CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
06 NOV 10 AM 10:59

DEPARTMENT: Financial Services

AGENDA DATE: 11/21/06

CONTACT PERSON/PHONE: Carmen Arrieta-Candelaria (541-4293)

DISTRICT(S) AFFECTED: Citywide

SUBJECT:

An ordinance to establish regulations whereby the City of El Paso may refuse to enter into an agreement with a person indebted to the City of El Paso and whereby the City of El Paso may offset amounts it owes vendors by amounts owed by vendors to the City of El Paso.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Pursuant to Section 252.0436(a) of the Texas Local Government Code (the "Code"), a municipality by ordinance may establish regulations permitting the municipality to refuse to enter into a contract or other transaction with a person indebted to the municipality; and pursuant to Section 252.0436(b) of the Code, the regulations adopted under Section 252.0436(a) of the Code may provide for the municipality to refuse to award a contract or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the municipality. The City of El Paso (the "City") desires to establish regulations, pursuant to Section 252.0436(a) of the Code, whereby the City may refuse to enter into a contract or other transaction with a person indebted to the City including but not limited to an apparent low bidder or successful proposer; and the City desires to establish regulations whereby the City may offset any amounts due and payable by the City, under an existing contract awarded by City Council, against any debt due and payable to the City from a Vendor.

PRIOR COUNCIL ACTION

Has the Council previously considered this item or a closely related one?

Council has not previously considered such a resolution.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Carmen Arrieta-Candelaria

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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ORDINANCE NO. _____

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AN ORDINANCE TO ESTABLISH REGULATIONS WHEREBY THE CITY OF EL PASO MAY REFUSE TO ENTER INTO AN AGREEMENT WITH A PERSON INDEBTED TO THE CITY OF EL PASO, AND WHEREBY THE CITY OF EL PASO MAY OFFSET AMOUNTS IT OWES VENDORS BY AMOUNTS OWED BY VENDORS TO THE CITY OF EL PASO

WHEREAS, pursuant to Section 252.0436(a) of the Texas Local Government Code (the "***Code***"), a municipality by ordinance may establish regulations permitting the municipality to refuse to enter into a contract or other transaction with a person indebted to the municipality;

WHEREAS, pursuant to Section 252.0436(b) of the Code, the regulations adopted under Section 252.0436(a) of the Code may provide for the municipality to refuse to award a contract or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the municipality;

WHEREAS, the City of El Paso (the "***City***") desires to establish regulations, pursuant to Section 252.0436(a) of the Code, whereby the City may refuse to enter into a contract or other transaction with a person indebted to the City including but not limited to an apparent low bidder or successful proposer; and

WHEREAS, the City desires to establish regulations whereby the City may offset any amounts due and payable by the City, under an existing contract awarded by City Council, against any debt due and payable to the City from a Vendor (defined hereinafter).

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. For purposes of this Ordinance, the following definitions shall apply:

Contracting Entity shall mean an individual, a sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the City that requires approval by the City Council.

Debt shall mean any sum of money, which is owed to the City by a Contracting Entity, Owner, or Vendor, that exceeds one hundred dollars ($100.00) and that has become Delinquent (defined hereinafter). Such Debt shall include but not be limited to: (i) property taxes; (ii) hotel/motel occupancy taxes; and (iii) license and permit fees.

Debtor shall mean a Contracting Entity or Owner (defined hereinafter) owing a Debt to the City. Debtor shall include relationships within the second degree by consanguinity or within the first degree by affinity.

Delinquent shall mean any unpaid Debt that is past due for sixty (60) days or more and, which is not currently subject to challenge, protest, or appeal.

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Final Notice of Offset shall have the meaning set forth in section 3(c) herein.

Indebted or Indebtedness shall mean owing a Debt to the City without regard to ability or inability to pay the same, where the amount is Delinquent.

Indebtedness Notice shall have the meaning set forth in section 2(d) herein.

Notice of Offset shall have the meaning set forth in section 3(b) herein.

Owner shall mean, with respect to a Contracting Entity, any person owning five percent (5%) or more thereof, or, in the case of a non-profit corporation, any officer of the non-profit corporation.

Vendor shall mean an individual, a sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity, which has entered into a contract or other transaction with the City.

2. That this regulation is hereby approved pursuant to Section 252.0436(a) of the Code, whereby the City may refuse to enter into a contract or other transaction with a Debtor:

(a) For all formal bids and in accordance with this Ordinance, the City may refuse to enter into a Contract or other transaction, with a Debtor except in cases where the City deems it in its best interest to enter into such transactions.

(b) This regulation applies to all purchases and contracts, formal bids, proposals or otherwise, that require City Council approval. Contracts typically awarded without the submission of a proposal, including but not limited to contracts for engineering and architectural services, shall be subject to this Ordinance and shall not be approved by City Council until a determination as to any Indebtedness to the City by the Contracting Entity or Owner has been made as provided for in this Ordinance.

(c) If a Contracting Entity or Owner is deemed to be Indebted to the City, the Purchasing Manager shall send a written notice to the Contracting Entity or Owner, via Certified Mail Return Receipt Requested, stating the amount of Debt and that failure to pay such Debt may result in the City refusing to award a contract or enter into any transaction with the Debtor (the "***Indebtedness Notice***").

i. The Contracting Entity or Owner will have five (5) business days from the time it receives the Indebtedness Notice to make full

payment on the Debt, make the necessary payment arrangements to settle the Debt, or appeal the Purchasing Manager's determination to the City's Chief Financial Officer (the "***CFO***").

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ii. If the Contracting Entity or Owner desires to appeal the Purchasing Manager's determination to the CFO, the Contracting Entity or Owner must send a written statement and any supporting documents to the CFO regarding payment of the Debt which supports the Contracting Entity's or Owner's contention that they are not indebted to the City. Upon receipt of such statement and supporting documents, the CFO will make a determination of the Indebtedness. If the CFO determines that the Contracting Entity or Owner is Delinquent, the CFO will request immediate payment on the Debt or request payment arrangements be made immediately. If the Contracting Entity or Owner does not respond to this request, the CFO may disqualify such Contracting Entity or Owner from entering into a Contract or other transaction with the City. The Contracting Entity or Owner will be notified in writing at least seventy two (72) hours prior to the award of the Contract in question of the CFO's final determination.

iii. The Contracting Entity or Owner may appeal the CFO's final determination to City Council by appearing before Council on the date of the award of the contract.

3. That the following regulations are hereby approved under which the City may offset any amounts the City owes a Vendor by any Debt owed to the City.

(a) The Purchasing Division of the Financial Services Department shall maintain a log of all awarded contracts and, at least monthly, identify those Vendors, which are Indebted to the City. The Purchasing Manager shall prepare a schedule which shows the amounts of Indebtedness by each Vendor which shall exclude amounts currently under protest, challenge, or appeal by the Vendor. Said schedule shall then be forwarded to the CFO, which shall determine what amounts the City owes the Vendor, which shall be offset by the Indebtedness, if any.

(b) Once the CFO determines that certain amounts due by the City to the Vendor shall be offset by Debt owed to the City, the CFO will notify the Vendor of his/her decision to offset ("***Notice of Offset***").

(c) The Vendor shall have five (5) business days after receipt of the Notice of Offset to submit a written statement with supporting documents as to why the CFO should not offset amounts the City owes the Vendor by Debt owed to the City. After reviewing the written statement and any supporting documents sent by the Vendor, the CFO shall make a final determination as to whether offset in each particular case is appropriate.

The CFO will notify the Vendor of the final determination ("***Final Notice of Offset***").

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(d) The Vendor shall have five (5) business days after receipt of the Final Notice of Offset to appeal the CFO's final determination of offset to the City Manager. Such appeal should include a written statement, with supporting documents, as to why the CFO's determination of offset should be reversed. The City Manager shall review the statement and supporting documents and shall make a decision. Said decision by the City Manager shall be final and may not be appealed to City Council.

(Signature page to follow)

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Signature Page

PASSED AND APPROVED this the ____ day of_____, 2006.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Jorge Villegas
Assistant City Attorney

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer