal if:

- A. It has been rendered non-serviceable by its normal use in Town operations and is not cost effective to remain in service. Or, if serviceable, the cost or repair exceed its replacement cost or would not result in a sufficiently usable asset, or
- B. It has no further identifiable use in any Town operation and has not been requested for use by any Town department, or
- C. It is forfeiture property, the court awarded title to the Town and no identifiable law enforcement purpose is proposed and,
- D. Proper petition, as described herein, is made through the Department Director or designee to the Town Manager, or designee, and
- E. Approval by Council a Resolutions declaring property suitable for disposal, include property identification number and brief description
- F. Any such property, determined as belonging to the Town by due process, having value to others in the community, shall be sold or otherwise disposed of in accordance with Policy described herein. No Town personal property, regardless of its condition or value, shall be converted to personal use by Town employees while still owned by the Town.
- G. Unless otherwise provided by law, the Finance Director, or designee, shall be empowered, pursuant to regulations, to allocate proceeds from the sale, lease, or disposal of surplus supplies, with the exception of firearms, dangerous instruments or explosives which will be disposed of, and such proceeds allocated in accordance with federal and state law. Town agencies which originally purchased a material with general fund monies shall not be reimbursed for its transfer or sale. All such monies received shall be deposited in the Town's general fund.
- H. The Finance Director, or designee, may transfer weapons to the Police Department for Law Enforcement training purposes.
- I. Upon forfeiture of any deadly weapon, dangerous instrument or explosive by order of any court, the item which is the subject of the forfeiture shall be turned over to the Finance Director, or designee, for sale, trade or destruction.

- J. The Finance Director, or designee, may delegate to the Police Department the destruction, in accordance with federal and state law of any deadly weapon, dangerous instrument or explosive. If the deadly weapon, dangerous instrument or explosive cannot be destroyed or is determined to have historic value, it may be otherwise disposed of as permitted by law.
- K. For purposes of this section, Historic is defined as a weapon of which the model is not available for retail sale due to no longer being manufactured or having historical significance as determined by the Police Department.

9-103 TYPES OF DISPOSAL

Once the Finance Director and the approval of disposal form have been signed, the following are acceptable forms of disposal:

- A. Trade-Ins
- B. Sale by Public Auction
- C. Sale by Online Auction
- D. Sale by Silent Auction
- E. Sale by Sealed Bid
- F. Negotiated Sales
- G. Donation to another Governmental Entity approved by Town Council
- H. Sale for Scrap
- I. Junked
- J. Recycling

When the above methods of disposal are not applicable a complete written explanation should be attached to the disposal form. The Finance Director shall be responsible for coordinating all methods of disposal.

9-104 RECORDS

- A. All department managers/directors will file the detailed disposal list together with the related sales information, and account to the Finance Director for all monies received. All sales are subject to audit.
- B. Except for proceeds from outsourced auctions, the sales proceeds shall be deposited within one business day, where possible, and credited to the appropriate fund.

- C. All records related to a sale shall be maintained by the Purchasing Department for a period of time in compliance with state law and the Town's record and retention schedule.

9-105 DISPOSAL OF COMPUTER EQUIPMENT AND RADIO/COMMUNICATIONS EQUIPMENT

Computer equipment and radio/communications equipment are to be transferred to the Information Technology Department prior to disposal.

9-106 EXCEPTIONS

- A. Disposal of consumable items and personal property costing less than \$100 or with a usable life of less than one year is exempt from this Policy and it is the responsibility of the purchasing agent to determine the appropriate method of disposal.
- B. Property that is recommended for recycling or disposal in a solid waste bin as long as the proper documents have been issued and signed.

9-107 ABANDONED, UNCLAIMED SURPLUS PROPERTY DISPOSALS

- A. The Department Directors shall report to the Finance Director all abandoned, unclaimed and surplus property that comes into the possession of any Town Department. The Department Director will turn over to the Police Department any and all abandoned, unclaimed and found items of value such as bicycles, skateboards, jewelry, cash, vehicles, electronic equipment and serialized items. The Police department will follow Town Policy in final disposition of those items. All other abandoned, unclaimed and found items with limited values such as lawn chairs, baseball gloves, bats, balls, furniture, miscellaneous. sports equipment, and small electronics shall prep for disposal.
- B. The sale, lease or disposal of all abandoned, unclaimed and found items turned over to Finance Director, or will be accomplished by sale, public auction, competitive sealed bidding or other appropriate method determined by the Finance Director, or designee, to be most advantageous to the Town.
- C. All Town of Florence surplus materials, excess supplies, obsolete materials, equipment, vehicles, and recycled metals will be turned over to Finance Director, or for disposal. Disposal will be accomplished by public auction, competitive sealed bidding or other appropriate method determined by the Finance Director, or designee, to be most advantageous to the Town.

- D. The Finance Director, or designee, may authorize the transfer of excess supplies, obsolete materials, equipment, and vehicles for use by other Town departments.
- E. The Finance Director, or designee, may authorize the trade in of surplus materials, excess supplies, obsolete materials, equipment, and vehicles as part of any authorized purchase that the Finance Director, or designee, deems appropriate.
- F. The Finance Director, or designee, is tasked with the management of supplies during their entire life cycle and all departments within the Town must give access to Finance Director, or for inspection, observation, and inventory of any and all supplies in their possession.
- G. No Town surplus or obsolete property may be converted for personal use by Town employees unless fair market value is received for such property and the property is disposed of in a commercially reasonable manner.
- H. Town employees and/or the disposing Department are prohibited from purchasing any surplus supplies unless approved by the Finance Director, or designee,
- I. The Finance Director, or designee, may donate Town excess supplies, obsolete materials, equipment, and vehicles to other governmental agencies, nonprofit agencies or private agencies when an appropriate need has been demonstrated such as: Hurricane damage, tornado, flooding, or some form of catastrophic infrastructure failure. Such donation shall be approved by Town Council if the value of the donation exceeds \$50,000 dollars. If the value is under \$50,000 dollars the Finance Director, or designee, shall be the final approving authority.
- J. The Finance Director, or designee, may sell Town excess supplies, obsolete materials, equipment, and vehicles to other governmental agencies, nonprofit agencies or private agencies for a nominal fee when an appropriate need has been demonstrated such as: lack of funding for the purchase of new equipment, breakdown of existing equipment, as goodwill gesture by the Town to that entity in order to help them through some specific need or crisis. The nominal fee shall be at least \$1.00, which shall be deposited in the Town's general fund. The approval to sell to another Department for a nominal fee shall be approved by Town Council if the value of the item(s) exceeds \$50,000 dollars. If the value is under \$50,000 dollars the Finance Director, or designee, shall be the final approving authority.

ARTICLE 10 - ETHICS IN PUBLIC CONTRACTING

10-101 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be addition to the civil sanctions set forth in this part. Criminal, civil, and administrative sanctions against employees or nonemployees which are in existence on the effective date of this Policy shall not be impaired.

10-102 EMPLOYEE CONFLICT OF INTEREST

It shall be unethical for any Town employee to participate directly or indirectly in a procurement contract when:

- A. The Town employee or any member of the Town employee's immediate family has a financial interest pertaining to the procurement contract; or
- B. Any other person, business, or organization with whom the Town employee or any member of a Town employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract. No person preparing specifications/scope of work or plans pursuant to 306 shall receive any direct or indirect benefit from the utilization of such specifications/scope of work or be eligible to bid on those same specifications/scope of work or plans when issued.
 - 1. The Finance Director, or designee, may contract for the preparation of specifications/scope of work or plans with persons other than Town personnel, including, but not limited to consultants, designers, and other draftsmen of specifications.
 - 2. If a person prepares a specification/scope of work or plan pursuant to Paragraph 1 of this Regulation, such person shall comply with the requirements of this Section.
 - 3. Notwithstanding the provisions of these Procurement Guidelines, the Finance Director, or designee, retains the authority to approve or disapprove all specifications/scope of work or plans.

10-103 GRATUITIES AND KICKBACKS

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any Town employee or former Town employee, or for any Town employee or former Town employee to solicit, demand, accept, or agree to accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal thereof.

- B. Kickbacks. It shall be unethical 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.

10-104 PROHIBITION AGAINST CONTINGENT FEES

It shall be unethical 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 employees or bona fide established commercial selling agencies for the purpose of securing business.

10-105 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It shall be unethical for any Town employee who is participating directly or indirectly in the procurement process to become or to be, while such a Town employee, the employee of any person contracting with the governmental body by whom the employee is employed.

It shall be unethical for any terminated Town employee to participate directly or indirectly in the procurement process with another contracting company for a period of twelve (12) months after termination of employment with the Town.

10-106 USE OF CONFIDENTIAL INFORMATION

It shall be unethical for any employee or former employee knowingly to use confidential or privileged Town information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

10-107 SANCTIONS

- A. Employees. The Town Manager may impose any one or more of the following sanctions on a Town employee for violations of the ethical standards in this Article;
 - 1. oral or written warnings or reprimands
 - 2. suspension with or without pay for specified periods of time; or
 - 3. termination of employment
- B. Nonemployees. The Town Manager may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:
- C. Written warnings or reprimands
- D. Termination of contracts; or
- E. Debarment or suspension as provided in Section 6-101 (Authority to Debar or Suspend).

10-108 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS

- A. General Provisions. The value of anything transferred or received in breach of the ethical standards of this Policy by a Town employee or a nonemployee may be recovered from both Town employee and nonemployee.
- B. Recovery of Kickbacks by the Town. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Town and will be recoverable hereunder from the receipt. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

SECTION V. TOWN-WIDE PROCEDURES (POLICY DEPENDENT)

- A. The Finance Director has the authority to develop and adopt Town-wide procedures for financial issues pertaining to the Town of Florence.
- B. Town-wide procedures will be shared on the Town intranet with all Town Departments.

SECTION VI. DEFINITIONS

This Policy applies to contracts for the procurement of goods, supplies, services, and construction that is entered into by the Town of Florence after effective date of this Policy, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to all expenditure of public funds by a public agency for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this Policy shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

The words defined in this Section shall have the meanings set forth below whenever they appear in this Guideline, unless:

- (a) the context in which they are used clearly requires a different meaning; or
- (b) a different definition is prescribed for a particular Article or provision in this Section, unless the context otherwise requires

"Adequate Evidence" means cause sufficient that a reasonable person may conclude that an act has occurred. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration, and other inferences that may be drawn from the existence or absence of affirmative facts.

"Agent" means a person who acts on behalf of another person or group.

"Affiliate" means any person whose governing instruments require it to be bound by the decision of another person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent subsidiary relationship between persons.

"Architect, Engineer and Land Surveying Services" means those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State,

"Best Interests of this Town" means advantageous to the Town of Florence.

"Bid Sample" means an item furnished by a bidder to show the characteristics of the item offered in this bid.

"Blind Trust" means an independently managed trust in which the employee beneficiary has no management rights and in which the employee beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

"Brand Name or Equal Specifications" means specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet Town requirements, and that provides for the submission of equivalent products.

"Brand Name Specifications" means a specification limited to one or more items by manufacturers' names or catalogue numbers.

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

"Capability" means capability at the time of contract award.

- "Capital Improvement Project" means a new construction project, or the expansion, renovation, or replacement of an existing asset or facility with a total cost of at least \$25,000 and an estimated useful life of more than one year.
- "Change Order" means a written order signed by the Town, directing the contractor to make changes which the Changes clause of the contract authorizes the Finance Director, or to order without the consent of the contractor.
- "Code" means the Town of Florence Policy of Ordinances.
- "Confidential Information" means any information which is available to an employee only because of the employee's status as an employee of this Town and is not a matter of public knowledge or available to the public on request.
- "Conspicuously" means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- "Construction" means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property as per ARS Title 34.
- "Contract" means all types of Town agreements, regardless of what they may be called, for the procurement or disposal of goods, supplies, services, or construction.
- "Contract Modification" means any written alteration in terms and conditions, specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- "Contractor" any person or firm having a contract with the Town of Florence.
- "Cooperative Purchasing" procurement conducted by, or on behalf of, one or more public procurement units.
- "Cost Analysis" means the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of cost to be incurred, prices to be paid, and costs to be reimbursed.
- "Cost Data" means information concerning the actual or estimated cost of tangibles as labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.
- "Cost Plus a Percentage of Cost Contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work.
- "Cost Reimbursement Contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of the Policy and Guidelines, and a fee, if any.
- "Data" means recorded information, regardless of form or characteristic.
- "Days" means business days and shall be computed pursuant to A.R.S. 1 243.
- "Debarment" means the disqualification of a vendor to receive invitations for bids or the award of a contract by the Town for a specified period of time, not to exceed three (3) years, commensurate with the seriousness of the offense resulting from conduct or failure or inadequacy of performance.
- "Defective Data" means data that is inaccurate, incomplete or non-current.
- "Department" includes all departments and offices of the Town of Florence, unless otherwise provided by the Arizona Revised Statutes.

"Descriptive Literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item offered in a bid or proposal.

"Designee" a duly authorized representative of a person holding a superior position.

"Direct or Indirect Participation" means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

"Direct Transfer" means the transfer of surplus or excess property by the Finance Director, or designee, from one Department to another without physically moving the property to the Procurement Officer/Department.

"Discussions" means an exchange of information or any form of negotiation.

"Drawing Lots" means a random selection of 2 or more identical bids.

"Electronic" Electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

"Emergency Purchase" procurement when supplies, or services are needed for a situation where the health, safety or welfare of the public is endangered if immediate corrective or preventative action is not taken.

"Employee" an individual drawing a salary from a governmental body, whether elected or not, and any non-compensated individual performing personal services for any governmental body.

"Established Catalogue Price" the price included in a catalogue, price list, schedule, or other form that:

- (a) is regularly maintained by a manufacturer or contractor
- (b) is either published or otherwise available for inspection by customers; and
- (c) states prices at which sales are currently or were last made to a significant number of any categories of buyers or buyers constituting the general buying public for the supplies or services involved

"Established Markets" means those places where materials are regularly bought and sold at prices set by open competition.

"Excess Materials" means any materials which have a remaining useful life, but which are no longer required by the Agent in possession of the materials.

"Excess Supplies" any supplies other than expendable supplies having a remaining useful life but which are no longer required by the Agent in possession of the supplies.

"Exempt Purchase" a procurement that the Town Manager or their designee, up to an amount specified in the Policy and/or Guidelines, has determined that the best interest of the Town requires being exempt from this Policy.

"Expendable Supplies" all tangible supplies other than nonexpendable supplies.

"Fair Market Value" means the price at which sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition.

"Filed" means delivery to the Finance Director. A time/date stamp affixed to a document by the Finance Director, or designee, their designee, or approved electronic method shall be determinative of the time of delivery for purposes of filing.

"Finance Director" the principal public purchasing official.

“Financial Interest means”

- (a) ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive compensation
- (b) ownership of such interest in any property or any business or
- (c) holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management

“Governing Instruments” means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by laws.

“Governmental Body” any department, commission, council, board, bureau, committee, institution, legislative body, Department, government corporation, or other establishment or official of the executive, legislative, or judicial branch of this Town.

“Grant” the furnishing by the Town of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

“Gratuity” a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

“Immediate Family” a spouse, partner in a civil union, children, stepchildren residing in the person’s household, parents, brothers, and sisters, etc.

“Incremental Award” means an award or portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.

“Interested Party” means an actual or prospective 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 respondent has an economic interest will depend upon the circumstances of each case.

“Invitation for Bids” all documents, whether attached or incorporated by reference, utilized for soliciting bids.

“Local Vendor” a vendor having an office within the corporate limits of the Town or within the water and sewer service area of the Town.

“May” denotes the permissive.

“Minor Informality” means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and waiver or correction of such mistake does not prejudice other bidders or offerors.

“Multiple Award” means an award of separate contracts for one or more similar materials or services to more than one respondent.

“Nonexpendable Supplies” all tangible supplies having an original acquisition cost of over \$100 per unit and a probable useful life of more than one year.

“Offer Acceptance Time” means the time during which the Town may accept an offer of a bid or proposal.

“Official Responsibility” direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct Town action.

“Person” any business, individual, union, committee, club, other organization, or group of individuals.

“Plan” means a design or the representation of anything drawn on a plan.

“Posted Prices” means the sale price determined by the Finance Director, or designee.

“Price Analysis” means the evaluation of price data.

“Price Data” means information concerning prices, including profit, for materials, services, or construction substantially similar to those being procured under a contract or subcontract. In this definition, “prices” refers to offered or proposed selling prices, historical selling prices or current selling prices of the items being purchased.

“Procurement” the purchasing, renting, leasing, or otherwise obtaining 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.

“Public Notice” the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the Town and maintained for that purpose.

“Public Procurement Unit” means any one of the following:

- (a) a Local Public Procurement Unit,
- (b) a State Public Procurement Unit, and
- (c) any not-for-profit entity comprised of more than one Unit or Activity listed in subparagraphs (a), (b), or (c)
- (d) any Federal Department

“Public Procurement Unit” any County, Town, and any other subdivision of the State or public Department of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation operating a charitable hospital.

“Purchase Description” the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of the solicitation.

“Purchase Requisition” or “Purchase Request” that document whereby an Agent requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the Town of Florence Procurement Policy.

“Purchasing Department” any department which is authorized by the Town of Florence Procurement Policy or its implementing regulations, or Guidelines, by way of delegation from the Finance Director, or designee.

“Purchasing Officer” any department employee assigned to assist with Town procurement by way of delegation from the Department Head.

- "Qualified Products List" means an approved list of materials described by model or catalogue numbers, that, prior to competitive solicitation, the Town has determined will meet the applicable specifications requirements.
- "Regulation" a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been promulgated in accordance with the Town Procurement Code.
- "Responsible Respondent" a respondent who has the capability to perform fully the contract requirements, and the reliability which will assure good faith performance.
- "Responsive Respondent" a respondent who has submitted a bid or proposal which conforms in material requests to the solicitation.
- "Request for Proposals" all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- "Responsible Bidder or Offeror" means a person who has the capability in all respects to professionally the contract requirements, and tenacity, perseverance, experience, integrity, reliability, capability, facility, equipment, and credit which will assure good faith performance.
- "Responsible Bidder" means a person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids and in compliance with all terms in the Towns sole discretion.
- "Service" 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" such as architects, lawyers, certified public accountants, consultants, appraisers, and engineers. This term shall not include employment agreements or collective bargaining agreements.
- "Shall" denotes the imperative.
- "Signature" a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.
- "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 Town invites a person to participate in a procurement.
- "Specification" Any description of the physical or functional characteristics, or of 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 or construction item for delivery.
- "Specification for a Common or General Use Item" means a specification that has been developed and approved for repeated use in procurement.
- "Standard Commercial Material" means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.
- "State Public Procurement Unit" the Office of the Chief Finance Director, or of this or any other State and any other Purchasing Department of this State or any other State.
- "Substantial Evidence" means a preponderance of the evidence that a reasonable person might accept as more likely than not indicating a particular conclusion.

"Supplies" means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

"Supply" all personal property.

"Surplus Supplies" any supplies, other than expendable supplies, no longer having any use to the Town. This term includes obsolete, scrap, and nonexpendable supplies that have completed their useful life cycle.

"Surplus Materials" means any materials that no longer have any use to the Town. This includes obsolete materials, scrap materials, scrap metals and nonexpendable materials that have completed their useful life cycle.

"Suspension" means an action taken by the Finance Director, or designee, temporarily disqualifying a person from participating in Town procurement.

"Technical Offer" means unpriced written information from a prospective contract stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.

"Using Department" means any department of the Town which utilizes any supplies, services, or construction procured under this Policy.

"Written or In Writing" the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

SECTION VII. SUPPLEMENTAL FORMS

Finance Director shall have the authority to establish and amend forms necessary and will share internal forms on the Town internal drives. Public forms will be stored on the Town procurement webpage.

APPENDIX

Additional Provisions Relating to Compliance with Attachment O to OMB Circular A-102:

The ABA Model Procurement Ordinance for Local Governments suggests a legislative basis for a modern, comprehensive, open, and competitive procurement system designed to promote efficiency, effectiveness, and fairness in public purchasing by small units of local government. As such, the Model Procurement Ordinance is seen as fulfilling the fundamental standards of good public purchasing which are required of governmental recipients by Attachment O (Procurement Standards) to OMB Circular A-102 (Uniform Administrative Requirements for Grants-in-Aid to States and Local Governments from which it is derived, the ABA Model Procurement Ordinance for Local Governments does not suggest “model” coverage for those additional requirements of Attachment O that implements various socioeconomic and other federal public Policy goals. This Appendix contains additional provisions covering these “other” requirements of the current addition of Attachment O.

Several observations should be noted concerning the provisions set forth in this Appendix. First, the text of these provisions represents only a paraphrasing of the Attachment O text. Second, the additional provisions have been numbered so as to suggest an appropriate placement within the structure of the Model Procurement Ordinance. Third, these additional provisions have been drafted so as to make them applicable only if the procurement is being funded in whole or in part by assistance from a federal agency; if no federal assistance funds are involved, these additional provisions would be inapplicable. Finally, the additional provisions set forth in this Appendix have been included as a convenience for a small unit of local government that wants to be certain that its new procurement system addresses all of the current requirements of Attachment O. They do not constitute the recommendations of the American Bar Association, or any of its Sections or Committees.

OMB Circular A-102 is available to view at:

<http://www.whitehouse.gov/omb/circulars/a102/a102.pdf>