

ORDINANCE 2924; COUNCIL BILL 20-032

AN EMERGENCY ORDINANCE AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO AMEND THE PROCUREMENT CODE, UNDER CHAPTER 24 OF THE MUNICIPAL CODE, TO ACCOMMODATE EMERGENCY PROCUREMENT MEASURES.

The City Council is informed that:

WHEREAS, on April 3, 2020 the City Council approved \$1,072,500 in emergency assistance to assist with the impact to City residents caused by the Public Health Order to address the Coronavirus and the City's response to the Public Health Order allows City management and personnel to act: to assure an adequate local public health infrastructure, to promote a healthy community and healthy behavior, to minimize the spread of communicable disease, to protect against environmental health hazards, to prepare for and respond to emergencies, and to assure health services to its residents; and

WHEREAS, the City Manager's Office received guidance from City Council to amend the City's Procurement Code to accommodate to the current Public Health Order; and

WHEREAS, Article V, Section 5.10. Procurement, of the City of Las Cruces Charter stipulates that City Council shall adopt a Procurement Code consisting of procurement rules, regulations and procedures which is codified in the Las Cruces Municipal Code (LCMC), 1997, as amended in Chapter 24, Procurement Code; and

WHEREAS, City staff has reviewed the Procurement Code, LCMC, Chapter 24, and recommends revisions based on a state of emergency; and

WHEREAS, the recommended changes include adding the definition of an emergency, specifically when there exists an immediate threat to public health, welfare, or safety and adding an exemption for the procurement of services, and supplies and construction materials when such an authorized state of emergency exists, which includes but is not limited to: health care related goods or services; food and water; health and hygiene products; or other basic life necessities and the City Manager may authorize emergency procurement under this provision.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the City of Las Cruces:

(I)

THAT, Chapter 24, Procurement Code, Sections 24-1 and 24-4 of the LCMC is hereby amended and adopted, as shown in Exhibit "A", attached hereto and made a part of this Emergency Ordinance.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 10 day of April 2020



APPROVED



Mayor

ATTEST:

Christine Rivera
City Clerk - Acting

Moved by: Yvonne Flores

Seconded by: Gabe Vasquez

AYES Kasandra Gandara, Gabe Vasquez, Gill Sorg, Ken Miyagishima, Yvonne Flores, Tessa Abeyta-Stuve, Johana Bencomo

NAYS



**2924; Council
Bill 20-032**

Council Action and Executive Summary

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

District:	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input checked="" type="checkbox"/> 6	Adopted:	April 10, 2020
1st Reading:		Department:	Financial Services
Drafter:	Jose Cardona	Line of Business:	Procure To Pay
Program:			

Title:	AN EMERGENCY ORDINANCE AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO AMEND THE PROCUREMENT CODE, UNDER CHAPTER 24 OF THE MUNICIPAL CODE, TO ACCOMMODATE EMERGENCY PROCUREMENT MEASURES.
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TYPE OF ACTION: ☐ Administrative ☒ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

To amend the City's Procurement Code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On April 3, 2020 the City Council approved \$1,072,500 in emergency assistance to assist with the impact to City residents caused by the Public Health Order to address the Coronavirus. The City's response to the Public Health Order allows City management and staff to assure an adequate local public health infrastructure, promote a healthy community and healthy behavior, minimize the spread of communicable disease, protect against environmental health hazards, prepare for and respond to emergencies, and assure health services to its residents.

The City Manager's Office received guidance from City Council to amend the City's Procurement Code to accommodate emergency proclamations. Article V, Section 5.10. Procurement, of the City of Las Cruces Charter stipulates that City Council shall adopt a Procurement Code consisting of procurement rules, regulations and procedures. City staff has reviewed the Procurement Code, LCMC, Chapter 24, and recommends revisions based on a state of emergency.

The recommended changes include adding the definition of an emergency, specifically when there exists an immediate threat to public health, welfare, or safety and adding an exemption for the procurement of services, and supplies and construction materials when such an authorized state of emergency exists. This includes but is not limited to: health care related goods or services; food and water; health and hygiene products; or other basic life necessities. The City Manager may authorize emergency procurement under this provision.

The amendment to the City's Procurement Code will streamline and improve the emergency procurement process and assist in meeting the needs of the City.

SUPPORT INFORMATION:

Exhibit A - Amended Procurement Code for Council packet (Emergency Procurement) 04.07.2020 (A)

ANNUAL BUDGET APPROVAL:

- ☐ Yes
- ☐ No
- ☒ N/A

Does this action amend the Capital Improvement Plan (CIP)?

- ☐ Yes
- ☐ No
- ☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Emergency Ordinance and amend the Procurement Code to make the necessary changes.
2. Vote "No"; this action will not approve the Emergency Ordinance and the Procurement Code will remain as status quo.
3. Vote to "Amend"; this could modify the Ordinance based on direction from City Council to Staff.
4. Vote to "Table"; this will impact the City's response to the current Public Health Order and City Council will need to provide direction to Staff.

Sec. 24-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

All definitions listed within New Mexico Statutes sections 13-1-21 through 13-1-199, NMSA, 1978, plus, sections 13-4-1 through 13-4-43, NMSA, 1978, are incorporated herein by reference. Wherever difference exists between such statutory definitions and any definitions within this chapter, the definition of this chapter shall prevail.

Agreement means two or more persons having common understanding about responsibilities, obligations, duties and rights.

Approved equals means approved specifications as established by the industry or the using agency.

Bid means a response to a procurement solicitation issued pursuant to section 24-91 of this chapter.

Bidder means a person who submits a quote/bid in response to a solicitation for respective, competitive quotes/bids.

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

Brand name or equal specifications means a specification limited to one or more items by manufacturers' names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

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

Calendar days means all days in a month including weekend, holidays, etc.

Contingency means an amount set aside to address unforeseen issues.

Contract means agreement between two or more persons authorized to legally bind their interests by setting forth what each person will or will not do in the procurement of tangible personal property, professional or nonprofessional services, or construction.

Contract limitations and change orders means a construction related written order directing the contractor to make a change, which the contract authorizes with or without the contractor's consent.

Emergency. For the purposes of this section, an emergency is (a) when an emergency procurement of supplies, services, or construction items is necessary when there exists an immediate threat to public health, welfare, or safety; or (b) or as defined by Article III, Sec. 9-41, and authorized in accordance with LCMC Article III, et. seq.

Employee means an individual drawing salary or wages from the city, whether elected or not; any uncompensated individual performing personal services for the city or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of the city; and any uncompensated individual serving as an elected official of the city.

Financial interest means:

- (1) Ownership of one percent or more of any property or business; or
- (2) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity means anything of value that is presented or promised in anticipation of receiving a consideration, whether or not the consideration is less than, equal to or greater than the value presented or promised.

Invitation for bid/invitation to bid (IFB or ITB) means all documents, whether attached or incorporated by reference, used for soliciting sealed bids whereby award is based upon the lowest price that meets specifications.

Local business means a business that has a valid city business certificate issued through the City of Las Cruces Community Development Department.

Offerer (offeror) means a person submitting a proposal in response to a competitive request for proposals.

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

Pricing data means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Procurement means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, service, or construction, including needs analysis, specification development, competitive or noncompetitive solicitation of sources, contract development, negotiation and execution, and all phases of contract administration.

Proposal means a response to a competitive procurement solicitation issued pursuant to section 24-92 of this chapter.

Public agency means an administrative division of city, state or federal government.

Qualified products list means an approved list of tangible goods, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, a determination was made that the list met applicable specification requirements.

Quote means a response to a procurement solicitation issued pursuant to section 24-94 of this chapter.

Request for proposals (RFP) means a competitive solicitation of proposals conducted for the purchase of goods/services/construction whereby the responses are evaluated considering multiple, weighted criteria and the resulting contract is awarded based upon the response ranked highest considering such criteria.

Request for quote (RFQ) means a competitive solicitation quotes conducted for the purchase of goods/services/construction, whereby award is based upon the lowest price that meets specifications from a local business or non-local business as deemed practical.

Supplies includes tangible goods including, but is not limited to, equipment, materials, rolling stock, books, fuel, tools, printed media.

Technical services means research and development (R&D) work, the development and installation of management information systems (MIS), materials requirement planning (MRP) systems, and the development of technical manuals, printing services, and repair services.

Using agency means any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this chapter.

Working days means only those days per City calendar in which City staff are available to address, observe, or otherwise handle contractual issues as they arise. The following days are normally not considered working days: City Holidays, Saturdays, Sundays, and days in which the City Manager has closed City Offices due to inclement weather or some other specified emergency.

Sec. 24-4. - Authorized exemptions.

This chapter shall not apply to the following:

- (1) Procurement of goods, services or construction from state agencies, public bodies or external procurement units.
- (2) Procurement of publicly provided or publicly regulated gas, electricity, water, sewer or refuse collection services.
- (3) Purchases of books and periodicals from publishers or copyright holders thereof to include publications offered on CDs, videos, or the Internet.
- (4) Travel or shipping by common carrier or by private conveyance, or to meals and lodging. Payment for conference registrations, membership dues, or any other similar items, which are administrative in nature and are determined to be non-competitive by the city purchasing manager.
- (5) Purchase of livestock.
- (6) Art objects or artifacts or for their creation.
- (7) Procurement from self-determination corporations or other such enterprises designed and operated to assist in the care or maintenance of the sick and indigent and the prevention thereof, and aided by state or federal antipoverty programs or through private philanthropy.

- (8) Leases, exchanges or purchases of real property or a permanent interest in land.
- (9) Services of bond underwriters.
- (10) Services of expert witnesses needed in conjunction with litigation, court reporting services and legislative activities.
- (11) Purchases, rentals, leases (personal and real property), and professional/technical services contracts necessary for the investigation of criminal activities. The police department may purchase such materials and services without quotations, requests for proposals, or bids if such would compromise a criminal investigation as determined by the chief of police in writing. All funds expended for this type activity will be properly receipted and accounted for with supporting documentation. All documentation will be maintained by the police department and shall be subject to internal audit. Rentals, leases, and professional/technical services will be limited to the term of an investigation.
- (12) Contracts with professional entertainers.
- (13) Advertising in all media.
- (14) Promotional goods intended for resale or for the procurement of printing services for materials produced and intended for resale.
- (15) Subscription services.
- (16) Contracts for retirement and other benefits.
- (17) Services provided by lobbyists or legislative experts.
- (18) Contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration.
- (19) Contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts.
- (20) Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act.202
- (21) Procurement of services, supplies, and construction materials when an emergency exists as defined by LCMC Art. I, Sec. 24-1. The duration for this exemption shall occur in accordance with the state of emergency as authorized by Art. III, Sec. 9-38, and shall terminate concurrently with the authorized state of emergency. Procurement under this section shall be limited to emergency services, supplies, and construction materials for the provision of public health, welfare, or safety, including but not limited to: health care related goods or services; food and water; health and hygiene products; or other basic life necessities. The city manager may authorize the purchasing manager or designee to make emergency procurement under this provision up to an amount of \$250,000. This provision shall otherwise comply with LCMC Sec. 24-65 and Sec. 24-96.