

1 **CITY OF SANTA FE, NEW MEXICO**

2 **ORDINANCE NO. 2012-16**

3
4
5 **AN ORDINANCE**

6 **ADOPTING THE 2012 PROCUREMENT CODE PURSUANT TO ARTICLE IX, SECTION**
7 **9.02 OF THE SANTA FE MUNICIPAL CHARTER AND ARTICLE 11-13 SFCC 1987.**

8
9 **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

10 **Section 1. City of Santa Fe Procurement Code.** Pursuant to Article IX, Section 9.02
11 of the Santa Fe Municipal Charter and Article 11-13 SFCC 1987, the governing body shall adopt a
12 procurement code by ordinance which may be amended from time to time.

13 **Section 2. Legislative Findings.**

14 A. On November 30, 2011 the governing body adopted:

15 (1) Resolution No. 2011-66 that directed staff to prepare amendments to the
16 Purchasing Manual. Substantial amendments were made by staff to the Purchasing Manual
17 to provide a bid preference to non-local contractors who used local subcontractors when
18 bidding on city capital improvement contracts which is intended to increase the employment
19 of the unemployed and underemployed residents of Santa Fe who work in the construction
20 trades; and to establish allowances for veteran's bidding preference; and

21 (2) Resolution No. 2011-67 approving a \$22,000,000 gross receipts tax revenue
22 bond issue for municipal capital projects that will create jobs during this difficult economic
23 time; and

24 (2) Resolution No. 2011-68 that approved a \$22,800,000 general obligation bond
25 for municipal capital projects, for approval by the voters of Santa Fe, that would invest in

1 economic development projects that will create jobs during this difficult economic time.

2 C. On February 29, 2012, the governing body adopted:

3 (1) Resolution No. 2012-23, directing staff to establish a sweat-free procurement
4 policy; and

5 (2) Resolution No. 2012-26, directing staff to establish a buy American
6 procurement policy.

7 D. Due to the substantial and numerous amendments to the Purchasing Manual, the
8 Council has determined that it is in the best interest of the public to adopt by this Ordinance, the 2012
9 Procurement Code/Purchasing Manual, pursuant to the authority granted in Article IX, Section 9.02
10 of the Santa Fe Municipal Charter and Article 11-13 SFCC 1987.

11 E. Upon adoption, the Purchasing Manual shall be re-published with the publication
12 date clearly designated, and all amendments shall be incorporated therein.

13 **Section 3. Amendments.** The governing body and the procurement officer have
14 determined that the City procurement code/purchasing manual should be amended to reflect the above
15 referenced resolutions of the governing body, including but not limited to, buy American and sweat
16 free requirements, bid preferences for non-local contractors that use local subcontractors and
17 veteran's bid preference as well as any other changes that staff determines are needed for ease of
18 administration of the purchasing manual.

19 **A. Section 3, Definitions, of the Purchasing Manual is amended to incorporate the**
20 **following definitions:**

21 **3.102.1 SWEAT-FREE.** As it relates to purchasing, the term sweat-free refers to purchasing
22 policies that protect against slavery, forced overtime, child labor, excessive hours,
23 below-subsistence wages, discrimination, abuse, harassment and similar work place
24 violations and/or conditions and promotes purchasing policies that promote and protect
25 freedom and worker health and safety.

1 **3.110** VETERAN. For purposes of the Veteran Preference in Section 15, Veteran has the
2 same meaning as defined in 38 U.S.C. 101(2) quoted as follows: "2) The term
3 "veteran" means a person who served in the active military, naval, or air service, and
4 who was discharged or released therefrom under conditions other than
5 dishonorable."

6 **B. Section 4.1.6 of the Purchasing Manual is amended to read:**

7 **4.1.6** Procurement Requirements for Tangible Personal Property and Services, Including
8 Professional Services that Exceed \$5,000 up to \$49,999 or that exceed \$50,000.
9 Purchases of tangible personal property and services, including professional services,
10 that exceed \$5,000 require at least three verbal quotes. Purchases of tangible personal
11 property and services, including professional services that exceed \$5,000 but not more
12 than \$50,000 require at least three written quotes. Purchases of tangible personal
13 property exceeding \$50,000 require bids. Purchases of services, including professional
14 services, that exceed \$50,000 in one fiscal year, not including applicable tax, require
15 requests for proposals.

16 **C. Section 15 of the Purchasing Manual is amended to read:**

17 **15. PROCUREMENT ASSISTANCE, PREFERENCES AND REQUIREMENTS**

18 **15.1 PROCUREMENT ASSISTANCE TO SMALL BUSINESS**

19 **15.1.1** General Policy. It is the policy of the City to encourage small businesses, as defined in
20 Section 3.97 of this Manual, to do business with the City.

21 **15.1.2** Vendor Manual. The Purchasing Director shall issue a publication on how to do
22 business with the City and how to be put on the bidders list in addition to any other
23 reasonable action to ensure small businesses are invited to bid.

24 **15.1.3** Bonding Requirements. The Purchasing Director may reduce bid bond, performance
25 bond, or payment bond requirements to encourage procurement from small

1 businesses. If determined to be in the best interest of the City, the reduced bond
2 requirement must be so stated in the invitation for bid information. No reduction in
3 bonding may be applied if not stated in the invitation for bid. Small businesses are
4 defined as businesses which are not a subsidiary or division of another business and
5 which have an average annual volume for the proceeding three fiscal years not
6 exceeding \$1,500,000. If a bidder qualifies as a small business, the bond requirement
7 may be reduced. In order to qualify for the reduced bond the firm must submit signed
8 copies of the business tax returns for the last three years to indicate that the gross
9 volume receipts qualify. Performance bonds and payment bonds for construction
10 contracts may not be reduced to less than 50%. (See Section 28 PUBLIC WORKS
11 (CONSTRUCTION) CONTRACTS.)

12 **15.2 BUY AMERICAN AND BUY SWEAT FREE REQUIREMENT**

13 The City shall purchase goods, vehicles or items of tangible personal property
14 manufactured or assembled in the United States of America. The City shall purchase its
15 uniforms that are manufactured or assembled in sweat free businesses. Bids shall certify
16 compliance with these "Buy American" and "Buy Sweat-Free" requirements in bid
17 documents. The City may waive one or both of these requirements if it is in the best
18 interest of the City's finances to do so or if no such good, item of tangible personal
19 property, or uniforms exist for purchase.

20 **15.3 MINORITY BUSINESS PREFERENCE**

21 In order to attempt to increase the opportunity for the purchase of goods and services
22 from minority owned businesses, the Purchasing Division shall deem certified minority
23 businesses as those listed in the minority business directory to be on the City's bidders
24 list.

25 **15.4 STATE OF NEW MEXICO RESIDENT PREFERENCE AND LOCAL**

1 **(RESIDENT OF CITY AND/OR COUNTY OF SANTA FE) PREFERENCE**

2 **15.4.1 INTENT AND POLICY**

- 3 a. For the purposes of Section 15, the terms “resident business” and “resident
4 manufacturer” shall be defined as in N. M. Stat. Ann. Section 13-1-21 (1978).
- 5 b. The preference factor for resident preference applied to bids that qualify as a
6 resident business and/or resident manufacturer shall be a five percent (5%)
7 downward adjustment of the bid.
- 8 c. The preference factor for local preference applied to bids that qualify as a local
9 business and/or local manufacturer shall be a ten percent (10%) downward
10 adjustment of the bid.
- 11 d. Limitation. No bidder/proponent shall receive more than a 5% resident
12 preference or 10% local preference, as applicable preference pursuant to Section
13 15 on any one offer submitted. A bidder/proponent may not claim cumulative
14 preferences.
- 15 e. Intent. The City recognizes that the intent of the New Mexico Procurement
16 Code’s, Section 13-1-1 et seq. NMSA 1978, State resident preference statute is
17 to give New Mexico businesses and contractors an advantage over those
18 businesses, manufacturers and contractors from outside the State of New
19 Mexico. The underlying policy is to give a preference to those persons and
20 companies who contribute to the economy of the State of New Mexico by
21 maintaining businesses and other facilities within the state and giving
22 employment to residents of the state (1969 OP. Attorney Gen. No. 69-42.) The
23 City also has adopted a policy to include a local preference for those persons
24 and companies who contribute to the economy of the City and/or County of

1 Santa Fe by maintaining businesses and other facilities within the City and/or
2 County and giving employment to residents of the City and/or County.

3 **15.4.2 HOW TO SUBMIT AN APPLICATION FOR AN IN-STATE OF NEW**
4 **MEXICO BIDDER PREFERENCE**

5 The intent and policy of this preference is to apply the preference only when bids are
6 received from in-state businesses, manufacturers and contractors that are within five
7 percent (5%) of low bids received from out-of-state businesses, manufacturers and
8 contractors (13-1-21 (A)-1-21 (F) and 13-4-2 (C) NMSA 1978.)

9 (a) To qualify for this preference and to be considered a New Mexico in-state
10 resident for application of the in-state preference, the in-state bidder must have
11 included with its bid or proposal:

12 (1) A valid State of New Mexico purchasing certification number
13 evidencing State Purchasing Agent approval as an in-state resident in
14 accordance with Section 13-1-22 NMSA 1978.

15 (2) A valid resident business certificate or resident contractor certificate
16 issued by the New Mexico State Taxation and Revenue Department
17 starting January 1, 2012.

18 (b) For information on obtaining a State of New Mexico in-state purchasing
19 certification number, the prospective bidder should contact the Taxation and
20 Revenue Department at 1-505-827-0951 or log on to the web site:

21 <http://www.tax.newmexico.gov/Businesses/Pages/In->
22 [StatePreferenceCertification.aspx](http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx):

23 (c) As of January 1, 2012, the City of Santa Fe will only accept the new State
24 Preference Certification Forms.

25 (d) The in-state preference does not apply to contracts that use federal funding.

1 (e) If the bidder has met the above criteria, the low responsive in-state resident bid
2 shall be multiplied by .95. If that amount is then lower than the low responsive
3 bid of an out-of-state, non-resident bidder, the award will be based taking into
4 consideration the in-state, preference of the five percent (5%).

5 **15.4.3 REQUIREMENT TO BE CURRENT ON ALL STATE OF NEW MEXICO**
6 **RELATED BUSINESS TAXES**

7 To be considered for the in-state resident preference during the bid and request for
8 proposal process, the submitter of the bid and/or proposal shall be current on all State
9 of New Mexico related business taxes, including but not limited to, GRT, Property,
10 and Payroll taxes and submit proof thereof. The City Purchasing Officer may grant
11 an exception to this requirement if the submitter has worked out a payment plan with
12 the State of New Mexico Taxation and Revenue Department. A copy of the payment
13 agreement will need to be included with all of the other submittal requirements.

14 **15.4.4 NO IN-STATE RESIDENT PREFERENCE APPLIED IN CASES OF**
15 **COMPETING IN-STATE BIDDERS**

16 If the lowest responsive bid and the next lowest responsive bids within five percent (5%)
17 of the lowest bid are all from the state of New Mexico, then the in-state resident
18 preference will not be applied and the state purchasing certification number will not be
19 considered. To be considered an in-state bidder in this situation, the bidders must meet
20 the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978.
21 After examining the information included in the bid submitted, the Purchasing Director
22 may seek additional information of proof to verify that the business is a valid New
23 Mexico business. If it is determined by the Purchasing Director that the information is
24 not factual and the low responsive bid is actually an out-of-state bidder and not a New
25 Mexico business, then the procedures in the previous section may be applied.

1 **15.4.5**

HOW TO SUBMIT AN APPLICATION AND QUALIFY FOR LOCAL PREFERENCE

3 (a) Local Preference. The term “local”, for purposes of the “local preference” in
4 Section 15.4.5 shall mean:

5 (1) The bidder’s principal place of business of the enterprise must be
6 physically located within the Santa Fe County Geographic
7 Boundaries.

8 (2) The business location inserted on the Application Form must be a
9 physical location, street address or such. DO NOT use a post office
10 box or other postal address.

11 (3) Principal place of business must have been established no less than
12 six months preceding Application for Local Preference.

13 (b) Bids for Goods and Services. When bids for the purchase of goods or services
14 pursuant to Section 22 are received, the lowest responsive bid received from
15 those bidders in the local preference category one shall be multiplied by the
16 Local Preference Factor. The preference factor for local preferences applied to
17 bids shall be .90 and the local preference for proposals shall be 1.10. If the
18 resulting price of that bid receiving the preference is lower than or equal to the
19 lowest bid of all bids received, the contract shall be awarded to that bidder
20 receiving the preference. If no bids are received from bidders in the Local
21 Preference category one, or if the bid receiving the preference does not qualify
22 for an award after multiplication by the Preference Factor, the same procedure
23 shall be followed with respect to Resident Preference category two of bidders
24 listed to determine if the bid qualifies for award. The priority of categories of
25 bidders is:

1 the Local Preference requirements for specific projects or on a case by case
2 basis if it is the City's best interest to do so.

3 **15.4.6 LOCAL SUBCONTRACTOR PREFERENCE**

- 4 (a) Preference for Non-Local Primary Contractors Using Local Subcontractors.
5 Non-Local Contractors that do not qualify for the local preference as stated in
6 section 15.4.5 are eligible to receive a percent preference if qualified local
7 subcontractors are identified and used as subcontractors for the non-local
8 primary contractor on City Bids and Request for Proposals.
- 9 (b) Local subcontractors identified and used as subcontractors for the non-local
10 primary contractor must be registered and licensed with the City of Santa Fe.
- 11 (c) Local subcontractors identified and used as subcontractors for the non-local
12 primary contractor must be registered with the State of New Mexico as stated in
13 section 15.4.2.
- 14 (d) All local subcontractor documentation must be received at the time of submittal
15 of the Request for Bid or Request for Proposals.
- 16 (e) The local subcontractor must have been registered with the City of Santa Fe and
17 the State of New Mexico for a period of one calendar year before the Bid or
18 Request for proposal is publicly advertised.
- 19 (f) The percentage for local subcontractor preference shall be based on the amount
20 of work to be performed by the various subcontractors. The maximum
21 allowable percentage for local subcontractor preference is 10%. Example: on a
22 construction project of \$100,000, the stated dollar amount of work to be
23 completed by the local subcontractor is \$40,000 or 40%. The percentage for
24 local subcontractor preference in this Example would be 4%.
- 25 (g) The primary non-local contractor must not replace the local subcontractor

1 without authorized approval from the City Project Manager or the Purchasing
2 Officer.

3 **15.5 VETERANS PREFERENCE**

4 When a contract for supplies or services is to be awarded through competitive sealed
5 bidding pursuant to Section 22 or through request for proposals Section 23, an
6 amount equal to five percent (5%) of the bid price shall be subtracted from the bid of
7 each bidder that is either a contractor that is at least fifty-one percent (51%) veteran-
8 owned or a contractor with a workforce that is at least fifty-one percent (51%)
9 comprised of veterans. When a contract for supplies, services, or professional
10 services is to be awarded through a request for competitive sealed proposals pursuant
11 to Section 23, one of the evaluation factors stated in the request shall be whether the
12 offeror is either a contractor that is at least fifty-one percent (51%) veteran-owned or
13 a contractor with a workforce that is at least fifty-one percent (51%) comprised of
14 veterans. The relative weight assigned to the offeror's status as a veteran or as having
15 a workforce that is at least fifty-one percent (51%) comprised of veterans shall be
16 five percent (5%). Any contractor that claims the veterans' preference pursuant to
17 this section when submitting a bid or offer shall submit, along with the bid or offer,
18 certification of the contractor's status as either at least fifty-one percent (51%)
19 veteran-owned or as having a workforce that is at least fifty-one percent (51%)
20 comprised of veterans. The procurement officer shall create a certification process to
21 be used by contractors to satisfy the requirements of this subsection and that may be
22 relied upon by the City in giving a preference pursuant to this section.

23 **D. A new Section 28.8 of the Purchasing Manual is ordained to read:**

24 **28.8 COMMUNITY WORKFORCE AGREEMENTS**

25 **28.8.1 Legislative Findings.** The Governing Body finds that:

- 1 (a) The use of community workforce agreements for construction projects in
2 excess of \$500,000, is in the best interest of the City, in building large capital
3 outlay projects funded by Gross Receipts Tax and General Obligation bonds.
- 4 (b) Community workforce agreements will ensure that:
- 5 (1) Time schedules are met for large-scale construction projects;
- 6 (2) Large-scale construction projects will be completed with highly
7 qualified workers;
- 8 (3) The project will meet the highest standards of safety and quality;
- 9 (4) There are peaceful, orderly, and mutually binding procedures for
10 resolving labor issues to:
- 11 (i) Avoid labor conflicts; and
- 12 (ii) Promote overall stability throughout the duration of the
13 project by providing legally enforceable guarantees that the
14 projects will be carried out in an orderly and timely manner
15 without strikes, lockouts, or slowdowns in light of complex
16 project elements and diversity or numerosity of contractors.
- 17 (c) Community workforce agreements will allow the City to more accurately
18 predict the costs of large-scale construction projects and ensure fair and
19 reasonable working conditions for all workers for large-scale City
20 construction projects.

21 **28.8.2 Applicability; Contracts Over \$500,000.** Public works Construction contracts in
22 excess of \$500,000 shall be governed by a Community Workforce Agreement
23 (“CWA”) and shall be known as “Covered Projects.”

24 **28.8.3 Incorporation by Reference.** CWAs shall be included in any invitation for bid
25 packet used to initiate competitive sealed bid procurement for Covered Projects,

1 which shall include all contractual terms and conditions applicable to the
2 procurement, as described in Section 22.1 of this Purchasing Manual.

3 **28.8.4 Variable Terms.** The terms of any construction project CWA may vary in
4 accordance with the scope, duration, cost, or other characteristics of any Covered
5 Project and such terms shall be determined by the City in any Invitation for Bid
6 Packet on a project-by-project basis. Provided, however, that any CWA shall
7 incorporate terms to promote the following objectives:

- 8 (a) Make available a ready and adequate supply of highly trained and skilled
9 trade and craft workers;
- 10 (b) Accurately determine project labor costs at the outset of any construction
11 project;
- 12 (c) Establish working conditions for all construction trades and crafts for the
13 duration of the project;
- 14 (d) Negotiate legally enforceable commitments with all parties to a construction
15 project to ensure labor stability and labor peace over the life of the project;
- 16 (e) Facilitate increases in the number of trained and skilled local construction
17 workers through cooperative procedures and apprenticeship programs; and
- 18 (f) Promotes the hiring of local subcontractors in the construction of large-scale
19 public works projects funded by gross receipts tax and general obligation
20 bonds.
- 21 (g) Strive to develop a local workforce and use at least fifty percent (50%) of
22 local workers in public works projects.

23 **E. Section 29.2 of the Purchasing Manual is repealed and a new Section 29.2 is**
24 **ordained to read:**

25 **29.2 CONTINGENCY FEE CONTRACTS AUTHORIZED**

- 1 (a) In addition to other forms of payment of contractors provided for in this
2 Manual, the City is authorized to enter into contracts, on a contingency fee
3 basis, including but not limited to:
- 4 (1) Contracts with outside private attorneys; or
 - 5 (2) Contracts with collection agencies to undertake recovery efforts for
6 delinquent utility charges or unpaid taxes by legal proceedings and
7 otherwise;
 - 8 (3) Contracts to perform audits of the City to increase efficiency and
9 save money.
- 10 (b) In matters for which a contractor has been retained by the City on a
11 contingency fee basis, the contingency fee paid to the contractor shall not
12 exceed thirty percent (30%) of either:
- 13 (1) The amount awarded and collected by the City pursuant by a court
14 order; or
 - 15 (2) The amount collected by the City pursuant to a settlement
16 agreement;
 - 17 (3) The amount collected by the City for a delinquent utility charge or
18 unpaid taxes;
 - 19 (4) The amount of demonstrated, direct savings and/or efficiencies
20 achieved directly from an audit performed by the contractor.
- 21 (c) The City may obtain professional services contingent upon receipt of a
22 federal or state grant. A written and approved grant agreement must be
23 executed before any commitment of funds.
- 24 (d) The Purchasing Director shall have authority to determine whether a contract
25 shall be eligible for a contingency fee.

1 (e) In addition, the contingency fee contract may provide for payment of the
2 contractor's reasonable out-of-pocket charges, costs and expenses.

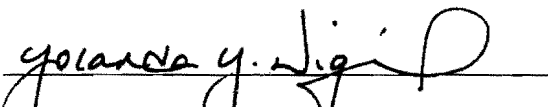
3 **Section 4. Adoption of City's 2012 Purchasing Manual/Procurement Code.** The
4 city of Santa Fe 2012 Purchasing Manual is hereby adopted by reference and incorporated as fully as
5 set out herein and shall serve as the city of Santa Fe Procurement Code. Copies of the 2012
6 Purchasing Manual including all amendments are on file at the city of Santa Fe clerk's office and the
7 office of the city of Santa Fe procurement officer.

8 PASSED, APPROVED and ADOPTED this 28th day of March, 2012.

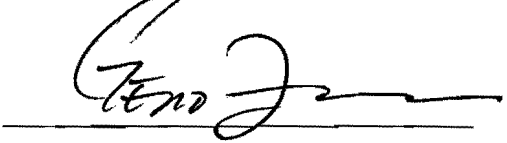
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11 DAVID COSS, MAYOR

12 ATTEST:

13 
14 YOLANDA VIGIL, CITY CLERK

15
16 APPROVED AS TO FORM:

17 

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19 GENO ZAMORA, CITY ATTORNEY