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Meeting Date: May 23, 2018  
Staff Contact: Mark S. Sanchez, Executive Director

**TITLE:**       **O-18-3 – Repealing Section Six, the Albuquerque Bernalillo County Water Utility Authority Selection Advisory Committee Ordinance to coincide with the adoption of the County of Bernalillo Procurement Ordinance**

**ACTION:**     **Recommend Approval**

**SUMMARY:**

The Albuquerque Bernalillo County Water Utility Authority (Water Authority) has determined it to be operationally and functionally beneficial to adopt the County of Bernalillo Procurement Ordinance. To date, the Water Authority had followed the City of Albuquerque Public Purchases Ordinance legal requirements governing approval of contracts. Under the previous legal framework, the Water Authority Selection Advisory Committee Ordinance provided the procedure for the selection of firms or persons to provide professional engineering, architectural, landscape architectural and other related professional services.

By adoption of the County of Bernalillo's Procurement Ordinance, the Water Authority has determined it to be no longer necessary to establish a separate Ordinance governing selection of engineers, architects, and other related professional services. The County of Bernalillo's Procurement Ordinance establishes its own legal requirements regarding the composition of the Selection Advisory Committee and for selection of firms providing engineers, architects, and other related professional services. The Water Authority will establish additional rules governing the Selection Advisory Committee, if necessary, via administrative instruction.

The repeal of the Ordinance will be effective July 1, 2018, to coincide with the Water Authority's adoption of the County of Bernalillo Procurement Ordinance.

**FISCAL IMPACT:**

None

# Albuquerque Bernalillo County Water Utility Authority

BILL NO. O-18-3

## ORDINANCE

REPEALING SECTION SIX, THE ALBUQUERQUE BERNALILLO COUNTY WATER  
UTILITY AUTHORITY SELECTION ADVISORY COMMITTEE ORDINANCE, TO  
COINCIDE WITH THE ADOPTION OF THE COUNTY OF BERNALILLO PROCUREMENT  
ORDINANCE

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD, THE GOVERNING BODY OF  
THE WATER AUTHORITY:

### **Section 1. SECTION 6 IS REPEALED AS FOLLOWS:**

~~Section 6 SELECTION ADVISORY COMMITTEE~~

~~6-1-1 SHORT TITLE.~~

~~6-1-2 DEFINITIONS.~~

~~6-1-3 SELECTION OF SERVICES.~~

~~6-1-4 SELECTION ADVISORY COMMITTEE.~~

~~6-1-5 AD HOC BOARD.~~

~~6-1-6 PUBLICATION OF PROPOSED PROJECTS.~~

~~6-1-7 METHOD OF SELECTION.~~

~~6-1-8 PROMULGATION OF RULES AND REGULATIONS.~~

~~6-1-9 EMERGENCY SELECTION.~~

~~6-1-10 DISCLOSURE STATEMENT.~~

~~6-1-11 DEFINITE TERM REQUIRED.~~

~~6-1-12 COMPENSATION FOR BASIC SERVICES OF CONSULTING~~

~~ENGINEERS, ARCHITECTS, LANDSCAPE ARCHITECTS, CONSTRUCTION~~

~~MANAGERS AND SURVEYORS.~~

~~6-1-13 CHANGE IN SCOPE; AUTHORIZATION REQUIRED.~~

~~6-1-14 MULTI-PHASE PROJECTS.~~

~~6-1-15 PROMULGATION OF RULES AND REGULATIONS.~~

~~6-1-1 SHORT TITLE.~~

~~This Ordinance may be cited as the "Selection Advisory Committee Ordinance."~~

~~6-1-2 DEFINITIONS.~~

~~For the purpose of §§ 6-1-1 et seq., the following definition shall apply unless the context clearly indicates or requires a different meaning.~~

~~—"BASIC SERVICES". Those professional services of consulting engineers, architects landscape architects, construction managers, surveyors, and other professional service providers, identified as "Basic Services" in each specific agreement between the Authority and each consulting professional or professional firm to which a project is assigned.~~

~~6-1-3 SELECTION OF SERVICES.~~

~~—The selection of firms or persons to provide professional architectural, engineering, construction management landscape architectural and other professional services which will cost \$50,000 or more, or landscape architectural or surveying services which will cost \$10,000 or more, shall be accomplished in accordance with the provisions of §§6-1-1 et seq. For the purposes of §§6-1-1 et seq., PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL CONSTRUCTION MANAGEMENT, SURVEYING AND OTHER PROFESSIONAL SERVICES means the performance of any professional service or creative work requiring architectural, landscape architectural, construction management, surveying, engineering, or other professional education, training and experience, and the application of special professional knowledge, such as the mathematical, physical and engineering sciences, design or architectural principles to such professional services or creative work as consultation, investigation, evaluation, planning, design, observation of construction, surveying, photogrammetry and construction management.~~

~~6-1-4 SELECTION ADVISORY COMMITTEE.~~

~~—The Selection Advisory Committee shall be composed of five voting members and a nonvoting Selection Advisory Committee (SAC) Administrator as follows:~~

~~—(A) Architectural, Engineering, and Landscape Architectural, Construction Management, Surveying or Other Professional Services.~~

~~—(1) The General Manager of the Authority, or the designated staff alternate of the General Manager.~~

~~————— (2) — A minimum of two but a maximum of three Authority employees, who are registered in the state as engineers, or possessing other professionally licensed or technical qualifications suitable for the project.~~

~~————— (3) — A minimum of one, but a maximum of two, engineer(s) or other technically qualified individual(s) who is registered in the state shall be appointed as a member by the Executive Director from outside the Authority from a listing of professionally qualified candidates representative of public utility and/or public works service agencies, including but not limited to the City of Albuquerque, Bernalillo County, Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), Middle Rio Grande Conservancy District (MRGCD), Middle Rio Grande Council of Governments (MRCOG), other public entities or professional associations, having professional expertise relevant to the project. Any such member shall not be contracting directly or indirectly through a subcontract with the Authority to perform professional services for the Authority. In the event that the Executive Director's outside representative is not available, a registered engineer or other technically qualified individual who is a public employee, and approved by the Executive Director, may serve as the Executive Director's representative.~~

~~————— (4) — Selection Advisory Committee Administrator.~~

~~(B) — The Selection Advisory Committee Administrator shall be a an Authority employee designated by the Executive Director as responsible for all administrative functions associated with the Selection Advisory Committee as delineated in Rules and Regulations promulgated by the Executive Director. The SAC Administrator shall serve as the Chairperson of the Selection Advisory Committee.~~

~~(C) — The Selection Advisory Committee Administrator shall not call a meeting with less than two weeks notice to members unless the Administrator first polls all members and finds no objection to the meeting date proposed and a quorum of the members shall be present.~~

#### ~~6-1-5 AD HOC BOARD.~~

~~In case of a project of unique or special nature, the Executive Director may name an Ad Hoc Board to recommend to the Executive Director firms or persons to provide professional architectural, engineering, landscape architectural, construction management, surveying and other related professional services required on the project. The Ad Hoc Board shall be comprised of the appropriate Selection Advisory Committee members augmented by a~~

~~maximum of four additional voting members. If the Executive Director elects to use this method of selection, the Authority shall be advised of the reasons for the Ad Hoc Board, the names of the additional voting member(s) who would augment the Selection Advisory Committee, and the selection criteria. The Authority shall review and approve the Executive Director's recommendation of the establishment of an Ad Hoc Board and the additional voting member(s) who would augment the Selection Advisory Committee prior to any convening of the Board. The SAC Administrator shall serve as the Chairperson of the Ad Hoc Board.~~

#### ~~6-1-6 PUBLICATION OF PROPOSED PROJECTS.~~

~~Brief descriptions of proposed projects shall be published in an Albuquerque newspaper of general circulation at least twice, not less than one week apart, with a due date for responses not less than one week after the second publication.~~

#### ~~6-1-7 METHOD OF SELECTION.~~

~~—— (A) Recommendation by Committee. The Selection Advisory Committee shall evaluate proposals received for each project by assigning points to evaluation criteria. For each project the General Manager or his designee, in coordination with the Chairperson, shall determine the maximum points for each criterion according to adopted procedures. If interviews are conducted from a short list of respondents, interview project related items shall be determined by the Committee. Interviewee's responses to these items during their interview presentation to the Committee shall also be evaluated by assigning points to evaluation criteria which shall consist of the interview items, the overall quality of the presentation, and subsequent response to questions from Committee Members. The Committee shall submit the names of not more than three qualified professional firms or persons in the order in which they are recommended to the Executive Director. Rankings shall be determined by the amount of points for each firm or person. If the Committee determines that there are less than three firms or persons qualified to provide the services, only those deemed qualified shall be recommended to the Executive Director.~~

~~—— (B) Recommendation by Executive Director. For the purpose of review and approval by the Authority as required by §§ 6-1-1 et seq., the Executive Director shall submit the Committee's or Ad Hoc Board's recommended list of qualified professional firms or persons to the Authority and indicate the order in which they are recommended. If the order is different from the Committee's or Ad Hoc Board's, the Executive Director shall explain the difference.~~

~~——— (C) — Approval by the Authority Board. The Authority Board shall approve or disapprove the recommendations made by the Executive Director. In the event the Authority does not approve the Executive Director's recommendations, the Executive Director shall then recommend another firm or person for the number one ranking from the firms or persons recommended by the Committee or the Ad Hoc Board.~~

~~——— (D) — If the Executive Director is unable to negotiate a satisfactory services agreement with the firm or person ranked number one based upon unreasonable delay or unreasonable cost, the Executive Director shall formally terminate negotiations with such firm or person and the Executive Director may undertake negotiations with the firm or person ranked number two. In the event that the Executive Director is unable to negotiate a satisfactory services agreement with the firm or person ranked number two, the Executive Director shall formally terminate negotiations with such firm or person and the Executive Director may undertake negotiations with the firm or person ranked number three. In the event that the Executive Director is unable to negotiate a satisfactory services agreement with the person ranked number three, the Executive Director shall formally terminate negotiations with such firm or person. If, after the termination of negotiations with the firm or person ranked number three there still is a need for the services, the entire selection process shall be repeated.~~

~~——— (E) — In those instances where the Executive Director is unable to negotiate a satisfactory services agreement with the firms or persons in their ranked order as approved by the Authority, the Executive Director shall formally communicate with the Authority the reasons for terminating negotiations in each case.~~

#### ~~6-1-8 PROMULGATION OF RULES AND REGULATIONS.~~

~~——— The Executive Director shall promulgate rules and regulations for the efficient and equitable administration of §§ 6-1-1 et seq. Such rules and regulations shall govern:~~

~~——— (A) — The procedures to be followed in the selection of firms or persons to provide professional architectural, engineering, construction management, and other professional services which will cost less than \$50,000, or landscape architectural or surveying services which will cost less than \$10,000.~~

~~——— (B) — The procedures to be followed by the Selection Advisory Committee in the selection of firms or persons to provide professional architectural, engineering, construction management, and other professional services which will cost \$50,000 or more, or landscape~~

1 ~~architectural or surveying services which will cost \$10,000 or more.~~

2 ~~6-1-9 EMERGENCY SELECTION.~~

3 ~~——— When the Executive Director determines that urgent and compelling reasons require~~  
4 ~~emergency contractual professional architectural, engineering, landscape architectural,~~  
5 ~~construction management, surveying and other professional services, the Executive Director,~~  
6 ~~notwithstanding any provision contained herein, may approve such services, provided that~~  
7 ~~the Executive Director shall notify the Authority of the action citing the compelling and urgent~~  
8 ~~reasons therefor. The report required to be made to the Authority by the Executive Director,~~  
9 ~~shall be submitted at the next regular meeting of the Authority.~~

10 ~~6-1-10 DISCLOSURE STATEMENTS.~~

11 ~~——— (A) The Executive Director shall cause to be incorporated into any contract~~  
12 ~~between the Authority and any firm or person performing architectural, engineering,~~  
13 ~~landscape architectural, construction management, surveying and other professional~~  
14 ~~services, a disclosure statement wherein such firm or person shall affirm whether within the~~  
15 ~~prior two years, it has made or agreed to make any valuable gift, whether in the form of~~  
16 ~~service, loan, thing or promise, to any person or any of his immediate family, having the duty~~  
17 ~~to recommend, the right to vote upon, or any other direct influence on the selection of firms~~  
18 ~~or persons performing architectural, engineering, landscape architectural, construction~~  
19 ~~management, surveying and other services.~~

20 ~~(B) Offerors shall disclose all campaign contributions in accordance with Section 13-1-~~  
21 ~~191.1 NMSA 1978, as amended.~~

22 ~~——— (C) A solicitation or proposed award for a proposed contract may be canceled~~  
23 ~~pursuant to Section 13-1-181 NMSA 1978, or a contract that is executed may be ratified or~~  
24 ~~terminated pursuant to Section 13-1-182 NMSA 1978 if:~~

25 ~~——— (1) a prospective contractor fails to submit a fully completed disclosure~~  
26 ~~statement pursuant to this section; or~~

27 ~~——— (2) a prospective contractor or family member or representative of the~~  
28 ~~prospective contractor gives a campaign contribution or other thing of value to an applicable~~  
29 ~~public official or the applicable public official's employees during the pendency of the~~  
30 ~~procurement process.~~

31 ~~6-1-11 DEFINITE TERM REQUIRED.~~

~~Any agreement for the basic services provided by consulting engineers, architects landscape architects, construction managers, surveyors, and other professional service providers, shall be for a definite term which shall be stated in the agreement. The term of the agreement may only be extended for good cause and after the written approval of the Executive Director.~~

~~6-1-12 COMPENSATION FOR BASIC SERVICES OF CONSULTING ENGINEERS, ARCHITECTS LANDSCAPE ARCHITECTS, CONSTRUCTION MANAGERS AND SURVEYORS.~~

~~Compensation for the basic services provided by consulting engineers, architects landscape architects, construction managers, surveyors, and other professional service providers, shall be negotiated. If an estimated construction cost can be determined from the project for which the basic services are provided, it may be used as the basis of negotiations unless use of the estimated construction cost is prohibited by funding authorities.~~

~~6-1-13 CHANGE IN SCOPE; AUTHORIZATION REQUIRED.~~

~~(A) In the event there is a change in the scope, complexity, character, or duration of a project involving the basic services of consulting engineers, architects landscape architects, construction managers, surveyors and other professional service providers, the compensation for such services shall be renegotiated or negotiated as appropriate. Whenever applicable, appropriate consideration of estimated construction cost will be used as the basis of negotiations.~~

~~(B) Any change in scope that will require different or additional services, except those services to which the emergency selection provisions in this article apply, shall be authorized by the prior written approval of the Executive Director or his designee. This provision shall apply to a change in any form, whether by amendment, additional services authorization, addendum or other designation.~~

~~(C) The written authorization shall specify the additional or different services, the estimated total cost of the additional or different services, and how the additional or different services relate to the scope of services of the underlying agreement for basic services.~~

~~(D) Verbal authorization to proceed to perform additional or different services shall not constitute valid authorization, and no services should be performed prior to the execution of all required written authorizations.~~

~~6-1-14 MULTI-PHASE PROJECTS.~~



~~Compensation for the basic services of consulting engineers, architects landscape architects, construction managers, surveyors and other professional service providers, for projects to be constructed in stages over a period of years, or in multiple phases, shall be negotiated. Whenever applicable, appropriate consideration of estimated construction cost will be used as the basis of negotiations.~~

~~6-1-15 PROMULGATION OF RULES AND REGULATIONS.~~

~~\_\_\_\_\_ The Executive Director shall promulgate rules and regulations for determining compensation for the basic services of consulting engineers, architects, landscape architects, construction managers, surveyors and other professional service providers, when an estimated construction cost is used as the basis of negotiations. Such rules and regulations shall provide for a biennial review of the percentage of estimated construction cost to be paid for such basic services.~~

**Section 2. SEVERABILITY CLAUSE.** If any Section, paragraph, sentence, clause, work or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Water Authority hereby declares that it would have passed this Ordinance and each Section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

**Section 3. EFFECTIVE DATE.** This Ordinance shall become effective July 1, 2018.