

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, COUNTY OF MARICOPA, STATE OF ARIZONA, AMENDING CHAPTER 4 ADMINISTRATION OF THE WICKENBURG TOWN CODE BY AMENDING ARTICLE 4-4 PURCHASING ADDING FOUR (4) NEW SUBSECTIONS SPECIFICALLY, SECTION 4-4-18 PROTEST OF SOLICITATIONS AND CONTRACT AWARDS; SECTION 4-4-19 STAY OF PROCUREMENTS DURING PROTEST; SECTION 4-4-20 RESOLUTION OF SOLICITATION AND CONTRACT AWARD PROTESTS; AND SECTION 4-4-21 REMEDIES BY THE TOWN CLERK AND/OR TOWN COUNCIL; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, AND PROVIDING FOR SEVERABILITY

WHEREAS, the Town of Wickenburg has benefited tremendously by the Maricopa County Community Development Block Grant (CDBG) Program; and,

WHEREAS, in order to be in compliance with all regulations associated with the CDBG Program, the Town has been directed to amend its Town Code to include four (4) additional federal regulations and procedures regarding protest of solicitations and contract awards.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, COUNTY OF MARICOPA, STATE OF ARIZONA, AS FOLLOWS:

SECTION I. IN GENERAL

It is hereby ordained by the Mayor and Common Council of the Town of Wickenburg that the following changes be made to Chapter 4, ADMINISTRATION, specifically Section 4-4 PURCHASING by adding four (4) new Subsections as follows:

SECTION 4-4-18 PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

PURSUANT TO THE ARIZONA ADMINISTRATIVE CODE: R2-7-A-901

- A. ANY INTERESTED PARTY MAY PROTEST A SOLICITATION, A DETERMINATION THAT A PURCHASE OR CONTRACT IS NOT REQUIRED TO BE BID, OR THE AWARD OF A CONTRACT.
- B. THE INTERESTED PARTY SHALL FILE THE PROTEST, IN WRITING, WITH THE TOWN CLERK'S OFFICE, AND SHALL INCLUDE THE FOLLOWING INFORMATION:
 - 1) THE NAME OF PERSON FILING PROTEST; AND,
 - 2) THE NAME OF THE BUSINESS (IF APPLICABLE) FILING THE PROTEST; AND,
 - 3) THE FULL ADDRESS (BOTH PHYSICAL AND MAILING IF DIFFERENT), TELEPHONE AND FAX NUMBER OF THE PROTESTING PARTY; AND,
 - 4) THE ORIGINAL SIGNATURE OF THE PROTESTING PARTY OR THE PROTESTING PARTY'S REPRESENTATIVE; AND,
 - 5) IDENTIFICATION OF THE SOLICITATION OR CONTRACT NUMBER; AND,
 - 6) A DETAILED STATEMENT OF THE LEGAL AND FACTUAL GROUNDS OF THE PROTEST, INCLUDING COPIES OF RELEVANT DOCUMENTS; AND,
 - 7) THE FORM OF RELIEF BEING REQUESTED.
- C. IF THE PROTEST IS BASED UPON ALLEGED IMPROPRIETIES IN A SOLICITATION THAT ARE APPARENT BEFORE THE DEADLINE FOR SUBMITTAL, THE PROTESTING PARTY SHALL FILE THE PROTEST BEFORE THE DEADLINE FOR SUBMITTAL OF A BID.
- D. IN CASES OTHER THAN THOSE COVERED IN SUBSECTION C, THE PROTESTING PARTY SHALL FILE THE PROTEST WITHIN TEN (10) CALENDAR DAYS AFTER THE TOWN CLERK CONDUCTS THE PUBLIC BID OPENING AS LONG AS THE BID FILE IS AVAILABLE FOR PUBLIC INSPECTION.
- E. THE PROTESTING PARTY MAY SUBMIT A WRITTEN REQUEST TO THE TOWN CLERK FOR AN EXTENSION OF THE TIME LIMIT FOR PROTEST FILING SET FORTH IN SUBSECTION D. THE WRITTEN REQUEST SHALL BE SUBMITTED BEFORE THE EXPIRATION OF THE TIME LIMIT SET FORTH IN SUBSECTION D - TEN (10) CALENDAR DAYS AND SHALL SET FORTH GOOD CAUSE AS TO THE SPECIFIC ACTION OR INACTION OF THE TOWN THAT RESULTED IN THE PROTESTING PARTY BEING UNABLE TO SUBMIT THE PROTEST WITHIN THE TEN (10) CALENDAR DAYS. THE TOWN CLERK SHALL HAVE THE AUTHORITY TO APPROVE OR DENY THE REQUEST IN WRITING, STATE THE REASONS FOR THE DETERMINATION, AND, IF AN EXTENSION IS GRANTED, SET FORTH A NEW DATE FOR SUBMISSION OF THE FILING BUT SHALL NOT BE FOR LONGER THAN TWENTY (20) ADDITIONAL CALENDAR DAYS.

F. THE TOWN CLERK SHALL IMMEDIATELY GIVE NOTICE OF PROTEST TO ALL BIDDERS.

SECTION 4-4-19 STAY OF PROCUREMENTS DURING PROTEST

PURSUANT TO THE ARIZONA ADMINISTRATIVE CODE: 92-7-A902

- A. IF A PROTEST IS FILED BEFORE THE DEADLINE FOR SUBMITTAL OF BIDS, BEFORE THE AWARD OF CONTRACT, OR BEFORE THE PERFORMANCE OF A CONTRACT HAS BEGUN, THE TOWN CLERK SHALL, IN WRITING, MAKE A WRITTEN DETERMINATION TO EITHER:
- 1) PROCEED WITH THE SOLICITATION, AWARD OR CONTRACT PROCESS; OR,
 - 2) RECOMMEND TO THE TOWN COUNCIL TO STAY ALL OR PART OF THE PROCUREMENT IF THERE IS A REASONABLE PROBABILITY THE PROTEST WILL BE UPHOLD OR THAT A STAY IS IN THE BEST INTEREST OF THE TOWN.
- B. UPON DETERMINATION, THE TOWN CLERK SHALL PROVIDE THE PROTESTING PARTY, AND ALL OTHER INTERESTED PARTIES WITH A COPY OF THE WRITTEN DETERMINATION.

SECTION 4-4-20 RESOLUTION OF SOLICITATION AND CONTRACT AWARD PROTESTS

PURSUANT TO THE ARIZONA ADMINISTRATIVE CODE: R2-7-A-903

- A. ONLY THE MAYOR AND COMMON COUNCIL HAVE THE AUTHORITY TO RESOLVE A PROTEST.
- B. AFTER THE DETERMINATION HAS BEEN MADE PURSUANT TO SUBSECTION A, THE TOWN CLERK SHALL ISSUE A WRITTEN DECISION LETTER TO THE PROTESTING PARTY WITHIN SEVEN (7) DAYS AFTER A COUNCIL MEETING HAS BEEN HELD AND DETERMINATION BEEN MADE REGARDING A PROTEST FILED UNDER SECTION 4-4-18. THE TOWN CLERK SHALL FURNISH THE DECISION TO THE PROTESTING PARTY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR BY ANY OTHER METHOD THAT PROVIDES EVIDENCE OF RECEIPT WITH A COPY TO THE TOWN MANAGER AND TOWN COUNCIL.
- C. THE TOWN COUNCIL MAY REQUEST ONE EXTENSION NOT TO EXCEED THIRTY (30) DAYS IF THE REASON(S) CAN BE JUSTIFIED.
- D. IF THE TOWN COUNCIL FAILS TO HEAR AND ISSUE A DECISION WITHIN SIXTY (60) DAYS, THE PROTESTING PARTY MAY PROCEED AS IF THE TOWN CLERK HAD ISSUED AN ADVERSE DECISION.

SECTION 4-4-21 REMEDIES BY THE TOWN CLERK AND/OR TOWN COUNCIL

PURSUANT TO THE ARIZONA ADMINISTRATIVE CODE: R2-7-A-904

- A. IF THE TOWN CLERK AND/OR TOWN COUNCIL SUSTAINS A PROTEST IN WHOLE OR IN PART AND DETERMINES THAT A SOLICITATION, A DETERMINATION OF NOT SUSCEPTIBLE FOR AWARD, OR CONTRACT AWARD DOES NOT COMPLY WITH THIS ARTICLE 4-4, THE CLERK SHALL ASSIST COUNCIL IN IMPLEMENTING AN APPROPRIATE REMEDY.
- B. IN DETERMINING AN APPROPRIATE REMEDY, THE TOWN CLERK AND/OR TOWN COUNCIL SHALL CONSIDER ALL THE CIRCUMSTANCES SURROUNDING THE PROCUREMENT OR PROPOSED PROCUREMENT INCLUDING:
- 1) THE SERIOUSNESS OF THE PROCUREMENT DEFICIENCY;
 - 2) THE DEGREE OF PREJUDICE TO OTHER INTERESTED PARTIES OR TO THE INTEGRITY OF THE PROCUREMENT SYSTEM;
 - 3) THE GOOD FAITH OF THE PARTIES;
 - 4) THE EXTENT OF PERFORMANCE;
 - 5) THE COSTS TO THE TOWN;
 - 6) THE URGENCY OF THE PROCUREMENT;
 - 7) THE IMPACT ON THE TOWN'S MISSION; AND,
 - 8) OTHER RELEVANT ISSUES.
- C. THE TOWN CLERK AND/OR TOWN COUNCIL MAY IMPLEMENT ANY OF THE FOLLOWING APPROPRIATE REMEDIES:
- 1) DECLINE TO EXERCISE AN OPTION TO REVIEW UNDER THE CONTRACT;
 - 2) TERMINATE THE CONTRACT;
 - 3) AMEND THE SOLICITATION;

- 4) ISSUE A NEW SOLICITATION;
- 5) AWARD A CONTRACT CONSISTENT WITH THIS ARTICLE 4-4; OR,
- 6) RENDER SUCH OTHER RELIEF AS DETERMINED NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE 4-4.

SECTION II. REPEAL OF CONFLICTING ORDINANCES

All ordinances and parts of ordinances in conflict with the provisions of the Ordinance or any part of the Code adopted herein by reference are hereby repealed.

SECTION III. SEVERANCE CLAUSE

In any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the Code adopted therein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF WICKENBURG, STATE OF ARIZONA, ON THIS 2 DAY OF July, 2007.

R.R. Badowski
R.R. BADOWSKI, MAYOR

Date Signed: 7/2/07

ATTEST:
Donna Ables
Donna Ables, Deputy Town Clerk

Date Signed: 7/2/07

APPROVED AS TO FORM:

Susan D. Goodwin
Susan D. Goodwin, Town Attorney
Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.

Number of Councilmembers Present: 7
Number of Votes For: 7
Number of Votes Against: 0
Number of Abstentions: 0

CERTIFICATION

I HEREBY CERTIFY that the foregoing Ordinance Number 987 was duly amended, passed and adopted by the Common Council of the Town of Wickenburg, Arizona, at a regular meeting held on the 2 day of August 2007, and that a quorum was present at the meeting.

Donna Riffel
Donna Riffel, Town Clerk