

TUCSON, ARIZONA
 Supp. No. 108 – Instruction Sheet

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through September 30, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current revision number appearing on the lower left corner of each page revised in this package is “Supp. No. 108” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CONTAINING
THE CHARTER AND GENERAL ORDINANCES
CITY OF TUCSON, ARIZONA

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From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

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Chapter 10

CIVIL SERVICE – HUMAN RESOURCES*

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***Editor's note** – The editor added “Human Resources” to the title in order to more accurately reflect the contents of the chapter as expressed in § 10-1.

Charter references – Civil service generally, ch. XXII; department of human resources, ch. XXX.

Cross reference – Civil service statutes of reserve police officers, § 2-122(a).

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- Secs. 10-40 – 10-44. Reserved.
- Sec. 10-45. Computation of hourly rates.
- Sec. 10-46. Part-time employees to be paid by the hour.
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Article III. Reserved

- Sec. 10-54. Reserved.

Sec. 10-31(8). Payment for uniform maintenance.

Subject to the prior approval of the city manager, the human resources director shall, as part of the budget process, annually recommend payment for uniform maintenance.

(Ord. No. 10426, § 4, 6-19-07, eff. 6-24-07; Ord. No. 10806, § 2, 6-15-10, eff. 7-1-10; Ord. No. 10900, § 2, 6-28-11, eff. 7-1-11; Ord. No. 10989, § 3, 6-5-12, eff. 7-1-12; Ord. No. 11075, § 5, 5-21-13, eff. 7-1-13; Ord. No. 11134, § 2, 12-17-13; Ord. No. 11180, § 2, 6-3-14, eff. 6-29-14; Ord. No. 11273, § 2, 6-9-15, eff. 6-28-15; Ord. No. 11291, § 3, 8-5-15)

Editor's note – Ord. No. 11180, § 2, adopted June 3, 2014, ratified, reaffirmed, and reenacted this section for Fiscal Year 2015. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 29, 2014. Ord. No. 11273, § 2, adopted June 9, 2015, and Ord. No. 11291, § 5, adopted August 5, 2015, ratified, reaffirmed, and reenacted this section for Fiscal Year 2016. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 28, 2015.

(1953 Code, ch. 10, § 10; Ord. No. 7369, § 17, 3-12-90; Ord. No. 9675, § 3, 2-25-02, eff. 6-30-02)

Editor's note – Listed below are the ordinances constituting and amending the compensation plan:

1957 Supp. to 1953 Code, Ch. 10, § 36 – Amended by:

Ord. No. 1826, § 2, 5-5-58
 Ord. No. 1853, § 1, 8-18-58
 Ord. No. 1855, § 2, 9-2-58
 Ord. No. 1870, § 1, 12-8-58
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 Ord. No. 2574, § 1, 1-20-64
 Ord. No. 2651, § 1, 8-13-64
 Ord. No. 2658, § 1, 9-8-64
 Ord. No. 2693, § 1, 11-2-64

Ch. 10, § 36a of the 1953 Code as added by Ord. No. 1980, § 7, 11-16-59 – Amended by:

Ord. No. 2004, § 2, 2-3-60
 Ord. No. 2105, § 1, 11-7-60
 Ord. No. 2129, § 2, 1-3-61
 Ord. No. 2212, § 4, 9-18-61
 Ord. No. 2390, § 4, 12-17-62
 Ord. No. 2608, § 1, 5-4-64
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Ch. 10, § 36b of the 1953 Code as added by Ord. No. 1980, § 7, 11-16-59 – Amended by:
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 Ord. No. 2651, § 2, 8-13-64
 Ord. No. 2659, § 1, 9-8-64

Ch. 10, § 36c of the 1953 Code as added by Ord. No. 1980, § 7, 11-16-59 – Amended by:

Ord. No. 2004, § 4, 2-3-60
 Ord. No. 2074, § 1, 8-1-60
 Ord. No. 2212, § 6, 9-18-61
 Ord. No. 2329, § 2, 8-13-62
 Ord. No. 2574, § 2, 1-20-64

Ch. 10, § 36d of the 1953 Code as added by Ord. No. 1980, § 7, 11-16-59 – Amended by:

Ord. No. 1971, § 2, 11-16-59
 Ord. No. 2004, § 5, 2-3-60
 Ord. No. 2032, § 1, 5-16-60
 Ord. No. 2212, § 7, 9-18-61
 Ord. No. 2390, § 7, 12-17-62
 Ord. No. 2496, § 2, 7-22-63

Ch. 10, § 36e of the 1953 Code as added by Ord. No. 1980, § 7, 11-16-59 – Amended by:

Ord. No. 2004, § 6, 2-3-60
 Ord. No. 2212, § 8, 9-18-61
 Ord. No. 2329, § 3, 8-13-62
 Ord. No. 2390, § 8, 12-17-62
 Ord. No. 2460, § 2, 5-6-63
 Ord. No. 2574, § 3, 1-20-64
 Ord. No. 2608, § 2, 5-4-64
 Ord. No. 2695, § 1, 11-9-64

Ch. 10, § 36f of the 1953 Code as added by Ord. No. 1980, § 7, 11-16-59 – Amended by:

Ord. No. 2004, § 7, 2-3-60
 Ord. No. 2105, § 2, 11-7-60
 Ord. No. 2212, § 9, 9-18-61
 Ord. No. 2213, § 1, 9-25-61
 Ord. No. 2390, § 9, 12-17-62
 Ord. No. 2460, § 3, 5-6-63
 Ord. No. 2490, § 3, 7-22-63
 Ord. No. 2574, § 4, 1-20-64
 Ord. No. 2693, § 2, 11-2-64

Ch. 10, § 36g of the 1953 Code as added by Ord. No. 1980, § 7, 11-16-59 – Amended by:

Ord. No. 2004, § 8, 2-3-60
 Ord. No. 2063, § 1, 7-5-60
 Ord. No. 2105, § 3, 11-7-60
 Ord. No. 2212, § 10, 9-10-61
 Ord. No. 2216, § 1, 10-19-61
 Ord. No. 2390, § 10, 12-17-62
 Ord. No. 2496, § 4, 7-22-63
 Ord. No. 2574, § 5, 1-20-64

Ch. 10, § 36 of the 1953 Code as added by Ord. No. 2638, § 1, 7-6-64.

Section 10-31 has been amended by the following ordinances:

- Ord. No. 2754, § 3, 4-5-65
- Ord. No. 2845, § 4, 2-7-66
- Ord. No. 2874, § 1, 5-16-66
- Ord. No. 2908, §§ 1, 2, 8-1-66
- Ord. No. 2930, §§ 1, 2, 10-24-66
- Ord. No. 2940, § 3, 11-28-66
- Ord. No. 2973, § 1, 2-6-67
- Ord. No. 2974, § 1, 2-6-67
- Ord. No. 2986, § 2, 3-20-67
- Ord. No. 3009, §§ 1, 2, 6-5-67
- Ord. No. 3061, § 1, 12-4-67
- Ord. No. 3079, § 1, 1-15-68
- Ord. No. 3123, § 1, 5-20-68
- Ord. No. 3126, § 2, 5-27-68
- Ord. No. 3127, § 1, 6-3-68
- Ord. No. 3137, § 1, 7-1-68
- Ord. No. 3163, §§ 1, 2, 9-9-68
- Ord. No. 3179, § 1, 11-12-68
- Ord. No. 3199, § 1, 12-2-68
- Ord. No. 3208, § 1, 1-13-69
- Ord. No. 3209, §§ 1, 2, 1-13-69
- Ord. No. 3214, § 1, 2-3-69
- Ord. No. 3215, §§ 1, 2, 2-24-69
- Ord. No. 3251, §§ 1, 2, 5-5-69
- Ord. No. 3266, § 1, 6-2-69
- Ord. No. 3279, § 1, 6-23-69
- Ord. No. 3298, § 1, 7-21-69
- Ord. No. 3344, § 2, 10-16-69
- Ord. No. 3405, § 1, 2-2-70
- Ord. No. 3428, § 1, 3-23-70
- Ord. No. 3429, § 1, 3-23-70
- Ord. No. 3444, § 1, 5-18-70
- Ord. No. 3512, § 1, 8-31-70
- Ord. No. 3534, § 1, 10-12-70
- Ord. No. 3581, § 1, 1-4-71
- Ord. No. 3582, § 1, 1-4-71
- Ord. No. 3635, §§ 1, 2, 5-12-71
- Ord. No. 3648, §§ 1 - 4, 5-10-71
- Ord. No. 3710, §§ 1, 2, 9-7-71
- Ord. No. 3768, § 1, 12-20-71
- Ord. No. 3838, §§ 1 - 4, 5-1-72
- Ord. No. 3863, §§ 1 - 4, 6-12-73
- Ord. No. 3914, §§ 1, 2, 9-5-72
- Ord. No. 3968, § 1, 1-22-73
- Ord. No. 4014, § 1, 4-23-73
- Ord. No. 4025, § 1, 5-21-73
- Ord. No. 4027, § 1, 5-29-73
- Ord. No. 4038, § 2, 6-25-73
- Ord. No. 4065, § 1, 7-16-73
- Ord. No. 4075, § 1, 8-6-73
- Ord. No. 4105, § 1, 11-5-73
- Ord. No. 4119, § 2, 12-11-73
- Ord. No. 4142, § 1, 2-25-74
- Ord. No. 4182, § 1, 5-28-74
- Ord. No. 4194, § 1, 6-3-74
- Ord. No. 4198, § 2, 6-17-74
- Ord. No. 4203, § 2, 7-1-74
- Ord. No. 4218, § 1, 7-22-74
- Ord. No. 4239, § 1, 9-9-74
- Ord. No. 4241, § 1, 9-9-74
- Ord. No. 4306, § 1, 1-13-75
- Ord. No. 4371, § 1, 6-30-75
- Ord. No. 4381, § 1, 8-4-75
- Ord. No. 4425, § 2, 12-30-75
- Ord. No. 4445, § 1, 2-17-76
- Ord. No. 4523, § 2, 6-21-76
- Ord. No. 4528, § 1, 6-28-76
- Ord. No. 4643, § 1, 5-23-77
- Ord. No. 4682, § 2, 7-5-77
- Ord. No. 4735, § 2, 12-19-77
- Ord. No. 4849, §§ 2, 3, 7-3-78
- Ord. No. 4859, § 1, 8-7-78
- Ord. No. 4872, § 1, 9-5-78
- Ord. No. 4896, § 1, 10-23-78
- Ord. No. 4905, §§ 1, 2, 11-13-78
- Ord. No. 4939, §§ 1, 2, 2-12-79
- Ord. No. 4984, § 2, 6-4-79
- Ord. No. 5007, §§ 1, 2, 7-2-79
- Ord. No. 5032, § 1, 9-4-79
- Ord. No. 5061, §§ 1, 2, 11-13-79
- Ord. No. 5085, § 1, 1-7-79
- Ord. No. 5146, §§ 1, 2, 5-5-80
- Ord. No. 5164, § 2, 5-27-80
- Ord. No. 5199, § 1, 8-4-80
- Ord. No. 5305, §§ 1, 2, 2-9-81
- Ord. No. 5365, § 1, 6-8-81
- Ord. No. 5399, §§ 2, 3, 7, 6-29-81
- Ord. No. 5413, § 1, 8-3-81
- Ord. No. 5599, §§ 1, 3 - 5, 9, 6-28-82
- Ord. No. 5624, § 1, 8-3-82
- Ord. No. 5677, § 1, 11-8-82
- Ord. No. 5798, §§ 1, 3, 8, 7-5-83
- Ord. No. 5832, § 1, 8-1-83
- Ord. No. 5850, §§ 1 - 3, 9-6-83
- Ord. No. 5901, § 1, 11-21-83
- Ord. No. 5903, § 1, 11-21-83
- Ord. No. 5951, § 1, 2-13-84
- Ord. No. 6007, § 1, 4-30-84
- Ord. No. 6040, §§ 1, 3, 8, 6-25-84
- Ord. No. 6071, § 1, 8-6-84
- Ord. No. 6114, §§ 1 - 3, 11-5-84
- Ord. No. 6169, § 1, 2-11-85
- Ord. No. 6264, §§ 1, 3, 8, 6-24-85
- Ord. No. 6302, §§ 1, 2, 9-3-85
- Ord. No. 6329, § 1, 11-18-85
- Ord. No. 6332, § 1, 11-25-85
- Ord. No. 6338, § 1, 11-25-85
- Ord. No. 6452, § 1, 3, 6-16-86
- Ord. No. 6506, § 1, 9-2-86
- Ord. No. 6613, § 1, 1-12-87
- Ord. No. 6643, § 1, 3-16-87
- Ord. No. 6735, §§ 1, 5, 10, 7-6-87
- Ord. No. 6772, §§ 1, 2, 9-14-87
- Ord. No. 6840, § 1, 11-16-87
- Ord. No. 6913, § 1, 3-28-88
- Ord. No. 6921, § 1, 4-4-88
- Ord. No. 6945, § 1, 5-9-88
- Ord. No. 6960, §§ 1, 2, 6-6-88
- Ord. No. 7004, §§ 1, 4, 9 - 11, 14, 7-5-88
- Ord. No. 7024, § 1, 9-6-88
- Ord. No. 7097, § 1, 11-28-88

Ord. No. 7151, §§ 1, 2, 3-6-89
 Ord. No. 7196, §§ 1, 2, 5-15-89
 Ord. No. 7243, §§ 7, 9, 12, 7-3-89
 Ord. No. 7275, §§ 1 – 3, 9-11-89
 Ord. No. 7312, §§ 1, 2, 11-13-89
 Ord. No. 7350 § 1, 2-5-90
 Ord. No. 7383, § 2, 3-19-90
 Ord. No. 7439, § 1, 6-25-90
 Ord. No. 7466, § 1, 8-6-90
 Ord. No. 7497, § 1, 9-17-90
 Ord. No. 7518, § 1, 11-19-90
 Ord. No. 7549, § 1, 1-14-91
 Ord. No. 7566, § 1, 2-25-91
 Ord. No. 7599, §§ 1, 2, 4-1-91
 Ord. No. 7605, §§ 1, 2, 4-15-91
 Ord. No. 7653, §§ 1, 2, 6-24-91
 Ord. No. 7691, §§ 1, 2, 9-16-91
 Ord. No. 7780, §§ 1, 2, 3-16-92
 Ord. No. 7906, § 1, 9-14-92
 Ord. No. 7917, §§ 1, 2, 10-5-92
 Ord. No. 7970, § 1, 1-4-93
 Ord. No. 8022, § 1, 4-12-93
 Ord. No. 8067, §§ 1, 2, 6-21-93
 Ord. No. 8090, § 1, 7-6-93
 Ord. No. 8092, § 1, 8-2-93
 Ord. No. 8149, § 1, 11-1-93
 Ord. No. 8166, § 1, 11-22-93
 Ord. No. 8206, § 1, 2-7-94
 Ord. No. 8316, § 1, 7-5-94
 Ord. No. 8367, § 1, 9-12-94
 Ord. No. 8378, § 1, 10-17-94
 Ord. No. 8439, § 2, 1-23-95
 Ord. No. 8444, § 1, 2-6-95
 Ord. No. 8519, §§ 1, 2, 6-12-95
 Ord. No. 8619, § 1, 1-2-96
 Ord. No. 8712, § 2, 6-10-96
 Ord. No. 8753, § 2, 8-5-96
 Ord. No. 8791, § 1, 1-6-97
 Ord. No. 8842, § 1, 3-17-97
 Ord. No. 8844, § 1, 3-24-97
 Ord. No. 8878, § 1, 6-9-97
 Ord. No. 8975, § 1, 11-3-97
 Ord. No. 9008, § 1, 2-2-98
 Ord. No. 9055, § 1, 5-18-98
 Ord. No. 9068, § 1, 6-8-98
 Ord. No. 9093, § 1, 8-3-98
 Ord. No. 9151, § 1, 11-2-98
 Ord. No. 9191, § 1, 1-11-99
 Ord. No. 9237, § 1, 6-14-99
 Ord. No. 9347, § 1, 2-7-00
 Ord. No. 9352, § 1, 2-28-00
 Ord. No. 9399, § 1, 6-12-00
 Ord. No. 9465, § 1, 9-25-00
 Ord. No. 9475, § 1, 10-16-00
 Ord. No. 9575, § 1, 6-25-01
 Ord. No. 9588, § 1, 8-6-01
 Ord. No. 9677, § 1, 2-25-02 (effective June 30, 2002)
 Ord. No. 9724, §§ 1, 2, 6-17-02
 Ord. No. 9727, §§ 1, 2, 6-24-02
 Ord. No. 9742, § 2, 8-5-02 (retroactive to June 30, 2002)
 Ord. No. 10003, § 1, 6-28-04 (effective June 27, 2004)

Ord. No. 10165, § 1, 6-14-05 (effective June 26, 2005)
 Ord. No. 10289, §§ 1 – 3, 6-27-06 (effective July 9, 2006)
 Ord. No. 10293, §§ 1, 2, 6-27-06 (retroactive to June 25, 2006)
 Ord. No. 10364, § 1, 12-19-06 (amending Ord. No. 10289)
 Ord. No. 10426, § 1, 6-19-07 (effective June 24, 2007)
 Ord. No. 10491, §§ 1, 2, 1-8-08
 Ord. No. 10550, § 1, 6-17-08 (effective July 1, 2008)
 Ord. No. 10619, §§ 1, 2 (Exh. A), 1-6-09 (effective January 1, 2009)
 Ord. No. 10675, § 1, 6-2-09 (effective July 1, 2009)
 Ord. No. 10806, § 1, 6-15-10 (effective July 1, 2010)
 Ord. No. 10900, § 1, 6-28-11 (effective July 1, 2011)
 Ord. No. 10989, § 2, 6-5-12 (effective July 1, 2012)
 Ord. No. 11075, § 5, 5-21-13 (effective July 1, 2013)
 Ord. No. 11134, § 2, 12-17-13
 Ord. No. 11180, § 1, 6-3-14 (effective June 29, 2014)
 Ord. No. 11233, § 1, 12-16-14
 Ord. No. 11273, § 1, 6-9-15 (effective June 28, 2015)
 Ord. No. 11291, § 3, 8-5-15

Sec. 10-32. Administration of plan.

(a) Under the direction and supervision of the city manager, the human resources director shall administer the annual position-compensation plan which is predicated on performance and skill based components and principles. A skill based pay component of the position-compensation for any department will not be implemented or administered without prior approval of a department proposal by the human resource director. Consideration and implementation of a proposal for a skill based component requires:

- (1) That a comprehensive review of departmental work practices has been undertaken. This review shall include the evaluation of work practices, the identification of potential improvements that integrate organization change, new work practices and use of new technologies and,
- (2) That benefits and cost savings which will result from the utilization of a skill based pay component for the department have been identified and quantified.
- (3) That there has been a job analysis identifying skill, job description, skill objectives, training program supporting the acquisition of identified skills, and skill based compensation structure.

- (4) That the human resources is satisfied with and approves the proposed skill based component to be appropriate for the classification involved.

(b) In no event shall a skill based pay component for a department be approved if the proposal results in the compensation of positions in a city classification both under the performance and skill based component of the compensation plan.
 (1953 Code, ch. 10, § 21; Ord. No. 7369, § 18, 3-12-90; Ord. No. 10003, § 3, 6-28-04)

Cross references – Duties of director of personnel pertaining to pensions, § 22-23; duties pertaining to group insurance, § 22-84.

Sec. 10-33. Language communication compensation.

(a) In addition to the compensation authorized by section 10-31, employees who use a language other than English, with proficiency at a conversational level as verified by the director of the department of human resources, a minimum of five (5) percent of the work week, or occupy a position designated by an appointing authority and approved by the city manager as a “language communication” position, shall receive extra compensation in the amount of thirty dollars (\$30.00) per pay period.

(b) Designation of a “language communication” position by the appointing authority and its authorization by the city manager shall be pursuant to procedures to be set forth in city administrative directives.

(c) The director of the department of human resources is responsible for the administration of the language communication compensation program, including, but not limited to, fixing: competency standards; verification procedures for confirming five (5) percent language usage; and criteria to be utilized by appointing authorities when designating “language communications” positions.

(Ord. No. 7937, § 1, 10-26-92; Ord. No. 9540, § 1, 4-16-01; Ord. No. 9562, § 1, 6-11-01; Ord. No. 9727, § 2, 6-24-02; Ord. No. 10165, § 3, 6-14-05; Ord. No. 10426, § 2, 6-19-07; Ord. No. 10550, § 3, 6-17-08, eff. 7-1-08; Ord. No. 10675, § 2, 6-2-09, eff. 7-1-09; Ord. No. 10806, § 2, 6-15-10, eff. 7-1-10; Ord. No. 10900,

§ 2, 6-28-11, eff. 7-1-11; Ord. No. 10989, § 3, 6-5-12, eff. 7-1-12; Ord. No. 11075, § 5, 5-21-13, eff. 7-1-13; Ord. No. 11134, § 2, 12-17-13; Ord. No. 11180, § 2, 6-3-14, eff. 6-29-14; Ord. No. 11273, § 2, 6-9-15, eff. 6-28-15)

Editor’s note – Ord. No. 11180, § 2, adopted June 3, 2014, ratified, reaffirmed, and reenacted this section for Fiscal Year 2015. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 29, 2014. Ord. No. 11273, § 2, adopted June 9, 2015, ratified, reaffirmed, and reenacted this section for Fiscal Year 2016. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 28, 2015.

Sec. 10-33.1. Proficiency pay for commissioned police personnel certified as bilingual users of American Sign Language (ASL) or Spanish.

(a) Effective July 1, 2011, commissioned police personnel who are certified as bilingual users of ASL or Spanish, who use ASL or Spanish a minimum of five (5) percent of the work week, or who occupy a position designated by the police chief and approved by the city manager as regularly requiring a certified bilingual user of ASL or Spanish, will receive eighty-five dollars (\$85.00) per pay period.

(b) Designation of a position as regularly requiring the use of a certified bilingual user of ASL or Spanish by the appointing authority and if authorized by the city manager, shall be pursuant to procedures to be set forth in city administrative directives.

(c) Certified bilingual officers who are receiving compensation under this section are not eligible for language communication compensation under section 10-33.

(d) The director of the department of human resources is responsible for establishing and/or adopting certification standards to ensure that bilingual ASL or Spanish proficiency is at a speed and technical level necessary to accomplish all critical aspects of a commissioned law enforcement officer’s duties in those languages. The department of human resources is also responsible for the administration of the certified ASL or Spanish proficiency program including but not limited to verification procedures for confirming five (5) percent usage and criteria to be utilized by

control. This oversight and control shall include approval of any competency and proficiency standards, educational standards and other such criteria. The human resources department shall verify that program requirements are met and/or maintained before any biannual compensation is made to anyone authorized to participate in the CEP.

(b) There shall be three (3) levels of graduated CEP pay based on points:

- (1) Level One, 20 points. \$150.00
- (2) Level Two, 30 points. \$250.00
- (3) Level Three, 40 points. \$350.00

(c) Commissioned police personnel through rank of captain participating in the CEP will receive CEP biannual incentive compensation dependent on CEP points attained. Compensation will be paid biannually on the second payday in March and September, except for the first payment after commencement of the program, which shall be paid on the second payday of June, 2005. To be eligible for the biannual payments, points must be attained prior to the cutoff date for submitting the form for processing payment. The form must be correctly submitted no later than February 28, for the March payment and August 31 for the September payment, except that the form for the first payment after commencement of the program must be submitted no later than April 1, of 2005.

(d) Annual compensation recommendations for CEP will be on a total compensation basis and not on top of or in excess of the salary/benefits budget and will be addressed through the normal budgeting process and is subject to annual re-adoption and reenactment by the mayor and council as part of the annual compensation plan.

(Ord. No. 10136, § 1, 3-22-05; Ord. No. 10165, § 2, 6-14-05; Ord. No. 10426, § 2, 6-19-07; Ord. No. 10550, § 2, 6-17-08; Ord. No. 10675, § 2, 6-2-09, eff. 7-1-09; Ord. No. 10806, § 2, 6-15-10, eff. 7-1-10; Ord. No. 10900, § 2, 6-28-11, eff. 7-1-11; Ord. No. 10989, § 3, 6-5-12, eff. 7-1-12; Ord. No. 11075, § 5, 5-21-13, eff. 7-1-13; Ord. No. 11134, § 2, 12-17-13; Ord. No. 11180,

§ 2, 6-3-14, eff. 6-29-14; Ord. No. 11273, § 2, 6-9-15, eff. 6-28-15)

Editor’s note – Ord. No. 11180, § 2, adopted June 3, 2014, ratified, reaffirmed, and reenacted this section for Fiscal Year 2015. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 29, 2014. Ord. No. 11273, § 2, adopted June 9, 2015, ratified, reaffirmed, and reenacted this section for Fiscal Year 2016. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 28, 2015.

Sec. 10-53.4. Additional compensation for certain public safety command staff.

The following public safety classifications shall receive four thousand dollars (\$4,000.00) annually in addition to the compensation provided in the Annual Compensation Plan Schedules to be paid biweekly.

The classifications to receive this additional compensation are police lieutenant, police lieutenant-assignments to captain and assistant police chief, fire battalion chief, and fire battalion chief-assignments to staff and assistant fire chief.

(Ord. No. 10289, § 5, 6-27-06; Ord. No. 10426, § 3, 6-19-07; Ord. No. 10550, § 2, 6-17-08; Ord. No. 10675, § 2, 6-2-09, eff. 7-1-09; Ord. No. 10806, § 2, 6-15-10, eff. 7-1-10; Ord. No. 10900, § 3, 6-28-11, eff. 7-1-11; Ord. No. 10989, § 3, 6-5-12, eff. 7-1-12; Ord. No. 11075, § 5, 5-21-13, eff. 7-1-13; Ord. No. 11134, § 2, 12-17-13; Ord. No. 11180, § 2, 6-3-14, eff. 6-29-14; Ord. No. 11273, § 2, 6-9-15, eff. 6-28-15)

Editor’s note – Ord. No. 11180, § 2, adopted June 3, 2014, ratified, reaffirmed, and reenacted this section for Fiscal Year 2015. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 29, 2014. Ord. No. 11273, § 2, adopted June 9, 2015, ratified, reaffirmed, and reenacted this section for Fiscal Year 2016. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 28, 2015.

Sec. 10-53.5. Honor guard assignment pay for fire commissioned personnel.

Commissioned fire guard personnel assigned to the Tucson Fire Department Honor Guard by the fire chief shall receive twenty-five dollars and thirty cents (\$25.30) per pay period in addition to compensation provided by the Annual Compensation Plan Schedules. (Ord. No. 10289, § 6, 6-27-06; Ord. No. 10426, § 2, 6-19-07; Ord. No. 10550, § 2, 6-17-08; Ord. No. 10675,

§ 2, 6-2-09, eff. 7-1-09; Ord. No. 10806, § 2, 6-15-10, eff. 7-1-10; Ord. No. 10900, § 2, 6-28-11, eff. 7-1-11; Ord. No. 10989, § 3, 6-5-12, eff. 7-1-12; Ord. No. 11075, § 5, 5-21-13, eff. 7-1-13; Ord. No. 11134, § 2, 12-17-13; Ord. No. 11180, § 2, 6-3-14, eff. 6-29-14; Ord. No. 11273, § 2, 6-9-15, eff. 6-28-15)

Editor’s note – Ord. No. 11180, § 2, adopted June 3, 2014, ratified, reaffirmed, and reenacted this section for Fiscal Year 2015. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 29, 2014. Ord. No. 11273, § 2, adopted June 9, 2015, ratified, reaffirmed, and reenacted this section for Fiscal Year 2016. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 28, 2015.

Sec. 10-53.6. Reserved.

Editor’s note – Section 10-53.6, additional compensation to defray housekeeping costs for commissioned fire personnel, was repealed by § 4 of Ord. No. 11291, adopted August 5, 2015, effective July 12, 2015. The section had been derived from Ord. Nos. 10426, 10558, and 11273.

Sec. 10-53.7. Certified crane operator assignment and incentive pay program.

(a) In addition to the compensation authorized by section 10-31, city water department employees, trained, certified, and licensed for the operation and maintenance of telescopic boom cranes (TSS) boom truck fixed cab (BTF), shall receive a pay increase of five dollars per hour (\$5.00) added to the employee’s base salary as designated by the annual compensation plan when assigned to and during the operation of the telescopic boom cranes.

(b) Telescopic boom crane operation work assignments are temporary and at the discretion of the director of the water department; assignment to and removal from (TSS) (BTF) crane operation is not appealable to the city civil service commission.

(c) The director of human resources is responsible for the administration of certified crane operator and assignment compensation, including, but not limited to, fixing competency and proficiency standards and setting criteria to be utilized by the water department director when making a certified crane operator assignment.
(Ord. No. 11240, § 1, 2-4-15; Ord. No. 11273, § 2, 6-9-15, eff. 6-28-15)

Editor’s note – Ord. No. 11273, § 2, adopted June 9, 2015, ratified, reaffirmed, and reenacted this section for Fiscal Year 2016. Appendix A and accompanying schedules are implemented for all classified and unclassified employees, effective June 28, 2015.

Sec. 10-53.8. Certified compressed natural gas inspector assignment and incentive pay program.

(a) In addition to the compensation authorized by section 10-31, compensation in the amount of seventy-six dollars and ninety-two cents (\$76.92) per pay period shall be paid to general services department employees certified as Compressed Natural Gas (CNG) Inspectors, accepted in the CNG Inspection program, and assigned to perform CNG inspections.

(b) Assignment to the CNG program is temporary and at the discretion of the director of the general services department; assignment to and removal from the CNG Program is not appealable to the city civil service commission.

(c) The director of human resources is responsible for the administration of certified Compressed Natural Gas Inspector and assignment compensation, including, but not limited to, fixing competency and proficiency standards and setting criteria to be utilized by the general services department director when making a CNG inspector assignment.
(Ord. No. 11280, § 1, 6-23-15, eff. 7-1-15)

ARTICLE III. RESERVED

Sec. 10-54. Reserved.

Editor’s note – Section 10-54, the executive pay plan, was repealed by § 1 of Ord. No. 7383, adopted Mar. 19, 1990. The section had been derived from Ord. Nos. 4850, 4940, 4985, 5164, 5399, 5599, 5798, 6040, 6264, 6735, 7004, 7243, 7275. See now § 10-31.

Chapter 22

**PENSIONS, RETIREMENT, GROUP INSURANCE, LEAVE BENEFITS AND
OTHER INSURANCE BENEFITS***

- Art. I. In General, §§ 22-1 – 22-12**
Art. II. Social Security, §§ 22-13 – 22-29
Art. III. Tucson Supplemental Retirement System, §§ 22-30 – 22-77
Div. 1. Types of Retirement and Benefits, §§ 22-30 – 22-43.1
Div. 2. Administration of the System, §§ 22-44 – 22-77
Art. IV. Group Insurance and Medical Health Plans, §§ 22-78 – 22-89
Art. V. Leave Benefit Plan, §§ 22-90 – 22-99
Art. VI. Other Insurance Benefits, §§ 22-100 – 22-104

Article I. In General

- Sec. 22-1. Contributions to the public safety personnel retirement system.
Secs. 22-2 – 22-12. Reserved.

Article II. Social Security

- Sec. 22-13. Short title.
Sec. 22-14. Purpose.
Sec. 22-15. Execution of application and agreement authorized.
Sec. 22-16. Effect of membership.
Sec. 22-17. Director of finance to pay city contributions.
Sec. 22-18. Funds for city contributions for current services.
Sec. 22-19. Funds for city contributions for past services.
Sec. 22-20. Employee contributions for current services.
Sec. 22-21. Employee contributions for past services.
Sec. 22-22. Collection of employee contributions for past services.
Sec. 22-23. Duties of director of personnel.
Secs. 22-24 – 22-29. Reserved.

Article III. Tucson Supplemental Retirement System

Division 1. Types of Retirement and Benefits

- Sec. 22-30. Definitions.
Sec. 22-31. Trust fund.
Sec. 22-32. Exclusive benefit.
Sec. 22-33. Membership.
Sec. 22-34. Membership contributions.
Sec. 22-35. City contributions.

***Editor's note** – Ord. No. 10294, § 1, adopted June 27, 2006, amended the title of ch. 22 to read as herein set out. Prior to inclusion of said ordinance, ch. 22 was entitled, "Pensions, Retirement and Group Insurance." It should be noted that said ordinance is effective June 20, 2006.

The 1953 Code, ch. 20, §§ 1 – 24, provided for pensions and retirement. These sections were repealed by Ord. No. 1420, § 1, enacted Nov. 30, 1953. Terms and conditions of the repeal, appearing as ch. 20, §§ 25 and 26 in the 1957 supplement to the 1953 Code, have not been included in this Code because fully executed and rights thereunder are guaranteed by the present supplement retirement systems, § 22-34 et seq.

Charter reference – Civil service generally, ch. XXII.

Cross reference – Civil service generally, ch. 10.

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- Sec. 22-36. Accumulation of credited service.
- Sec. 22-37. Retirements.
- Sec. 22-38. End of service program.
- Sec. 22-39. Disability retirement.
- Sec. 22-40. Death benefits.
- Sec. 22-41. Refund of accumulated contributions accounts; transfers to other systems.
- Sec. 22-42. Retirement benefit payment options.
- Sec. 22-43. Administration of benefit payments; benefit calculations.
- Sec. 22-43.1. System approved domestic relations orders.

Division 2. Administration of the System

- Sec. 22-44. Board of trustees.
- Sec. 22-45. Investments.
- Sec. 22-46. Finance director duties.
- Sec. 22-47. Human resources director duties.
- Sec. 22-48. System administrator.
- Sec. 22-49. Indemnification.
- Sec. 22-50. Miscellaneous administrative provisions.
- Sec. 22-51. Alteration, amendment, repeal of the system.
- Sec. 22-52. Effective date.
- Sec. 22-53. Reserved.
- Sec. 22-54. Reserved.
- Sec. 22-55. Reserved.
- Secs. 22-56 – 22-77. Reserved.

Article IV. Group Insurance and Medical Health Plans

- Sec. 22-78. Short title.
- Sec. 22-79. Purpose.
- Sec. 22-80. Coverage authorized.
- Sec. 22-81. Finance director to pay premiums.
- Sec. 22-82. Employees' premium costs.
- Sec. 22-83. City's premium costs.
- Sec. 22-84. Duty of human resources director.
- Sec. 22-85. Applicability to existing, future employees.
- Sec. 22-86. Medical insurance incentive allowance.
- Secs. 22-87 – 22-89. Reserved.

Article V. Leave Benefit Plan

- Sec. 22-90. Providing for leave benefit plan.
- Sec. 22-91. Duties of the human resources director and city manager.
- Sec. 22-92. Peace officer recruitment incentive.
- Sec. 22-93. Conditions for annual sick leave payment to fire department commissioned personnel.
- Sec. 22-94. Conditions for annual sick leave payment to police department commissioned personnel.
- Sec. 22-95. Wellness attendance incentive.
- Sec. 22-96. Transfer and accrual of sick leave and vacation for City of Tucson/Pima County Household Hazardous Waste Program employees entering city service.
- Secs. 22-97 – 22-99. Reserved.

Article VI. Other Insurance Benefits

- Sec. 22-100. Reserved.
- Sec. 22-101. Death benefit for employee group eligible for representation by TPOA.
- Sec. 22-102. Death benefit for employee group eligible for representation by IAFF.
- Sec. 22-103. Death benefit for employee group eligible for representation by AFSCME.
- Sec. 22-104. Death benefit for employee group eligible for representation by CWA/TACE.

approximately equal installments commencing in the pay period in which July 1 falls through the end of that fiscal year.

Sec. 22-93(g). Employees with twenty-two (22) or more years of service as of July 1 of the year of their request for sick leave payment who have six hundred (600) hours of sick leave on the first day of the pay period in which April 1 falls shall, on request, be paid for the unused portion of the first seven (7) days (fifty-six (56) hours) of their annual sick leave plus an additional one hundred fifty-two (152) hours of their accrued sick leave, or any part of those combined hours, as set forth in the employee's request, not to exceed a maximum total of two hundred eight (208) hours per year, in approximately equal installments, commencing in the pay period in which July 1 falls through the end of that fiscal year.

(Ord. No. 9382, § 1, 5-15-00; Ord. No. 9523, § 1, 3-5-01; Ord. No. 9561, § 1, 6-11-01; Ord. No. 9720, § 1, 6-10-02; Ord. No. 10425, § 2, 6-19-07, eff. 7-1-07)

Editor's note – Ord. No. 9382, § 1, adopted May 15, 2000, amended the Code by adding provisions designated as § 22-92. Inasmuch as there already exist provisions so designated, the provisions of Ord. No. 9382 have been included herein as § 22-93 at the discretion of the editor.

Sec. 22-94. Conditions for annual sick leave payment to police department commissioned personnel.

Sec. 22-94(a). Payment shall be at the employee's base rate of pay in effect at the time of the payment, exclusive of overtime, shift differential, standby pay, temporary promotion pay, longevity pay, and any other type of pay not included in the employee's base rate.

Sec. 22-94(b). Payment shall require a request by the employee prior to June 1 preceding the fiscal year of payment. Any of the remaining annual sick leave hours for which payment is not requested remain subject to the sick leave transfer provisions of city administrative directive 2.01-7.

Sec. 22-94(c). Conditions for annual sick leave payment to police department commissioned personnel are subject to retroactive and/or prospective alteration, amendment, or repeal at any time.

Sec. 22-94(d). Employees with fifteen (15) or more years of service in the pay period in which July 1 of the year of their request for sick leave payment falls, who have four hundred eighty (480) hours of sick leave

on the first day of the pay period in which April 1 falls, shall, on request, be paid for the unused portion of the first fifty-six (56) hours of their annual sick leave, plus an additional forty-eight (48) hours of their accrued sick leave, or any part of those combined hours as set forth in the employee's request, not to exceed a maximum total of one hundred four (104) hours per year, in approximately equal installments commencing in the pay period in which July 1 falls through the end of that fiscal year.

Sec. 22-94(e). Employees with seventeen (17) or more years of service in the pay period in which July 1 of the year of their request for sick leave payment falls, who have five hundred forty-four (544) hours of sick leave on the first day of the pay period in which April 1 falls, shall, on request, be paid for the unused portion of the first fifty-six (56) hours of their annual sick leave, plus an additional one hundred (100) hours of their accrued sick leave, or any part of those combined hours as set forth in the employee's request, not to exceed a maximum total of hundred fifty-six (156) hours per year, in approximately equal installments commencing in the pay period in which July 1 falls through the end of that fiscal year.

Sec. 22-94(f). Employee with twenty (20) or more years of service in the pay period in which July 1 of the year of their request for sick leave payment falls, who have six hundred (600) hours of sick leave on the first day of the pay period in which April 1 falls shall, on request, be paid for the unused portion of the first seven (7) days (fifty-six (56) hours) of their annual sick leave plus an additional one hundred fifty two (152) hours of their accrued sick leave, or any part of those combined hours, as set forth in the employee's request, not to exceed a maximum total of two hundred eight (208) hours per year, in approximately equal installments, commencing in the pay period in which July 1 falls through the end of that fiscal year.

Sec. 22-94(g). Year(s) of prior active duty military service or prior commissioned police service from other jurisdictions shall be included in calculating the years of qualifying service applicable to any payments made under the preceding subparagraphs (d) through (f) of § 22-94.

(Ord. No. 9560, § 1, 6-11-01; Ord. No. 95-90, § 2, 8-6-01; Ord. No. 9864, § 3, 6-16-03; Ord. No. 9878, § 2, 8-4-03; Ord. No. 10425, § 3, 6-19-07, eff. 7-1-07, eff. 7-1-07)

Sec. 22-95. Wellness attendance incentive.

The employee groups eligible for representation by a labor organization and employees eligible for overtime who are not eligible to be represented by any labor organization shall be entitled to receive a cash incentive of two hundred fifty dollars (\$250.00) for each six (6) month period in each fiscal year, conditioned that the employee has not used any leave without pay or sick leave, including FMLA, in the six (6) month measuring period preceding the date of payment. The Wellness Attendance incentive payment will be paid in February for the first six (6) month period and in August for the second six (6) month period. (Ord. No. 9719, § 3, 6-10-02; Ord. No. 10004, § 3, 6-28-04; Ord. No. 10019, § 1, 8-2-04; Ord. No. 10163, § 2, 6-14-05; Ord. No. 10294, § 2, 6-27-06; Ord. No. 10425, § 4, 6-19-07; Ord. No. 10557, § 3, 6-25-08, eff. 7-1-08; Ord. No. 10678, § 4, 6-9-09, eff. 7-1-09; Ord. No. 10812, § 1, 6-22-10, eff. 7-1-10; Ord. No. 10899, § 1, 6-7-11, eff. 7-1-11; Ord. No. 10991, § 2, 6-12-12, eff. 7-1-12; Ord. No. 11071, § 1, 5-21-13, eff. 7-1-13; Ord. No. 11176, § 1, 6-3-14, eff. 7-1-14; Ord. No. 11292, § 1, 8-5-15)

Sec. 22-96. Transfer and accrual of sick leave and vacation for City of Tucson/Pima County Household Hazardous Waste Program employees entering city service.

(a) Each City of Tucson/Pima County Household Hazardous Waste Program employee who is leaving Pima County employment and beginning employment with the City of Tucson under section 13 of the intergovernmental agreement with Pima County approved by mayor and council resolution on March 1, 2005 shall have his or her accrued sick and vacation leave balances transferred with the employee.

(b) These employees shall thereafter accrue city sick and vacation leave at a rate commensurate with the employees combined length of service with the county and city. This special length of service provision shall not otherwise affect the status of these employees, who will begin employment with the city as new civil service employees.

(c) The administration of accumulated and earned sick and vacation leave, as provided in this section for these employees, shall be in accordance with applicable city code and administrative provisions, as they may be amended from time to time. (Ord. No. 10125, § 1, 3-1-05)

Secs. 22-97 – 22-99. Reserved.

ARTICLE VI. OTHER INSURANCE BENEFITS

Sec. 22-100. Reserved.

Editor’s note – Ord. No. 10425, § 5, adopted June 19, 2007, effective July 1, 2007, repealed § 22-100, which pertained to providing for other insurance benefits and derived from Ord. No. 9383, § 1, adopted May 15, 2000; Ord. No. 10005, § 1, adopted June 28, 2004; Ord. No. 10163, § 4, June 14, 2005.

Sec. 22-101. Death benefit for employee group eligible for representation by TPOA.

Effective June 1, 2008, the city shall provide a twenty-five thousand dollar (\$25,000.00) death benefit to the survivor of a city employee who is a member of the employee group eligible for representation by TPOA, who holds a permanent position in the classified service at the time of death, and who is killed while directly performing duties as a peace officer for the city. A survivor for the purposes of this section shall be the person(s) indicated as the beneficiary of the employee’s pension or as otherwise provided by law. (Ord. No. 10005, § 1, 6-28-04; Ord. No. 10163, § 5, 6-14-05; Ord. No. 10557, § 4, 6-25-08, eff. 7-1-08; Ord. No. 10569, § 1, 7-8-08)

Sec. 22-102. Death benefit for employee group eligible for representation by IAFF.

The city shall provide a twenty-five thousand dollar (\$25,000.00) death benefit to the survivor of a city employee who is a member of the employee group eligible for representation by IAFF who holds a permanent position in the classified service at the time of death and who is killed while directly performing duties as a commissioned fire employee for the city, or

who dies as a result of occupational illness or occupational exposure. A survivor for the purposes of this section shall be the person(s) indicated as the beneficiary of the employee's pension or as otherwise provided by law.

(Ord. No. 10005, § 1, 6-28-04; Ord. No. 10294, § 3, 6-27-06; Ord. No. 10557, § 5, 6-25-08, eff. 7-1-08)

Sec. 22-103. Death benefit for employee group eligible for representation by AFSCME.

The city shall provide a two thousand five hundred dollar (\$2,500.00) special death benefit to the survivor of a city employee who is a member of the employee group eligible for representation by AFSCME and dies while in the employ of the City of Tucson. Although the benefit will be paid without restriction, it is intended that it should be used for purposes of the employees funeral expenses. A survivor for the purposes of this section shall be the person(s) indicated as the beneficiary of the employee's pension or as otherwise provided by law.

(Ord. No. 10020, § 1, 8-2-04; Ord. No. 10557, § 6, 6-25-08, eff. 7-1-08)

Sec. 22-104. Death benefit for employee group eligible for representation by CWA/TACE.

The city shall provide twenty-five thousand dollars (\$25,000.00) death benefit to the survivor of a city employee who is a member of the employee group eligible for representation by CWA/TACE who holds a permanent position in the classified service at the time of death and who is killed while directly performing duties as an employee for the city, or who dies as a result of occupational illness or occupational exposure. A survivor for the purposes of this section shall be the person(s) indicated as the beneficiary of the employee's pension or as otherwise provided by law.

(Ord. No. 10557, § 7, 6-25-08, eff. 7-1-08)

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Chapter 28

TUCSON PROCUREMENT CODE*

- Art. I. In General, §§ 28-1 – 28-10**
- Art. II. Procurement Director Authority, §§ 28-11 – 28-14**
- Art. III. Source Selection and Contract Formation, §§ 28-15 – 28-40**
- Art. IV. Specifications, §§ 28-41 – 28-46**
- Art. V. Procurement of Professional Design Services and Capital Improvements, §§ 28-47 – 28-57**
- Art. VI. Contract Terms and Conditions, §§ 28-58 – 28-61**
- Art. VII. Cost Principles, §§ 28-62 – 28-65**
- Art. VIII. Materials Management, §§ 28-66 – 28-74**
- Art. IX. Legal and Contractual Remedies, §§ 28-75 – 28-125**
- Art. X. Cooperative Purchasing, §§ 28-126 – 28-131**
- Art. XI. Reserved, §§ 28-132 – 28-136**
- Art. XII. Affirmative Action by City Contractors, §§ 28-137 – 28-146**
- Art. XIII. Small Business Enterprise Program, §§ 28-147 – 28-151.5**
- Art. XIV. Living Wage, §§ 28-152 – 28-159**

Article I. General Provisions

- Sec. 28-1. Applicability.
- Sec. 28-2. Definitions.
- Sec. 28-3. Supplementary general principles of law applicable.
- Sec. 28-4. Requirement of good faith.
- Sec. 28-5. Confidential information.
- Secs. 28-6 – 28-10. Reserved.

Article II. Procurement Director Authority

- Sec. 28-11. Authority of the director.
- Sec. 28-12. Written determinations.
- Secs. 28-13, 28-14. Reserved.

Article III. Source Selection and Contract Formation

- Sec. 28-15. Definitions.
- Sec. 28-16. Methods and dollar thresholds of source selection.
- Sec. 28-17. Competitive sealed bidding.
- Sec. 28-18. Competitive sealed proposals.
- Sec. 28-19. Contracting for legal counsel.
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- Sec. 28-21. Sole source procurement.
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- Sec. 28-24. Competitive reverse auctions.
- Sec. 28-25. Cancellation of solicitations.
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- Sec. 28-28. Bid and contract security, material or service contracts.

***Editor's note** – Ord. No. 9913, § 1, adopted Nov. 17, 2003, amended chapter 28 in its entirety to read as herein set out. Former chapter 28, §§ 28-1 – 28-5, 28-11, 28-12, 28-15 – 28-37, 28-41 – 28-45, 28-47 – 28-56, 28-58, 28-62, 28-63, 28-66 – 28-71, 28-75 – 28-118, 28-126 – 28-129, 28-132 – 28-134, 28-137 – 28-144, 28-145 – 28-151, 28-152 – 28-160, pertained to similar subject matter and derived from Ord. No. 7973, § 4, adopted Jan. 25, 1993. See the Code Comparative Table.

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- Sec. 28-29. Reserved.
- Sec. 28-30. Reserved.
- Sec. 28-31. Multi-term contracts.
- Sec. 28-32. Right to inspect.
- Sec. 28-33. Right to audit records.
- Sec. 28-34. Reporting of anticompetitive practices.
- Sec. 28-35. Prospective vendor databases.
- Sec. 28-36. Contract form and execution.
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- Sec. 28-39. Reserved.
- Sec. 28-40. Reserved.

Article IV. Specifications

- Sec. 28-41. Reserved.
- Sec. 28-42. Maximum practicable competition.
- Sec. 28-43. Specifications prepared by other than city personnel.
- Sec. 28-44. Brand name or equal specification.
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- Sec. 28-47. Definitions.
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- Sec. 28-49. Procurement of professional design services.
- Sec. 28-50. Procurement of construction services.
- Sec. 28-51. Construction by city employees.
- Sec. 28-52 – 28-57. Reserved.

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- Sec. 28-58. Contract terms and conditions.
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- Sec. 28-62. Cost principles.
- Sec. 28-63. Cost or pricing data.
- Secs. 28-64, 28-65. Reserved.

Article VIII. Materials Management

- Sec. 28-66. Definitions.
- Sec. 28-67. Materials management guidelines.
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- Sec. 28-69. Disposition of surplus property.
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- Sec. 28-76. Authority of the contract officer.
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- Sec. 28-79. Time for filing protests.
- Sec. 28-80. Stay of procurements during the legal due process.
- Sec. 28-81. Confidential information.
- Sec. 28-82. Decision by the contract officer on a protest.
- Sec. 28-83. Remedies for a protest.
- Sec. 28-84. Appeals to the director.
- Sec. 28-85. Notice of appeal.
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- Sec. 28-87. Contract officer report on an appeal.
- Sec. 28-88. Remedies for an appeal of a protest.
- Sec. 28-89. Dismissal before hearing.
- Sec. 28-90. Hearing.
- Sec. 28-91. Filing of a contract claim.
- Sec. 28-92. Contract officer's decision on a contract claim.
- Sec. 28-93. Issuance of a timely decision on a contract claim.
- Sec. 28-94. Appeals on a contract claim to the director.
- Sec. 28-95. City claims against a contractor.
- Sec. 28-96. Hearing.
- Sec. 28-97. Mediation.
- Sec. 28-98. Arbitration.
- Sec. 28-99. Authority to debar or suspend.
- Sec. 28-100. Debarment or suspension causes.
- Sec. 28-101. Matters not proper for debarment or suspension.
- Sec. 28-102. Initiation of debarment.
- Sec. 28-103. Period of debarment.
- Sec. 28-104. Notice.
- Sec. 28-105. Notice to affiliates.
- Sec. 28-106. Imputed knowledge.
- Sec. 28-107. Suspension.
- Sec. 28-108. Period and scope of suspension.
- Sec. 28-109. Suspension notice, hearing, determination and appeal.
- Sec. 28-110. Reinstatement.
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- Sec. 28-113. Hearing procedures.
- Sec. 28-114. Hearing officer's decision.
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- Sec. 28-116. Reserved.
- Sec. 28-117. Judicial review of protests, claims, debarments or suspensions.
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- Secs. 28-119 – 28-125. Reserved.

Article X. Cooperative Purchasing

- Sec. 28-126. Definitions.
- Sec. 28-127. Applicability.
- Sec. 28-128. Cooperative purchasing agreements required.
- Sec. 28-129. Cooperative purchasing authorized.
- Secs. 28-130, 28-131. Reserved.

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- Secs. 28-132 – 28-136. Reserved.

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Article XII. Affirmative Action by City Contractors

- Sec. 28-137. Definitions.
- Sec. 28-138. Provision against discrimination required in all city contracts.
- Sec. 28-139. Reporting requirements.
- Sec. 28-140. Duties and requirements of contractors on city contracts; responsibility for implementation.
- Sec. 28-141. Inability or failure to comply with affirmative action obligations.
- Sec. 28-142. Administrative responsibility.
- Sec. 28-143. Exemptions.
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- Secs. 28-145, 28-146. Reserved.

Article XIII. Small Business Enterprise Program

- Sec. 28-147. Definitions.
- Sec. 28-148. Administrative provisions.
- Sec. 28-149. Establishment of SBE program goals for construction and construction services projects.
- Sec. 28-150. SBE plans for eligible projects.
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- Sec. 28-151.1. SBE plans for eligible design projects.
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- Sec. 28-151.3. Applicability to procurement of goods, materials, and services.
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Article XIV. Living Wage

- Sec. 28-152. Conditions for use.
- Sec. 28-153. Eligible contract.
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- Sec. 28-156. Reserved.
- Sec. 28-157. Wages.
- Sec. 28-158. Compliance.
- Sec. 28-159. Records.

ARTICLE I. GENERAL PROVISIONS***Sec. 28-1. Applicability.**

Sec. 28-1(1). The provisions of this chapter shall apply to the following:

- (a) Every expenditure of public monies by this city irrespective of their source, including federal assistance monies;
- (b) Disposal of property; and
- (c) Contracts where there is no expenditure of public monies or where the city is offering something of value to the business community when the city determines source selection and award of a contract.

Sec. 28-1(2). The following are exempt from the provisions of this chapter:

- (a) Grants awarded by the city and approved by mayor and council;
- (b) The sale or lease of city real property;
- (c) Contracts for professional witnesses if the purpose of such contracts is to provide for services or testimony relating to an existing or probable judicial proceeding in which this city is or may become a party or to contracts for special investigative services for law enforcement purposes;
- (d) Agreements negotiated by the city attorney in settlement of litigation or threatened litigation;
- (e) The purchases of materials for resale in a concession operation;
- (f) Contracts for municipal improvement districts; or

- (g) Contracts entered into with an eligible entity as defined by Public Law 105-285, section 673(1)(a)(i), as amended, for designated community services block grant monies and any other monies given to the eligible entity that accomplish the purpose of Public Law 205-285, section 672.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-2. Definitions.

In this chapter, unless the context otherwise requires:

Sec. 28-2(1). “*Business*” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Sec. 28-2(2). “*Change order*” means a written document authorized by the director which directs the contractor to make changes with or without the consent of the contractor.

Sec. 28-2(3). “*City*” means the municipal corporation now existing and known as the City of Tucson.

Sec. 28-2(4). “*Construction*” means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings or real property.

Sec. 28-2(5). “*Construction services*” means either of the following for construction-manager-at risk, design-build and job-order-contracting project delivery methods:

***Editor’s note**—Ord. No. 10404, § 1, adopted May 15, 2007, amended Arts. I – X in their entirety to read as herein set out. Former Arts. I – X, §§ 28-1 – 28-5, 28-11, 28-12, 28-15 – 28-37, 28-41 – 28-45, 28-47 – 28-52, 28-58, 28-62, 28-63, 28-66 – 28-71, 28-74 – 28-118, 28-126 – 28-129, pertained to similar subject matter, and derived from Ord. No. 9913, § 1, adopted Nov. 17, 2003; Ord. No. 10292, § 1, adopted June 27, 2006; Ord. No. 10328, §§ 1, 2, adopted Oct. 10, 2006.

- (a) Construction, excluding services through the construction-manager-at-risk or job-order-contracting project delivery methods.
- (b) A combination of construction and, as elected by the city, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in section 28-47.

Sec. 28-2(6). “*Contract*” means all types of city agreements, regardless of what they may be called, for the procurement of materials, services, construction, construction services or the disposal of materials.

Sec. 28-2(7). “*Contract amendment*” means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties of the contract.

Sec. 28-2(8). “*Contract officer*” means any person duly authorized by the director to facilitate the source selection process, including but not limited to, preparing solicitations and written determinations, conducting negotiations, making award recommendations, and administering contracts.

Sec. 28-2(9). “*Contractor*” means any person who has a contract with the city.

Sec. 28-2(10). “*Days*”, unless otherwise specified, means calendar days and shall be computed pursuant to A.R.S. section 1-243.

Sec. 28-2(11). “*Department*” means the department of procurement.

Sec. 28-2(12). “*Designee*” means a duly authorized representative of the director, designated by the director.

Sec. 28-2(13). “*Director*” means the director of the department of procurement and the central procurement and contracting authority for the city, or the director's designee.

Sec. 28-2(14). “*Disposal of material*” means sale of surplus, unclaimed and seized property by public auction, competitive sealed bidding, small purchase procedures or other appropriate method designated by this chapter.

Sec. 28-2(15). “*Electronic*” means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Sec. 28-2(16). “*Grant*” means the furnishing by this city of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of materials, services or construction. A contract resulting from such an agreement is not a grant but a procurement contract.

Sec. 28-2(17). “*In writing*” has the same meaning as “written” or “writing” in A.R.S. 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.

Sec. 28-2(18). “*Materials*” means all property, including but not limited to, equipment, supplies, and buildings but does not include land, a permanent interest in land or leases of real property.

Sec. 28-2(19). “*Person*” means any corporation, consultant, business, individual, union, committee, club, other organization or group of individuals.

Sec. 28-2(20). “*Procurement*” means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services. Procurement also includes all functions that pertain to the acquisition of any material, service, construction or construction services, including description of requirements, selection and solicitation of sources, preparation, negotiation and award of contract, and all phases of contract administration.

Sec. 28-2(21). “*Public notice*” means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods may include electronic mailing lists and a website maintained for that purpose.

Sec. 28-2(22). “*Services*” means the furnishing of labor, time or effort by a contractor, consultant, subcontractor or subconsultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to, consulting, personal, professional, legal counsel, auditing, technical, professional design and construction services.

Sec. 28-2(23). “*Specification*” is used interchangeably with “*scope*”, “*scope of services*”, or “*scope of work*” and means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

Sec. 28-2(24). “*Subcontractor or subconsultant*” means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the city.

Sec. 28-2(25). “*Using agency*” means any organizational unit of the city, which utilizes any materials, services or construction procured under this chapter.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-3. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-4. Requirement of good faith.

This chapter requires all parties involved in the negotiation, performance, or administration of city contracts to act in good faith.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-5. Confidential information.

Confidential information shall be designated as follows:

Sec. 28-5(1). If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld from public record, a statement advising the contract officer of this fact should accompany the submission and the information shall be so identified wherever it appears.

Sec. 28-5(2). The information identified by the person as confidential may not be disclosed until the contract officer makes a written determination.

Sec. 28-5(3). The contract officer shall review the statement and information and may determine in writing that the information shall be withheld or disclosed.

Sec. 28-5(4). If the contract officer determines to disclose the information, the contract officer shall inform the person in writing of such determination.

Sec. 28-5(5). Notwithstanding the above provisions, in the event records marked as confidential are requested for public release, the city shall release records marked confidential ten (10) working days after the date of notice to the person of the request for release, unless the person has, within the ten (10) day period, secured a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records.

Sec. 28-5(6). The city shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records marked confidential. Nor shall the city be in any way financially responsible for any costs associated with securing such an order.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Secs. 28-6 – 28-10. Reserved.

ARTICLE II. PROCUREMENT DIRECTOR AUTHORITY*

Sec. 28-11. Authority of the director.

Sec. 28-11(1). Except as otherwise provided in this chapter, the director may adopt operational procedures, consistent with this chapter, governing the procurement and management of all materials, services, construction and construction services to be procured by this city and the disposal of materials.

Sec. 28-11(2). The director shall serve as the central procurement and contracting authority of this city.

Sec. 28-11(3). Except as otherwise provided in this chapter, the director shall:

- (a) Procure or supervise the procurement of all materials, services and construction needed by this city.
- (b) Establish guidelines for the management of all inventories of materials belonging to this city.
- (c) Manage the disposal of materials belonging to the city.
- (d) Sell, trade or otherwise dispose of surplus materials belonging to this city.
- (e) Prepare, issue, revise, maintain, and monitor the use of specifications for materials, services and construction required by this city.
- (f) Manage the city’s procurement card (pCard) program.
- (g) Manage the city’s mail services division.
- (h) Manage the city's Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) programs.

Sec. 28-11(4). The director may delegate procurement authority to designees or to any department or official of the city.

Sec. 28-11(5). The director may determine in writing that noncompliance with any provision of this chapter is nonsubstantial and may allow for correction or may waive minor informalities or irregularities. The basis for the decision shall be included in the determination.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-12. Written determinations.

Written determinations required by this chapter shall be retained in the department.

(Ord. No. 10404, § 1, 5-15-07)

Secs. 28-13, 28-14. Reserved.

ARTICLE III. SOURCE SELECTION AND CONTRACT FORMATION**

Sec. 28-15. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-15(1). “Best value” means a technique in the competitive sealed bid process which permits the evaluation of objective criteria to determine the best overall value to the city.

Sec. 28-15(2). “Discussions” means communication with an offeror, bidder or respondent for the purpose of:

- (a) Eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response;
- (b) Clarifying any offer or response to assure full understanding of, and responsiveness to, solicitation requirements;

* **Editor’s note**—See editor’s note at Art. I.

** **Editor’s note**—See editor’s note at Art. I.

- (c) Resolving minor variations in contract terms and conditions; or
- (d) Establishing the competency or financial stability of any offeror, bidder or respondent.

Sec. 28-15(3). "Invitation for bid" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in section 28-17.

Sec. 28-15(4). "Invitation for reverse auction bids" means all documentation, written or electronic, whether attached or incorporated by reference, which are used for soliciting bids in accordance with procedures prescribed in section 28-24.

Sec. 28-15(5). "Minor informality" means mistakes, or non-judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of such mistakes does not prejudice other bidders, offerors or respondents.

Sec. 28-15(6). "Negotiations" means an exchange of information or any form of cooperation during which the offeror and the city may alter or otherwise change the scope of work, conditions, terms, and price, unless prohibited, of the proposed contract.

Sec. 28-15(7). "Proposal revision" means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contract officer, as the result of negotiation.

Sec. 28-15(8). "Request for proposals" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in section 28-18.

Sec. 28-15(9). "Request for qualifications" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents in accordance with article V.

Sec. 28-15(10). "Request for quotation" means a process for small purchases as defined in section 28-16.

Sec. 28-15(11). "Responsible bidder, offeror, or respondent" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

Sec. 28-15(12). "Responsive bidder" means a person who submits a bid which conforms in all material respects to the invitation for bids.

Sec. 28-15 (13). "Reverse auction" means an electronic auction in which the role of the buyer and seller are reversed. In an ordinary auction (also known as a forward auction), buyers compete to obtain a good or service. In a reverse auction, sellers compete to obtain business. Bids shall be publicly posted throughout the auction to encourage competition.

Sec. 28-15(14). "Solicitation" means an invitation for bids, a request for technical proposals, a request for proposals, a request for qualifications, a request for quotations, an invitation for reverse auction bids or any other invitation or request by which the city invites a person to participate in a procurement. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-16. Methods and dollar thresholds of source selection.

All contracts of the city shall be awarded by one of the methods of source selection specified in this chapter and by the dollar thresholds specified herein.

Sec. 28-16(1). Small purchases. A small purchase is any contract not exceeding the dollar amount prescribed in A.R.S. § 41-2535(A) of the Arizona Procurement Code. Small purchases may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

Sec. 28-16(1)(a). Small purchases under ten thousand dollars (\$10,000.00). The director shall adopt operational procedures for making small purchases of ten thousand dollars (\$10,000.00) or less.

Sec. 28-16(1)(b). Small purchases over ten thousand dollars (\$10,000.00). Insofar as it is practical for small purchases in excess of ten thousand

dollars (\$10,000.00) but less than the dollar amount prescribed in A.R.S. § 41-2535(A) of the Arizona Procurement Code, a request for quotation shall be solicited from no less than three (3) businesses. Award shall be made to the responsible respondent, whose offer is most advantageous to the city and conforms in all material respects to the small purchase requirements. The responses shall be maintained as a public record.

Sec. 28-16(2). Consideration of taxes in small purchases. In evaluating small purchases, except for procurement of construction, for purposes of evaluating price, the director shall include the amount of applicable business privilege tax. The amount of a city's business privilege tax shall not be included in the evaluation except in those instances in which the award is between a Tucson bidder and an Arizona-based, non-Tucson bidder. In this event, the applicable city business privilege tax shall be included in the non-Tucson bidder's price for evaluation purposes only.

Sec. 28-16(3). Purchases exceeding the small dollar threshold: Purchases that exceed the dollar amount prescribed in A.R.S. § 41-2535(A) of the Arizona Procurement Code shall be made in accordance with one of the procedures authorized in the following sections: 28-17 (competitive sealed bidding), 28-18 (competitive sealed proposals), 28-21 (sole source procurements), 28-22 (emergency procurements), 28-23 (special procurements), 28-24 (competitive reverse auctions), 28-48 (procurement of professional design services), and 28-50 (procurement of construction services). (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-17. Competitive sealed bidding.

Sec. 28-17(1). Invitation for bids.

- (a) Competitive sealed bids shall be solicited through an invitation for bids. The invitation for bids shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

- (b) A prequalification process may be conducted prior to the issuance of an invitation for bids in order to establish a list of qualified bidders. In the event a prequalification process is used, the contract officer shall only consider bids that are submitted from prequalified bidders.

Sec. 28-17(2). Public notice. Notice of the invitation for bids shall be electronically posted and the invitation for bids shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the director. The public notice shall state the place, date, and time of bid opening.

Sec. 28-17(3). Late bids. A bid is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. The department's clock is the governing clock. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids may be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.

Sec. 28-17(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 name of each bidder and the amount of each bid, as well as other relevant information as the director deems appropriate shall be recorded. Unless otherwise determined by the director, this record shall be open to public inspection. Unless otherwise determined by the director, the bids shall not be opened for public inspection until after a contract is awarded. After a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 28-5.

Sec. 28-17(5). Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this

chapter. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

Sec. 28-17(6). Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the department prior to the time set for bid opening.

Mistakes discovered after bid opening may be modified or withdrawn only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other bid provisions prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a mistake 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 that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the director.

Sec. 28-17(7). Contract award.

- (a) *General.* The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.

- (b) *Contract award based on best value.* Notwithstanding section 28-17(7)(a), the contract may be awarded on best value analysis provided that the criteria for analysis was included in the invitation for bids in accordance with section 28-17(1). The contract shall be awarded by appropriate written notice to the responsive, responsible bidder whose bid is determined to be the best value to the city and that conforms in all material respects to requirements and criteria set forth in the invitation for bids.

- (c) *Procurement of recycled material.* If the price of recycled material, which conforms to specifications, is within ten (10) percent of a low bid material, which is not recycled, and the recycled material bidder is otherwise the lowest responsible and responsive bidder, the award shall be made to the bidder offering the recycled material. The director is authorized to purchase recycled material where the price differential between available virgin material and recycled content material is greater than ten (10) percent when the additional cost, as determined by the director, is deemed insignificant and substantial budget impacts will not result.

- (d) *Consideration of taxes in competitive sealed bidding.* In evaluating the bids, except for procurement of construction, and for purposes of determining the low bidder, the director shall include the amount of applicable business privilege tax. The amount of a city's business privilege tax shall not be included in the evaluation except in those instances in which the award is between a Tucson bidder and an Arizona-based, non-Tucson bidder. In this event, the applicable city business privilege tax shall be included in the non-Tucson bidder's price for evaluation purposes only to determine the lowest bidder.

- (e) *Public record.* After the city issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the bids shall be available for public inspection, except to the extent that

the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 28-5 (confidential information).

Sec. 28-17(8). Low tie bids. If there are two (2) or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the director. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-18. Competitive sealed proposals.

Sec. 28-18(1). Request for proposals.

- (a) Competitive sealed proposals shall be solicited through a request for proposals. The request for proposals shall include a scope of work and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.
- (b) A prequalification process may be conducted prior to the issuance of a request for proposals in order to establish a list of qualified offerors. In the event a prequalification process is used, the contract officer shall only consider proposals that are submitted from prequalified offerors.

Sec. 28-18(2). Public notice. Notice of request for proposal shall be electronically posted and the request for proposal shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the director. The public notice shall state the place, date, and time of bid opening.

Sec. 28-18(3). Late proposals. A proposal is late if it is received at the location designated in the request for proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with section 28-17(3).

Sec. 28-18(4). Receipt of proposals. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after a notice of intent to award is issued, or in the absence of a notice of intent to award, after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with section 28-5 (confidential information).

Sec. 28-18(5). Withdrawal of proposals. Proposals may be withdrawn by written notice before or after proposal opening and may be permitted where appropriate. All decisions to permit the withdrawal of a proposal after opening shall be supported by a written determination made by the director.

Sec. 28-18(6). Consideration of taxes in competitive sealed proposals. In evaluating the proposals, except for procurement of construction, and for purposes of evaluating price, the director shall include the amount of applicable business privilege tax. The amount of a city's business privilege tax shall not be included in the evaluation except in those instances in which the award is between a Tucson offeror and an Arizona-based, non-Tucson offeror. In this event, the applicable city business privilege tax shall be included in the non-Tucson offeror's price for evaluation purposes.

Sec. 28-18(7). Evaluation of proposals.

- (a) *Evaluation criteria.* The request for proposals shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. Specific numerical weighting is not required to be published.
- (b) *Selection committee.* The director shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

Sec. 28-18(8). Discussion with offerors. Discussions may be conducted with offerors.

Sec. 28-18(9). Negotiations with offerors and revisions to proposals. Negotiations may be conducted with offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (a) *Concurrent negotiations.* Negotiations may be conducted concurrently with offerors for the purpose of determining source selection and/or contract award.
- (b) *Exclusive negotiations.* Exclusive negotiations may be conducted with the offeror whose proposal is determined in the source selection process to be most advantageous to the city. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the city may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.

Sec. 28-18(10). Contract award. Contract award shall be made by the director to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city taking into consideration the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-19. Contracting for legal counsel.

Sec. 28-19(1). Authority. For the purpose of procuring the services of legal counsel, as defined by the laws of the state, contracts for the services of legal counsel shall be awarded with the authorization of the city attorney except as otherwise provided by law.

Sec. 28-19(2). Conditions for use. Unless determined by the city attorney that direct selection is in the best interest of the city, the services of legal counsel shall be procured in accordance with this chapter.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-20. Reserved.

Sec. 28-21. Sole source procurements.

Notwithstanding any other provisions of this chapter, a contract may be awarded without competition when the director determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using agency requesting a sole source procurement shall provide written evidence to support a sole source determination. The director may require that negotiations are conducted as to price, delivery, and terms. The director may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the director of the basis for the sole source procurement shall be maintained as a public record.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-22. Emergency procurements.

Notwithstanding any other provisions of this chapter, the director may make or authorize others to make emergency procurements of materials, services, or construction when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with sections 28-17 (competitive sealed bidding), 28-18 (competitive sealed proposals), 28-24 (competitive reverse auctions), 28-49 (procurement of professional design services), or 28-50 (procurement of construction services) contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. The using agency requesting an emergency procurement shall provide written evidence to support an emergency determination. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need. A written determination director of the basis for the emergency procurement and for the selection of the particular contractor shall be maintained as a public record.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-23. Special procurements.

Notwithstanding any other provisions of this chapter, the director may make, or authorize others to make, procurements when, due to unusual or special circumstances, it would be in the best interest of the city to accomplish the procurement without compliance with sections 28-17 (competitive sealed bidding), 28-18 (competitive sealed proposals), 28-24 (competitive reverse auctions), 28-49 (procurement of professional design services), or 28-50 (procurement of construction services). The using agency requesting a special procurement shall provide written evidence to support a special procurement determination. Any special procurement shall be limited to those materials, services, or construction necessary to satisfy the city's need and shall be made with sound fiscal discretion. A written determination by the director of the basis for the special procurement and for the selection of the particular contractor shall be maintained as public record. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is fair, honest, prudent, a wise exercise of discretion and is in the public interest. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-24. Competitive reverse auctions.

Sec. 28-24(1). Invitation for reverse auction bids.

- (a) Competitive reverse auction bids shall be solicited through an invitation for reverse auction bids. The invitation for reverse auction bids shall be issued and shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.
- (b) A prequalification process may be conducted prior to the issuance of an invitation for reverse auction bids in order to establish a list of qualified bidders. In the event a prequalification process is used, the contract officer shall only consider bids that are submitted from prequalified bidders.

Sec. 28-24(2). Public notice. Notice of the invitation for reverse auction bids shall be electronically posted and the invitation for reverse auction bids shall be available for public inspection not

less than fourteen (14) days prior to the date set forth therein for the close of the auction. A shorter time may be deemed necessary for a particular procurement as determined in writing by the director. The public notice shall state the location of the internet website hosting the reverse auction.

Sec. 28-24(3). Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for reverse auction bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for reverse auction bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for reverse auction bids.

Sec. 28-24(4). Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after auction closing, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before auction closing may be modified or withdrawn by written notice received in the department prior to the time set for auction closing.

Mistakes discovered after auction closing may be modified or withdrawn only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After auction closing, no changes in bid prices or other bid provisions prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a mistake may be permitted to withdraw its bid if:

- (a) The mistake is clearly evident in the auction transcripts, but the intended correct bid is not similarly evident; or
- (b) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the director.

Sec. 28-24(5). Contract award. The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for reverse auction bids. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-25. Cancellation of solicitations.

Sec. 28-25(1). Cancellation of solicitations. An invitation for bids, a request for proposals, a request for qualifications, an invitation for reverse auction bids or other solicitation may be cancelled prior to opening or after opening when it is in the best interest of the city.

Sec. 28-25(2). Cancellation of solicitations prior to opening.

- (a) As used in this section, “opening” means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals or in the case of a reverse auction means the date and time set for the auction close.
- (b) Prior to opening, a solicitation may be cancelled in whole or in part when the director determines in writing that such action is in the city’s best interest for reasons including but not limited to:
 - (i) The city no longer requires the materials, services, or construction;
 - (ii) The city no longer can reasonably expect to fund the procurement;
 - (iii) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the city; or
 - (iv) It is otherwise not advantageous to the city.
- (c) When a solicitation is cancelled prior to opening, notice of cancellation shall be publicly posted.
- (d) The notice of cancellation shall:

- (i) Identify the solicitation;
- (ii) Briefly explain the reason for cancellation; and
- (iii) Where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar materials, services, or construction.

Sec. 28-25(3). Cancellation of solicitation after opening but prior to award.

- (a) After opening but prior to award, a solicitation may be cancelled when the director determines in writing that such action is in the city’s best interest for reasons including but not limited to:
 - (i) The city no longer requires the materials, services or construction;
 - (ii) Ambiguous, erroneous or otherwise inadequate specifications or scopes of work were part of the solicitation;
 - (iii) The solicitation did not provide for consideration of all factors of significance to the city;
 - (iv) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - (v) All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices;
 - (vi) There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith;
 - (vii) Competition was insufficient; or
 - (viii) It is otherwise not advantageous to the city.

- (b) A notice of cancellation of the solicitation shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to subsection 28-25(2)(d) of this section.
- (c) All bids, proposals or statements received shall remain, to the extent possible, confidential.

Sec. 28-25(4). Documentation. The reasons for cancellation shall be made a part of the procurement file and shall be available for public inspection. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-26. Rejection of individual bids, proposals, quotations or statements of qualifications.

- (a) A bid may be rejected if:
 - (i) The bidder is determined to be nonresponsible pursuant to section 28-27 (Responsibility of bidders, offerors and respondents);
 - (ii) The bid is nonresponsive in accordance with section 28-17 (competitive sealed bidding);
 - (iii) The proposed price exceeds available funds or is unreasonable; or
 - (iv) It is otherwise not advantageous to the city.

(b) A proposal, statement of qualifications, or reverse auction bid may be rejected if:

- (i) The person responding to the solicitation is determined to be nonresponsible pursuant to section 28-27 (responsibility of bidders, offerors and respondents); or
- (ii) It is unacceptable;
- (iii) The proposed price exceeds available funds or is unreasonable; or
- (iv) It is otherwise not advantageous to the city.

- (c) The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-27. Responsibility of bidders, offerors and respondents.

Sec. 28-27(1). Findings of nonresponsibility. If a bidder, offeror or respondent who otherwise would have been awarded a contract is found nonresponsible, a written finding of nonresponsibility, setting forth the basis of the finding, shall be prepared by the contract officer. The unreasonable failure of a bidder, offeror or respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of nonresponsibility with respect to such bidder or offeror. The written finding shall be made part of the contract file and be made a public record.

Sec. 28-27(2). Right of nondisclosure. Confidential information furnished by a bidder, offeror or respondent in response to an inquiry of responsibility pursuant to this section shall not be disclosed by the city outside of the department, using agency, or individuals involved in the evaluation process without prior written consent by the bidder, offeror or respondent. Confidential information shall be identified and managed in accordance with section 28-5.

Sec. 28-27(3). Factors. Factors to be considered in determining if a prospective contractor is responsible include:

- (a) The proposed contractor’s financial, physical, personnel or other resources, including subcontracts;
- (b) The proposed contractor’s record of performance and integrity;
- (c) Whether the proposed contractor is qualified legally to contract with the city; and
- (d) Whether the proposed contractor supplied all necessary information concerning its responsibility.

Sec. 28-27(4). Responsibility criteria. The contract officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-28. Bid and contract security, material or service contracts.

The director may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the director shall consider the nature of the performance and the need for future protection to the city. The requirement for security must be included in the invitation for bids, invitation for reverse auction bids or request for proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-29. Reserved.

Sec. 28-30. Reserved.

Sec. 28-31. Multi-term contracts.

Unless otherwise provided by law, a contract for materials, services or construction may be entered into for any period of time deemed to be in the best interest of this city, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-32. Right to inspect.

The city may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or subconsultant that is related to the performance of any contract awarded or to be awarded by this city.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-33. Right to audit records.

Sec. 28-33(1). The city may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in article VII of this chapter to the extent that the books and records relate to the cost or pricing data. Any person who is awarded a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless otherwise specified in the contract.

Sec. 28-33(2). The city is entitled to audit the books and records of a contractor, consultant or any subcontractor or subconsultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or subconsultant for a period of three (3) years from the date of final payment under the subcontract, unless otherwise specified in the contract.

Sec. 28-33(3). All contractors, consultants, subcontractors, and subconsultants participating in city contracts are required to cooperate fully and promptly with the city in reviews, investigations and other requests for information that are related to the performance of any contract awarded or to be awarded by this city.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-34. Reporting of anticompetitive practices.

If for any reason collusion or other anticompetitive practices are suspected among any bidders, offerors or respondents a notice of the relevant facts shall be transmitted to the director and the city attorney. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the director.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-35. Prospective vendor databases.

Sec. 28-35(1). The director shall maintain a prospective vendor database. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a city contract.

Sec. 28-35(2). Persons desiring to be included in the prospective vendor database may register with the department electronically. The department may remove a person from the prospective vendor database if it is determined that inclusion is not advantageous to the city.

Sec. 28-35(3). It shall be the vendor’s sole responsibility to ensure that vendor registration information is current and active.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-36. Contract form and execution.

All contracts entered into under this chapter shall be executed in the name of the city by the director and approved as to form by the city attorney.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-37. Assignment of rights and duties.

The rights and duties of a city contract are not transferable or otherwise assignable without the written consent of the director.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-38. Efficient resource procurement and utilization.

All printed material produced by a contractor in the performance of a contract shall, whenever practicable, be printed on recycled paper, labeled as printed on recycled paper, and duplexed.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-39. Reserved.

Sec. 28-40. Reserved.

ARTICLE IV. SPECIFICATIONS*

Sec. 28-41. Reserved.

Sec. 28-42. Maximum practicable competition.

Sec. 28-42(1). All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the city’s needs and shall not be unduly restrictive.

Sec. 28-42(2). To the extent practicable and unless otherwise permitted by this chapter, all specifications shall describe the city’s requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Sec. 28-42(3). Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The using agency requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success in the material’s performance, or inconvenience of developing specifications do not justify the use of restrictive specifications.

Sec. 28-42(4). To the extent practicable, the city shall use accepted commercial specifications and shall procure standard commercial materials.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-43. Specifications prepared by other than city personnel.

The requirements of this chapter regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications prepared other than by city personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.
(Ord. No. 10404, § 1, 5-15-07)

*Editor’s note – See editor’s note at Art. I.

Sec. 28-44. Brand name or equal specification.

A brand name or equal specification may be used to describe the standards of quality, performance, and other salient characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-45. Brand name specification.

A brand name specification may be used to identify the sole acceptable item that meets the city's needs for purchases above the amount specified in section 28-16(1). The using agency requesting a brand name specification shall provide written evidence to support a brand name determination. A written determination by the director of the basis for the brand name shall be maintained as public record. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a brand name specification. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-46. Reserved.

**ARTICLE V. PROCUREMENT OF
PROFESSIONAL DESIGN SERVICES AND
CAPITAL IMPROVEMENTS***

Sec. 28-47. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-47(1). "Capital improvement" means an outlay of funds for the acquisition or improvement of real property, which extends the life or increases the productivity of the real property.

Sec. 28-47(2). "Construction" means the process of building, altering, repairing, improving or demolishing any public infrastructure facility, including public structure, public building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair, or routine maintenance of existing

public infrastructures or facilities, including structures, buildings or real property.

Sec. 28-47(3). "Construction-manager-at-risk" means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.
- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (c) Design and construction of the project may be in sequential phases or concurrent phases.
- (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 28-47(4). "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

- (a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
- (b) A combination of construction and, as elected by the city, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

Sec. 28-47(5). "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

Sec. 28-47(6). "Design-bid-build" means a project delivery method in which:

- (a) There is a sequential award of two (2) separate contracts.

*Editor's note – See editor's note at Art. I.

- (b) The first contract is for design services.
- (c) The second contract is for construction.
- (d) Design and construction of the project are in sequential phases.
- (e) Finance services, maintenance services and operations services are not included.

Sec. 28-47(7). "Design-build" means a project delivery method in which:

- (a) There is a single contract for design services and construction services.
- (b) Design and construction of the project may be in sequential phases or concurrent phases.
- (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 28-47(8). "Finance services" means financing for a construction services project.

Sec. 28-47(9). "Force account" means work ordered to be done without prior agreement (i.e., is not included in the negotiated lump sum or unit prices). If so ordered, the objective is to reimburse the contractor for all costs associated with the work on an agreed time and materials basis, plus profit commensurate with those costs.

Sec. 28-47(10). "Infrastructure facility" means a building; structure; or networks of buildings, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services. Included are government office buildings; public schools; courthouses; jails; prisons; water treatment plants, distribution systems, and pumping stations; wastewater treatment plants, collection systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air, and water port structures, terminals, and equipment.

Sec. 28-47(11). "Job-order-contracting" means a project delivery method in which:

- (a) The contract is a requirements contract for indefinite quantities of construction.
- (b) The construction to be performed is specified in job orders issued during the contract.
- (c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
- (d) The project limit shall be set by the director in accordance with A.R.S. title 34.

Sec. 28-47(12). "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Sec. 28-47(13). "Operations services" means routine operation of existing facilities, structures, buildings or real property.

Sec. 28-47(14). "Preconstruction services" means advice during the design phase.

Sec. 28-47(15). "Professional design services" means architect services, assayer services, engineering services, geologist services, landscape architect services, and land surveying service or any combination of those services that are legally required to be accomplished, reviewed, and approved by professionals registered to practice in the pertaining discipline in the State of Arizona. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-48. Procurement of construction.

Sec. 28-48(1). Contracts for construction shall be solicited through a competitive sealed bid process except as otherwise provided for in 28-50 (procurement of construction services), 28-16(1) (small purchases), 28-21 (sole source procurement), 28-22 (emergency procurements) and 28-23 (special procurements). The director shall award and administer contracts for construction in accordance with the requirements of A.R.S. title 34 and the Tucson Procurement Code.

Sec. 28-48(2). Bidders shall submit subcontractor lists for all first tier subcontracts that are above five thousand dollars (\$5,000.00). Bids not in compliance with this requirement shall be deemed non-responsive. Submission of the subcontractor list shall act as bidder certification that the work shall be performed by either the bidder or the listed subcontractors. Modifications, additions, or substitutions may be allowed at the discretion of the director, for reasons including but not limited to, subcontractor non-responsiveness, insolvency, or any other reason deemed by the director to be in the best interest of the city.

Sec. 28-48(3). If failure to comply with subsection 28-48(2) would result in the rejection of the lowest responsive bid, and the next lowest responsive bid is five (5) percent higher (or more) than the lowest responsive bid, the director shall allow the lowest responsive bidder an additional two (2) days from the time of bid opening to submit the required subcontractor list.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 10434, § 1, 7-10-07; Ord. No. 10462, § 1, 10-16-07; Ord. No. 10635, § 1, 2-24-09; Ord. No. 11296, § 1, 8-5-15)

Editor's note—Section 2 of Ord. No. 10434 states that "Section 1 [28-48(4)] shall expire on June 26, 2008."

Editor's note—Ord. No. 10462, § 4, states that section 28-48(3) shall apply to applicable solicitations issued after the effective date of this ordinance.

Sec. 28-49. Procurement of professional design services.

Contracts for professional design services shall be solicited through a request for qualifications except as otherwise provided for in 28-16(1) (small purchases), 28-21 (sole source procurement), 28-22 (emergency procurements) and 28-23 (special procurements). The director shall award and administer contracts for professional design services in accordance with the requirements of A.R.S. title 34 and the Tucson Procurement Code.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-50. Procurement of construction services.

Contracts for construction services shall be solicited through a design-build, construction-manager-at-risk or job-order-contracting selection process

utilizing a request for qualifications except as otherwise provided for in sections 28-16(1) (small purchases), 28-21 (sole source procurement), 28-22 (emergency procurements) and 28-23 (special procurements). The director shall award and administer contracts for construction services in accordance with the requirements of A.R.S. title 34 and the Tucson Procurement Code.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-51. Construction by city employees.

A building, structure, addition or alteration of a public facility may be constructed by force account if the cost does not exceed the amount established and adjusted each year in accordance with A.R.S. title 34. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-52 – 28-57. Reserved.

ARTICLE VI. CONTRACT TERMS AND CONDITIONS*

Sec. 28-58. Contract terms and conditions.

All city contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The director shall have the authority to establish and modify any such terms and conditions.

(Ord. No. 10404, § 1, 5-15-07)

Secs. 28-59 – 28-61. Reserved.

ARTICLE VII. COST PRINCIPLES†

Sec. 28-62. Cost principles.

The director shall adopt rules setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

***Editor's note**—See editor's note at Art. I.

†**Editor's note**—See editor's note at Art. I.

Sec. 28-63. Cost or pricing data.

The submission of current cost or pricing data may be required in connection with any award, change order or contract modification.
(Ord. No. 10404, § 1, 5-15-07)

Secs. 28-64, 28-65. Reserved.

**ARTICLE VIII. MATERIALS
MANAGEMENT***

Sec. 28-66. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-66(1). "Property" means assets with a useful life of more than one (1) year.

Sec. 28-66(2). "Property transfer" means the transfer of fixed assets between using agencies or transfer of property to or from the surplus property program.

Sec. 28-66(3). "Surplus property" means property no longer needed by using agencies for their operations, property in poor or non-working condition, or property that is a by-product (e.g. scrap metal, used tires and oil, etc.).

Sec. 28-66(4). "Unclaimed, lost and confiscated property" means all property used as evidence in the courts and remaining unclaimed after final disposition, property seized by a peace officer as being used unlawfully, and all property coming into the hands of any city officer or employee as lost or unclaimed.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-67. Materials management guidelines.

The director shall establish guidelines for and shall be responsible for the management of:

Sec. 28-67(1). The transfer of surplus property and operation of the surplus property program.

Sec. 28-67(2). The sale or disposal of surplus, unclaimed, lost and confiscated property by competitive sale or other authorized method.

Sec. 28-67(3). The trade-in of surplus property for purchase of new equipment.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-68. Inventory management.

The director shall control and supervise all existing and future city warehouses established for the purpose of purchasing, storing and issuing supplies. The director shall also be responsible and accountable for all warehouse materials and maintain a perpetual inventory record thereof. The director will establish policies and procedures governing the addition or deletion of items carried in inventory, the sale or other disposal of inventory items no longer needed, delivery and other services provided to using agencies, and any policies or procedures required for efficient and effective operation of the inventory system.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-69. Disposition of surplus property.

Sec. 28-69(1). The director will operate a surplus property program for the purpose of receiving, storing, transferring, or selling surplus property no longer needed by using agencies.

Sec. 28-69(2). Using agencies shall request department authorization to transfer fixed assets to another using agency, or to request transfer of property into or from the surplus property program.

Sec. 28-69(3). Unless otherwise provided for, surplus property no longer needed by any using agency shall be offered through competitive sale to the highest responsible bidder.

Sec. 28-69(4). Unless otherwise provided, all proceeds from the sale of surplus property will be deposited into the city's general fund. Proceeds from fixed asset sales of enterprise, federal, grant or other special designation property will be reimbursed, less pro-rated selling expenses, to the appropriate fund, after completion of each sale.

*Editor's note—See editor's note at Art. I.

Sec. 28-69(5). Notwithstanding the provisions of this article, surplus fire apparatus and/or related equipment may be disposed of through noncompetitive sale with public emergency, fire, rescue or medical agencies. Responsibility for the sale may be delegated by the director to the Tucson Fire Chief. Any such sale shall be at fair market value and the proceeds shall be restricted for use by the Tucson Fire Department for the purchase of equipment or apparatus in accordance with article III.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-70. Disposition of unclaimed, lost, confiscated property.

Sec. 28-70(1). The Tucson Police Department will deliver to the department all unclaimed, lost and confiscated property not claimed or taken away by owner or finder, excluding all firearms, ammunition, knives or other weapons and excluding any items determined to be of use in special police operations.

Sec. 28-70(2). After delivery to the department, unclaimed or lost property may be transferred to using agencies upon submission of a detailed request from the using agency to the director.

Sec. 28-70(3). Unless otherwise provided for, all remaining unclaimed, lost and confiscated property shall be disposed of in accordance with section 28-69(3). Proceeds of the auction, less selling expenses if applicable, will be deposited to the general fund unless otherwise required.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-71. Donations.

[*Sec. 28-71(1).*] Notwithstanding any other provision, surplus, unclaimed, or lost property not needed by using agencies may be disposed of through a donation process provided that any such noncompetitive disposition is made pursuant to a request submitted to the director for review and approval of the city attorney. The director shall consider the monetary loss to the city and determine whether such disposition is in the public interest. Any

request for donation with a fair market value exceeding two thousand five hundred dollars (\$2,500.00) shall require additional approval by the mayor and council.

Sec. 28-71(2). Notwithstanding the provisions of [section] 28-71(1), surplus fire apparatus and/or related equipment may be disposed of through noncompetitive sale with public emergency, fire, rescue or medical agencies.

Sec. 28-71(3). Notwithstanding the provisions of [sections] 28-69(3) and 28-69(4), the fire chief and/or his designee may dispose of surplus fire apparatus and/or related equipment through noncompetitive sale at fair market value with public emergency, fire, rescue or medical agencies, with the proceeds of such a sale restricted for use by the fire department for the purchase of equipment or apparatus in accordance with sections 28-17 or 28-18.

(Ord. No. 10404, § 1, 5-15-07)

Secs. 28-72 – 28-74. Reserved.

ARTICLE IX. LEGAL AND CONTRACTUAL REMEDIES*

Sec. 28-75. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-75(1). “*Adequate evidence*” means more than mere accusation but less than substantial evidence. 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.

Sec. 28-75(2). “*Affiliate*” means any person whose governing instruments requires it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other 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.

***Editor’s note**—See editor’s note at Art. I.

Sec. 28-75(3). “*Debarment*” means an action taken by the director under this article to prohibit a person from participating in city procurements.

Sec. 28-75(4). “*Filed*” means delivery to the contract officer or to the director, whichever is applicable. A time and date of receipt shall be documented in a verifiable manner for purposes of filing.

Sec. 28-75(5). “*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.

Sec. 28-75(6). “*Interested party*” means an actual or prospective bidder, respondent or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case. An interested party does not include a supplier, subconsultant or subcontractor to an actual or prospective bidder, respondent or offeror.

Sec. 28-75(7). “*Receipt*” means the earlier of actual receipt or the first attempted delivery by certified mail, or by any other means that provides evidence of the attempt, to the persons’ last known address.

Sec. 28-75(8). “*Substantial evidence*” means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

Sec. 28-75(9). “*Suspension*” means an action taken by the director under this article temporarily disqualifying a person from participating in city procurements.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-76. Authority of the contract officer.

The contract officer shall have the authority to settle and resolve protests and contract claims. Appeals from the decisions of the contract officer may be made to the director pursuant to the provisions of this article.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-77. Right to protest.

Any actual interested party who is aggrieved in connection with the solicitation or award of a contract above the amount specified in section 28-16(1) may protest to the contract officer.
(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-78. Filing of a protest.

Content of protest. The protest shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the protestant;
- (b) The signature of the protestant or its representative;
- (c) Identification of the solicitation or contract number;
- (d) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- (e) The form of relief requested.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-79. Time for filing protests.

Sec. 28-79(1). Protests concerning improprieties in a solicitation. Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.

Sec. 28-79(2). In cases other than those covered in subsection (1) of this section, protests shall be filed within ten (10) days after the aggrieved person knows or should have known of the facts giving rise thereto; however, in no event shall the protest be filed later than ten (10) days after issuance of notice of intent to award or in the absence of a notice of intent to award, after notification of award.

Sec. 28-79(3). The contract officer, without waiving the city’s right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

Sec. 28-79(4). The contract officer shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-80. Stay of procurements during the legal due process.

Sec. 28-80(1). In the event of a timely protest under section 28-79, the city shall stay the solicitation or award of the contract unless the director makes a written determination that there is a reasonable probability that the protest will be denied and that proceeding further with the solicitation or award of the contract is in the best interests of the city. The stay shall automatically continue throughout the legal process unless the director makes a written determination to lift it.

Sec. 28-80(2). In the event of a timely appeal under section 28-84, and in the event that the director has made a written determination to lift a stay, the city shall stay the solicitation or award of the contract unless the director makes another written determination that proceeding with the solicitation or award of the contract is in the best interests of the city. The stay shall automatically continue throughout the legal process unless the director makes a written determination to lift it.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-81. Confidential information.

Sec. 28-81(1). Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to section 28-5.

Sec. 28-81(2). If the protestant believes the protest contains material that should be withheld, a statement advising the contract officer of this fact shall accompany the protest submission in accordance with section 28-5.

(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-82. Decision by the contract officer on a protest.

Sec. 28-82(1). The contract officer shall issue a written decision within fourteen (14) days after a protest has been filed pursuant to section 28-78. The decision shall contain an explanation of the basis of the decision.

Sec. 28-82(2). The contract officer shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

Sec. 28-82(3). The time limit for decisions set forth in subsection (1) of this section may be extended by the director for a reasonable time not to exceed thirty (30) days beyond the original fourteen (14) day time period. The contract officer shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

Sec. 28-82(4). If the contract officer fails to issue a decision within the time limits set forth in subsection (1) or (3) of this section, the protestant may proceed as if the contract officer had issued an adverse decision.

Sec. 28-82(5). The contract officer's decision shall contain a statement regarding the appeals process that is available pursuant to this article.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-83. Remedies for a protest.

Sec. 28-83(1). If the contract officer sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with the procurement code, the officer shall implement an appropriate remedy.

Sec. 28-83(2). In determining an appropriate remedy, the contract officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to:

- (a) The seriousness of the procurement deficiency;

- (b) The degree of prejudice to other interested parties or to the integrity of the procurement process;
- (c) The good faith of the parties;
- (d) The extent of performance;
- (e) Costs to the city;
- (f) The urgency of the procurement; and
- (g) The impact of the relief on the using agency's mission.

Sec. 28-83(3). An appropriate remedy may include one or more of the following:

- (a) Reject all bids, responses or proposals;
- (b) Terminate the contract;
- (c) Reissue the solicitation;
- (d) Issue a new solicitation;
- (e) Award a contract consistent with the procurement code;
- (f) Such other relief as is determined necessary to ensure compliance with the Charter and this chapter.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-84. Appeals to the director.

Sec. 28-84(1). Appeal. An appeal from a decision entered or deemed to be entered by the contract officer shall be filed with the director within seven (7) days from the date the decision is issued. The appellant shall also file a copy of the appeal with the contract officer.

Sec. 28-84(2). Content of appeal. The appeal shall contain:

- (a) The information set forth in section 28-78, including the identification of confidential information in the manner set forth in section 28-81;

- (b) A copy of the decision of the contract officer; and
- (c) The precise factual or legal error in the decision of the contract officer from which an appeal is taken.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-85. Notice of appeal.

Sec. 28-85(1). The director shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings.

Sec. 28-85(2). The director shall, upon request, furnish copies of the appeal to those named in subsection (1) of this section subject to the provisions of section 28-81.

(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-86. Reserved.

Sec. 28-87. Contract officer report on an appeal.

Sec. 28-87(1). [Report.] The contract officer shall file a report on the appeal with the director within seven (7) days from the date the appeal is filed. At the same time, the contract officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested or any other method that provides evidence of receipt, and to any interested parties who have responded to the notice given pursuant to section 28-85(2). The report shall contain copies of:

- (a) The appeal;
- (b) Any other documents that are relevant to the protest; and
- (c) A statement by the contract officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

Sec. 28-87(2). Extension for filing of report.

- (a) The contract officer may request in writing an extension of the time period setting forth the reason for extension.
- (b) The director's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the report. The director shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

Sec. 28-87(3). Comments on report.

- (a) The appellant shall file comments on the contract officer's report with the director within seven (7) days after receipt of the report. Copies of the comments shall be provided by the appellant to the contract officer and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.
- (b) The director may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in subsection (3)(a) of this section stating the reason an extension is necessary. The director's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The director shall notify the contract officer of any extension.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-88. Remedies for an appeal of a protest.

The director may affirm the appeal in whole or in part or deny it. If the appeal is denied in whole or in part and a determination is made that a solicitation, evaluation process, proposed award, or award does not comply with the Charter and/or this chapter, a hearing shall be held in accordance with section 28-113.

(Ord. No. 11296, § 1, 8-5-15)

Sec. 28-89. Dismissal before hearing.

The director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

Sec. 28-89(1). The appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or

Sec. 28-89(2). The appeal is untimely pursuant to section 28-84(1).

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-90. Hearing.

Hearings on appeals of protest decisions shall be conducted in accordance with section 28-113.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-91. Filing of a contract claim.

Content of claim. The claim shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the claimant;
- (b) The signature of the claimant or its representative;
- (c) Identification of the solicitation or contract number;
- (d) A detailed statement of the legal and factual grounds of the claim including copies of relevant documents; and
- (e) The form of relief requested.

(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-92. Contract officer's decision on a contract claim.

Sec. 28-92(1). Written decision. If a contract claim cannot be resolved by mutual agreement, the contract officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than sixty (60) days after the request is filed. Before

issuing a final decision, the contract officer shall review the facts pertinent to the contract claim or controversy and secure any necessary assistance from legal, financial, procurement, and other advisors.

Sec. 28-92(2). Final decision. The contract officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:

- (a) A description of the claim;
- (b) A reference to the pertinent contract provision;
- (c) A statement of the factual areas of agreement or disagreement;
- (d) A statement of the contract officer's decision, with supporting rationale;
- (e) A statement regarding the appeals process that is available pursuant to this article.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-93. Issuance of a timely decision on a contract claim.

Sec. 28-93(1). The time limit for decisions set forth in section 28-92(1) may be extended for good cause. The contract officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision is anticipated.

Sec. 28-93(2). If the contract officer fails to issue a decision within sixty (60) days after the request on a claim is filed or within the time prescribed under subsection (1) of this section, the contractor may proceed as if the contract officer had issued an adverse decision.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-94. Appeals on a contract claim to the director.

Sec. 28-94(1). Appeal of final decision. An appeal of a final decision of a contract officer on a claim shall

be filed with the director within five (5) days from the date the decision is received. The appellant shall also file a copy of the appeal with the contract officer.

Sec. 28-94(2). Content of appeal. The appeal shall contain a copy of the decision of the contract officer and the basis for the precise factual or legal error in the decision of the contract officer from which an appeal is taken.

Sec. 28-94(3). Remedies for an appeal on a contract claim. The director may affirm the contract claim in whole or in part; or may remand the claim to a hearing in accordance with section 28-96 or to mediation services in accordance with section 28-97 or to arbitration in accordance with section 28-98; or make any other appropriate disposition. If the director sustains the claim in whole or part, remedies may be implemented in accordance with sections 28-96 through 28-98.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-95. City claims against a contractor.

All contract claims asserted by the city against a contractor that are not resolved by mutual agreement shall promptly be referred by the contract officer to the director for a hearing, in accordance with section 28-96, or mediation, in accordance with section 28-97, or arbitration in accordance with section 28-98.

(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-96. Hearing.

Hearings on appeals of claims decisions shall be conducted in accordance with section 28-113.

(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-97. Mediation.

Contract claims may be resolved utilizing mediation services if the director determines the use of such services is in the best interest of the city.

(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-98. Arbitration.

Contract claims may be resolved utilizing arbitration if the director determines the use of arbitration is in the best interest of the city. The claim

shall be settled by arbitration in accordance with the current construction industry arbitration rules of the American Arbitration Association or, at the option of the city, in accordance with the provisions of the Arizona Revised Statutes, Article I, Chapter 9, Title 12. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-99. Authority to debar or suspend.

The director has the sole authority to debar or suspend a person from participating in city procurements. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-100. Debarment or suspension causes.

The causes for debarment or suspension shall be limited to the following:

Sec. 28-100(1). Conviction of any person or any affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

Sec. 28-100(2). Conviction of any person or any affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, or 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 city contractor and which conviction arises out of or obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

Sec. 28-100(3). Conviction or civil judgment finding a violation by any person or affiliate of any person under state or federal antitrust statutes arising out of the response to a solicitation.

Sec. 28-100(4). Violations of contract provisions within three (3) years of current debarment action, as set forth below, of a character which are reasonably deemed to be so serious as to justify debarment action:

- (a) Abandonment of a contract without good cause; or

- (b) Knowingly fails without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

- (c) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except 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; or

- (d) Failure to pay a contractor, subcontractor or material provider as required by A.R.S. section 32-1129.

Sec. 28-100(5). A determination by the Arizona Registrar of Contractors that the contractor has violated the provisions of A.R.S. § 32-1129 or a finding of responsibility by the municipal court for a violation of Tucson Code section 11-38.

Sec. 28-100(6). Any other cause that the director reasonably determines to be so serious and compelling as to affect responsibility as a city contractor, including suspension or debarment of such person or any affiliate of such person by another governmental entity for any cause listed in this section. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-101. Matters not proper for debarment or suspension.

Any conviction or judgment dated more than three (3) years prior to the notice of suspension or notice of debarment shall not be a basis for any debarment or suspension of a person or an affiliate of a person. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-102. Initiation of debarment.

Upon receipt of information concerning a possible cause for debarment, the director may investigate the possible cause. If the director has a reasonable basis to believe that a cause for debarment exists, the director may debar a person in accordance with this chapter. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-103. Period of debarment.

Sec. 28-103(1). The period of time for a debarment shall not exceed three (3) years from the date of the debarment determination.

Sec. 28-103(2). If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-104. Notice.

If the director implements debarment, the director shall notify the person in writing within seven (7) days of the debarment action by certified mail, return receipt requested or by any other method that provides evidence of receipt. The person may submit a request to the director for an administrative hearing within fourteen (14) days of issuance of the director's debarment action. If a hearing is granted, it shall be conducted in accordance with this article. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-105. Notice to affiliates.

Sec. 28-105(1). If the director proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.

Sec. 28-105(2). The affiliate shall advise the director within thirty (30) days of receipt of the notice under section 28-104 of its intention to appear under subsection (1) of this section. Failure to provide written notice of appearance within the thirty (30) day period shall be a waiver of the right to appear in the hearing. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-106. Imputed knowledge.

Sec. 28-106(1). Improper conduct by a person may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge or approval of, the contractor.

Sec. 28-106(2). The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge or approval of, the contractor. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-107. Suspension.

Sec. 28-107(1). The director may suspend a person from receiving any award in order to protect the city's interests. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-108. Period and scope of suspension.

The period of suspension shall not be more than sixty (60) days unless the director is informed of compelling reasons to extend the period of suspension. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-109. Suspension notice, hearing, determination and appeal.

Sec. 28-109(1). The director shall notify the person suspended by certified mail, return receipt requested or by any other method that provides evidence of receipt.

Sec. 28-109(2). The notice of suspension shall state:

- (a) The basis for suspension;
- (b) The period, including dates, of the suspension;
- (c) That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
- (d) That the person may request a hearing on the suspension if the person files a written request for a hearing with the director within seven (7) days after receipt of the notice.

Sec. 28-109(3). If a suspended party requests a hearing, the director may arrange for a hearing.

Sec. 28-109(4). In the event a hearing is conducted, it shall occur to the extent practicable, in accordance with this article.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-110. Reinstatement.

Sec. 28-110(1). The director may at any time after a final decision on debarment or suspension reinstate a debarred or suspended person or rescind the debarment or suspension upon a determination that the cause upon which the debarment or suspension is based no longer exists.

Sec. 28-110(2). Any debarred or suspended person may request reinstatement by submitting a petition to the director supported by documentary evidence showing that the cause for debarment or suspension no longer exists or has been substantially mitigated.

Sec. 28-110(3). The director may require a hearing on the request for reinstatement.

Sec. 28-110(4). The decision on reinstatement shall be in writing and specify the factors on which it is based.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-111. Limited participation.

The director may allow a debarred or suspended person to participate in city contracts on a limited basis during the debarment or suspension period upon a written determination that participation is advantageous to the city. The determination shall specify the factors on which it is based and define the extent of the limits imposed.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-112. Master list for suspension and debarment.

Sec. 28-112(1). The director shall maintain a master list of debarments and suspensions under this article.

Sec. 28-112(2). The master list shall show as a minimum the following information:

- (a) The names of those persons whom the city has debarred or suspended under this article;

- (b) The basis for the action;
- (c) The period of debarment or suspension, including the expiration date; and
- (d) The name of the debarring or suspending agency, if the city's debarment or suspension is based on debarment or suspension by another governmental agency.

Sec. 28-112(3). The master list shall include a separate section listing persons voluntarily excluded from participation in city contracts.
(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-113. Hearing procedures.

Sec. 28-113(1). If a hearing is required or permitted under this article, the director shall appoint a hearing officer.

Sec. 28-113(2). If a hearing is required or permitted under this article, the hearing officer shall arrange for a prompt hearing and notify the parties of the time and place of the hearing.

Sec. 28-113(3). The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.

Sec. 28-113(4). The hearing officer may:

- (a) Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (b) Require parties to state their positions concerning the various issues in the proceeding;
- (c) Require parties to produce for examination those relevant witnesses and documents under their control;
- (d) Rule on motions and other procedural items on matters pending before such officer;
- (e) Regulate the course of the hearing and conduct of participants;

- (f) Establish time limits for submission of motions or memoranda;
- (g) Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - (i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - (ii) Excluding all testimony of an unresponsive or evasive witness; and
 - (iii) Expelling the person from further participation in the hearing;
- (h) Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;
- (i) Administer oaths or affirmations; and
- (j) Assess or apportion damages or costs associated with the hearing matter or the proceedings to the parties involved.

Sec. 28-113(5). A transcribed record of the hearing shall be made available at cost to the requesting party. (Ord. No. 10404, § 1, 5-15-07)

Sec. 28-114. Hearing officer’s decision.

Sec. 28-114(1). The hearing officer's decision shall be final. The decision shall be based on the evidence presented and shall include findings of fact and conclusions of law. The decision shall be sent to all parties by certified mail, return receipt requested or by any other method that provides evidence of receipt.

Sec.28-114(2). The director may affirm, modify, or reject the hearing officer’s recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-115. Reserved.

Sec. 28-116. Reserved.

Sec. 28-117. Judicial review of protests, claims, debarments or suspensions.

The decision of the hearing officer in a protest (section 28-77 et seq.), claim (section 28-91 et seq.), debarment (section 28-99 et seq.), or suspension (section 28-99 et seq.) under this chapter is subject to special action review to superior court by any party to the proceeding. Exhaustion of the procedures set forth in this Code shall be a condition precedent to seeking judicial review and the party seeking review shall file the special action within thirty (30) days of a final decision by the hearing officer. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-118. Exclusive remedy.

Notwithstanding any law to the contrary, this article shall provide the exclusive procedure for asserting a claim or cause of action against this city arising in relation to any procurement conducted under this chapter. (Ord. No. 10404, § 1, 5-15-07)

Secs. 28-119—28-125. Reserved.

ARTICLE X. COOPERATIVE PURCHASING*

Sec. 28-126. Definitions.

In this article, unless the context otherwise requires:

Sec. 28-126(1). “*Cooperative purchasing*” means procurement conducted by, or on behalf of, more than one public procurement unit.

Sec. 28-126(2). “*Local public procurement unit*” means the same as that term in A.R.S. section 41-2631. (Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

***Editor’s note**—See editor’s note at Art. I.

Sec. 28-127. Applicability.

Agreements entered into pursuant to this article shall be limited to the areas of procurement of materials, services, professional services, construction or construction services, warehousing or materials management.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-128. Cooperative purchasing agreements required.

The city is not authorized to participate in cooperative purchasing unless a cooperative purchasing agreement is executed between the parties or the parties are members of a cooperative purchasing group or authority that permits cooperative use amongst its membership. All agreements entered into pursuant to this article shall be approved by the director.

(Ord. No. 10404, § 1, 5-15-07)

Sec. 28-129. Cooperative purchasing authorized.

The city may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any materials, services, professional services, construction or construction services with one or more eligible procurement units in accordance with an agreement entered into between the participants. An agreement entered into as provided in this article is exempt from [A.R.S.] section 11-952, subsections D, E and F. Parties under a cooperative purchasing agreement may:

Sec. 28-129(1). Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.

Sec. 28-129(2). Cooperatively use materials or services.

Sec. 28-219(3). Commonly use or share warehousing facilities, capital equipment and other facilities.

Sec. 28-129(4). Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

Sec. 28-129(5). On request, make available to other eligible public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

The activities described in paragraphs (1) through (5) do not limit the activities of parties under a cooperative purchasing agreement.

(Ord. No. 10404, § 1, 5-15-07; Ord. No. 11296, § 1, 8-5-15)

Secs. 28-130, 28-131. Reserved.

ARTICLE XI. RESERVED

Secs. 28-132—28-136. Reserved.

ARTICLE XII. AFFIRMATIVE ACTION BY CITY CONTRACTORS**Sec. 28-137. Definitions.**

In this article, unless the context otherwise requires:

Sec. 28-137(1). *Affirmative action program* means a written plan, which is designed to promote employment of minorities and females as specified by applicable federal, state, and local laws.

Sec. 28-137(2). *Disability* means an individual person who has, has a history of, or is regarded as having a physical or mental impairment, which substantially limits one (1) or more major life activities.

Sec. 28-137(3). *Minority* means a person of the following ethnic groups: Hispanic, Black, Asian and Native American in accordance with Federal Regulations section 124.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-138. Provision against discrimination required in all city contracts.

All contracts exceeding the amount provided by section 28-16(1) (small purchases) may provide that the contractor will abide by the following provisions:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, sex, age, disability not related to job performance, national origin, sexual orientation, gender identity, familial status, and/or marital status.

(c) The contractor will furnish all information and reports required by the city and will permit access to books, records, and accounts by the city for purposes of investigation to ascertain compliance with this section.

(d) In the event of the contractor's non-compliance with the nondiscrimination clauses of his contract, the contract may be cancelled, terminated or suspended in whole or in part and the contractor may be debarred in accordance with section 28-100. (Ord. No. 9913, § 1, 11-17-03; Ord. No. 11057, § 3, 3-27-13; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-139. Reporting requirements.

Sec. 28-139(1). All contractors shall upon request submit annually the following reports to the Equal Opportunity Programs Division of Human Resources Department.

- (a) A copy of the City of Tucson Employment Utilization Report.
- (b) A completed City of Tucson Affirmative Action Questionnaire.
- (c) An affirmative action plan, if applicable.

Sec. 28-139(2). A contractor, upon request, must have the above listed items (a), (b), and (c) on file prior to the contract. The affirmative action plan, affirmative action questionnaire and employment utilization report, once approved by the city will be placed on file for a period of one (1) year; therefore these affirmative action documents need not be submitted for each separate contract. A person may renew each affirmative action document prior to the expiration of the year's time by submitting new documents or revisions. Submittal of any approved revisions will automatically reactivate the affirmative action documents for another year. If a person wishes the previously approved documents to remain unchanged, the contractor must inform the affirmative action officer of this fact and request in writing that the documents be reactivated for another year. (Ord. No. 9913, § 1, 11-17-03; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-140. Duties and requirements of contractors on city contracts; responsibility for implementation.

Sec. 28-140(1). A contractor may not be eligible for an award of the city construction contract unless it has complied with the reporting requirements of this article.

Sec. 28-140(2). The hiring goals, if applicable, established by the division for each contract shall reflect the minority applicant pool available within Pima County for the specific services provided for under the contract.

Sec. 28-140(3). Goals and timetables: An affirmative action plan may set forth, as a minimum, a hiring and promotion plan for minorities and women in percentages which reflect the minority applicant pool available within Pima County for the specific services provided for under each contract. Minorities, for the purpose of this subsection, shall be those groups defined in sections 28-137(2) and (3) and women. Firms which demonstrate good-faith efforts to reach the stated percentage goals will be deemed to be in compliance with the city's affirmative action objectives, even though the firm has not met the staffing utilization goals on a particular contract. Notwithstanding the fact that a contractor has complied with the goal of women and/or minority utilization set forth above, the contractor may be required to continue to make a good-faith effort to hire, when the opportunity arises, women and minorities of those races and in those trades that are substantially under-represented in the contractor's work force.

Sec. 28-140(4). The city's equal opportunity program division shall be responsible for administering the provisions of this article. This office may establish standards to be met by contractors in order to be eligible for award of contracts. Contractors may be requested to execute such further forms and submit documentation at such time and as may be required by the division. In monitoring the employment policies and practices of firms doing business with the city, the division is authorized to conduct "no notice", on-site employee interviews and compliance reviews.

Sec. 28-140(5). All employees who are not specifically provided for in subsection (3) of this section shall be covered by this article but shall not be subject to the percentage goals and timetables established in subsection (3). (Ord. No. 9913, § 1, 11-17-03; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-141. Inability or failure to comply with affirmative action obligations.

A contractor who encounters problems in complying with its affirmative action obligations may document its good-faith efforts to comply with those requirements in the manner prescribed by the division. The equal opportunity office shall consider the validity

of the good-faith efforts on the part of the contractor and may impose such sanctions as are provided in section 28-144 of this article, based upon consideration of the facts in each specific case. Labor unions are required to make good-faith efforts to cooperate with the contractors in fulfilling the staffing utilization goals set forth in this article.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-142. Administrative responsibility.

The equal opportunity program division shall be responsible for administering the provisions of this article by formulating specific affirmative action procedures which further the policy of the city as set forth herein.

(Ord. No. 9913, § 1, 11-17-03; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-143. Exemptions.

Sec. 28-143(1). Federally funded contracts shall be exempt from the provisions of this article.

Sec. 28-143(2). A contract otherwise subject to the provisions of this article may be exempt by the equal opportunity office director from compliance with its provisions in the case of an emergency or when special circumstances exist which, in the interest of the city, compel such exemption.

(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-144. Sanctions.

Any contractor who knowingly submits a false statement under this article, or any contractor who fails to comply with the provisions of the affirmative action plan submitted, or with any other requirements of this article, may be subject to those sanctions allowed by law, including but not limited to cancellation, termination, suspension of the contract or debarment in accordance with section 28-97.

(Ord. No. 9913, § 1, 11-17-03)

Secs. 28-145, 28-146. Reserved.

ARTICLE XIII. SMALL BUSINESS ENTERPRISE PROGRAM*

Sec. 28-147. Definitions.

The application of definitions specifically included herein is limited to contracts initiated under the Small Business Enterprise (SBE) program. The following terms shall have the following meanings for article XIII:

- (1) *Arizona Unified Certification Program (AZUCP)* is a reciprocity DBE certification program and is comprised of the Arizona Department of Transportation, City of Phoenix, and the City of Tucson as the sole DBE certifying agencies within Arizona.
- (2) *Certified small business enterprise (SBE)* shall mean a local small business that is an independent and continuing enterprise for profit performing a commercially useful function, that has completed the application process for certification, has met the requirements set forth in 49 CFR part 26, and holds a current City of Tucson business license.
- (3) *Commercially useful function* shall mean the performance of real and actual services in the discharge of any contractual endeavor. An SBE contractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. In determining whether an SBE is performing a commercially useful function, factors including, but not limited to, the following will be considered:
 - (a) If a Certified SBE does not perform or exercise responsibility for at least thirty (30) percent of the total cost of its contract with its own work force.
 - (b) The type of prime contract;

- (c) Whether the business has the skill and expertise to perform work for which it is being/has been certified;
- (d) Whether the business actually performs, manages and supervises the work for which it is being or has been certified;
- (e) Whether the business purchases goods and/or services from a non-SBE owned business enterprise and resells goods to the city, city contractor, or other person doing business with the city for the purpose of allowing these goods to be counted towards the fulfillment of SBE utilization goals; and
- (f) Standard industry practices.
- (4) *Construction project* shall mean a contract that has been awarded in accordance with A.R.S. title 34 and the Tucson Procurement Code.
- (5) *Construction services project* shall mean a contract that has been awarded using one of the following alternative project delivery methods as prescribed in A.R.S. title 34:
 - (a) Construction-manager-at-risk;
 - (b) Design-build; or
 - (c) Job-order-contracting.
- (6) *Controlled* shall mean the SBE owner(s) possess the legal authority to manage business assets, goodwill and daily operations of the business and actively and continuously exercise managerial authority in determining the policies and in directing the operations of the business.
- (7) *Disadvantaged business enterprise (DBE)* shall mean a for-profit business concern that is at least fifty-one (51) percent owned by one or more individuals who are both

***Editor’s note** – Ord. No. 10993, § 1, adopted June 12, 2012 and effective July 1, 2012, amended Art. XIII in its entirety as set out herein. Former Art. XIII pertained to the small, minority and women-owned business enterprise program and derived from Ord. No. 10634, § 1, adopted Feb. 10, 2009, as amended by Ord. No. 10703, § 1, adopted August 5, 2009.

- socially and economically disadvantaged consistent with 49 CFR part 26.
- (8) *Eligible contract for general procurement* shall mean any contract for goods, materials, or services that meets the city's needs for purchases in accordance with section 28-16(1) (small purchases) except as otherwise provided for in sections 28-21 (sole source procurements), 28-22 (emergency procurements) and 28-23 (special procurements) or contracts with nonprofit agencies.
- (9) *Eligible contract for professional design services* shall mean any contract for professional design services, unless otherwise precluded by law, estimated above the amount specified in section 28-16(1), except as otherwise provided for in sections 28-21 (sole source procurements), 28-22 (emergency procurements) and 28-23 (special procurements).
- (10) *Eligible construction or construction services project* shall mean any construction or construction services project, unless otherwise precluded by law, provided that the estimate for construction exceeds the amount specified in section 28-16(1) except as otherwise provided for in sections 28-21 (sole source procurements), 28-22 (emergency procurements) and 28-23 (special procurements). This term does not include any construction project in which the estimated value is below the formal solicitation threshold or projects which require a DBE goal pursuant to federal law.
- (11) *Joint venture* shall mean an association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the joint venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in capital acquired by the joint venture and interest in earnings. Only the portion of work, supplies, and/or services attributed to the SBE, as a member of the joint venture, may be counted towards relevant SBE participation goals.
- (12) *Local* shall mean that the principal place of business of the enterprise is physically located within the Tucson/Pima County metropolitan area.
- (13) *Office* shall mean a fixed established place where work of a clerical, administrative, professional or production nature is carried on and directly related to the business being certified. A temporary location, movable property, or location established to oversee a project does not qualify as an office.
- (14) *Owned*, for purposes of determining whether an enterprise is owned by an SBE, shall mean that the small business owner(s) meet the ownership requirements in accordance with 49 CFR part 26:
- (a) Possesses interest in the business, along with the incidents of ownership;
 - (b) Contributed capital, equipment, and expertise to the business;
 - (c) Acquired the interest with his or her own financial resources or has put his or her own financial resources at risk in the operation of the enterprise; and
 - (d) Enjoys the customary incidents of ownership and shall have a risk in profits commensurate with the ownership interest, as demonstrated by an examination of the substance, rather than the form, of ownership arrangements.

(15) *Professional design services contract* shall mean a contract that has been solicited and awarded for architect services, engineer services, landscape architect services, surveyor services, or assayer services in accordance with A.R.S. title 34.

(16) *Small business enterprise (SBE)* shall mean a business that meets the North American Industry Classification System (NAIC) size standard adopted by the city for purposes of qualifying for SBE certification.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-148. Administrative provisions.

Sec. 28-148(1). Duties of the director. The director shall implement and monitor the SBE program. The director shall be the chief administrative officer for the program and shall have the following duties and authority:

- (1) The administration and enforcement of this article.
- (2) Coordination of the development of administrative procedures and policies with the applicable department(s) to effectuate this article.
- (3) Coordination of outreach efforts, including increased working relationships with local community organizations to identify and increase the availability of SBE firms.

Sec. 28-148(2). Records retention requirements.

- (1) The director shall, ensure that data and records are maintained in order to conduct on-going analysis and evaluation of the SBE program and its objectives and may make recommendations to the city manager and mayor and council regarding additional efforts necessary to ensure SBE participation.
- (2) All city departments shall maintain and retain complete and accurate records relating to any professional design, construction, or construction services procurements.

(3) The director of the procurement department shall maintain records of source selection and record of the inclusion of SBEs for awarded procurements.

Sec. 28-148(3). Administrative provisions for certification. The director shall be responsible for the certification and verification of program eligibility. DBE and SBE criteria and definitions shall be applied in accordance with 49 CFR part 26 to establish eligibility for certification of local firms as a SBE. Only local firms shall qualify for certification as a SBE. Firms outside of the Tucson/Pima metropolitan area meeting the eligibility criteria for DBE certification will qualify only as a DBE and are not eligible to participate in the local SBE program. The director shall:

- (1) Maintain a listing of certified SBEs segmented into specified trades or lines of business to be maintained as public record; and
- (2) Participate and effectuate reciprocity of DBE certification through the AZUCP.

Sec. 28-148(4). Standards for SBE certification. The director shall certify and monitor contractors, subcontractors, professional services consultants, professional services subcontractors, vendors, and suppliers as a bona fide SBE for participation in the SBE program based on the certification criteria and definitions as set forth in 49 CFR part 26, including, but not limited to, the following standards:

- (1) A SBE shall be an independent business enterprise, continuing in operation for profit, performing a commercially useful function. The ownership and control shall be real and substantial and be indicated by customary incidents of ownership, as demonstrated by an examination of the substance rather than the form of ownership and operating arrangements.
- (2) A certified SBE shall have a valid City of Tucson business license.
- (3) A certified SBE shall be a local enterprise as defined by this article and an active participant within the Tucson/Pima County metropolitan area.

- (4) The SBE applicant(s) must not exceed the personal net worth standard as defined in 49 CFR part 26.
- (5) The SBE applicant is responsible for cooperating and providing all necessary documentation in support of all eligibility as set forth in 49 CFR part 26 and this article. A complete certification application is required along with supportive documents including, but not limited to, three (3) years of income tax records (personal and business), bank signature card, a current personal net worth statement, and various other documents confirming ownership, management, and control of the SBE applicant firm. Additionally, an on-site audit is required at the firm's place of business.

Sec. 28-148(5). Certification investigations. In accordance with 49 CFR part 26, the director may investigate SBE ownership, contract transactions, and other relevant arrangements beyond formal documentation at initial certification, during certification, during the annual update, or based on a complaint submitted to the director. To the extent reasonably necessary to ensure compliance, such investigations may include, but are not limited to, the following:

- (1) Personal interviews with persons having knowledge or relevant information relating to an SBE's eligibility, certification, or decertification.
- (2) Personal interviews with bidders, contractors, vendors, and/or suppliers involved in a contractual relationship with the SBE.
- (3) Reviewing records pertaining to certification.
- (4) Conducting random on-site visits, audits, and/or relevant inquiries.

Sec. 28-148(6). Certification period. In accordance with 49 CFR part 26, the director shall grant certification to an approved SBE with the requirement for an annual update affirming there have been no changes in the firm's circumstances affecting its ability to meet size, ownership, or control requirements or

material changes in the information provided in its application form. If an SBE is denied certification on the basis of the information submitted, the entity may not reapply for a period of one (1) year from the date of the notice of denial provided that such firm shall have the right to appeal such denial to the director in accordance with the process specified in section 28-148(9).

Sec. 28-148(7). Continuing certification. All certified SBEs must annually re-submit disclosure affidavits and any other required documents.

Sec. 28-148(8). Decertification. The director may decertify a business enterprise because of, but not limited to, the following, in accordance with 49 CFR part 26 where applicable, or demonstrates continued poor performance on contracts as determined by City of Tucson staff:

- (1) A change in ownership and/or control.
- (2) A change in management structuring.
- (3) Exceeding small business administration size limits by industry designation.
- (4) Exceeding program standard for owner(s) personal net worth.
- (5) Fails to comply with annual reporting requirements.
- (6) Fails to fulfill the requirements of 28-148(4).
- (7) Fails to cooperate as directed in 28-148(5).
- (8) Continued poor performance ratings.

Sec. 28-148(9). Protest procedures for SBE certification and decertification decisions.

- (1) *SBE certification/decertification decisions.* All decisions regarding certifications and decertifications made by the director shall be made in writing and shall include the reasons for the decision. The notice shall be sent to the affected party and the affected party shall have the right to seek administrative review as provided herein.

- (a) An aggrieved party may submit protest in writing to the director within ten (10) days from the date of notice of the adverse decision. The protest must include the legal and factual basis for the protest along with any supporting documents.
 - (b) Within fifteen (15) days of receipt of the protest, the director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
- (2) *Appeal of director's certification and decertification decisions.* If the protest is denied, the aggrieved party may request an appeal review through the director. The request must be in writing and received by the director within seven (7) days of the aggrieved party's receipt of the decision notice. The aggrieved party shall set forth the legal and factual basis for the appeal of the decision. The director shall retain an independent hearing officer who will have knowledge of the certification standards/criteria as set forth in 49 CFR part 26, construction and procurement law and the small business enterprise program.
- (a) Within seven (7) days of receipt of the notice of appeal from the aggrieved party, the director shall forward the notice to the independent hearing officer.
 - (b) The independent hearing officer shall make a decision based solely on the administrative record.
 - (c) The independent hearing officer shall make a written decision on the appeal, as soon as practical. The decision may affirm, modify, or reverse the decision by the director.
 - (d) The independent hearing officer's decision will be forwarded to the

director for a final decision regarding certification or decertification.
 (Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-149. Establishment of SBE Program Goals for Construction and Construction Services Projects.

Sec. 28-149(1). Eligible projects for subcontractor SBE participation goals.

- (1) All eligible projects shall be reviewed by the director or designee for determination of subcontracting opportunities for SBE participation. Where there is sufficient availability of SBEs, the director or designee may establish individual project participation goals.
- (2) Specific participation SBE goals are to be established on eligible projects that are estimated above the amount specified in section 28-16(1) and according to the criteria established by the director including, but not be limited to, the following:
 - (a) The present availability of certified SBEs ready, willing, and able to provide labor and/or material on a particular project in the profession or industry/trade classifications relevant to the project.
 - (b) The ability of certified SBE firms to readily expand their capacity to meet additional demand.
 - (c) The level of participation by such firms in past projects awarded by the city.
 - (d) The design scope of work, plans, and project specifications.
- (3) SBE goals for a construction contract must be clearly published as part of the solicitation requirements issued with each invitation for bid (IFB).

(4) SBE goals or requirements for construction services shall be issued in the request for qualifications (RFQ).

(5) SBE goals shall apply to the initial contract award for construction contracts and to the individual project or phase awards for construction services.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-150. SBE Plans for Eligible Projects.

Sec. 28-150(1). Contractor's SBE plan for construction projects. Notwithstanding its compliance with any other requirement, no bidder shall be awarded a contract for an eligible project, unless the director or designee has approved the SBE plan or granted a waiver on the project. Such SBE plan shall be designed to meet the applicable project goals which shall be incorporated into the contract. Each bidder shall submit a completed and signed SBE plan or fully documented waiver request with the bid submission.

Sec. 28-150(2). Contractor's SBE plan for construction services projects. Notwithstanding its compliance with any other requirement, respondents shall receive director or designee approval of the SBE plan or be granted a waiver on the project in accordance with the requirements set forth in the solicitation. Such SBE plan shall be designed to meet the applicable project goals, which shall be incorporated into the contract.

Sec. 28-150(3). Contractors for eligible projects. Contractors for eligible projects may meet the SBE project goals through the following methods:

(1) *Prime contractor participation.*

(a) Certified SBE prime contractors may use their own participation towards fulfillment of the project's subcontracting goals.

(2) *Subcontractor participation.*

(a) When a contractor utilizes one or more certified SBE subcontractors to satisfy its SBE participation commitment, the contractor may claim only the value of the commercially useful function to be

performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.

(b) If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If a SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it should be presumed that the SBE is not performing a commercially useful function.

(3) *Supplier participation.* Contractors for construction or construction services may contract with one or more certified SBE suppliers provided that the supplier is a regular dealer of the materials supplied to obtain credits toward SBE goals. The value of the commercially useful function to be performed by such SBEs and credited toward satisfaction of the applicable SBE goals is as follows:

(a) If a certified SBE supplier manufactures the goods supplied, one hundred (100) percent of the contract amount is credited towards the applicable SBE participation goal.

(b) If a certified SBE supplier is a wholesaler warehousing the goods supplied or a manufacturer's representative, then the total contract amount is credited toward the established SBE goal; however, only twenty-five (25) percent of the total SBE project goal may be met in this manner.

(c) If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, the twenty-five (25) percent limit for suppliers may be increased, or a combination of these two (2) methods may be utilized.

Sec. 28-150(4). Submission of SBE plan for construction projects.

- (1) The city shall publish the SBE subcontracting goals in the solicitation and the specifications. All bidders shall submit the SBE participation plan or request for good faith waiver with the bid unless otherwise specified.
- (2) The completed and signed SBE plan for the project must include a list of names of the certified SBE prime contractor, SBE subcontractors and/or suppliers to be used in the project, the type of work or service each business will perform, and the dollar amount of a certified SBE prime contractor and/or each certified SBE's subcontract and/or suppliers of the total project.
- (3) The bidder shall certify that the SBE plan has met the established SBE project participation goals, or notwithstanding good faith efforts to meet the goals, the bidder has been unable to do so and therefore is requesting a good faith effort waiver in part or in full. If the bidder's certification, the SBE plan or a fully documented good faith effort waiver (partial or full) is not submitted with the bid for any reason, the bid shall be deemed non-responsive.

Sec. 28-150(5). Submission of SBE plan for construction services projects.

- (1) The solicitation shall contain SBE requirements. All respondents shall comply with the SBE requirements as set forth in the solicitation.
- (2) The contractor shall submit an SBE participation plan or request for good faith waiver for each project awarded under the job order contracts, that are estimated above the amount specified in section 28-16(1) and has a goal established by the director unless exempted by sections 28-21(sole source procurements), 28-22 (emergency procurements) or 28-23 (special procurements).

- (3) The contractor shall submit an SBE participation plan or request for good faith waiver for all construction manager at risk contracts and design build contracts, in accordance with the solicitation, prior to award or prior to establishing a guaranteed maximum price (GMP), if applicable.
- (4) The completed and signed SBE plan for the project shall include a list of names of the certified SBE prime contractor, SBE subcontractors and/or suppliers to be used in the eligible project, the type of work or service each business will perform, and the dollar amount of a certified SBE prime contractor, and/or each certified SBE's subcontract and/or suppliers of the total project.
- (5) The contractor shall certify that the SBE plan has met the established SBE project participation goals or, notwithstanding good faith efforts to meet the goals, the contractor has been unable to do so and therefore is requesting a good faith effort waiver in part or in full.

Sec. 28-150(6). Review of SBE plans for construction projects.

- (1) The director shall review and evaluate the apparent low bidder's SBE goals plan and determine whether the bidder met the project goals for the contract and approve or reject such plan. The director may clarify information relative to the SBE plan with the bidder and/or any listed subcontractors.
- (2) The director may reject the plan and determine that the bid is non-responsive where the bidder:
 - (a) Failed to provide a completed SBE plan;
 - (b) Failed to identify SBEs by name, the scope of work, and value of work as a percent of the total bid sufficient to meet the applicable SBE goals for that project;

- (c) Failed to achieve the dollar value and/or percentage of credible participation by certified SBEs necessary to meet the project goals; or
 - (d) Failed to meet the requirements for a waiver of the SBE goals.
- (3) The director's determination shall be in writing and state the basis for such decision.
- (4) The director's determination shall be subject to the remedy provisions of Tucson Code section 28-153(2).
- (5) Replacement of an SBE.
- (a) Notwithstanding the requirements of section 28-48(2) of the Tucson Procurement Code, the Director shall review and approve the replacement of an SBE from a construction project.
 - (b) Removal of an SBE does not relieve the contractor of responsibility for meeting the SBE project goal.
 - (c) The contractor shall immediately take adequate good faith efforts to obtain another certified SBE to perform equal or greater dollar value of the work or submit a request for a partial or full good faith effort waiver.
- (b) Failed to identify SBEs by name, the scope of work, and value of work as a percent of the total bid sufficient to meet the applicable SBE goals for that project;
 - (c) Failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or
 - (d) Failed to meet the requirements for a waiver of the SBE goals. In the event that a plan is found unacceptable, the Director may pursue remedies up to and including termination of the contract.
- (3) For all construction manager-at-risk contracts and design build contracts, the director may determine that the plan is not acceptable where the respondent:
- (a) Failed to provide a completed SBE plan;
 - (b) Failed to identify SBEs by name, the scope of work and value of work of the total bid sufficient to meet the applicable SBE goals for that project;
 - (c) Failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or
 - (d) Failed to meet the requirements for a waiver of the SBE goals. In the event that a plan is found unacceptable, the director may:
 - (i) If the contract has not been awarded, formally cease negotiations with the firm and enter into negotiations with the next ranked firm or reject all submittals; or
 - (ii) If the contract has been awarded, formally terminate the contract for failure to comply with the SBE provisions.

Sec. 28-150(7). Review of SBE plans for construction services projects.

- (1) The director shall review and evaluate SBE plans and determine whether the contractor met the project goals, and approve or reject such plan. The director may clarify information relative to the SBE plan with the respondent and/or any listed subcontractors.
- (2) For job order contracts, the director may determine that the plan is not acceptable where the contractor:
 - (a) Failed to provide a completed SBE plan;

- (4) The director’s determination shall be in writing and state the basis for such decision.
- (5) The director’s determination shall be subject to the remedy provisions of section 28-153(2).

Sec. 28-150(8). Maintenance of records and reports by construction contractors. Unless otherwise specified in the solicitation, contractors awarded eligible contracts shall submit a participation report which summarizes the number and dollar amount of all subcontract awarded during the contract term. The participation report must be submitted to the director no later than one (1) month after the contract has been awarded and with the final payment request. In addition to the statutory requirement for retention, failure to submit the one (1) month participation report of all proposed subcontractors will result in the city withholding an additional ten (10) percent of all future payments on the eligible contract until it is determined that the contractor is in compliance. Failure to submit the participation report at the time of request for final payment shall result in withholding final payment from the contractor until it is determined that the contractor is in compliance. For job order contracts, the contractor shall submit subcontractor utilization reports to the director at the completion of each individual project. (Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-151. Establishment of SBE Program Goals for Professional Design Services.

Sec. 28-151(1). Eligible projects for professional design services SBE participation goals.

- (1) All eligible projects shall be reviewed by the director for determination of professional design services SBE participation. Where there is sufficient availability of SBEs, the director may establish individual project participation goals.
- (2) Specific participation SBE goals shall be established on eligible projects estimated above the amount specified in section 28-16(1) and according to the criteria established by the director or designee including, but not be limited to, the following:

- (a) The present availability of certified SBEs ready, willing, and able to provide design services in the profession or industry/trade classifications relevant to the project.
 - (b) The ability of certified SBE firms to readily expand their capacity to meet additional demand.
 - (c) The level of participation by such firms in past projects awarded by the city.
 - (d) The design scope of work, plans, and project specifications.
- (3) SBE program requirements for a design contract must be clearly identified in the request for qualifications (RFQ) issued for each applicable project.
 - (4) SBE program requirements shall apply to the initial contract award for design contracts and to the individual project or phase awards for design services.

Sec. 28-151(2). Professional design services small purchase reserve. Insofar as practical and where a sufficient number of certified SBE firms exist to comply with the small purchase requirements set forth in section 28-16(2), the director of procurement may reserve competition for small purchases for professional design services to certified SBEs. Where insufficient certified SBEs exist, non-SBEs may be included in the quoting process for small purchases. (Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-151.1. SBE Plans for Eligible Design Projects.

Sec. 28-151.1(1). Prime consultant’s SBE plan for design services projects. Notwithstanding its compliance with any other requirement of the Tucson Procurement Code, respondents shall receive director approval of the SBE plan or be granted a waiver on the project in accordance with the requirements set forth in the solicitation. Such SBE plan shall be designed to meet the applicable project goals, which shall be incorporated into the resulting contract.

Sec. 28-151.1(2). Consultants for eligible projects.
Consultants for eligible projects may meet the SBE project goals through the following methods:

- (1) *Prime consultant participation.*
 - (a) Certified SBE prime consultants may use their own participation towards fulfillment of the project's SBE goals.
- (2) *Subconsultant participation.*
 - (a) When a prime consultant utilizes one or more certified SBE subconsultants to satisfy its SBE participation commitment, the prime consultant may claim only the value of the commercially useful function to be performed by such subcontractor(s) in order to obtain credit toward the satisfaction of the applicable goal.
 - (b) If a certified SBE subconsultant enters into second tier subcontracts consistent with the standard industry practices, such SBE subconsultant is performing a commercially useful function. If a SBE subconsultant subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it should be presumed that the SBE is not performing a commercially useful function.

Sec. 28-151.1(3). Submission of SBE plan for professional design services projects.

- (1) The solicitation shall contain any applicable SBE requirements. All respondents shall comply with the SBE requirements as set forth in the solicitation.
- (2) The prime consultant shall submit an SBE participation plan or request for good faith waiver for each design project awarded under a request for qualification (RFQ) estimated above the amount specified in section 28-16(1) and has a goal established in

accordance with the solicitation, prior to award. Plan(s) shall be submitted during the negotiation stage after the selection committee has identified the top ranked firm(s).

- (3) The completed and signed SBE plan for the project shall include a list of names of the certified SBE prime consultant and SBE subconsultants to be used in the eligible project, the type of work or service each business will perform, and the dollar amount of a certified SBE prime consultant, and/or each certified SBE's subcontract of the total project.
- (4) The prime consultant shall certify that the SBE plan has met the established SBE project participation goals or, notwithstanding good faith efforts to meet the goals, the consultant has been unable to do so and therefore is requesting a good faith effort waiver in part or in full.

Sec. 28-151.1(4). Review of SBE plans for professional design services projects.

- (1) The Director shall review and evaluate SBE plans and determine whether the consultant met the project goals, and approve or reject the plan. The director may clarify information relative to the SBE plan with the respondent and/or any listed subconsultants.
- (2) For all professional design services contracts, the director may determine that the plan is not acceptable where the respondent:
 - (a) Failed to provide a completed SBE plan;
 - (b) Failed to identify SBEs by name, the scope of work and value of work of the total negotiated fees sufficient to meet the applicable SBE goals for that project;
 - (c) Failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or

(d) Failed to meet the requirements for a waiver of the SBE goals. In the event that a plan is found unacceptable, the director may:

- (i) If the contract has not been awarded, formally cease negotiations with the firm and enter into negotiations with the next ranked firm or reject all submittals; or
- (ii) If the contract has been awarded, formally terminate the contract for failure to comply with the SBE provisions.

(3) The director’s determination shall be in writing and state the basis for such decision.

(4) The director’s determination shall be subject to the remedy provisions of section 28-151.2(2).

(5) Replacement of an SBE:

- (a) The director shall review and approve the replacement of all subconsultants, including any SBE firms from a professional design services project. Approval must be obtained prior to the substitute subconsultant beginning the work.
- (b) Removal of an SBE does not relieve the prime consultant of responsibility for meeting the SBE project goal.
- (c) The consultant shall immediately take adequate good faith efforts to obtain another certified SBE to perform equal or greater dollar value of the work or submit a good faith waiver request, in full or in part.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-151.2. SBE Good Faith Effort.

Sec. 28-151.2(1). Good faith effort waiver.

(1) If the SBE plan does not meet the project goals, the bidder or respondent may seek a waiver. A request for waiver shall be available only when certified firms are determined to not be ready, willing, or able to perform. The application for a waiver shall be in writing and must be fully completed and submitted in accordance with sections 28-150(4), 28-150(5) and 28-151.1(3). The waiver request shall indicate whether a complete or partial waiver is sought. If a partial waiver is being sought the scope of such waiver must be indicated and an SBE plan must also be submitted. When a full waiver is sought, an SBE plan does not need to be submitted. The bidder or respondent must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the bidder's/respondent's good faith efforts to meet the goals. Evidence of the bidder's/respondent's good faith efforts should include, but is not limited to the following:

- (a) Documentation of communication with the Department of Procurement seeking technical/ professional assistance identifying available SBEs.
- (b) Copies of written notification to certified SBEs regarding subcontracting opportunities on a project.
- (c) Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
- (d) Documentation of efforts to assist and negotiate with SBEs for specific sub-bids and reasons for rejection of any such offered, including the names, addresses, and telephone numbers of SBEs who were contacted and reason for the rejection.

- (e) As to each SBE contacted which the bidder/respondent considered not to be qualified, a written statement of the reasons for the bidder's/respondent's conclusion.
- (f) Written quotes or records of verbal quotes solicited from all SBEs seeking subcontract work with prime contractors at the time of the solicitation submittal.
- (g) Verification that the contractor/prime consultant rejected available SBEs because they submitted bids/proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all bids received from potential subcontractors/subconsultants and all relevant dates.
- (2) A project goal may be waived, at least in part, if the bid or proposals received by the bidder/respondent requesting a waiver from all SBEs in one trade area exceeds the quote or proposal of the lowest non SBE competing for the same work by the lesser of fifteen (15) percent or two hundred fifty thousand dollars (\$250,000.00), and no other trade area is available to meet the established SBE goal. A bidder may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a bid.
- (3) If after consultation with certified SBE firms and/or appropriate city employees, the director determines that SBE availability is less than projected, the director may waive or reduce established project goals. In such circumstances, the director shall certify that SBEs are not available.
- (4) If the director determines that SBE availability is sufficient to support the established project goals the director shall deny the good faith waiver request. All decisions regarding the denial of good faith waiver requests or plan decisions made by the director shall be made in writing and shall include the reasons for the decision. The notice shall be sent to the affected party and the affected party shall have the right to seek administrative review pursuant to Tucson Code section 28-151.2(2).
- (a) *Waiver denial for construction.* If the apparent low bidder is denied a waiver the director shall determine the bid is non-responsive. The determination shall be subject to Tucson Code section 28-151.2(2).
- (b) *Waiver denial for construction services.* If the waiver is denied, the director's determination shall be subject to Tucson Code section 28-151.2(2).
- (c) *Waiver denial for professional design services.* If the waiver is denied, the director's determination shall be subject to Tucson Code section 28-151.2(2).
- Sec. 28-151.2(2). Right to appeal good faith effort waiver or plan decision.* An aggrieved party has a right to protest a good faith waiver request or plan decision made by the director as follows:
- (1) An aggrieved party may submit a protest in writing to the director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.
- (2) Within five (5) days of receipt of the protest, the OEP director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
- The decision of the director is final and not appealable.
(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)
- Sec. 28-151.3. Applicability to Procurement of Goods, Materials, and Services.**
- Sec. 28-151.3(1). Price preference for small purchases.* Insofar as is practical and where a sufficient number of certified SBE firms exist to comply with the small purchase requirements set forth in section

28-16(1), the director may reserve competition for small purchases for goods and services to certified SBEs. Where insufficient certified SBEs exist, non-SBEs may be included in the quoting process for small purchases. When certified SBEs compete against non-SBEs, the price of a quote received from a certified SBE shall be adjusted by seven (7) percent for purposes of evaluating price. Where no certified SBEs exist for a good or service, this section shall not apply and the purchase shall be governed solely by section 28-16(1).

Sec. 28-151.3(2). Reducing size, scope, or terms of certain contracts. To the extent practicable, the procurement director may evaluate large purchases of certain commodities and services for purchase through smaller, shorter-term contracts that are more accessible to and enhance participation of local SBEs. (Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-151.4. Program Compliance.

Sec. 28-151.4(1) Complaints, investigations of compliance, non-retaliation. The director may receive and investigate any complaints and allegations. All parties shall cooperate fully with an investigation conducted by the director. Retaliation against anyone who initiates or assists in an investigation is strictly prohibited. Any contractor who engages in retaliatory conduct will be subject to sanctions up to and including debarment. Any city employee who engages in retaliatory actions will be subject to discipline. Complaints filed with the director may include, but are not limited to the following:

- (1) Discriminatory treatment of SBEs on a project or work sites.
- (2) Bid-shopping by prime contractors which has an adverse effect on SBE participation.
- (3) Failure to make prompt payment to SBE contractors.
- (4) Failure to utilize SBE contractors and consultants once the contract has been awarded.

(5) Substitution of subcontractor issues.

(6) Allegations of non-performance by SBE sub-contractors.

(Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-151.5. Additional Terms.

Sec. 28-151.5(1). Non-interference. The process of determining and appealing eligibility, certification, continuing certification or decertification of the SBE status of enterprises shall not be subject to interference, influence, or coercion of any sort by parties including departmental and elected officials.

Sec. 28-151.5(2). Authority. The director shall promulgate rules and regulations, consistent with the provisions of article XIII, for implementation of the SBE program.

Sec. 28-151.5(3). Termination. The SBE program may be terminated by the mayor and council. (Ord. No. 10993, § 1, 6-12-12, eff. 7-1-12; Ord. No. 11296, § 1, 8-5-15)

ARTICLE XIV. LIVING WAGE

Sec. 28-152. Conditions for use.

Employees of city contractors and sub-contractors providing services to the city shall be paid a living wage by said contractors and sub-contractors for the hours expended providing services to the city, and shall also be offered health insurance or compensated as provided under section 28-157(c).

(Ord. No. 9913, § 1, 11-17-03; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-153 Eligible contract.

An eligible contract shall be any contract awarded by the city pursuant to section 28-17 or section 28-18. (Ord. No. 9913, § 1, 11-17-03; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-154. Ineligible contracts.

An ineligible contract shall include:

- (a) Contracts under which federal or state regulations preclude the applicability of a living wage;
- (b) Contracts which involve programs where the city shares management authority with other jurisdictions, and intergovernmental and cooperative agreements;
- (c) Contracts that are impacted by bond covenants, grant restrictions, governmental regulations;
- (d) Contracts which involve programs that do not primarily provide direct services to the city but have a franchise or contract to provide services to the residents or property owners of the city;
- (e) Job training and youth or summer employment programs;
- (f) Contracts that would otherwise be eligible, in which all eligible employees are compensated at or above the living wage rates required;
- (g) Contracts awarded to contractors with no employees;
- (h) Contracts awarded for goods;
- (i) Contracts awarded for construction, constructions services, or professional design services pursuant to Article V.

(Ord. No. 9913, § 1, 11-17-03; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-155. Eligible employee.

Any person employed by a contractor holding an eligible contract with the city who:

- (a) Is not a person who provides volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;

(b) Expends chargeable time providing services to the city and on city property;

(c) Is at least sixteen (16) years of age.
(Ord. No. 9913, § 1, 11-17-03)

Sec. 28-156. Reserved.**Sec. 28-157. Wages.**

(a) If health insurance benefits are offered, a wage of no less than \$10.39 per hour.

(b) If health benefits are offered, an eligible contractor shall pay no less than fifty (50) percent of the eligible employee's health benefits premium.

(c) In the absence of 28-157(a), if health insurance benefits are not offered, a wage of no less than \$11.62 per hour.

(d) The wage rates shall automatically be adjusted each year based upon the cost of labor adjustment provided to permanent city employees. The adjusted wage rates shall be effective for the calendar year commencing January 1 after the effective date for city employees. Existing contracts shall be adjusted each year upon the contract renewal date.

(e) If the contract is subject to a prevailing wage requirement or union agreement, the higher wage shall apply.

(f) If health benefits are offered to an eligible employee under an eligible contract, proof of said benefits shall be provided at the time of bid or proposal submission or, as the city may require, in accordance with notification by the city of its intent to award a contract.

(Ord. No. 9913, § 1, 11-17-03; Ord. No. 11296, § 1, 8-5-15)

Sec. 28-158. Compliance.

The city's director of procurement shall monitor compliance, including the investigation of claimed violations, and may promulgate administrative rules and regulations to implement and enforce this article. In the event of any violation of the provisions set forth in this article, the contractor and any subcontractor responsible therefor shall be liable for the unpaid

wages and shall pay the eligible employee any amounts underpaid. The city's director of procurement is additionally authorized to take any one (1) or more of the following remedies in the event of a written determination of noncompliance:

- (a) Liquidated damages paid to the city in the amount of fifty dollars (\$50.00) for each incidence of noncompliance for each day of non-compliance and/or each day it continues;
- (b) Suspension of further payments on the contract until the violation has ceased;
- (c) Suspend and/or terminate the contract for cause; and/or
- (d) Debar or suspend the contractor or subcontractor from future city contracts pursuant to article IX.

Protests or appeals of the director's remedies for noncompliance shall be in accordance with article IX. (Ord. No. 9913, § 1, 11-17-03)

Sec. 28-159. Records.

(a) The contractor or subcontractor shall make the records required available for inspection, copying, or transcription by authorized representatives of the city's director of procurement, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or make them available, the director may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to article IX.

(b) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period for three (3) years thereafter for all eligible employees. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(Ord. No. 9913, § 1, 11-17-03)

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11204	10-9-14	1	4-12
11209	11-5-14	1	1-19
11219	12-9-14	1 (eff. 1-1-15)	19-300 – 19-380
		2 (eff. 1-1-15)	Rpld Reg. 19-300.1 – 19-360.2
		3 (eff. 1-1-15)	19-480
		5	Rpld 19-1200 – 19-1255
11220	12-9-14	1, 2	20-140 (note)
11221	12-9-14	1, 2	20-141 (note)
11222	12-9-14	1, 2	20-142 (note)
11223	12-9-14	1, 2	20-143 (note)
11224	12-9-14	1, 2	20-144 (note)
11225	12-9-14	1, 2	20-145 (note)
11226	12-9-14	1	10B-2
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11227	12-9-14	1	11B-3
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11228	12-9-14	1	Added 2-45 – 2-47
11232	12-16-14	1	10A-122
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11240	2-4-15	1	10-53.7
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11245	2-18-15	1	Rpld ch. 12 (12-1 – 12-110)
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11266	5-5-15	1	Added 10A-250 – 10A-255
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11272	6-9-15	1 (eff. 7-1-15)	15-1
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		4 (eff. 7-1-15)	15-32.2
		5 (eff. 7-1-15)	15-33.2
		6 (eff. 7-1-15)	15-34.2, 15-34.7, 15-34.8
		7 (eff. 7-1-15)	15-60

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