

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 2C
Amend No. _____

Date Prepared: January 2, 2008

Council Meeting Date: January 15, 2008

TO: Honorable Mayor and Council
FROM: Herman Koebergen, Materials Manager *for [Signature]*
THROUGH: Brent Mattingly, Finance Director *[Signature]*
SUBJECT: Revision of the Procurement Code, Peoria City Code § 2-300 *et seq.*

RECOMMENDATION: That the Mayor and Council adopt the proposed changes to the Procurement Sections of Chapter 2 of the Peoria City Code.

SUMMARY:

The Finance Department recommends approval of the revised procurement code with both substantive and housekeeping changes as provided by the attached Revised Procurement Code.

The major changes include:

- (1) Changing the language to be current with the American Bar Association's Model Procurement Code.
- (2) Added language to be compliant with the Federal Transit Administration's (FTA) Grant requirements.
- (3) The provisions of the Title 34. Arizona Revised Statutes allows cities to establish limits on projects delivered under the Job Order Contracting (JOC) delivery method. Materials Management recommends adopting a single project limit of three million (\$3,000,000) dollars for work accomplished under a JOC.

Materials Management believes these changes are in the best interest of the City and recommends the proposed changes to the code.

ATTACHMENT:

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# _____ LIC. # _____
Action Date: _____

REV. 07/05

ORDINANCE NO. 08-01

PROVIDING FOR AMENDMENT OF P.C.C. § 2-302 PERTAINING TO PROCUREMENT CODE; PURPOSE; ADOPTION OF NEW P.C.C. § 2-302.1 PERTAINING TO SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE; ADOPTION OF NEW P.C.C. § 2-302.2 PERTAINING TO REQUIREMENT OF GOOD FAITH; ADOPTION OF NEW P.C.C. § 2-302.3 PERTAINING TO EFFECTIVE DATE; AMENDMENT OF P.C.C. § 2-304 PERTAINING TO PROCUREMENT CODE; APPLICATION; AMENDMENT OF P.C.C. § 2-306 PERTAINING TO PROCUREMENT; DEFINITIONS; ADOPTION OF NEW P.C.C. § 2-306.1 PERTAINING TO PUBLIC ACCESS TO PROCUREMENT INFORMATION; ADOPTION OF NEW P.C.C. § 2-306.2 PERTAINING TO ELECTRONIC TRANSMISSIONS; AMENDMENT OF P.C.C. § 2-307 PERTAINING TO PROCUREMENT; MATERIALS MANAGEMENT; ADOPTION OF NEW P.C.C. § 2-307.1 PERTAINING TO AUTHORITY TO CONTRACT FOR LEGAL SERVICES; ADOPTION OF NEW P.C.C. § 2-307.2 PERTAINING TO EXEMPTIONS FROM THE PROCUREMENT CODE; ADOPTION OF NEW P.C.C. § 2-307.3 PERTAINING TO CITY PROCUREMENT GUIDELINES; ADOPTION OF NEW P.C.C. § 2-307.4 PERTAINING TO METHODS OF SOURCE SELECTION; ADOPTION OF NEW P.C.C. § 2-307.5 PERTAINING TO DELEGATION OF AUTHORITY BY THE MATERIALS MANAGER; AMENDMENT OF P.C.C. § 2-308 PERTAINING TO SPECIFICATIONS; ADOPTION OF NEW P.C.C. § 2-308.1 PERTAINING TO DUTIES OF THE MATERIALS MANAGER; ADOPTION OF NEW P.C.C. § 2-308.2 PERTAINING TO MAXIMUM PRACTICABLE COMPETITION; ADOPTION OF NEW P.C.C. § 2-308.3 PERTAINING TO SPECIFICATIONS PREPARED BY OTHER THAN CITY PERSONNEL; AMENDMENT OF P.C.C. § 2-309 PERTAINING TO INSPECTION OF PLANT & AUDIT OF RECORDS; ADOPTION OF NEW P.C.C. § 2-309.1 PERTAINING TO RIGHT TO AUDIT RECORDS; AMENDMENT OF P.C.C. § 2-310 PERTAINING TO PROCUREMENT; REQUISITIONS; AMENDMENT OF P.C.C. § 2-311 PERTAINING TO MODIFICATION & TERMINATION OF CONTRACTS; AMENDMENT OF P.C.C. § 2-312 PERTAINING TO

PROCUREMENT; UNAUTHORIZED PURCHASES; VIOLATION, LIABILITY, ENFORCEMENT; AMENDMENT OF P.C.C. § 2-313 PERTAINING TO COMPETITIVE SEALED BIDDING; ADOPTION OF NEW P.C.C. § 2-313.1 PERTAINING TO COMPETITIVE SEALED PROPOSALS; ADOPTION OF NEW P.C.C. § 2-313.2 PERTAINING TO CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS; ADOPTION OF NEW P.C.C. § 2-313.3 PERTAINING TO RESPONSIBILITY OF BIDDERS AND OFFERORS; ADOPTION OF NEW P.C.C. § 2-313.4 PERTAINING TO PREQUALIFICATION OF SUPPLIERS; ADOPTION OF NEW P.C.C. § 2-313.5 PERTAINING TO SUBSTANTIATION OF OFFERED PRICES; ADOPTION OF NEW P.C.C. § 2-313.6 PERTAINING TO MULTI-YEAR CONTRACTS; AMENDMENT OF P.C.C. § 2-314 PERTAINING TO SMALL PURCHASES; ADOPTION OF NEW P.C.C. § 2-314.1 PERTAINING TO SOLE SOURCE PROCUREMENT; AMENDMENT OF P.C.C. § 2-315 PERTAINING TO EMERGENCY PROCUREMENTS; ADOPTION OF NEW P.C.C. § 2-315.1 PERTAINING TO PROCUREMENT OF INFRASTRUCTURE FACILITIES AND SERVICES; GENERAL; AMENDMENT OF P.C.C. § 2-317 PERTAINING TO SINGLE SOURCE PROCUREMENTS; AMENDMENT OF P.C.C. § 2-318 PERTAINING TO COOPERATIVE PURCHASING AUTHORIZED; ADOPTION OF NEW P.C.C. § 2-318.1 PERTAINING TO SALE, ACQUISITION, OR USE OF SUPPLIES BY A PUBLIC PROCUREMENT UNIT; ADOPTION OF NEW P.C.C. § 2-318.2 PERTAINING TO COOPERATIVE USE OF SUPPLIES OR SERVICES; ADOPTION OF NEW P.C.C. § 2-318.3 PERTAINING TO CONTRACT CONTROVERSIES; ADOPTION OF NEW P.C.C. § 2-318.4 PERTAINING TO FEDERAL GRANTS; ADOPTION OF NEW P.C.C. § 2-318.5 PERTAINING TO FEDERAL TRANSIT ADMINISTRATION'S (FTA) STANDARDS OF CONDUCT; AMENDMENT OF P.C.C. § 2-319 PERTAINING TO WAREHOUSING; AMENDMENT OF P.C.C. § 2-321 PERTAINING TO LEGAL & CONTRACTUAL REMEDIES; ADOPTION OF NEW P.C.C. § 2-321.1 PERTAINING TO AUTHORITY TO DEBAR OR SUSPEND; ADOPTION OF NEW P.C.C. § 2-321.2 PERTAINING TO AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES; ADOPTION OF NEW P.C.C. § 2-321.3 PERTAINING TO DETERMINATIONS; AMENDMENT OF P.C.C. § 2-322 PERTAINING TO SUPPLY MANAGEMENT REGULATIONS; AMENDMENT OF P.C.C. § 2-325 PERTAINING TO SUPPLY MANAGEMENT REGULATIONS; AMENDMENT OF P.C.C. § 2-326 PERTAINING TO ASSISTANCE TO MBE/WBE; ADOPTION OF NEW P.C.C. § 2-326.1 PERTAINING TO COMPLIANCE WITH FEDERAL REQUIREMENTS; AMENDMENT

OF P.C.C. § 2-327 PERTAINING TO ETHICS IN PUBLIC CONTRACTING; ADOPTION OF NEW P.C.C. § 2-327.1 PERTAINING TO GENERAL STANDARDS OF ETHICAL CONDUCT; ADOPTION OF NEW P.C.C. § 2-327.2 PERTAINING TO CRIMINAL SANCTIONS; ADOPTION OF NEW P.C.C. § 2-327.3 PERTAINING TO EMPLOYEE CONFLICT OF INTEREST; ADOPTION OF NEW P.C.C. § 2-327.4 PERTAINING TO EMPLOYEE DISCLOSURE REQUIREMENTS; ADOPTION OF NEW P.C.C. § 2-327.5 PERTAINING TO GRATUITIES AND KICKBACKS; ADOPTION OF NEW P.C.C. § 2-327.6 PERTAINING TO PROHIBITION AGAINST CONTINGENT FEES; ADOPTION OF NEW P.C.C. § 2-327.7 PERTAINING TO RESTRICTIONS ON EMPLOYMENT OF PRESENT AND FORMER EMPLOYEES; ADOPTION OF NEW P.C.C. § 2-327.8 PERTAINING TO USE OF CONFIDENTIAL INFORMATION; AND AN EFFECTIVE DATE.

WHEREAS, adoption of a nationally standardized procurement code will simplify the procurement process, facilitate the recruitment of procurement staff, and create a more transparent procurement process for sellers and the public;

WHEREAS, the 2000 ABA Model Procurement Code from the American Bar Association and its predecessors have been adopted in full by sixteen states; in part, by several more; and by thousands of local jurisdictions across the United States; and

WHEREAS, certain of the policies and procedures provided by the 2000 ABA Model Procurement Code are consistent with the aims and policies of the City of Peoria.

THEREFORE, IT IS ORDAINED by the Mayor and Council of the City of Peoria, Maricopa County, Arizona as follows:

SECTION 1. Amendment of P.C.C. § 2-302. Chapter 2, Section 2-302 of the Peoria City Code (1992) pertaining to *Procurement code; purpose* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-302. Procurement code; purpose.</p> <p>The purpose of the Procurement Code is:</p> <p style="padding-left: 40px;">(a) To establish standard procedures for the procurement of supplies, materials, equipment and services.</p> <p style="padding-left: 40px;">(b) To provide all goods and services at the right time, right place, right quality, right price, and the right source to meet the operational requirements of the City.</p>	<p>Sec. 2-302. Procurement code; purpose.</p> <p>(1) <u><i>Interpretation.</i></u></p> <p style="padding-left: 40px;">This Code shall be construed and applied to promote its underlying purposes and policies.</p> <p>(2) <u><i>Purposes and Policies.</i></u></p> <p style="padding-left: 40px;">The underlying purposes and policies of this Code are:</p> <p style="padding-left: 80px;">(a) <i>to simplify, clarify, and modernize the</i></p>

(c) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the city.

(Ord. No. 91-09, 2/12/91)

(Ord. No. 99-13, 4/6/99, Amended) SUPP
1999-2

(Ord. 01-165, 10/16/01, Amended) SUPP
2001-3

law governing procurement by the City;

(b) to permit the continued development of procurement policies and practices;

(c) to make as consistent as possible the procurement laws among the various jurisdictions;

(d) to provide for increased public confidence in the procedures followed in public procurement;

(e) to ensure the fair and equitable treatment of all persons who deal with the procurement system of the City;

(f) to provide increased economy in City procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the City;

(g) to foster effective broad-based competition within the free enterprise system;

(h) to provide safeguards for the maintenance of a procurement system of quality and integrity; and

(i) to obtain in a cost-effective and responsive manner the materials, services, and construction required by the City in order for those departments to better serve the City's businesses and residents.

(3) Singular-Plural and Gender Rules.

In this Code, unless the context requires otherwise:

(a) words in the singular number include the plural, and those in the plural include the singular; and

(b) words of a particular gender include any gender and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

ABA Model Procurement Code Reference 01-101

	(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended) SUPP 1999-2 (Ord. No. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 08-____, 1/15/08)
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SECTION 2. New P.C.C. § 2-302.1. Chapter 2, Section 2-302.1 of the Peoria City Code (1992) pertaining to *Supplementary General Principles of Law Applicable* is created to read as follows:

Sec. 2-302.1. Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of this State, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Code.

ABA Model Procurement Code Reference 01-102

(Ord. No. 08-____, 1/15/08)

SECTION 3. New P.C.C. § 2-302.2. Chapter 2, Section 2-302.2 of the Peoria City Code (1992) pertaining to *Requirement of Good Faith* is created to read as follows:

Sec. 2-302.2. Requirement of Good Faith.

This Code requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

ABA Model Procurement Code Reference 01-103

(Ord. No. 08-____, 1/15/08)

SECTION 4. New P.C.C. § 2-302.3. Chapter 2, Section 2-302.3 of the Peoria City Code (1992) pertaining to *Effective Date* is created to read as follows:

Sec. 2-302.3. Effective Date.

This Code shall become effective thirty (30) days after Council action to adopt.

ABA Model Procurement Code Reference 01-109

(Ord. No. 08-____, 1/15/08)

SECTION 5. Amendment of P.C.C. § 2-304. Chapter 2, Section 2-304 of the Peoria City Code (1992) pertaining to *Procurement Code; application* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-304. Procurement Code; application. This code shall apply as follows:</p> <p style="padding-left: 40px;">(a) To every expenditure of public monies, including, but not limited to federal</p>	<p>Sec. 2-304. Procurement Code; application. <u>(1) General Application.</u> This Code applies only to contracts solicited or entered into after the effective date of this</p>

assistance monies by this city acting through a city governmental unit, as defined in this code, unless otherwise specified in this code.

Nothing in this code guidelines promulgated under this code shall prevent any city governmental unit from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. In the event of a conflict between the terms of this code and the term of any grant from the United States or this State, the terms of such grant shall govern.

(b) This code also applies to the inventory and disposal of city materials, unless otherwise provided by law.

(c) This code does not apply to contracts between this city and other political subdivisions of the State of Arizona, except as provided in this code.

(d) This code is not applicable to contracts for expert services if the purposes of such services is [sic] to provide for professional services relating to an existing or probable lawsuit in which this city is or may become a party or to contract for special investigative services for law enforcement or administrative investigation purposes.

(e) In the event of a conflict between the provisions of this code and the provisions of Title 34, Arizona Revised Statutes, the provisions of Title 34 shall govern.

(f) This code does not apply to agreements negotiated by legal counsel representing the city in settlement of litigation or threatened litigation.

(g) This code does not apply to development agreements, as defined in Arizona Revised Statutes Section 9-500.05, or contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals or environmental assessments to the extent that they are negotiated as part of the contract for

Code unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) Application to City Procurement.

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

(3) Requisitions

A department shall file with materials management, requisitions stating the requirements for supplies and services. Requisitions for capital outlay shall be in accordance with the City's adopted budget guidelines and codes. The approval shall certify that there is to the credit of the using agency a sufficient unencumbered appropriation balance to defray the amount of such order. Materials Management may not issue an order for delivery until the department has filed the requisition for the requirement.

The City Manager or his designee may promulgate policies or guidelines requiring justification of expenditures prior to the processing of requisitions for capital outlay and any other services not approved within a departmental budget.

(4) Unauthorized purchases, violation.

purchase or sale of real property.

State Law Reference A.R.S. §9-500.05.
Development Agreements

(Ord. No. 91-09, 2/12/91)

(Ord. No. 99-13, 4/6/99, Amended (a), (b), (d)
and added (g)) SUPP 1999-2

(Ord. 01-165, 10/16/01, Amended) SUPP
2001-3

enforcement

Except as provided in this code, it shall be improper for any city employee to order the purchase of supplies or services or to attempt to enter into contracts within the purview of this code other than through materials management and purchase orders or contracts made contrary to the provisions hereof shall not be approved by Materials Management and the city shall not be bound thereby. Further, the City Manager or his designee may impose discipline on employees who violate this code in accordance with the City's codes and personnel administrative regulations.

A person who contracts for or purchases any materials, services or construction in a manner contrary to the requirements of this code or violates the ethical standards contained in this code shall be personally liable for the recovery of all public monies paid, together with legal interest and all costs, attorney's fees and damages arising out of the violation. Further, the City Manager or his designee may impose discipline on employees who contracted for or purchased any materials, services of construction in a manner contrary to the requirements of this code or engages in violations of the ethical standards contained in this code in accordance with the City's codes and personnel administrative regulations. The City Attorney shall assist Materials Management in enforcing the provisions of this code.

ABA Model Procurement Code Reference 01-104

State Law Reference A.R.S. §9-500.05.
Development Agreements

(Ord. No. 91-09, 2/12/91)

(Ord. No. 99-13, 4/6/99, Amended (a), (b), (d)
and added (g)) SUPP 1999-2

(Ord. No. 01-165, 10/16/01, Amended) SUPP
2001-3

	(Ord. No. 08-____, 1/15/08)
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SECTION 6. Amendment of P.C.C. § 2-306. Chapter 2, Section 2-306 of the Peoria City Code (1992) pertaining to *Procurement; definitions* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-306. Procurement; definitions.</p> <p>The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:</p> <p>(a) "City governmental unit": includes all departments and offices of the city of Peoria, whether under the supervision of the city manager or the mayor and council; together with all boards and commissions, unless otherwise provided by the Arizona Revised Statutes.</p> <p>(b) "Construction": the process of building, altering, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property, including but not limited to the preventative maintenance of existing structures, buildings and streets.</p> <p>(c) "Contract modifications": any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.</p> <p>(d) "Contractor": any person having a contract with the city.</p> <p>(e) "Cooperative purchasing": procurement conducted by, or on behalf of, more than one (1) public procurement unit.</p> <p>(f) "Debarment": the disqualification of a vendor to receive invitations for bids or the award of a contract by the city for a specified period of time, not to exceed three (3) years, commensurate with the seriousness of the offense resulting from conduct or failure or inadequacy of performance.</p> <p>(g) "Emergency purchase": procurement</p>	<p>Sec. 2-306. Procurement; definitions.</p> <p>The words defined in this Section shall have the meanings set forth below whenever they appear in this Code, unless:</p> <p>(a) the context in which they are used clearly requires a different meaning; or</p> <p>(b) a different definition is prescribed for a particular Article or provision.</p> <p><i>Blind Trust</i> means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.</p> <p><i>Business</i> means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.</p> <p><i>Change Order</i> means a written order signed by the Procurement Officer, directing the contractor to make changes which the Changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.</p> <p><i>Code</i> means this Procurement Code, Peoria City Code Sections 2-301 to 2-399.</p> <p><i>Cooperative Purchasing</i> means procurement conducted by, or on behalf of, one or more Public Procurement Units, as defined in this Code.</p> <p><i>Confidential Information</i> means any information which is available to an employee only because of the employee's status as an employee of this city and is not a matter of public knowledge or available to the public on request.</p>

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

(h) "Exempt Purchase": procurement that the City Manager or his designee up to an amount specified in this code has determined that the best interest of the city requires to be exempt from this code.

(i) "Invitation for bid": all documents including those attached or incorporated by reference, utilized for soliciting bids.

(j) "Local vendor": a vendor having an office within the corporate limits of the city.

(k) "Materials management": the section of the Finance Department that serves as the materials manager for the City.

(l) "Open market procurement": procedures used for procurement when formal purchase procedure is not required.

(m) "Procurement": the purchasing, renting, leasing, or otherwise obtaining any supply, or service. The term includes all functions that pertain to the obtaining of any supply, or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(n) "Professional services": are services of those individuals, regardless of whether self employed or employed within a business entity, who through special learning or attainment have acquired intellectual skills and qualifications in a particular area of endeavor that has been generally accepted as a profession and which requires a prolonged course of specialized instruction and study, including: architects; attorneys; certified public accountants; clergy; construction and project managers; dentists; engineers; geologists; physicians; nurses; psychologists; teachers;

Conspicuously means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

Construction means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.

Contract means all types of city agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

Contract Modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person having a contract with a governmental body.

Cost-Reimbursement Contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Code, and a fee, if any.

Data means recorded information, regardless of form or characteristic.

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

Debarment: the disqualification of a vendor to receive invitations for bids or the award of a contract by the city for a specified period of time, not to exceed three (3) years, commensurate with the seriousness of the offense resulting

veterinarians and health care facilities which provide a combination of professional and para-professional services.

(o) "Request for proposal": all documents including those attached or incorporated by reference, utilized for soliciting proposals.

(p) "Responsible bidder or offeror": a bidder or offeror who has the capability to perform fully the contract requirements, and the reliability, which will assure good faith performance.

(q) "Responsive bidder or offeror": a bidder or offeror who has submitted a bid or proposal which conforms in material requests to the solicitation.

(r) "Service": the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term does not include "professional services" provided by those persons as defined in this section.

(s) "Specification": any description of the physical or functional characteristics, or of the nature of, a supply, or service, item. The term may include a description of any requirements for inspecting, testing, or preparing a supply, or service item for delivery.

(t) "Supply": all personal property.

(u) "Surplus supplies": any supplies no longer having any use to the city. This term includes obsolete, scrap, and nonexpendable supplies that have completed their useful life cycle.

(v) "Using or requesting agency": any department, agency or commission or board, committee, or other city governmental unit, using supplies or services.

(w) "Written determination": a document in writing that specifies the information required by this code or any policy or regulation of the

from conduct or failure or inadequacy of performance.

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

Electronic means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Employee means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for any governmental body.

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

Exempt Purchase means a procurement that the City Manager or his designee, up to an amount specified in this code, has determined that the best interest of the city requires being exempt from this code.

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

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any categories of buyers or buyers constituting the general buying public for the supplies or services involved.

(d) *Excess Supplies* means any supplies

City and shall be maintained in the applicable solicitation or contract file.

(Ord. No. 91-09, 2/12/91)

(Ord. No. 99-13, 4/6/99, Amended, adding (h) amending existing (i), (j), (m), (q) and added (w)

(Ord. No. 02-42, 6/7/02, Amended) SUPP 2002-2

other than expendable supplies having a remaining useful life but which are no longer required by the Using Agency in possession of the supplies.

Expendable Supplies means all tangible supplies other than nonexpendable supplies.

Financial Interest means:

(a) *ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive compensation*

(b) *ownership of such interest in any property or any business or*

(c) *holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.*

Governmental Body means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of this City.

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

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

Immediate Family means a spouse, children, parents, brothers and sisters, etc.

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

Local Public Procurement Unit means any county, city, town, and any other subdivision of the State or public agency of any such subdivision, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction, and any nonprofit corporation operating a charitable hospital.

Local vendor a vendor having an office within the corporate limits of the city.

Materials Manager means the person holding the position of the Materials Manager, as the head of the central procurement office of the City.

May denotes the permissive.

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

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

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

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract,

and all phases of contract administration.

Procurement Officer means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

Professional Services are services of those individuals, regardless of whether self employed or employed within a business entity, who through special learning or attainment have acquired intellectual skills and qualifications in a particular area of endeavor that has been generally accepted as a profession and which requires a prolonged course of specialized instruction and study, including: architects; attorneys; certified public accountants; clergy; construction and project managers; dentists; engineers; geologists; physicians; nurses; psychologists; teachers; veterinarians and health care facilities which provide a combination of professional and para-professional services.

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

Public Procurement Unit means any one of the following:

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

Purchase Request means that document whereby a Using Agency requests that a

	<p>contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.</p> <p><i>Purchasing Agency</i> means any department other than Materials Management which is authorized by this Code or its implementing regulations, or by way of delegation from the Materials Manager, to enter into contracts.</p> <p><i>Purchase Description</i> means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of the solicitation.</p> <p><i>Regulation</i> means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been promulgated in accordance with the City Procurement Code.</p> <p><i>Request for Proposals</i> means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.</p> <p><i>Responsible Bidder or Offeror</i> means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.</p> <p><i>Responsive Bidder</i> means a person who has submitted a bid which conforms in all material respects to the Invitation for Bids or Request for Proposals.</p> <p><i>Services</i> means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the</p>
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required performance. This term shall not include employment agreements or collective bargaining agreements.

Shall denotes the imperative.

Signature means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

Specification means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

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

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

State Public Procurement Unit means the Office of the Chief Procurement Officer of this or any other State and any other Purchasing Agency of this State or any other State.

Using Agency means any governmental body of the city which utilizes any supplies, services, or construction procured under this Code.

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

ABA Model Procurement Code Reference 01-

	<p>301 (Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended, adding (h) amending existing (i), (j), (m), (q) and added (w) (Ord. No. 02-42, 6/7/02, Amended) SUPP 2002-2 (Ord. No. 08-____, 1/15/08)</p>
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SECTION 7. New P.C.C. § 2-306.1. Chapter 2, Section 2-306.1 of the Peoria City Code (1992) pertaining to *Public Access to Procurement Information* is created to read as follows:

Sec. 2-306.1. Public Access to Procurement Information.

Procurement information shall be a public record to the extent provided in Arizona Revised Statutes Title 39 and shall be available to the public as provided in such statute.

ABA Model Procurement Code Reference 01-401

(Ord. No. 08-____, 1/15/08)

SECTION 8. New P.C.C. § 2-306.2. Chapter 2, Section 2-306.2 of the Peoria City Code (1992) pertaining to *Electronic Transmissions* is created to read as follows:

Sec. 2-306.2. Authorization for the Use of Electronic Transmissions.

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with best business practices. applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

- (a) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (b) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

ABA Model Procurement Code Reference 01-501

(Ord. No. 08-____, 1/15/08)

SECTION 9. Amendment of P.C.C. § 2-307. Chapter 2, Section 2-307 of the Peoria City Code (1992) pertaining to *Procurement; materials management* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-307. Procurement; materials management.</p> <p>(a) There shall be a section within the Finance Department that shall be designated Materials Management. Materials Management shall in accordance with the</p>	<p>Sec. 2-307. Procurement; materials management.</p> <p>Except as otherwise provided in this code, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control,</p>

provisions of this code manage and procure all materials and services on behalf of the city. Materials Management shall be responsible for the inventory and disposal of materials, supplies and equipment.

(b) The Materials Manager shall have general supervision of the materials management division, and shall have the responsibility and authority to:

- (1) Procure and contract for supplies and services including rentals, service agreements, and leases needed by any city governmental unit, in accordance with purchasing procedures as prescribed by this code and such guidelines as the materials manager shall adopt for the internal management and operation of the materials management division and such other rules and regulations as shall be prescribed by the city manager. The authority of the materials manager to make procurement and contract for all using agencies shall not be abridged by exempting any using agency, except in accordance with the provisions of this code.
- (2) To establish and amend, all guidelines, forms and rules authorized by this code and any others necessary to its operation.
- (3) To provide signature authority for city generated purchase orders.
- (4) To execute small dollar contracts on behalf of the City, upon approval as to form by the City Attorney and recording with the City Clerk.
- (5) To have the authority to suspend or debar vendors.
- (6) To cooperate with City functions in all procurement subject to the provisions of the Arizona Public Works Statutes contained in Title 34, Arizona Revised Statutes.
- (7) To inform city employees and contractors of the ethical standards for public contracting contained in this code and to enforce these

warehousing, sale, and disposal of supplies, services, and construction now vested in, or exercised by the city are hereby transferred to the Materials Manager, as provided in this Code.

There shall be a section within the Finance Department that shall be designated Materials Management. Materials Management shall in accordance with the provisions of this code manage and procure all materials and services on behalf of the city. Materials Management shall be responsible for the inventory and disposal of materials, supplies and equipment.

The Materials Manager shall have general supervision of the materials management and inventory control divisions, and shall have the responsibility and authority to:

- (1) Procure and contract for supplies and services including rentals, service agreements, and leases needed by any city governmental unit, in accordance with purchasing procedures as prescribed by this code and such guidelines as the Materials Manager shall adopt for the internal management and operation of the materials management and inventory control divisions and such other rules and regulations as shall be prescribed by the city manager. The authority of the Materials Manager to make procurement and contract for all using agencies shall not be abridged by exempting any using agency, except in accordance with the provisions of this code.
- (2) To establish and amend, all guidelines, forms and rules authorized by this code and any others necessary to its operation.
- (3) To provide signature authority for city generated purchase orders.
- (4) To execute small dollar and other administratively executed contracts on behalf of the city.

Budgeted line items specifically identifying

standards as provided in this code.
State Law Reference, A.R.S. §§34-101, et seq., Public Buildings and Improvements.
(Ord. No. 91-09, 2/12/91)
(Ord. No. 99-13, 4/6/99, Amended (a) and (b)) SUPP 1999-2
(Ord. 01-165, 10/16/01, Amended) SUPP 2001-3
(Ord. No. 02-42, 6/7/02, Amended) SUPP 2002-2

products or services, which have been approved by the City Council in the formal review and adoption process of the annual budget of the city, and for which an award is within the allocated expenditure, may be administratively executed by the Materials Manager.

Awards that exceed the allocated expenditure or deviate from the identified description and/or scope within the annual budget of the city shall require Council approval.

(5) To have the authority to suspend or debar vendors.

(6) To have the authority to resolve disputes related to contracts

(7) To cooperate with City functions in all procurement subject to the provisions of the Arizona Public Works Statutes contained in Title 34, Arizona Revised Statutes.

(8) To inform city employees and contractors of the ethical standards for public contracting contained in this code and to enforce these standards as provided in this code.

(9) The Materials Manager shall have the authority to refuse an award to any vendor or contractor who is in default on the payment of taxes, licenses or other moneys due the city, state, or federal government or that has litigation or threatened litigation at the time set for opening the bid or proposal. All vendors and contractors must be in compliance, at the time set for opening the bid or proposal, with all applicable state licensing laws, rules and regulations.

ABA Model Procurement Code Reference 02-301

State Law Reference, A.R.S. §§34-101, et seq., Public Buildings and Improvements.

(Ord. No. 91-09, 2/12/91)
(Ord. No. 99-13, 4/6/99, Amended (a) and (b)) SUPP 1999-2

	(Ord. No. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 02-42, 6/7/02, Amended) SUPP 2002-2 (Ord. No. 08-____, 1/15/08)
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SECTION 10. New P.C.C. § 2-307.1. Chapter 2, Section 2-307.1 of the Peoria City Code (1992) pertaining to *Authority to Contract for Legal Services* is created to read as follows:

Sec. 2-307.1. Authority to Contract for Legal Services.

This code is not applicable to contracts for professional witnessess or legal services, if the purposes of such services is to provide for professional services relating to an existing or probable lawsuit in which this city is or may become a party or to contract for special investigative services for law enforcement or administrative investigation purposes.

ABA Model Procurement Code Reference 02-302

(Ord. No. 08-____, 1/15/08)

SECTION 11. New P.C.C. § 2-307.2. Chapter 2, Section 2-307.2 of the Peoria City Code (1992) pertaining to *Exemptions from the Procurment Code* is created to read as follows:

Sec. 2-307.2. Exemptions from the Procurment Code.

This code does not apply to contracts between this city, other political subdivisions and the State of Arizona, except as provided in this code.

This code does not apply to development agreements, as defined in Arizona Revised Statutes or contracts for the purchase or sale of real property and ancillary services related thereto, such as title insurance, appraisals or environmental assessments to the extent that they are negotiated as part of the contract for purchase or sale of real property. State Law Reference A.R.S. §9-500.05. Development Agreements

ABA Model Procurement Code Reference 02-303

(Ord. No. 08-____, 1/15/08)

SECTION 12. New P.C.C. § 2-307.3. Chapter 2, Section 2-307.3 of the Peoria City Code (1992) pertaining to *City Procurement Guidelines* is created to read as follows:

Sec. 2-307.3. City Procurement Guidelines.

The Materials Manager may promulgate standard forms and contractual provisions to facilitate and standardize compliance with this code. The Materials Manager may modify or delete existing and add new contractual provisions and clauses for all forms of supply and service contracts utilized by the city, provided that such modifications are consistent with this code.

The Materials Manager may modify the contractual provisions and clauses for any individual contract, provided that any modifications are supported by a written determination that states the circumstances justifying the modification and that notice of any material modification are stated in the solicitation.

ABA Model Procurement Code Reference 02-401

(Ord. No. 08-____, 1/15/08)

SECTION 13. New P.C.C. § 2-307.4. Chapter 2, Section 2-307.4 of the Peoria City Code (1992) pertaining to *Methods of Source Selection* is created to read as follows:

Sec. 2-307.4. Methods of Source Selection.

No contract or procurement shall be subdivided to avoid the requirements of this section. Unless otherwise authorized by code, all city contracts shall be awarded by one of the following methods:

- (a) Section 3-202 (Competitive Sealed Bidding);
- (b) Section 3-203 (Competitive Sealed Proposals);
- (c) Section 3-204 (Small Purchases);
- (d) Section 3-205 (Sole Source Procurement);
- (e) Section 3-206 (Emergency Procurements);
- (f) Section 3-207 (Single Source Procurements);

The Materials Manager shall have the authority to determine the method of source selection that will be most practicable and advantageous to the city for all procurements.

ABA Model Procurement Code Reference 03-101

(Ord. No. 08-____, 1/15/08)

SECTION 14. New P.C.C. § 2-307.5. Chapter 2, Section 2-307.5 of the Peoria City Code (1992) pertaining to *Delegation of Authority by the Materials Manager* is created to read as follows:

Sec. 2-307.5. Delegation of Authority by the Materials Manager.

Subject to regulations, the Materials Manager may delegate authority to designees or to any department, agency, or official.

ABA Model Procurement Code Reference 02-205

(Ord. No. 08-____, 1/15/08)

SECTION 15. Amendment of P.C.C. § 2-308. Chapter 2, Section 2-308 of the Peoria City Code (1992) pertaining to *Procurement; standards and specifications* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-308. Procurement; standards and specifications.</p> <p>(a) The city materials manager shall prepare in cooperation with the using agencies written standards and specifications for supplies and services.</p> <p>(b) Standards and specifications for public works projects as defined in Title 34, Arizona Revised Statutes, shall be prepared in accordance with the requirements of Section</p>	<p>Sec. 2-308. Procurement; standards and specifications.</p> <p>The procurement guidelines shall set standards for the preparation, maintenance, and content of specifications for supplies, services, and construction required by the city.</p> <p>ABA Model Procurement Code Reference 04-201</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Added (b)) SUPP</p>

34- 101 through 34-104, Arizona Revised Statutes. State Law Reference: A.R.S. §34-101, et. Seq., Employment of Special Services (Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Added (b)) SUPP 1999-2	1999-2 (Ord. No. 08-____, 1/15/08)
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SECTION 16. New P.C.C. § 2-308.1. Chapter 2, Section 2-308.1 of the Peoria City Code (1992) pertaining to *Duties of the Materials Manager* is created to read as follows:

Sec. 2-308.1. Duties of the Materials Manager.

The Materials Manager shall monitor the use of specifications for supplies, services, and construction required by the City.

ABA Model Procurement Code Reference 4-202

(Ord. No. 08-____, 1/15/08)

SECTION 17. New P.C.C. § 2-308.2. Chapter 2, Section 2-308.2 of the Peoria City Code (1992) pertaining to *Maximum Practicable Competition* is created to read as follows:

Sec. 2-308.2. Maximum Practicable Competition.

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. There exists opportunities for applying standardization in the procurement of equipment or product.

ABA Model Procurement Code Reference 4-205

(Ord. No. 08-____, 1/15/08)

SECTION 18. New P.C.C. § 2-308.3. Chapter 2, Section 2-308.3 of the Peoria City Code (1992) pertaining to *Specifications Prepared by Other Than City Personnel* is created to read as follows:

Sec. 2-308.3. Specifications Prepared by Other Than City Personnel.

The requirements of this Article regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications assisted in or prepared other than by city personnel, including, but not limited to, those prepared by architects, engineers, and designers.

Any one participating in the preparation of plans and/or specifications for solicitations can not be a party to the bidding or proposing on that particular solicitation where those plans and specifications are included.

ABA Model Procurement Code Reference 4-206

(Ord. No. 08-____, 1/15/08)

SECTION 19. Amendment of P.C.C. § 2-309. Chapter 2, Section 2-309 of the Peoria City Code (1992) pertaining to *Procurement; inspection and testing* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-309. Procurement; inspection and testing.</p> <p>(a) The Materials Manager shall supervise the inspection or testing of deliveries of supplies or performance of services to determine their conformance with specifications.</p> <p>(1) The materials manager shall have authority to authorize using agencies having staff and facilities for adequate inspection to inspect all deliveries made to such agencies, including public works projects as defined in Title 34, Arizona Revised Statutes.</p> <p>(2) The Materials Manager shall have authority to require chemical and physical tests of samples submitted and sample of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the materials manager shall have the authority to make use of laboratory facilities of any agency of the city or any outside laboratory.</p> <p>(3) The Materials Manager shall have authority to monitor and inspect the performance of a contractor at the using agency to determine compliance to service specifications.</p> <p>(4) The Materials Manager shall have authority to require the supplier to submit certificates of compliance or conformance as evidence of acceptability.</p> <p>(5) Inspections related to consultant services and construction for Public Works projects shall be performed by the using department with professional expertise in the consultant service and area of construction.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended to add (a)(4) and (a)(5)) SUPP 1999-2</p>	<p>Sec. 2-309. Procurement; inspection and testing.</p> <p>The city may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the city.</p> <p>The Materials Manager shall have authority to require chemical and physical tests of samples submitted and sample of deliveries, which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the Materials Manager shall have the authority to make use of laboratory facilities of any agency of the city or any outside laboratory.</p> <p>The Materials Manager shall have authority to monitor and inspect the performance of a contractor at the using agency to determine compliance to service specifications.</p> <p>The Materials Manager shall have authority to require the supplier to submit certificates of compliance or conformance as evidence of acceptability.</p> <p>Inspections and testing related to construction projects shall be the responsibility of the using department.</p> <p>ABA Model Procurement Code Reference 03-601</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended to add (a)(4) and (a)(5)) SUPP 1999-2 (Ord. No. 08-____, 1/15/08)</p>

SECTION 20. New P.C.C. § 2-309.1. Chapter 2, Section 2-309.1 of the Peoria City Code (1992) pertaining to *Right to Audit Records* is created to read as follows:

Sec. 2-309.1. Right to Audit Records.

The city may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices to the extent that such books and records relate to that data. Any person who receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

The city shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

ABA Model Procurement Code Reference 3-602
 (Ord. No. 08-___, 1/15/08)

SECTION 21. Amendment of P.C.C. § 2-310. Chapter 2, Section 2-310 of the Peoria City Code (1992) pertaining to *Procurement; requisitions* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-310. Procurement; requisitions.</p> <p>(a) A requesting agency shall file with the Materials Management, requisitions stating the requirements for supplies and services. Requisitions for capital outlay shall be in accordance with the City's adopted budget guidelines and codes. The approval shall certify that there is to the credit of the using agency a sufficient unencumbered appropriation balance to defray the amount of such order. Materials Management may not issue an order for delivery until the requesting agency has filed the requisition for the requirement.</p> <p>(b) The City Manager or his designee may promulgate policies or guidelines requiring justification of expenditures prior to the processing of requisitions for capital outlay and</p>	<p>Sec. 2-310. [Reserved].</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended) SUPP 1999-2 (Ord. No. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 08-___, 1/15/08)</p>

<p>any other services not approved within a departmental budget.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended) SUPP 1999-2 (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3</p>	
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SECTION 22. Amendment of P.C.C. § 2-311. Chapter 2, Section 2-311 of the Peoria City Code (1992) pertaining to *Procurement code; promulgation; modification of forms and contractual provisions* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-311. Procurement code; promulgation; modification of forms and contractual provisions.</p> <p>(a) The Materials Manager may promulgate standard forms and contractual provisions to facilitate and standardize compliance with this code. The materials manager may modify or delete existing and add new contractual provisions and clauses for all forms of supply and service contracts utilized by the city, provided that such modifications are consistent with this code.</p> <p>(b) The Materials Manager may modify the contractual provisions and clauses for any individual contract, provided that any modifications are supported by a written determination that states the circumstances justifying the modification and that notice of any material modification are stated in the solicitation.</p> <p>(Ord. No. 91-09, 2/12/91)</p>	<p>Sec. 2-311. Procurement code; promulgation; modification of forms and contractual provisions.</p> <p>The Materials Manager may promulgate standard forms and contractual provisions to facilitate and standardize compliance with this code. The Materials Manager may modify or delete existing and add new contractual provisions and clauses for all forms of supply and service contracts utilized by the city, provided that such modifications are consistent with this code and any other applicable laws.</p> <p>The Materials Manager may modify the contractual provisions and clauses for any individual contract, provided that any modifications are supported by reasons that justifies the modification and that the modifications are included in the solicitation.</p> <p>ABA Model Procurement Code Reference 06-101</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 08- , 1/15/08)</p>

SECTION 23. Amendment of P.C.C. § 2-312. Chapter 2, Section 2-312 of the Peoria City Code (1992) pertaining to *Procurement; unauthorized purchases; violation, liability, enforcement* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-312. Procurement; unauthorized</p>	<p>Sec. 2-312. [Reserved].</p>

purchases; violation, liability, enforcement.

(a) Except as provided in this code, it shall be improper for any city employee to order the purchase of supplies or services or to attempt to enter into contracts within the purview of this code other than through Materials Management and purchase orders or contracts made contrary to the provisions hereof shall not be approved by Materials Management and the city shall not be bound thereby. Further, the City Manager or his designee may impose discipline on employees who violate this code in accordance with the City's codes and personnel administrative regulations.

(b) A person who contracts for or purchases any materials, services or construction in a manner contrary to the requirements of this code or violates the ethical standards contained in this code shall be personally liable for the recovery of all public monies paid, together with legal interest and all costs, attorney's fees and damages arising out of the violation. Further, the City Manager or his designee may impose discipline on employees who contracted for or purchased any materials, services of construction in a manner contrary to the requirements of this code or engages in violations of the ethical standards contained in this code in accordance with the City's codes and personnel administrative regulations.

(c) The City Attorney shall assist Management in enforcing the provisions of this code.

(Ord. No. 91-09, 2/12/91)
(Ord. No. 99-13, 4/6/99, Amended) SUPP
1999-2

(Ord. No. 91-09, 2/12/91)
(Ord. No. 99-13, 4/6/99, Amended) SUPP
1999-2
(Ord. No. 08-____, 1/15/08)

SECTION 24. Amendment of P.C.C. § 2-313. Chapter 2, Section 2-313 of the Peoria City Code (1992) pertaining to *Procurement; formal approved purchase procedure* is amended to read as follows:

Old	New
<p>Sec. 2-313. Procurement; formal approved purchase procedure.</p> <p>Procurement of supplies and services, when the cost will exceed fifty thousand dollars (\$50,000.00), Shall be made using either formal written invitation for bid (IFB), or request for proposal (RFP), except as otherwise provided in this code or pursuant to Title 34, Arizona Revised Statutes. The materials manager shall determine which procurement method (IFB or RFP) will be most practicable and advantageous to the city for the procurement of supplies and services.</p> <p>(a) General</p> <p>(1) Public notice of an IFB or RFP in a manner that is reasonable in the judgment of Materials Management, given the commercial context of the proposed purchase. Notice may be given in any publication that is reasonably available to prospective bidders in the judgment of Materials Management. For purposes of this code, reasonable notice shall be defined as not less than five business days.</p> <p>(2) The Materials Manager may require a bid or proposal bond/guarantee be submitted with any and all bids or proposals, and performance bonds be submitted prior to execution of any contract. The Materials Manager may waive the bid or proposal bond/guarantee requirement if they find that the requirement will have a significant negative impact on the ability of minority/women owned business to compete for city purchases or if by clear and convincing evidence that such waiver is in the best interest of the city.</p> <p>(3) The Materials Manager shall have the authority to refuse an award to any vendor or contractor who is in default on the payment of taxes, licenses or other moneys due the city, state, or federal government at the time set for</p>	<p>Sec. 2-313. Procurement; formal approved purchase procedure.</p> <p>(1) <i>Invitation for Bids.</i> An Invitation for Bids shall be issued for acquisitions and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.</p> <p>(2) <i>Public Notice.</i> Adequate public notice of the Invitation for Bids shall be given at a minimum of five (5) business days prior to the date set forth therein for the opening of bids, in accordance with the procurement guidelines.</p> <p>(3) <i>Bid Opening.</i> Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.</p> <p>(4) <i>Bid Acceptance and Bid Evaluation.</i> Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for Bids.</p> <p>(5) <i>Correction or Withdrawal of Bids; Cancellation of Awards.</i> Correction or</p>

opening the bid or proposal. All vendors and contractors must be in compliance, at the time set for opening the bid or proposal, with all applicable state licensing laws, rules and regulations.

(4) No contract or procurement shall be subdivided to avoid the requirements of this section.

(5) The amount of applicable transaction privilege or use tax of this city shall not be a factor in determining the net lowest bidder or the most advantageous proposal.

(6) Award will be made to the most responsive and responsible submission providing the greatest economic value.

(7) Budgeted line items specifically identifying one time operational or recurring products or services, that have been approved by the City Council in the review and adoption of the annual budget of the City, and for which an award is within the allocated expenditure, may be approved by the materials manager. Awards that exceed the allocated expenditure or deviate from the identified description and/or scope shall require City Council approval.

(b) Withdrawal or cancellation of bids.

(1) Prior to opening of the bids or proposals, the IFB or RFP may be delayed or canceled, or any or all bids or proposals may be rejected, in whole or in part, by the Materials Manager in the best interest of the city.

(2) After opening of the bids or proposals, the Materials Manager may reject all bids or proposals.

(3) A bidder or proposer may withdraw its bid at any time prior to bid opening or the deadline for receipt of proposal by notice to Materials Management in writing.

(c) Sealed proposals, or other approved methods that are defined as a request for

withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with regulations. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Materials Manager.

(6) *Rejection of Bids.* Prior to opening or after opening of the bids, the IFB may be delayed or canceled, or any or all bids may be rejected, in whole or in part, by the Materials Manager in the best interest of the city.

(7) *Award.* The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids.

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

ABA Model Procurement Code Reference 03-202

- (Ord. No. 91-09, 2/12/91)
- (Ord. No. 99-13, 4/6/99, Amended)
- (Ord. No. 01-165, 10/16/01, Amended) SUPP 2001-3
- (Ord. No. 08-____, 1/15/08)

proposals "RFP".

(1) Public notice of an RFP shall be in a manner that is reasonable in the judgment of Materials Management, given the commercial context of the proposed purchase. Notice may be given in any publication that is reasonably available to prospective bidders in the judgment of Materials Management. For purposes of this code reasonable notice shall be defined as not less than five business days.

(2) Proposals shall be solicited through a written request for proposals.

(3) Proposals shall be submitted at the time and place designated in the request for proposals. All information contained in the proposals shall be deemed as exempt from public disclosure based on the City's need to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall not be open for public inspection until after contract award. Except to the extent the offeror designates, and the city concurs, trade secrets or other proprietary data contained in the proposal shall remain exempt from public disclosure to the extent permitted by law.

(4) As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers during the

negotiation process.

(5) The award shall be made to the responsible and responsive offeror whose proposal is determined, in writing, to be the most advantageous to the city and best meets the overall needs of the city taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation other than as set forth in the request for proposals. The request for proposals shall state the relative importance of price and other evaluation factors, specific numerical weighing is not required.

(6) The contract file shall contain the basis upon which the award is made.

(Ord. No. 91-09, 2/12/91)

(Ord. No. 99-13, 4/6/99, Amended)

(Ord. 01-165, 10/16/01, Amended) SUPP
2001-3

SECTION 25. New P.C.C. § 2-313.1. Chapter 2, Section 2-313.1 of the Peoria City Code (1992) pertaining to *Competitive Sealed Proposals* is created to read as follows:

Sec. 2-313.1. Competitive Sealed Proposals.

(1) Conditions for Use.

(a) A contract may be entered into for acquisitions by competitive sealed proposals when the Materials Manager determines, pursuant to the code and guidelines, that the use of competitive sealed bidding is either not practicable or not advantageous to the city.

(b) The code or guidelines may provide that it is either not practicable or not advantageous to the city to procure specified types of supplies, services, or construction by competitive sealed bidding.

(c) Contracts for the design-build, design-build-operate-maintain, design-build-finance-operate-maintain or other project delivery methods for professional services shall be entered into by following Arizona Revised Statutes Title 34.

(2) Request for Proposals. Proposals shall be solicited through a Request for Proposals.

(3) Public Notice. Adequate public notice of the Request for Proposals shall be given at a minimum of five (5) business days prior to the date set forth therein for the opening of proposals, in accordance with the procurement guidelines.

(4) Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to

competing offerors during the process of negotiation. A Register of Proposals shall be prepared in accordance with the procurement guidelines, and shall be open for public inspection after contract award. Except to the extent the offeror designates, and the city concurs, trade secrets or other proprietary data contained in the proposal shall remain exempt from public disclosure to the extent permitted by law.

(5) Evaluation Factors. The Request for Proposals shall state the relative importance of price and other factors and subfactors, if any. The Materials Manager may appoint a committee to review qualifications. The committee shall consist of a materials management staff member and one or more individuals.

(6) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposals, and under regulations, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(7) Award. Award shall be made to the responsive and responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the city taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

(8) Debriefings. The Procurement Officer is authorized to provide debriefings that furnish the basis for the source selection decision and contract award.

ABA Model Procurement Code Reference 3-203

(Ord. No. 08-____, 1/15/08)

SECTION 26. New P.C.C. § 2-313.2. Chapter 2, Section 2-313.2 of the Peoria City Code (1992) pertaining to *Cancellation of Invitations for Bids or Requests for Proposals* is created to read as follows:

Sec. 2-313.2. Cancellation of Invitations for Bids or Requests for Proposals.

An Invitation for Bids, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the city in accordance with the code and in accordance with the procurement guidelines.

ABA Model Procurement Code Reference 3-301

(Ord. No. 08-____, 1/15/08)

SECTION 27. New P.C.C. § 2-313.3. Chapter 2, Section 2-313.3 of the Peoria City Code (1992) pertaining to *Responsibility of Bidders and Offerors* is created to read as follows:

Sec. 2-313.3. Responsibility of Bidders and Offerors.

(1) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) Right of Nondisclosure. Confidential information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the Office of the Materials Manager. The Materials Manager shall make a determination whether the information shall be subject to public disclosure.

ABA Model Procurement Code Reference 3-401

(Ord. No. 08-___, 1/15/08)

SECTION 28. New P.C.C. § 2-313.4. Chapter 2, Section 2-313.4 of the Peoria City Code (1992) pertaining to *Prequalification of Suppliers* is created to read as follows:

Sec. 2-313.4. Prequalification of Suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. The method of submitting prequalification information and the information required in order to be prequalified shall be determined by the Materials Manager.

ABA Model Procurement Code Reference 3-402

(Ord. No. 08-___, 1/15/08)

SECTION 29. New P.C.C. § 2-313.5. Chapter 2, Section 2-313.5 of the Peoria City Code (1992) pertaining to *Substantiation of Offered Prices* is created to read as follows:

Sec. 2-313.5. Substantiation of Offered Prices.

The Procurement Officer may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it, is reasonable, if:

- (1) the price is not:
 - (a) based on adequate price competition;
 - (b) based on established catalogue or market prices; or
 - (c) set by law or regulation; and
- (2) the price or cost exceeds an amount established in the regulations.

ABA Model Procurement Code Reference 3-403

(Ord. No. 08-___, 1/15/08)

SECTION 30. New P.C.C. § 2-313.6. Chapter 2, Section 2-313.6 of the Peoria City Code (1992) pertaining to *Multi-Year Contracts* is created to read as follows:

Sec. 2-313.6. Multi-Year Contracts.

Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the city provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

A multi-year contract is authorized where:

- (a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- (b) such a contract will serve the best interests of the city by encouraging effective competition or otherwise promoting economies in city procurement.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

ABA Model Procurement Code Reference 3-503

(Ord. No. 08-____, 1/15/08)

SECTION 31. Amendment of P.C.C. § 2-314. Chapter 2, Section 2-314 of the Peoria City Code (1992) pertaining to *Procurement; small dollar purchase procedure* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-314. Procurement; small dollar purchase procedures.</p> <p>(a) Procurement of supplies, and services, of less than the value of fifty thousand dollars (\$50,000.00) shall be made using small dollar purchase procedures. For purchases of less than Fifty Thousand (\$50,000.00) Dollars, Materials Management shall adopt procedures to provide for adequate and reasonable competition and maintaining appropriate records of such purchases.</p> <p>(b) All small dollar purchase procurement, wherever practical, should be based on limited competition and the process shall be recorded</p>	<p>Sec. 2-314. Procurement; small dollar purchase procedures.</p> <p>A procurement that is less than fifty thousand dollars (\$50,000.00) may be made in accordance with small purchase procedures, provided, however, that procurement requirement shall not be artificially divided so as to constitute a small purchase under this Section. All small dollar purchases will be conducted in accordance with established procurement guidelines.</p> <p>The City Manager has the discretionary authority to enter into contracts/agreements that are less than fifty thousand dollars (\$50,000.00)</p>

<p>and placed in the procurement file.</p> <p>(1) The Materials Manager or his designee shall solicit quotations by telephone, by interview, by request for quotation, or other best practice based upon dollar value.</p> <p>(2) The award shall be made to the quotation that is most advantageous to the City and conforms to the solicitation.</p> <p>(3) Materials Management shall keep a record of all small dollar purchase awards.</p> <p>(c) The Materials Manager may prescribe procedures for limited departmental purchase orders, procurement cards or other means for the procurement of supplies and services which do not exceed an established amount and which qualify as a small purchase item.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (c), (d) (e) renumbered as (b)(1),(b)(2) and (b)(3)) (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3</p>	<p>and based upon the best interest of the city, taking into account factors such as need, confidentiality, and city requirements shall be exempt from the competitive procurement requirements of this code.</p> <p>All other procurements exceeding a value of fifty thousand (\$50,000) dollars will be accomplished through the formal solicitation process.</p> <p>ABA Model Procurement Code Reference 03-204</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (c), (d) (e) renumbered as (b)(1),(b)(2) and (b)(3)) (Ord. No. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 08-___, 1/15/08)</p>
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SECTION 32. New P.C.C. § 2-314.1. Chapter 2, Section 2-314.1 of the Peoria City Code (1992) pertaining to *Sole Source Procurement* is created to read as follows:

Sec. 2-314.1. Sole Source Procurement.

A contract may be awarded for a supply or service item without competition when, under regulations, the Materials Manager, in writing that there is only one source for the required supply or service item. Sole Sources in excess of fifty thousand dollars (\$50,000) shall be approved by Council.

ABA Model Procurement Code Reference 3-205

(Ord. No. 08-___, 1/15/08)

SECTION 33. Amendment of P.C.C. § 2-315. Chapter 2, Section 2-315 of the Peoria City Code (1992) pertaining to *Procurement; Emergency and Exempt Procurement* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-315. Procurement; Emergency and Exempt Procurement.</p> <p>(a) Notwithstanding any other provisions of</p>	<p>Sec. 2-315. Procurement; Emergency and Exempt Procurement.</p> <p>Notwithstanding any other provision of this</p>

this code, upon declaration of an emergency in the manner provided by law or with written approval of the City Manager, Management may make or authorize emergency procurement based upon a threat to the public health, welfare, property or safety or if a situation exists which makes compliance with the provisions of this code impracticable, unnecessary or contrary to the public interest. Such emergency procurement shall be made with such competition as is practicable under the circumstances. The written determination for the emergency and the selection of the contractor shall be included in the contract file.

(1) A city governmental unit seeking an emergency procurement shall prepare a written requisition documenting the existence of an emergency condition and explaining the procurement need. The requisition shall be signed by the department manager or their designee.

(2) All emergency procurement in excess of Fifty thousand dollars (\$50,000.00) must be approved by the City Manager, unless submitted with a copy of the resolution adopted by the mayor and council declaring an emergency and authorizing the procurement or emergency procurements (in the event of a general emergency with unknown ramifications).

(b) An emergency procurement shall be limited to those materials, services or construction reasonably necessary to satisfy the emergency need.

(c) The City Manager has the authority to enter into contracts/agreements that are less than fifty thousand dollars (\$50,000.00) and based upon the best interest of the city, taking into account factors such as need, availability and city requirements shall be exempt from the competitive procurement requirements of this code.

Code, the Materials Manager, the City Manager, or Mayor and Council may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in this code; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

ABA Model Procurement Code Reference 03-206

(Ord. No. 91-09, 2/12/91)

(Ord. No. 99-13, 4/6/99, Amended (a) and (b) Repealed and replaced (c) SUPP. 1999-2

(Ord. No. 01-165, 10/16/01, Amended) SUPP 2001-3

(Ord. No. 08-___, 1/15/08)

<p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (a) and (b) Repealed and replaced (c)) SUPP. 1999-2 (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3</p>	
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SECTION 34. New P.C.C. § 2-315.1. Chapter 2, Section 2-315.1 of the Peoria City Code (1992) pertaining to *Procurement of Infrastructure Facilities and Services; General* is created to read as follows:

Sec. 2-315.1. Procurement of Infrastructure Facilities and Services; General.

Any solicitations issued for new construction or renovation of existing infrastructure or the repair and maintenance related to public works shall be accomplished through the requirements of the appropriate Arizona Revised Statute. In the event of a conflict between the provisions of this code and the provisions of Title 34, Arizona Revised Statutes, the provisions of Title 34 shall govern. The provisions of Title 34, Arizona Revised Statutes allow cities to establish limits on projects delivered under the Job Order Contracting delivery method. Therefore, the city adopts through this code a single project limit of three million (\$3,000,000) dollars for work accomplished under a JOC. ABA Model Procurement Code Reference 05-101

(Ord. No. 08-___, 1/15/08)

SECTION 35. Amendment of P.C.C. § 2-317. Chapter 2, Section 2-317 of the Peoria City Code (1992) pertaining to *Limited source procurement* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-317. Limited source procurement.</p> <p>(a) Except as provided in section 2-314(c) of this code, the Materials Manager shall determine in writing that a single source procurement is required. Single source procurement is a method to accomplish well thought out procurements, without competition, when the advantages and overriding considerations are paramount to the City's interest. Single source procurement shall not be used unless there is a preponderance of the evidence that in addition to price competition, it can be determined that a noncompetitive award is most advantageous to the City. The using governmental unit requesting single source procurement shall provide written evidence to support a single source procurement.</p> <p>(b) The materials manager may procure and contract for supplies and services without</p>	<p>Sec. 2-317. Limited source procurement.</p> <p>Notwithstanding any other provision of this Code, the Materials Manager may initiate a procurement less than the small purchase amount of fifty thousand dollars (\$50,000.00) where the officer determines that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this Section shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Materials Manager in the contract file. On purchases above the fifty thousand (\$50,000) dollar thresholds the Mayor and Council must authorize the use of a Single Source Procurement.</p>

<p>compliance with the procedures set forth in sections of this code when there has been a written determination that competition is not available and there are limited sources for the supply or service.</p> <p>(1) The agency requesting a limited source procurement shall provide a written determination, in such manner and on such form as the materials manager shall prescribe, justifying the basis for the limited source procurement.</p> <p>(2) A limited source procurement request that is less than Fifty thousand dollars (\$50,000.00) shall be submitted to the City Manager for approval.</p> <p>(3) A limited source procurement request which exceeds Fifty thousand dollars (\$50,000.00) shall be submitted to the City Council for approval.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (b)) (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3</p>	<p>ABA Model Procurement Code Reference 03-207</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (b)) (Ord. No. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 08-____, 1/15/08)</p>
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SECTION 36. Amendment of P.C.C. § 2-318. Chapter 2, Section 2-318 of the Peoria City Code (1992) pertaining to *Procurement; cooperative purchasing* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-318. Procurement; cooperative purchasing.</p> <p>(a) The Materials Manager shall have the authority to participate with other political subdivisions of this state, the state, and the federal government for the procurement of supplies or services in cooperative purchasing agreements.</p> <p>(b) The Materials Manager shall have the authority to enter into agreements, independent of the requirements of these rules, and established with other units of government for the cooperative use of</p>	<p>Sec. 2-318. Procurement; cooperative purchasing.</p> <p>(1) Any Public Procurement Unit may either participate in, sponsor, conduct, or administer a Cooperative Purchasing agreement for the procurement of any supplies, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement</p>

<p>supplies, equipment, or services provided the actions of the other party comply with the intent of this code.</p> <p>(c) If a procurement under this section involves the expenditure of state or federal assistance or contract monies, the Materials Manager shall comply with state or federal law and regulations which are mandatory and which are not reflected in this code or guidelines adopted by the city. It shall be the responsibility of the requesting department to provide the Materials Manager with the applicable acquisition requirements concurrent with its requisition.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (c)) SUPP. 1999-2 (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3</p>	<p>Unit contracts that are made available to other Public Procurement Units.</p> <p>(2) All Cooperative Purchasing conducted under this Article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in this Code.</p> <p>ABA Model Procurement Code Reference 10-201 (Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (c)) SUPP. 1999-2 (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 08-___, 1/15/08)</p>
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SECTION 37. New P.C.C. § 2-318.1. Chapter 2, Section 2-318.1 of the Peoria City Code (1992) pertaining to *Sale, Acquisition, or Use of Supplies by a Public Procurement Unit* is created to read as follows:

Sec. 2-318.1. Sale, Acquisition, or Use of Supplies by a Public Procurement Unit.

Any Public Procurement Unit may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of Code Sections affecting Source Selection, Contract Formation, and Supply Management.

ABA Model Procurement Code Reference 10-202

(Ord. No. 08-___, 1/15/08)

SECTION 38. New P.C.C. § 2-318.2. Chapter 2, Section 2-318.2 of the Peoria City Code (1992) pertaining to *Cooperative Use of Supplies or Services* is created to read as follows:

Sec. 2-318.2. Cooperative Use of Supplies or Services.

Any Public Procurement Unit may enter into an agreement, independent of the requirements of Code Sections affecting Source Selection, Contract Formation, and Supply Management, with any other Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

ABA Model Procurement Code Reference 10-203

(Ord. No. 08-___, 1/15/08)

SECTION 39. New P.C.C. § 2-318.3. Chapter 2, Section 2-318.3 of the Peoria City Code (1992) pertaining to *Contract Controversies* is created to read as follows:

Sec. 2-318.3. Contract Controversies.

Under a Cooperative Purchasing agreement, controversies arising between an administering Public Procurement Unit and its bidders, offerors, or contractors shall be resolved between the ordering Public Procurement Unit and the supplying bidders, offerors, or contractors in accordance with Public Procurement Unit's existing procedures.

ABA Model Procurement Code Reference 10-301

(Ord. No. 08-___, 1/15/08)

SECTION 40. New P.C.C. § 2-318.4. Chapter 2, Section 2-318.4 of the Peoria City Code (1992) pertaining to *Federal Grant Procurements* is created to read as follows:

Sec. 2-318.4. Federal Grant Procurements.

Any public procurement made by the city using federal funds, in whole or part, must meet the requirements of the Common Grant Rule (Code of Federal Regulations) and/or federal transit law. Specifically, funds from the Federal Transit Administration shall meet those requirements set forth in FTA Circular 4220.1E. Any additional requirements for these acquisitions may be promulgated in the procurement guidelines.

ABA Model Procurement Code Reference 10-20X Federal Grants

(Ord. No. 08-___, 1/15/08)

SECTION 41. New P.C.C. § 2-318.5. Chapter 2, Section 2-318.5 of the Peoria City Code (1992) pertaining to *Federal Transit Administration's (FTA) Standards of Conduct* is created to read as follows:

Sec. 2-318.5. Federal Transit Administration's (FTA) Standards of Conduct.

No employee, officer, agent, immediate family member, or Board member of the grantee (or company) shall participate in the selection, award, or administration of a contract supported by the FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The grantee's (or company's) officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees (or company's) may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will

provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's (or company's) officers, or agents, or by contractors or their agents.

ABA Model Procurement Code Reference 10-20X

(Ord. No. 08-___, 1/15/08)

SECTION 42. Amendment of P.C.C. § 2-319. Chapter 2, Section 2-319 of the Peoria City Code (1992) pertaining to *Procurement; warehousing stores* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-319. Procurement; warehousing stores.</p> <p>(a) The Materials Manager shall control and supervise warehouses and bulk storage facilities, and shall administer the warehouse inventories.</p> <p>(b) The City Council may budget sufficient funds annually to provide for a fund which shall function as the warehouse revolving fund.</p> <p>(c) Supplies to be added into an inventory shall be charged against the revolving fund. Requisitions for withdrawal of supplies in an inventory shall be credited to the revolving agency.</p> <p>(d) The materials manager shall maintain a perpetual inventory record of warehouse and bulk storage facilities, and be responsible for the receipt, storage, issuance and distribution of supplies contained therein.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (a) and (b)) SUPP. 1999-2 (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3</p>	<p>Sec. 2-319. Procurement; warehousing stores.</p> <p>The Materials Manager shall control and supervise warehouses and bulk storage facilities, and shall administer the warehouse inventories. The City Council may budget sufficient funds annually to provide for a fund, which shall function as the warehouse revolving fund.</p> <p>Supplies to be added into an inventory may be charged against the revolving fund. Requisitions for withdrawal of supplies in an inventory shall be credited to the revolving agency. The Materials Manager shall maintain a perpetual inventory record of warehouse and bulk storage facilities, and be responsible for the receipt, storage, issuance and distribution of supplies contained therein.</p> <p>All using agencies shall submit to the Materials Manager at such times and in such form as he shall prescribe, reports showing stocks of all surplus supplies. The Materials Manager shall have the authority to transfer and administer surplus supplies into a pool stock to be maintained in an inventory for use by requesting agencies on a temporary basis. Using such forms as shall be established, pool stock will be issued to a department. All pool stock shall be returned to inventory at designated time. The Materials Manager shall maintain pool stock in such condition that it is fit for its intended purpose.</p> <p>ABA Model Procurement Code Reference 08-</p>

	XXX Warehousing (Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended (a) and (b)) SUPP. 1999-2 (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 08-____, 1/15/08)
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SECTION 43. Amendment of P.C.C. § 2-321. Chapter 2, Section 2-321 of the Peoria City Code (1992) pertaining to *Procurement Code; protests; informal and formal* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-321. Procurement Code; protests; informal and formal.</p> <p>(a) Any interested party to a contract may protest a solicitation issued by the city; a proposed award of a City contract; the rejection of a request for changes, including a change order or debarment from the procurement process of the City by filing an informal protest.</p> <p>(1) Materials Management shall render a decision in writing within Fifteen (15) business day from the date the informal protest is filed. Copies of the decision shall be furnished to all interested parties by first class mail at the last address on file with the City. If Materials Management fails to render a decision within the required period, a formal protest may be filed.</p> <p>(b) Any interested party to a contract may file a formal appeal protesting a solicitation issued by the city, a proposed award of a City contract, the rejection of a request for changes, including a change order or debarment from the procurement process of the City, by filing a formal protest in the manner provided by this section.</p> <p>(1) A formal protest shall be in writing signed by an authorized party, containing their name, address and telephone number, identification of the contract, a detailed statement of the</p>	<p>Sec. 2-321. Procurement Code; protests; informal and formal.</p> <p>(1) <i>Right to Protest.</i> Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Materials Manager. The protest shall be submitted in writing within five (5) business days after contract award. A formal protest shall be in writing signed by an authorized party, containing their name, address and telephone number, identification of the contract, a detailed statement of the legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.</p> <p>(2) <i>Authority to Resolve Protests.</i> The Materials Manager or his designee shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with this code and the procurement guidelines promulgated by the Materials Manager.</p> <p>(3) <i>Decision.</i> If the protest is not resolved by mutual agreement, the Materials Manager shall promptly issue a decision in writing within fifteen (15) business days. The decision shall,</p>

legal and factual grounds of the protest, including copies of all relevant documents and the specific relief requested.

(2) The appeal shall be filed within five (5) business days following the date of the event that is the subject of the formal appeal or the decision of an informal appeal or the end of the fifteen day informal appeal process, if no decision was issued.

(3) The formal appeal shall be heard by the City's sales tax hearing officer or any other hearing officer appointed by the City for such purposes within ten (10) business days after filing of the date of appeal, unless extended by the hearing officer.

(c) The hearing officer may reject the protest, sustain the protest or reject or sustain in part and shall provide for an appropriate remedy.

(1) In determining an appropriate remedy, the hearing officer shall consider the circumstances surrounding the procurement or proposed procurement including, but not limited to the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the City, the urgency of the procurement and the impact of the relief upon the City.

(2) An appropriate remedy may include one or more of the following:

- (a) Decline to exercise an option to renew under the contract;
- (b) Terminate the contract;
- (c) Reissue the solicitation;
- (d) issue a new solicitation;
- (e) Award a contract consistent with city codes and policies;
- (f) Such other relief as is determined

(a) state the reasons for the action taken; and

(b) inform the protestant of its right to judicial or administrative review as provided in this Article.

(4) *Notice of Decision.* A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other interested party.

(5) *Finality of Decision.* A decision under Subsection (3) of this Section conclusive, unless an appeal is filed within five (5) business days following the date of the receipt of the decision by the Materials Manager that is the subject of the protest.

(6) *Formal Appeal Process.* The formal appeal shall be heard by the city's hearing officer or any other hearing officer appointed by the city for such purposes within fifteen (15) business days or as reasonably possible after filing of the date of appeal, unless extended by the hearing officer. The hearing officer may reject the protest, sustain the protest or reject or sustain in part and shall provide for an appropriate remedy. In determining an appropriate remedy, the hearing officer shall consider the circumstances surrounding the procurement or proposed procurement including, but not limited to the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the city, the urgency of the procurement and the impact of the relief upon the city.

An appropriate remedy may include one or more of the following:

- (a) Decline to exercise an option to renew under the contract;
- (b) Terminate the contract;

<p>necessary to ensure compliance with procurement code, procurement guidelines and procedures.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended) (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3</p>	<p>(c) Reissue the solicitation; (d) Issue a new solicitation; (e) Award a contract consistent with city codes and policies; (f) Such other relief as is determined necessary to ensure compliance with the procurement code, procurement guidelines, and procedures.</p> <p>ABA Model Procurement Code Reference 09-101</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 99-13, 4/6/99, Amended) (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 08- , 1/15/08)</p>
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SECTION 44. New P.C.C. § 2-321.1. Chapter 2, Section 2-321.1 of the Peoria City Code (1992) pertaining to *Authority to Debar or Suspend* is created to read as follows:

Sec. 2-321.1. Authority to Debar or Suspend.

(1) Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Materials Manager, after consultation with the City Attorney's Office, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The same officer, after consultation with the City Attorney's Office, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding twelve months. The authority to debar or suspend shall be exercised in accordance with regulations or procurement guidelines.

(2) Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

- (a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (b) conviction under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor;
- (c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals,
- (d) violation of contract provisions, as set forth below, of a character which is regarded by the Materials Manager to be so serious as to justify debarment action:

- (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - (e) any other cause the Materials Manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in regulations; and
 - (f) for violation of the ethical standards set forth in this code (Ethics in Public Contracting).
- (3) **Decision.** The Materials Manager shall issue a written decision to debar or suspend. The decision shall:
- (a) state the reasons for the action taken; and
 - (b) inform the debarred or suspended person involved of its rights to judicial or administrative review as provided in this code.
- (4) **Notice of Decision.** A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.
- (5) **Finality of Decision.** A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or
- (a) the debarred or suspended person commences an action in court or
 - (b) the debarred or suspended person appeals administratively to the Hearing Officer in accordance with this code and procurement guidelines.

ABA Model Procurement Code Reference 9-102

(Ord. No. 08-___, 1/15/08)

SECTION 45. New P.C.C. § 2-321.2. Chapter 2, Section 2-321.2 of the Peoria City Code (1992) pertaining to *Authority to Resolve Contract and Breach of Contract Controversies* is created to read as follows:

Sec. 2-321.2. Authority to Resolve Contract and Breach of Contract Controversies.

- (1) **Applicability.** This Section applies to controversies between the city and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification, rescission or termination.
- (2) **Authority.** The Materials Manager or a designee is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection (1) of this Section. This authority shall be exercised in accordance with this code and the procurement guidelines. The City Manager or the Materials Manager have the authority

to terminate contracts for cause.

(3) Decision. If such a controversy is not resolved by mutual agreement, the Materials Manager or the designee shall promptly issue a decision in writing. The decision shall:

- (a) state the reasons for the action taken; and
- (b) inform the contractor of its right to judicial or administrative review as provided in this Article.

(4) Notice of Decision. A copy of the decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the contractor and any other interested party.

(5) Finality of Decision. The decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or:

- (a) the contractor commences an action in court or
- (b) the contractor appeals administratively to the Procurement Hearing Officer in accordance with the code and procurement guidelines.

(6) Failure to Render Timely Decision. If the Materials Manager or the designee does not issue the written decision required under Subsection (3) of this Section within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

ABA Model Procurement Code Reference 9-103

(Ord. No. 08-___, 1/15/08)

SECTION 46. New P.C.C. § 2-321.3. Chapter 2, Section 2-321.3 Of the Peoria City Code (1992) pertaining to *Determinations* is created to read as follows:

Sec. 2-321.3. Determinations.

Written determinations required by this Code shall be retained in the appropriate official contract file of the Materials Manager or the Materials Management Division.

ABA Model Procurement Code Reference 01-201

(Ord. No. 08-___, 1/15/08)

SECTION 47. Amendment of P.C.C. § 2-322. Chapter 2, Section 2-322 of the Peoria City Code (1992) pertaining to *Procurement; sale, lease or disposal of surplus or obsolete City or personal property* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-322. Procurement; sale, lease or disposal of surplus or obsolete City or personal property.</p> <p>(a) The City shall have the right to sell, lease, exchange or otherwise dispose of City property for the best interests of the City. The</p>	<p>Sec. 2-322. Procurement; sale, lease or disposal of surplus or obsolete City or personal property.</p> <p>Unless otherwise provided by law, the Materials Manager shall be empowered, pursuant to regulations, to allocate proceeds</p>

<p>disposal of surplus or obsolete property shall be done in as competitive a manner as the Materials Manager determines to be practicable. Procedures shall be prescribed prohibiting the conversion of surplus and obsolete City property for personal use by City employees unless the City receives fair market value for such property and the property is disposed of in a commercially reasonable manner. This section excludes land.</p> <p>(b) Definitions:</p> <p>(1) "Excess materials" means any materials which have a remaining useful life but which are no longer required by the using agency in possession of the materials.</p> <p>(2) "Nonexpendable materials" means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one (1) year.</p> <p>(3) "Surplus materials" means any materials that no longer have any use to the City. This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life cycle.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 92-19, 5/12/92, Amended) (Ord. No. 99-13, 4/6/99, Deleted (b) and Renumbered (c) to conform and amended (c)) SUPP. 1999-2</p>	<p>from the sale, lease, or disposal of surplus supplies. City agencies which originally purchased a material with general fund monies shall not be reimbursed for its transfer or sale. All such monies received shall be deposited in the city's general fund.</p> <p>ABA Model Procurement Code Reference 08-301</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 92-19, 5/12/92, Amended) (Ord. No. 99-13, 4/6/99, Deleted (b) and Renumbered (c) to conform and amended (c)) SUPP. 1999-2 (Ord. No. 08-___, 1/15/08)</p>
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SECTION 48. Amendment of P.C.C. § 2-325. Chapter 2, Section 2-325 of the Peoria City Code (1992) pertaining to *Procurement duties of Materials Manager; abandoned, unclaimed surplus property disposal procedures* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-325. Procurement duties of Materials Manager; abandoned, unclaimed surplus property disposal procedures.</p> <p>(a) The Materials Manager shall be the head of and be responsible for the administration of Materials Management. The</p>	<p>Sec. 2-325. Procurement duties of Materials Manager; abandoned, unclaimed surplus property disposal procedures.</p> <p>The Materials Manager shall promulgate regulations or procurement guidelines</p>

Materials Manager shall have general supervision of Materials Management, and shall have the responsibility and authority to:

- (1) Manage materials during their entire life cycle.
- (2) Sell, lease or disposal of surplus materials by public auction, competitive sealed bidding or other appropriate method as determined to be in the best interest of the city.
- (3) Transfer of excess and surplus materials.
- (4) Trade-in of excess or surplus materials.

(b) The City may acquire surplus materials from state government and may distribute surplus materials as may be usable and necessary for public purposes to a state governmental unit or another political subdivision. No City government unit shall acquire state or political subdivision surplus material without approval of the Materials Manager.

(c) City agencies which originally purchased a material with general fund monies shall not be reimbursed for its transfer or sale. All such monies received shall be deposited in the City's general fund.

(Ord. No. 92-19, 5/12/92, Enacted)
(Ord. No. 99-13, 4/6/99, Amended repealing (b) and (c) and renumbering (d) and (e) to conform) SUPP. 1999-2

governing:

the management of supplies during their entire life cycle;

the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method determined to be most advantageous to the city, provided that no employee of the city or disposing agency shall be entitled to purchase any such supplies;

transfer of excess supplies; and
trade-in of excess or surplus materials.

The city may acquire surplus materials from state government and may distribute surplus materials as may be usable and necessary for public purposes of the city. No city government unit shall acquire state or political subdivision surplus material without approval of the Materials Manager.

The city shall have the right to sell, lease, exchange or otherwise dispose of city property for the best interests of the city. The disposal of surplus or obsolete property shall be done in as competitive a manner as the Materials Manager determines to be practicable. Procedures shall be prescribed prohibiting the conversion of surplus and obsolete city property for personal use by city employees unless the city receives fair market value for such property and the property is disposed of in a commercially reasonable manner. This section excludes the disposition of land and/or easements.

ABA Model Procurement Code Reference 08-201

(Ord. No. 92-19, 5/12/92, Enacted)
(Ord. No. 99-13, 4/6/99, Amended repealing (b) and (c) and renumbering (d) and (e) to conform) SUPP. 1999-2
(Ord. No. 08-___, 1/15/08)

SECTION 49. Amendment of P.C.C. § 2-326. Chapter 2, Section 2-326 of the Peoria City Code (1992) pertaining to *Procurement; assistance to small, minority, disadvantaged and women owned business enterprises* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-326. Procurement; assistance to small, minority, disadvantaged and women owned business enterprises.</p> <p>(a) Policy.</p> <p>(1) The Materials Manager shall take affirmative steps to locate small, minority, disadvantaged and women business enterprises interested in doing business with the City of Peoria. This policy will also include local vendors that have offices within the corporate limits City of Peoria. These steps shall include notification ion appropriate publications of solicitations.</p> <p>(2) It is the policy of the City of Peoria that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire and promote regardless or race, color, religion, gender, national origin, age or disability.</p> <p>(3) The Materials Manager shall develop include as part of the solicitations for professional and consultant services a request for firms to indicate whether they have been certified by any jurisdiction in this state as a minority or woman owned business enterprise.</p> <p>(b) Failure to comply with the provisions of this policy shall constitute grounds for termination of the contract with the vendor and debarment of the vendor from the procurement process.</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 92-19, 5/12/92, Renumbered) (Ord. No. 99-13, 4/6/99, Amended (a) and (b)) SUPP. 1999-2 (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3</p>	<p>Sec. 2-326. Procurement; assistance to small, minority, disadvantaged and women owned business enterprises.</p> <p>The Materials Manager shall take affirmative steps to locate small, minority, disadvantaged and women business enterprises interested in doing business with the city. This policy will also include local vendors that have offices within the corporate limits for the City of Peoria. These steps shall include notification in appropriate publications for solicitations.</p> <p>It is the policy of the city that suppliers of goods or services adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire and promote regardless or race, color, religion, gender, national origin, age or disability.</p> <p>The Materials Manager shall develop and include as part of the solicitations for professional and consultant services a request for firms to indicate whether they have been certified by any jurisdiction in this state as a minority or woman owned business enterprise.</p> <p>ABA Model Procurement Code Reference 11-300</p> <p>(Ord. No. 91-09, 2/12/91) (Ord. No. 92-19, 5/12/92, Renumbered) (Ord. No. 99-13, 4/6/99, Amended (a) and (b)) SUPP. 1999-2 (Ord. 01-165, 10/16/01, Amended) SUPP 2001-3 (Ord. No. 08-____, 1/15/08)</p>

SECTION 50. New P.C.C. § 2-326.1. Chapter 2, Section 2-326.1 of the Peoria City Code (1992) pertaining to *Compliance with Federal Requirements* is created to read as follows:

Sec. 2-326.1. Compliance with Federal Requirements.

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

ABA Model Procurement Code Reference 11-301

(Ord. No. 08-___, 1/15/08)

SECTION 51. Amendment of P.C.C. § 2-327. Chapter 2, Section 2-327 of the Peoria City Code (1992) pertaining to *Procurement; code of ethics* is amended to read as follows:

<i>Old</i>	<i>New</i>
<p>Sec. 2-327. Procurement; code of ethics.</p> <p>(a) Employment with the City of Peoria is a public trust. It is the policy of the city for employees to maintain high standards of honesty, integrity, impartiality, courtesy and conduct. These standards apply to City employees internally as well as when interacting with citizens and vendors. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering City service.</p> <p>(b) The City has promulgated the following ethical codes as part of this policy. The City Manager or his designees as it pertains to employees under his supervision, Charter Officers and the Mayor and Council are authorized to take steps to ensure these codes are complied with.</p> <p>(1) It is an affirmative obligation for City employees to perform their responsibilities in such a manner to assure fair competitive access to governmental procurement by responsible contractors.</p> <p>(2) No employee of the City should engage in acts that in the reasonable judgment of</p>	<p>Sec. 2-327. Procurement; code of ethics.</p> <p>Public employment is a public trust. It is the policy of the city to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the city. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.</p> <p>Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the city procurement organization.</p> <p>To achieve the purpose of this Code, it is essential that those doing business with the city also observe the ethical standards prescribed herein.</p> <p>ABA Model Procurement Code Reference 12-201</p> <p>State Law Reference: A.R.S. §38-502. Conflict of Interest Definitions.</p>

Materials Management or their department head would result in a loss of confidence in the integrity of the city's procurement operation. Such acts would include, but not be limited to receipt of gifts or services of more than a nominal value from a prospective vendor; statements to a vendor that they will be awarded the contract based on personal knowledge or relationships with city employees without an evaluation of their submittal being performed.; failure of a city employee sitting on a review committee to disclose any prior or current business or financial relationship with a proposed vendor, criticism of one vendor to another vendor who are competing for the same procurement prior to bid or proposal award, and any similar acts. For purposes of this code, nominal value is defined as fifty dollars or less from any single party during any single calendar year.

(3) City employees responsible by virtue of their position shall take reasonable efforts to ensure that contractors doing business with the City are expected to observe these same ethical standards. Violation of these standards shall constitute grounds for termination of a contract with the City and debarment of the vendor from doing any further business with the City. This information shall be included as a special term and condition of all city contracts.

(4) It is a violation of this code for any City employee to attempt to or to realize personal financial benefit to themselves or a relative as that term is defined in Arizona Revised Statutes Section 38-502 through use of their City of Peoria employment by conduct inconsistent with the proper discharge of the employee's duty.

(5) It is a violation of this code for any City employee or non employee to attempt to or influence any City of Peoria employee to violate the provisions of Sections 2-301

(Ord. No. 91-09, 2/12/91)
(Ord. No. 92-19, 5/12/92, Renumbered)
(Ord. No. 99-13, 4/6/99, Amended) SUPP.
1999-2 (Ord. No. 08-____, 1/15/08)

through 2-327 of this code of breach the code of ethical conduct set forth in this section.

(6) It is a violation of this code for any person preparing specifications or plans pursuant to this code or any policy or procedure of the city to receive any direct pecuniary benefit from the utilization of such plans or specifications.

(7) It is a violation of this code for any employee or agent acting on behalf of the City to directly or indirectly participate in or benefit or receive any pecuniary benefit from a procurement when the employee, agent or a relative as that term is defined in Arizona Revised Statutes Section 38-502 has a financial interest in the business or organization receiving the procurement.

(8) It is a violation of this code for any person to offer, give or agree to give any employee or former employee of the City or for any employee or former employee of the City to solicit, demand, accept, or agree to accept from another person, any valuable thing or valuable benefit that would not accrue in the performance of their official duties or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing content of any specification or procurement standard, rendering of advice, investigation, auditing or in any advisory capacity in any proceeding or application request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement of a contract or subcontract, or to any solicitation or proposal therefor. No administrative action taken for violations of this subsection shall be construed to preclude criminal prosecution of an employee or former employee or any other person under the provisions of Arizona Revised Statutes Sections 38-501 through 38-511.

(a) It is no defense to a violation of this subsection that the employee to whom a benefit or offer of employment was made, or agree to be made was not qualified to act in the desired manner.

(b) An employee or person may violate this section by intentionally or knowingly engaging in a violation or by recklessly or negligently engaging in a violation. The state of mind shall only be considered in imposing the penalty for such violation.

(9) It is a violation of this code for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Violation of this standard shall constitute grounds for termination of a contract with the City and debarment of the vendor from doing any further business with the City. This information shall be included as a special term and condition of all city contracts. Notwithstanding any administrative penalty imposed by the City, violation of this provision shall be deemed a class one misdemeanor punishable by a penalty of not less than five hundred (\$500.00), together with restitution to the City for any additional costs incurred as a result of violation of this provision. Venue shall be deemed to occur in the City of Peoria.

(10) It is a violation of this code for a person to be retained, or to retain a person, to solicit or secure a City of Peoria contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide established selling agencies for the purpose of securing business.

(11) It is a violation of this code for any employee who is participating directly or indirectly in the procurement process to

become the employee of any person under contract with the City concerning any matters that the employee participated in the procurement process for a period of twelve months following their employment with the City of Peoria. The Human Resources Department shall advise terminating employees of this provision.

(12) It is a violation of this code for any employee or former employee of the City to disclose or use confidential information acquired by the employee in the performance of their official duties for anticipated pecuniary benefit, or for the actual or anticipated pecuniary benefit of any other person.

State Law Reference: A.R.S. §38-502. Conflict of Interest Definitions.

(Ord. No. 91-09, 2/12/91)

(Ord. No. 92-19, 5/12/92, Renumbered)

(Ord. No. 99-13, 4/6/99, Amended) SUPP. 1999-2

SECTION 52. New P.C.C. § 2-327.1. Chapter 2, Section 2-327.1 of the Peoria City Code (1992) pertaining to *General Standards of Ethical Conduct* is created to read as follows:

Sec. 2-327.1. General Standards of Ethical Conduct.

(1) General Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

In order to fulfill this general prescribed standard, employees must also meet the specific standards including Employee Conflict of Interest; Employee Disclosure Requirements; Gratuities and Kickbacks; Prohibition Against Contingent Fees; Restrictions on Employment of Present and Former Employees; and Use of Confidential Information.

(2) General Ethical Standards for Non-Employees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this code and procurement guidelines is also a breach of ethical standards.

ABA Model Procurement Code Reference 12-202

(Ord. No. 08-____, 1/15/08)

SECTION 53. New P.C.C. § 2-327.2. Chapter 2, Section 2-327.2 of the Peoria City Code (1992) pertaining to *Criminal Sanctions* is created to read as follows:

Sec. 2-327.2. Criminal Sanctions.

To the extent that violations of the ethical standards of conduct set forth in this Part constitute violations of the Arizona Revised Statutes Section 38-501 through Section 38-511, they shall be punishable as provided therein. Such sanctions shall be in addition to the civil remedies set forth in this Article.

ABA Model Procurement Code Reference 12-203

(Ord. No. 08-___, 1/15/08)

SECTION 54. New P.C.C. § 2-327.3. Chapter 2, Section 2-327.3 of the Peoria City Code (1992) pertaining to *Employee Conflict of Interest* is created to read as follows:

Sec. 2-327.3. Employee Conflict of Interest.

(1) Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that:

- (a) the employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- (b) a business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- (c) any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(2) Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the Materials Manager.

(3) Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, request to the Materials Manager for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(4) Notice. Notice of this prohibition shall be provided in in the procurement file.

ABA Model Procurement Code Reference 12-204

(Ord. No. 08-___, 1/15/08)

SECTION 55. New P.C.C. § 2-327.4. Chapter 2, Section 2-327.4 of the Peoria City Code (1992) pertaining to *Employee Disclosure Requirements* is created to read as follows:

Sec. 2-327.4. Employee Disclosure Requirements.

(1) Disclosure of Benefit Received from Contract. Any employee who has, or obtains any benefit from, any contract with a business in which the employee has a financial interest shall

report such benefit to the Materials Manager; provided, however, this Section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(2) Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit, and fails to report such benefit to the Materials Manager, is in breach of the ethical standards of this Section.

ABA Model Procurement Code Reference 12-205

(Ord. No. 08-___, 1/15/08)

SECTION 56. New P.C.C. § 2-327.5. Chapter 2, Section 2-327.5 of the Peoria City Code (1992) pertaining to *Gratuities and Kickbacks* is created to read as follows:

Sec. 2-327.5. Gratuities and Kickbacks.

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

(2) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

ABA Model Procurement Code Reference 12-206

(Ord. No. 08-___, 1/15/08)

SECTION 57. New P.C.C. § 2-327.6. Chapter 2, Section 2-327.6 of the Peoria City Code (1992) pertaining to *Prohibition Against Contingent Fees* is created to read as follows:

Sec. 2-327.6. Prohibition Against Contingent Fees.

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

ABA Model Procurement Code Reference 12-207

(Ord. No. 08-___, 1/15/08)

SECTION 58. New P.C.C. § 2-327.7. Chapter 2, Section 2-327.7 of the Peoria City Code (1992) pertaining to *Restrictions on Employment of Present and Former Employees* is created to read as follows:

Sec. 2-327.7. Restrictions on Employment of Present and Former Employees.

(1) Contemporaneous Employment Prohibited. Except as may be permitted by this code or procurement guidelines, it shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed. Notice of this provision shall be provided in accordance with regulations promulgated by the Materials Manager.

(2) Restrictions on Former Employees in Matters Connected with Their Former Duties.

(a) Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the city, in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy,

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the city is a party or has a direct and substantial interest.

(b) One Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible. It shall be a breach of ethical standards for any former employee, within one year after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the city, in connection with any:

- (i) judicial or other proceeding, application, request for a ruling, or other determination;
- (ii) contract;
- (iii) claim; or
- (iv) charge or controversy,

in matters which were within the former employee's official responsibility, where the city is a party or has a direct or substantial interest.

(3) Disqualification of Business When an Employee Has a Financial Interest. It shall be a breach of ethical standards, Arizona Revised Statutes Section 38-502, for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than the city, in connection with any:

- (a) judicial or other proceeding, application, request for a ruling, or other determination;
- (b) contract;
- (c) claim; or
- (d) charge or controversy,

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the city is a party or has a direct and substantial interest.

ABA Model Procurement Code Reference 12-208

(Ord. No. 08-___, 1/15/08)

SECTION 59. New P.C.C. § 2-327.8. Chapter 2, Section 2-327.8 of the Peoria City Code (1992) pertaining to *Use of Confidential Information* is created to read as follows:

Sec. 2-327.8. Use of Confidential Information.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

ABA Model Procurement Code Reference 12-209

(Ord. No. 08-___, 1/15/08)

SECTION 60. Providing for Separability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision; and such shall not effect the validity of the remaining portions hereof.

SIGNATURES ON FOLLOWING PAGE

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona this 15th day of January, 2008.

Bob Barrett, Mayor
Date Signed: _____

ATTEST:

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

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Effective Dates: _____