

ORDINANCE NUMBER 15-12

AN ORDINANCE AMENDING ARTICLE V OF THE ROSWELL CITY CODE PERTAINING TO PURCHASING PROCEDURES, AND PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT, AND PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE

BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Article V of the Roswell City Code is hereby amended by adding a new Section 2-141 thereof, entitled “Purchasing director”, to read as follows:

ARTICLE V. PURCHASING PROCEDURES

Section 2-141 Application of Procurement Code

- (a) “Procurement Code” shall mean the provisions of the New Mexico Procurement Code as set forth in sections 13-1-28 through 13-1-199, NMSA 1978, and all amendments thereto following the effective date of this ordinance.
- (b) The City of Roswell, as a non-charter municipality in the State of New Mexico, is subject to the provisions of the Procurement Code.
- (c) The purchasing division of the finance department shall be the central purchasing office for the city, as that term is defined in the Procurement Code.
- (d) The city manager is authorized to adopt and amend policies and procedures for purchases of tangible personal property, services and construction on behalf of the city that are consistent with the provisions of the Procurement Code. The policies and procedures shall be updated to conform to changes made to the Procurement Code by the state legislature. The city manager may adopt additional requirements and controls for procurements which are more restrictive than the Procurement Code.
- (e) The threshold amounts set forth under the definition of “small purchases” under the Procurement Code (NMSA 1978 §13-1-125), as may be amended, shall apply as part of the city’s policies and procedures for the purchases of tangible personal property, services and construction on behalf of the city.
- (f) All purchases of tangible personal property, services and construction on behalf of the city shall be subject to the city’s policies and procedures for purchasing unless otherwise exempted by the provisions of the Procurement Code.

SECTION 2. Article V of the Roswell City Code is hereby amended by renumbering Section 2-141 thereof as Section 2-142, and amending the renumbered section to read as follows:

Section 2-142. Purchasing agent

- (a) The purchasing agent shall be the chief procurement officer of the city, and shall be responsible for the control of procurement of items of tangible personal property, services, and construction in accordance with ~~this~~ the provisions of the Procurement Code, and the city’s policies and procedures relating to procurements. The purchasing agent shall receive and maintain any necessary certifications or qualifications for the position of chief procurement officer.
- (b) In accordance with the Procurement Code and the city’s policies and procedures relating to procurements and subject to the supervision of the city finance director, the purchasing agent shall:
 - a. Purchase or supervise the purchasing of all tangible personal property, services and construction needed by the city;
 - b. Sell, trade, or otherwise dispose of surplus supplies, personal property, and equipment belonging to the city;

- c. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with city departments using the supplies, services and construction.
- (c) Consistent with this Code, and with the approval of the city manager, the purchasing agent may adopt operational procedures relating to the execution of his duties.
- (d) With the approval of the city manager, the purchasing agent may delegate authority to purchase certain tangible personal property, services, or construction to other city officials, if such delegation is deemed necessary for the effective procurement of those items.
- (e) The city manager may designate another person to act as chief procurement officer on a temporary basis in the event of a vacancy in the position of purchasing agent or if the purchasing agent is unable to act for any reason as chief procurement officer.

SECTION 3. Article V of the Roswell City Code is hereby amended by renumbering Section 2-142 thereof as Section 2-143, and amending the renumbered section to read as follows:

Section 2-143. Debarment procedures

- (a) The purchasing division may suspend a person from consideration for award of contracts if the purchasing division, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to subsection (c) below. The term of a suspension pursuant to this section shall not exceed three months; however, if a person, including a bidder, offeror or contractor, has been charged with a criminal offense that would be a cause for debarment pursuant to subsection (c) below, the suspension shall remain in effect until the criminal charge is resolved and the person is debarred or the reason for suspension no longer exists.
- (b) The purchasing division, after reasonable notice to the person involved, shall have authority to recommend to the City Council the debarment of a person for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three years. The authority to debar shall be exercised by the City Council in accordance with rules that shall provide for reasonable notice and a fair hearing prior to debarment.
- (c) The causes for debarment or suspension occurring within three years of the date final action on a procurement is taken include but not limited to the following:
 - (1) Criminal conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;
 - (2) Civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;
 - (3) Conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving stolen property of for violation of federal or state tax laws;
 - (4) Conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;

- (5) Criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;
- (6) Civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;
- (7) Civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act;
- (8) Violation by a bidder, offeror or contractor of contract provisions, as set forth below, of a character which is regarded the city purchasing agent to be so serious as to justify debarment action:
 - a. A willful failure to perform in accordance with one or more contracts; or
 - b. A history of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and provided further 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.
- (9) Any other cause the city purchasing division determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity.
- (10) For a willful violation by a bidder, offeror or contractor of the provisions of the New Mexico Procurement Act.

(d) As used in this section, the terms “bidder”, “offeror” and “contractor” include principals, officers, directors, owners, partners and managers of the bidder, offeror or contractor.

(e) As used in this section, the term “person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity.

SECTION 4. Article V of the Roswell City Code is hereby amended by adding a new Section 2-144 thereof, entitled “Debarment or suspension; notice of determination”, to read as follows:

Section 2-144 Debarment or suspension; notice of determination

- (a) The City Council shall issue a written determination to debar or suspend. The determination shall:
 - (1) state the reasons for the action taken; and
 - (2) inform the debarred or suspended business involved of its rights to judicial review pursuant to Section 156 of the Procurement Code.
- (b) A copy of the determination made by the City Council shall be:
 - (1) mailed to the last known address on file with the purchasing division, by first class mail, within three business days after issuance of the written determination; or
 - (2) transmitted electronically within three business days after issuance of the written determination.

SECTION 5. Article V of the Roswell City Code is hereby amended by adding a new Section 2-145 thereof, entitled "Continuation of current contracts with debarred or suspended business", to read as follows:

§ 2-145 Continuation of current contracts with debarred or suspended business

The continuation by the city of contracts or subcontracts in existence with a person or business who as the time is debarred, suspended or proposed for debarment shall be determined by the provisions of NMSA 1978 § 13-1-180.1.

SECTION 6. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or part of any ordinance heretofore repealed.

SECTION 7. If any section, paragraph, clause or provisions of this ordinance for any reason shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other part of this ordinance.

SECTION 8. This ordinance shall be effective after five (5) days following its publication as required by law.

PASSED, ADOPTED, SIGNED and APPROVED the 6th day of August, 2015.

CITY SEAL

Dennis Kintigh, Mayor

ATTEST: _____
Sharon Coll, City Clerk