

**CITY of ALBUQUERQUE  
TWENTY SECOND COUNCIL**

COUNCIL BILL NO. F/S O-16-30 ENACTMENT NO. D-2017-009

SPONSORED BY: Diane Gibson & Isaac Benton

1 **ORDINANCE**

2 **AMENDING THE PUBLIC PURCHASES ORDINANCE; REQUIRING**  
3 **COMPETITIVE BIDS FOR CAPITAL PROJECT CHANGE ORDERS IN EXCESS**  
4 **OF A CERTAIN PERCENT OF THE ORIGINAL AWARDED PROJECT COST.**

5 **WHEREAS, the City Office of Internal Audit reviewed a change order for a**  
6 **restroom remodeling project at the Sunport that resulted in a 103% increase to**  
7 **the amount of the contract after competitive bidding had closed and an**  
8 **individual contractor had been selected; and**

9 **WHEREAS, significant post-bid change orders in the City's procurement**  
10 **processes can have a negative effect on competition for City contracts and**  
11 **potentially result in increased overall costs for the City; and**

12 **WHEREAS, the Office of Internal Audit recommends that the City's**  
13 **procurement code define or describe what constitutes a "material" change**  
14 **order, and prescribe a process to be followed in the event of such a change**  
15 **order; and**

16 **WHEREAS, this ordinance amendment proposes to follow the Office of**  
17 **Internal Audit's recommendation by describing a material change order as any**  
18 **increase of 35% or more from the original contract amount, and calls for a new**  
19 **bid process for such material changes unless certain exceptions can be met.**

20 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**  
21 **ALBUQUERQUE:**

22 **SECTION 1. The Public Purchases Ordinance is hereby amended as**  
23 **follows:**

24 **"§ 5-5-11 CAPITAL PROJECTS.**

25 **(A) Unless otherwise agreed to by the Central Purchasing Office and CIP,**  
26 **the purchase of goods, services and construction for capital projects not**

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1 procured through the Central Purchasing Office, shall be procured through  
2 CIP, in accordance with the "Regulation Governing the Award and Rejection of  
3 Bids/Offers and Debarment of Contractors for Public Works Projects of the  
4 City of Albuquerque", effective July 25, 2008, or as hereafter amended.

5 (B) Goods, services and construction projects procured through CIP must  
6 comply with the reporting and preference requirements of § 5-5-31 of the  
7 Public Purchases Ordinance, except when the preference creates a conflict  
8 with federal laws relating to federally funded contracts.

9 (C) Unless otherwise exempted below, change orders for capital project  
10 contracts awarded in accordance with the "Regulation Governing the Award  
11 and Rejection of Bids/Offers and Debarment of Contractors for Public Works  
12 Projects of the City of Albuquerque" shall not add additional scope that  
13 exceeds thirty-five percent (35%) of the original contract amount. Any change  
14 order or combination of changes ordered, or change orders that can be  
15 reasonably anticipated within twelve months of the initial award, that exceed  
16 this limit may be awarded only through a separate competitive solicitation  
17 unless the change was the result of:

- 18 (1) A previously unknown or unforeseen condition at the time of  
19 the initial bid;
- 20 (2) Unanticipated claims related to the project;
- 21 (3) An emergency;
- 22 (4) Work that completes an additional segment or portion of the  
23 overall project that is functionally consistent with the bid where a written  
24 justification is prepared by the Director of the Department of Municipal  
25 Development describing why the change is in the economic interests of the  
26 City and otherwise not inconsistent with the purposes and benefits of  
27 separate competitive solicitation. A copy of this justification shall be provided  
28 to the City Attorney (or designee) and the Internal Auditor prior to execution of  
29 any change order amendment(s) to the contract.

30 (D) Contractors must provide increased bonds to cover approved change  
31 orders for capital projects.

32 (E) The Mayor may promulgate additional or revised rules and regulations  
33 regarding the solicitation of offers for capital projects and the award or

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1 rejection of offers therefor, including but not limited to establishing  
2 procedures for the solicitation and consideration of offers, award or rejection  
3 of offers, determining the responsibility of offerors, and such other matters as  
4 the Mayor deems desirable for the efficient administration of capital projects.

5 (F) It is the policy of the city to require local participation in capital projects  
6 where possible. Major construction projects which can reasonably be  
7 expected to exceed \$5,000,000 in cost may require that a market analysis be  
8 conducted to determine the percentage of local participation to be required for  
9 the project. This determination of the need for a market analysis and the  
10 appropriate local participation requirement shall be made on a case by case  
11 basis by the user with advice from the city's legal department as needed.

12 (G) The purchase of goods, services or construction for capital projects for  
13 the city shall not occur as part of a contract originally procured as a  
14 concession contract or entered into as a lease unless the following applies:

15 (1) The capital project is included in the original competitive solicitation  
16 for the concession contract or lease; or

17 (2) A city contractor is unable to complete a capital project, which was  
18 awarded to that city contractor through a competitive bid process, which will  
19 cause damage or harm to the concessionaire or lessee and the concessionaire  
20 or lessee can quickly complete the project as determined in writing by the CIP  
21 Official; or

22 (3) The purchase meets the requirements of an emergency purchase as  
23 set out in this article.

24 (H) Any and all rules and regulations adopted or promulgated under this  
25 provision shall be consistent with and subject to the provisions of this article,  
26 and in the event of a conflict between such rules and regulations and this  
27 article, this article shall control."

28 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
29 clause, word or phrase of this ordinance is for any reason held to be invalid or  
30 unenforceable by any court of competent jurisdiction, such decision shall not  
31 affect the validity of the remaining provisions of this ordinance. The Council  
32 hereby declares that it would have passed this ordinance and each section,

1 paragraph, sentence, clause, word or phrase thereof irrespective of any  
2 provisions being declared unconstitutional or otherwise invalid.

3 SECTION 3. COMPILATION. This ordinance shall be incorporated in and  
4 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

5 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days  
6 after publication by title and general summary.

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1 PASSED AND ADOPTED THIS 17<sup>th</sup> DAY OF April, 2017  
2 BY A VOTE OF: 9 FOR 0 AGAINST.

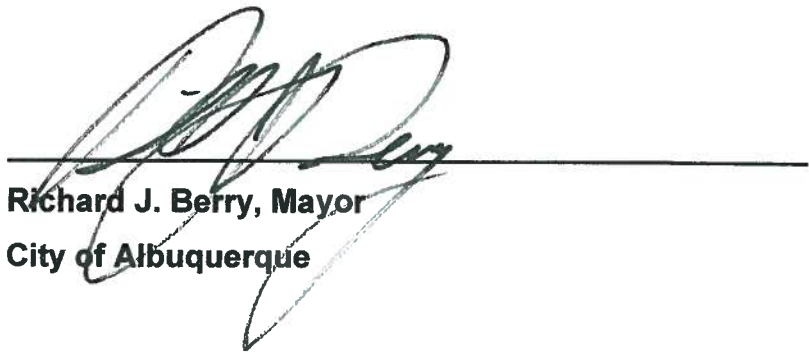
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Isaac Benton, President  
City Council

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12 APPROVED THIS 3<sup>rd</sup> DAY OF May, 2017  
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17 Bill No. F/S O-16-30



Richard J. Berry, Mayor  
City of Albuquerque

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26 ATTEST:



Natalie Y. Howard, City Clerk

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