

ORDINANCE NO. 19-1

AN ORDINANCE ADOPTING REVISED PROCUREMENT  
RULES AND REGULATIONS FOR THE CITY OF  
COLORADO SPRINGS

WHEREAS, City Charter § 3-10(f) requires City Council to "review and approve by ordinance...all municipal purchasing and contracting rules and regulations, it being determined that, as a matter of policy, City Council shall undertake those tasks through the legislative process"; and

WHEREAS, pursuant to City Charter § 15-10(c), as amended by the voters in November 2010 and relating to the transition to the Council-Mayor form of government, City Council approved Ordinance No. 11-5, approving the City's Procurement Rules and Regulations, in January 2011; and

WHEREAS, City Code Chapter 1 (Administration, Personnel, and Finance), Article 5 (Finance Management Procedures), Part 2 (Purchases), relating to the City's Purchasing Code, establishes a Purchasing Office and specifies the duties of the Purchasing Manager; and

WHEREAS, City Code § 1.5.204(A), Purchasing Manager, authorizes the Purchasing Manager to "...purchase or contract for all supplies, services, and construction needed for any City function or by any using agency that derives its support wholly or in part from the City, in accord with the City of Colorado Springs Procurement Rules and Regulations prescribed by the City Council"; and

WHEREAS, City Code § 1.5.204(B)(3), Rules and Regulations sets forth the process for changing the Rules and Regulations as follows:

"The Manager may recommend changes to the Rules and Regulations to the Mayor. The Mayor or the Mayor's designee shall submit proposed changes to the Rules and Regulations in writing to all City Council members. Within ten (10) business days of the submission to Council, any Council Member may request that the proposed changes be scheduled for discussion at an informal City Council meeting. After City Council has discussed the proposed changes Council may accept the changes or request modifications be made. If Council accepts, the proposed changes shall automatically become effective. If Council requests modifications, the Mayor shall reconsider the proposed change and resubmit any modifications to Council. Any resubmitted modifications shall follow the same procedure as outlined above. Should no City Council Member request that the proposed changes be scheduled for discussion, the proposed changes shall automatically become effective."

WHEREAS, the Manager recommended changes to the Rules and Regulations to the Mayor in November 2017, and the Mayor submitted those proposed changes to all Council members on November 21, 2017. Because of the extensive revisions that resulted, Councilmembers and the Mayor agreed that the proposed changes should be scheduled for discussion at a City Council work session meeting, which occurred on December 10, 2018; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council finds that the Procurement Rules and Regulations of the City of Colorado Springs should be revised and updated to improve the conduct of business by the City.

Section 2. The Procurement Rules and Regulations set forth as Exhibit "A" attached and made part of this Ordinance are approved, and all previous versions rescinded.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 8<sup>th</sup> day of January, 2019.

**Finally passed:** January 22<sup>nd</sup>, 2019

  
\_\_\_\_\_  
Council President

**Mayor's Action:**

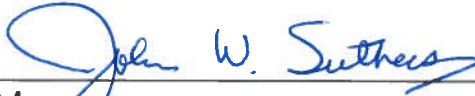
- Approved on 1/24/2019.
- Disapproved on \_\_\_\_\_, based on the following objections:

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\_\_\_\_\_  
Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Council President

ATTEST:


  
\_\_\_\_\_  
Sarah B. Johnson, City Clerk

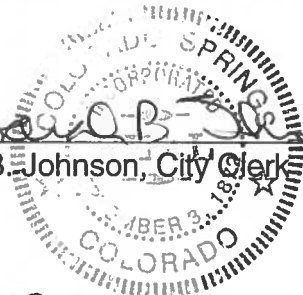


COS:   
CAO: TJP

I HEREBY CERTIFY, that the foregoing ordinance entitled **“AN ORDINANCE ADOPTING REVISED PROCUREMENT RULES AND REGULATIONS FOR THE CITY OF COLORADO SPRINGS”** was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on January 8<sup>th</sup>, 2019; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 22<sup>nd</sup> day of January, 2019, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 24<sup>th</sup> day of January, 2019.

  
Sarah B. Johnson, City Clerk



Initial: SBJ  
City Clerk

1<sup>st</sup> Publication Date: January 11<sup>th</sup>, 2019  
2<sup>nd</sup> Publication Date: January 30<sup>th</sup>, 2019

Effective Date: February 4<sup>th</sup>, 2019



# City of Colorado Springs Procurement Rules and Regulations

Procurement Services Division  
January 2019

Phone number:  
719-385-5910

Hours:  
Monday through Friday 8:00 am - 5:00 pm

Location:  
Colorado Springs City Hall  
107 N. Nevada Avenue, Suite 125, Colorado Springs, CO 80903

**CITY PROCUREMENT RULES AND REGULATIONS**  
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# PART I – GENERAL PROVISIONS

## 1-100 BASIS AND PURPOSE

These regulations are promulgated in accordance with City Code, Chapter 1 (Administration, Personnel, and Finance), Article 5 (Finance Management Procedures), Part 2 (Purchases).

These Regulations set forth the following elements of a Centralized purchasing function:

- a) the concept of a Centralized purchasing authority that will institute and maintain an effective and economical program for the acquisition of goods and services; and
- b) the purchase of needed equipment, materials, supplies, and services at favorable prices in keeping with suitability, appropriate quality, and reliable Vendor performance.

These Regulations are designed to simplify, clarify, and update the procurement and contracting process of the City. The Regulations are meant to encourage effective competition to the maximum extent practicable and to ensure that expenditures are carried out in a prudent, ethical, and efficient manner. The Regulations are also designed to assure a procurement system of quality, integrity, and accountability.

## 1-101 Application

These Regulations shall apply to every department, agency, commission, bureau or other division of the City, except as set forth in Subsections (a) through (h) below:

- a) Nothing in these Regulations shall prevent the City from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement, providing that competitive procedures as described in these Regulations shall be followed whenever possible.
- b) When procurement involves the expenditure of federal assistance or Contract funds, the City shall follow any mandatory requirements of applicable federal law and implementing Regulations, as stipulated by the language in the actual grant.
- c) Procurement of Professional Services is exempt from using sealed bids/Invitation for Bids (IFBs). The preferred method for procuring these services will be using Request for Proposals (RFPs) under the guidelines set forth in these Regulations.
- d) These Regulations shall not be applicable to the leasing, rental, acquisition or disposition of real property normally handled by the City's Real Estate Office.
- e) Memorial Health System and Colorado Springs Utilities have their own procurement regulations and are exempt from these Regulations unless otherwise adopted by their own regulations.
- f) The purchase and/or sale of financial instruments including but not limited to Certificates of Participation (COPs) and bonds are exempt from these Regulations.
- g) The purchase of insurance policies to protect the assets of both the City and its entities from accidental damages, liability, and potential losses are exempt from following these procurement guidelines. The purchase of these insurance policies shall be the responsibility of the City's Risk Management Office and shall follow procedures that are common in the industry and required by law to procure these policies.
- h) Negotiations and obligations with businesses in the name of the City's Economic Development Department are not subject to these Regulations.

## 1-102 Terms Defined in These Regulations

- a) AWARD – The acceptance of a Bid or Proposal by the City; or the execution of a Contract.
- b) BEST BID – A Bid that is not necessarily the lowest, but rather best fits the needs and interest of the City when taking into account the responsibility of the Offerors.
- c) BEST INTEREST OF THE CITY – A term granting a Procurement Services Division official the authority to use discretion to take action advantageous to the City, including Award of a Contract to the lowest Best Bid.

- d) BID – An offer, as a price, whether for payment or acceptance, given to the City by an Offeror on a City Contract.
- e) BID BOND – An insurance agreement in which a third party surety agrees to be liable to pay a certain amount of money in the event that the Offeror's Bid is accepted by the City and the Offeror fails to accept the Contract as awarded and approved as to form by the City Attorney.
- f) BRAND NAME SPECIFICATION – A Specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.
- g) BRAND NAME OR EQUAL SPECIFICATION – A Specification that cites brand names, model numbers, or other identifications as representing quality or performance called for, when inviting bids on comparable items or products of any manufacturer.
- h) CENTRALIZED – A system of purchasing in which the authority, responsibility, and control of purchasing activities is concentrated in one administrative unit.
- i) CITY – The City of Colorado Springs, including all City Departments and Divisions.
- j) CITY CHARTER – The Charter for the City of Colorado Springs is referred to throughout this document as "the Charter."
- k) CITY CODE – The Code of the City of Colorado Springs 2001, as amended, is referred to throughout this document as "the City Code."
- l) CODE OF ETHICS – City Code Chapter 1 (Administration, Personnel, and Finance), Article 3 (Code of Ethics), relating to the City's standards of business practices and ethics.
- m) COMPETITIVE SEALED BIDDING – The submission of firm prices by Offerors for a Contract, privilege, or right to supply merchandise or services. The Invitation for Bid (IFB) is the instrument used to solicit Competitive Sealed Bids.
- n) COMPETITION DOLLAR THRESHOLD – The maximum dollar amount for a requirement that does not require competitive quotes (up to \$14,999).
- o) CONFIDENTIAL– Subject to applicable open records law, any information that is available to a City employee only because of the employee's status as a public employee and is not a matter of public knowledge, such as trade secrets and test data, which may be provided to the City on a Confidential basis during the contracting process.
- p) CONTRACT – Any type of City agreement, regardless of what it may be called, for the procurement or disposal of supplies, equipment, materials, or services.
- q) COVERED PERSON – Any elected City official, appointee, administrative officer or employee, who is responsible for taking actions that include negotiating, approving, disapproving, administering, enforcing, or recommending for or against a Contract, Purchase Order, lease, concession, franchise, grant, Vendor, concessionaire, land use or any other matter to which the City is a party.
- r) DAYS – In computing time in these Regulations, time shall be computed as set forth in City Code § 1.1.105 Computation of Time: the time shall be computed by excluding the first and including the last day. If, however, the last day is a Saturday, Sunday or legal holiday, it shall be excluded and the time prescribed or allowed shall conclude on the next business day.
- s) DEPARTMENT MANAGER/DIRECTOR – Those municipal officers appointed by the Mayor pursuant to City Charter § 4-40(f), as well as those personnel who have operational or supervisory authority over public works, parks, community development, the Colorado Springs Airport, the municipal enterprises, and any director or manager of a City department, division, office, agency or enterprise if the Mayor's appointment authority is set forth by ordinance.
- t) DISCUSSIONS – Negotiations conducted as part of a competitive acquisition in order to maximize the City's ability to obtain best value, based on the requirement and the Evaluation factors set forth in the solicitation.
- u) EMERGENCY– Circumstances giving rise to a purchase made without following the normal purchasing procedures in order to obtain goods or services to meet an urgent and unexpected requirement.
- v) EVALUATION – The process of examining a Bid or Proposal after opening to determine the

- Offeror's responsibility, responsiveness to requirements, and to ascertain other characteristics of the Bid or Proposal that relate to determination of the successful Offeror.
- w) **FIRM BID RULE** – The principles of Contract law governing Competitive Sealed Bids (Invitation for Bids or IFBs) which states that Offerors are not permitted to change bids after the Offeror has had the opportunity to discover what other Offerors have offered.
  - x) **FORMAL SOLICITATION** – The process used for soliciting and awarding Contracts with values that exceed \$150,000. This process involves formally advertising the requirement as per these Regulations, issuing either a formal IFB or RFP, and making the resultant Award on a Contract. The Formal Solicitation process may also be used on requirements less than \$150,000 if deemed appropriate by the Procurement Services Manager.
  - y) **IMMEDIATE FAMILY** – As defined in the City Code § 1.3.102, relating to the City's Code of Ethics.
  - z) **INVITATION FOR BIDS (IFB)** – Method of formally soliciting Competitive Sealed Bids from prospective Vendors in which the intent is to award a Contract to the resultant lowest responsible and responsive Offeror. When the City has known Specifications, cost is the overriding consideration for Award, Discussions are not required or desired, and there is more than one qualified Vendor who can meet the Specification, then the use of Competitive Sealed Bids in the form of an IFB is the preferred method of procurement of goods, services, and construction by the City. IFBs must adhere to the legalities of the "Firm Bid Rule" for public procurement.
  - aa) **INFORMAL SOLICITATION** – The process of soliciting Bids or Proposals for requirements up to \$150,000 from prospective Vendors without formally advertising or issuing an IFB or RFP. Under the informal process, Bids or Proposals may be conveyed and received by letter, telephone, fax, or other written means, and under conditions different from those required for formal bidding. Competition is still required using this process unless waived in writing by the Procurement Services Manager.
  - bb) **LOWEST RESPONSIVE OFFEROR** – The Offeror submitting the lowest and Best Bid and who meets all requirements of the Bid invitation.
  - cc) **MAYOR** – To include the Mayor of the City of Colorado Springs or the Mayor's designee, unless specifically denoted otherwise.
  - dd) **MISTAKE** – A miscalculation in composing a Bid resulting in an incorrect price or other term or condition that will affect the Offeror's eligibility to be awarded a Contract.
  - ee) **NO BID** – A response to an IFB stating that the respondent does not wish to submit a Bid.
  - ff) **NON-RESPONSIVE BID** – A Bid that does not conform to the requirements of the IFB; non-conforming Bid; unresponsive Bid.
  - gg) **NOTICE** – Notice of a proposed purchase as required by law. Depending on the legal requirement, Notice may be satisfied by posting an announcement of the Formal Solicitation in a public place, notification of the appropriate Offerors from the plan holders list, formal advertisement in a newspaper of general circulation, posting the Formal Solicitation on the Procurement Services Division website, or a combination of these methods.
  - hh) **NOTICE OF INTENT TO AWARD** – Written notification from the City to all Offerors that the City has identified an Offeror with the highest ranked Proposal during the Proposal Evaluation and the City intends to move to Discussions with that Offeror.
  - ii) **NOTICE OF AWARD** – Written notification from the City to all Offerors that Discussions have concluded and the City intends to enter into a Contract with the successful Offeror.
  - jj) **OFFEROR** – A party who responds to a Formal Solicitation or Informal Solicitation of any kind by the City.
  - kk) **PERFORMANCE BOND** – A Contract of guaranty executed subsequent to Award by a successful Offeror to protect the City from loss due to Vendor inability to complete the Contract as agreed.
  - ll) **PERFORMANCE SPECIFICATION** – A Specification describing the performance characteristics sought in a product or service; a purchase description accenting performance

- over design; a functional rather than a generic or physical Specification.
- mm) PRE-QUALIFICATION OF OFFERORS – The screening of potential suppliers or Vendors in which the City considers factors including but not limited to financial capability, management capacity, and past performance in order to develop a list of prospective Offerors qualified to be sent invitations to Bid.
  - nn) PROCUREMENT SERVICES DIVISION – the Division that oversees all procurement transactions for the City.
  - oo) PROCUREMENT SERVICES MANAGER – The Manager of the Procurement Services Division.
  - pp) PROFESSIONAL SERVICES – Those services which are essentially intellectual in character and include analysis, evaluation, prediction, planning, or recommendation. Professional Services involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional Services include, but are not limited to, services performed by accountants, auditors, analysts, consultants, lawyers, physicians, planners, artists, engineers, and architects. RFPs are the preferred method of procurement of Professional Services.
  - qq) PROPOSAL – An offer made by an Offeror in response to a Request for Proposals.
  - rr) PROPRIETARY – Subject to applicable open records law, information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep Confidential and restricted from public access.
  - ss) PROTEST – A written statement concerning an unresolved disagreement or controversy arising out of the Formal Solicitation, Informal Solicitation, or Award of a Contract.
  - tt) PURCHASE ORDER – A City document that formalizes a purchase transaction with a Vendor. A Purchase Order contains statements as to quantity, description, price, terms, discounts, and date of performance, transportation, and other factors pertinent to the purchase and its execution by the Vendor. Acceptance of a Purchase Order by the Vendor constitutes a Contract.
  - uu) PURCHASE REQUISITION – That document whereby a Using Department requests that a Contract be entered into for a specific need and may include the description of a request item, delivery schedule, transportation data, evaluation criteria, suggested source of supply, and information supplied for the making of a written determination. A properly approved Purchase Requisition is required prior to soliciting Bids or Proposals, or before entering into a Contract when no solicitation is issued (i.e. Sole Source, Emergency).
  - vv) PURCHASING CARDS – Credit cards that are issued to City employees to perform small purchases under the terms of the City's Purchasing Card program.
  - ww) PURCHASING CODE – City Code Chapter 1 (Administration, Personnel, and Finance), Article 5 (Finance Management Procedures), Part 2 (Purchases).
  - xx) QUALIFIED PRODUCTS LIST – An approved list of supplies, services or construction items described by model or catalog numbers, which prior to Formal Solicitation, the City has determined will meet the applicable Specification requirements.
  - yy) REGULATIONS – Procurement Rules and Regulations, as approved by the Mayor and adopted by City Council pursuant to City Charter § 3-10(f).
  - zz) REQUEST FOR PROPOSALS (RFP) – All documents, whether attached or incorporated by reference, utilized for soliciting competitive Proposals; the RFP procedure permits Discussion of Proposals and prices as distinguished from competitive bidding and IFB.
  - aaa) RESPONSIBLE OFFEROR – An Offeror who in the City's sole judgment, has the financial capability, technical ability, and a record of satisfactory past performance in all respects, to perform in full the Contract requirements, and the integrity and reliability that will assure good faith performance.
  - bbb) SEALED BID – A Bid that has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission of all Bids. Sealed Bids

- are associated with IFBs. Sealed Bids are awarded without Discussions and are subject to the "Firm Bid Rule."
- ccc) SOLE SOURCE JUSTIFICATION – A document generated by the Procurement Services Division and completed by the Using Department which states the reasons for which the Using Department is requesting a deviation from the competition requirements in order to award a contract to a preselected Offeror. Sole Source Procurement is subject to approval by the Procurement Services Manager.
  - ddd) SOLE SOURCE PROCUREMENT – A procurement excepted from the competition process by the Procurement Services Manager after reviewing and approving the Sole Source Justification submitted by the Using Department.
  - eee) SPECIFICATIONS – Any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. A Specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
  - fff) TRADE SECRET – Any aspect of a business or its operation not made available to competitors.
  - ggg) TWO-STEP SEALED BID – Source selection involving two competitive steps, the first constituting a technical Proposal for furnishing the product or service described in the Formal Solicitation and the second a submission of prices.
  - hhh) USING DEPARTMENT – The City department for whose use a Formal Solicitation or Informal Solicitation is issued by the Procurement Services Division.
  - iii) VALUE ANALYSIS – An organized effort to analyze the function(s) of products, systems Specifications and standards, and practices and procedures, intended to satisfy the required function(s) in the most economical manner.
  - jjj) VENDOR – A party who has entered into a Contract with the City, as defined herein.
  - kkk) WAIVER OF COMPETITION – A process authorized by the Procurement Services Manager to procure items without competitive bidding procedures because of unique circumstances related to a particular need or procurement, including Emergency provisions.

### **1-103 Procurement Rules and Regulations**

The Procurement Services Division, in cooperation with Using Departments and the City Attorney's Office, will evaluate these Regulations at least annually, incorporating lessons learned, best practices, and new technology, and recommend changes to maintain and revise the Regulations to the Mayor and City Council as necessary. Any changes to these Regulations are adopted by ordinance pursuant to City Charter § 3-10(f) Personnel Policies and City Code § 1.5.204 Rules and Regulations.

## PART II – ADMINISTRATIVE MATTERS

### 2-100 ESTABLISHMENT OF THE PROCUREMENT SERVICES DIVISION

City Code § 1.5.203 establishes a Procurement Services Division.

#### 2-101 Procurement Services Manager

The Procurement Services Division shall be administered by and shall be under the general supervision of the Procurement Services Manager who shall be appointed by the Mayor. The Procurement Services Manager shall develop standard form Contracts that are reviewed and approved as to form by the City Attorney's Office. The approved Contracts shall be used whenever possible to execute Contracts on behalf of the City.

#### 2-102 Authority

- a) **MAYOR:** Per City Code § 1.2.313, the Mayor may execute any Contracts on behalf of the City subject to approval as to form by the City Attorney's Office. Furthermore, it shall be the Mayor's duty to ensure that all City Contracts are procured in compliance with the requirements of these Regulations, as approved by the Mayor and adopted by City Council pursuant to City Charter § 3-10(f). The Mayor has express authority over all procurements and the respective procurement processes outlined within these Regulations and may at any time be specifically involved in the approval process for any and all procurements, in whole or in part, if desired.
- b) **DEPARTMENT MANAGER/DIRECTOR:** The Department Manager/Director has the authority to make small purchases, for the department, up to \$14,999 using Purchase Orders and up to \$10,000 per transaction on the Purchasing Card (excluding IRS defined 1099 Vendors). This amount may be increased upon prior approval from the Procurement Services Manager. All Purchase Orders and Purchasing Card transactions are subject to audit by the Procurement Services Division and the Office of the City Auditor to ensure compliance with the City's Procurement Rules and Regulations and Purchasing Card policies.
  1. The Department Manager/Director is responsible for establishing internal procedures for procurements up to \$14,999. All purchases which are estimated to exceed \$14,999 shall be conducted by the Procurement Services Division. Department Managers/Directors shall consider a process for approving or coordinating all prospective procurements in excess of \$14,999 before they are sent to Procurement Services to ensure the validity of the requirement and to properly ascertain whether the required funding is budgeted and available. This process is documented in the form of a Purchase Requisition. A Purchase Requisition is required for all procurements over \$14,999.
  2. The Department Manager/Director must approve all Sole Source Justifications for requirements which exceed \$14,999 prior to submission to the Procurement Services Manager for final approval.
- c) **PROCUREMENT SERVICES MANAGER:** The Procurement Services Manager is responsible for all procurements which exceed \$14,999. The Procurement Services Manager may delegate Contract approval and execution authority via written memo. The memo shall specify the limits, if any, of the delegated authority and be acknowledged by the Deputy Chief of Staff. The Procurement Services Manager is also responsible for issuing final decisions related to protests, and for terminations of Contracts, either for default or convenience, which exceed the competition threshold (i.e. over \$14,999). Furthermore, the Procurement Services Manager shall have the discretion to require procurements which exceed the competition threshold to be solicited for competition, either informally or formally, by the Procurement Services Division. The Procurement Services Manager shall formally solicit and approve all Contracts over \$150,000 unless otherwise waived in accordance with these Regulations, and approve all Sole Source Procurements over \$14,999. Procurements between \$14,999 and \$150,000 (or the prevailing micro-purchase threshold if federally funded) may be purchased using informal purchasing procedures (i.e.

informal Bid Proposal, or quotation process). When interpreting these Regulations, the Procurement Services Manager may use applicable State of Colorado or federal procurement regulations and cited legal precedence as a basis for rendering a decision.

- d) CITY ATTORNEY'S OFFICE: A representative of the City Attorney's Office must review and approve all non-standard Contracts as to form. Also see Section 6-108 Legal Review of Contracts.

## **2-200 OTHER ADMINISTRATIVE MATTERS**

### **2-201 Unauthorized Contractual Actions**

In accordance with City Code and these Regulations, the Mayor, Chief of Staff, Chief Financial Officer, and the Procurement Services Manager are the only individuals with express contractual authority to bind the City on contractual actions greater than \$14,999, unless specifically authorized or delegated to other individuals, divisions, or departments either by these Regulations or in writing by the Mayor. Unauthorized commitments or contractual actions by individuals without express authority or approval by the Mayor or Procurement Services Manager may be subject to appropriate disciplinary action under the City's Policies and Procedures Manual (PPM). Unauthorized contractual actions may be cured by ratification by the Mayor. A few examples of unauthorized contractual acts are as follows:

- a) Ordering, receiving, or accepting goods or services in excess of \$14,999 without an approved Contract or Purchase Order.
- b) Directing a Vendor to proceed with work without a fully executed Contract. A fully executed Contract is defined as an agreement that has been signed by both the Vendor and the proper Contract authority of the City clearly describing the goods or services being contracted for and to what extent the City is financially obligated.
- c) Directing a change order to an existing Contract without ascertaining the availability of funds or obtaining approval that change is within the scope of Contract if applicable. See Section 6-110 Change Orders and Changes in Scope of Contract.
- d) Any contractual obligation that is made by an individual, division or department that obligates the City to another party without the current availability of sufficient funds to cover the obligation. See Section 2-202 Sufficiency of Funds below.
- e) Splitting purchases or requirements which exceed \$14,999 into distinctly different Purchase Orders as an effort to circumvent the City's competition requirements or to avoid obtaining proper Contract approval.

### **2-202 Sufficiency of Funds**

Except in cases of a declared emergency, the Procurement Services Manager shall not issue any order for delivery on an existing Contract or proceed with an open market purchase until the appropriate group or department manager certifies, after pre-audit, that there are sufficient funds available within the department's budget in excess of all unpaid obligations, to defray the cost of the Contract or open market purchase. (City Code § 1.5.207)

### **2-203 Vendor Equal Employment Opportunity Requirements**

The City is committed to equal employment opportunity for all and maintains and implements equal opportunity in all of its daily operations. The City's policy is that no person shall be discriminated against because of race, color, national origin, ancestry, sex, age, pregnancy status, religion, creed, disability, sexual orientation, genetic information, spousal or civil union status, or veteran status. Vendors shall comply with all federal and state nondiscrimination laws and have an equal employment opportunity policy. Vendors shall also comply with the City's Anti-discrimination policies regarding unlawful discrimination, harassment, retaliation and sexual harassment in the conduct of their business while on City property and/or interacting with City employees. Vendors will cooperate with the City in using the Vendor's best efforts to ensure that all businesses are afforded the full opportunity to compete for subcontracts or work under any City Contracts.



## **2-204 Conflicts of Interest**

In accordance with any applicable prohibitions listed in the City's PPM and Code of Ethics, any employee of the City who is involved in negotiating, approving, disapproving, administering, enforcing, or recommending for or against a Contract, Purchase Order, lease, concession, franchise, grant, Vendor, concessionaire, land use or any other matter to which the City is party is considered by definition a Covered Person and is strictly prohibited from accepting gifts or gratuities, regardless of value, from Vendors, subcontractors, concessionaires, or Vendors that could be considered a bribe or means of improper influence, or could be perceived to influence objectivity when interacting with or conducting business for or on behalf of the City.

In addition to the City's Code of Ethics, Contracts or Purchase Orders will not be awarded to consultants, engineers, architects, or other professionals, for Contract administration services that allow contractual and financial authority and responsibility for oversight, including change order and payment approval, if they were either paid or otherwise were directly involved in design or Specification preparation of the subject project by the City, without approval by the Procurement Services Manager. In no event shall the consultant or Vendor be granted authority for conducting the bidding process, approving change orders or obligating the City financially on the Contract for which they are providing oversight or design services.

Furthermore, no employee, Vendor or any affiliated firm of such employee or Vendor, is allowed to bid or propose on Contracts on which they are working or have worked (paid or unpaid), on either Contract oversight or design, without written consent or approval from the Procurement Services Manager. For the purpose of this provision, "Covered Person" means elected City officials, appointees, administrative officers, or employees that while a City employee were responsible for taking actions that included negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, vendor, concessionaire, land use or any other matter to which the City is a party.

The City will not entertain or accept a Bid or Proposal from, and in no event will a Contract or Purchase Order be awarded to, a former City employee who, while employed, met the definition of a Covered Person and was directly involved in design or Specification preparation of the subject project by the City, for six months from their separation date from the City.

It is not practical to list all possible instances of conflicts of interests. In addition to the expressed prohibitions and guidance above, the Procurement Services Manager shall in all cases seek to prevent an unfair competitive advantage and the existence of conflicting roles that might bias a Vendor's judgment or the judgment of a City official involved in a particular procurement. The Procurement Services Manager shall take reasonable steps to prevent, avoid, and mitigate any such conflicts of interest.

## **2-205 Employee-Owned Business**

The City shall not contract/purchase goods or services for any department if the Contract is with an employee of that department. Furthermore, contracting for goods or services with an employee, administrative officer, member of the employee's immediate family, or a company that is owned in whole or in part (defined as having an ownership interest of more than ten percent (10%) of the business) by an employee, administrative officer, or his/her Immediate Family Member (as defined in the City's Code of Ethics, City Code § 1.3.102), or a company in which an employee, administrative officer, or a member of his/her immediate family has a financial interest (defined as any interest in the business by means of a loan or other evidence of indebtedness, in excess of ten percent (10%) of said business's outstanding indebtedness), is permitted providing strict adherence to the following requirements;

- a) The Procurement Services Division shall be notified immediately in writing of such an ownership interest or financial interest. No Contract for goods or services shall be written to an employee-owned business if it could be construed or there is an appearance that the City employee-owned

- business has an advantage over other competitors.
- b) No solicitation of business by the employee shall take place during his/her normal duty hours.
  - c) All purchases or Contracts involving employee-owned businesses, regardless of estimated cost, shall be solicited for competition by the Procurement Services Division.
  - d) No master agreements or annual Purchase Orders will be allowed.
  - e) The employee owning the business or the employee with immediate family owning the business must recuse himself or herself from all involvement in the procurement.

### **2-206 Indemnification**

The Colorado State Constitution and the City Charter prohibit the City from the practice of indemnification of any party, public or private. Therefore, the City is prohibited from entering into any Contracts or agreements which require indemnification of a Vendor by the City.

### **2-207 Payments**

The City does not pre-pay or accept advance payment terms without approval from the Procurement Services Manager. Payment is made only when the product(s) are delivered in full, or the service has been completed. Scheduled payments made on a milestone and/or percentage basis may be acceptable for ongoing projects. These payments can only be approved by the Procurement Services Manager.

## **2-300 COMPETITION, SOLE SOURCE JUSTIFICATION, PREFERENCE**

### **2-301 Full and Open Competition**

The Procurement Services Division shall be responsible for ensuring the procurement of products, commodities, and services is in a manner that affords all responsible businesses a fair and equal opportunity to compete on a full and open competition basis, without restricting qualified Offerors from participating.

#### 2-301.1 Adequate Competition

It is the responsibility of the Procurement Services Division to ensure that an adequate selection of Offerors is solicited for every requirement in order to achieve optimum competition. This responsibility includes using other advertising methods or vehicles when sources may be limited, and contacting potential offerors either via phone, mail, email, or other method if the Procurement Services Division deems it necessary.

#### 2-301.2 Competition Exceptions

All purchases and Contracts shall be procured competitively either informally or formally if the aggregate total is more than \$14,999 (or the prevailing micro-purchase threshold if federally-funded) with the exception of purchases or Contracts made using the following exceptions. The applicable exceptions must be cited in the comments section of the Purchase Order or in a formal memo signed by the proper approving authority when applicable and placed in the file for audit purposes.

- a) When time is of the essence, purchases may be made off of another Contract or agreement written by another State, County, or Federal Government agency for identical goods or services. The agreement or Contract must be currently in use or active (including option periods) and have been formally competed by the State, County or Federal Government agency.
- b) Purchases directly from Federal, State, County or other local government units.
- c) Purchases made off of Contracts awarded through a joint purchasing alliance including but not limited to the Airport Purchasing Group, Western States Contracting Alliance (WSCA), U.S. Communities, or Multiple Assembly of Procurement Officials (MAPO) of which the City is a member and the Contract was formally competed by the alliance or group.
- d) Subscriptions for magazines, books or periodicals.
- e) Purchases from nonprofit organizations up to \$50,000 if the price has been determined to be fair and reasonable, as defined in Section 3-318 Fair and Reasonable Price.

- f) Training classes or instructors up to \$50,000 if the price is determined to be fair and reasonable.
- g) Purchases for inventory items intended for the purpose of resale for City enterprises.
- h) Professional Services up to \$100,000 annually with justification approved by the Procurement Services Manager.
- i) Personal service Contracts up to \$25,000, if price is determined to be fair and reasonable, as defined in Section 3-318 Fair and Reasonable Price.
- j) Unusual and compelling urgency precluding full and open competition, and the delay in Award of a Contract would result in serious injury, financial or other, to the City.
- k) Advertisements in appropriate publications.
- l) Obtaining professional legal services for trials, research, opinions, and testimony including but not limited to expert witnesses, trial consultants, case advisors and consultants. In these cases, there is no limit on cost as long as the City Attorney's Office has determined the need for such service is appropriate and the cost is fair and reasonable, as defined in Section 3-319 Fair and Reasonable Price.
- m) Other exceptions as approved by the Procurement Services Manager. (See Section 2-302 Sole Source Procurement.)
- n) Council-directed Contracts or agreements.

#### 2-301.3 Minimum Competition Requirements

These minimum competition requirements apply to the purchase of goods and services that are not exempted from competition under Section 2-301.2 Competition Exceptions above.

- a) Purchases up to \$14,999 do not require competitive Bids, Proposals or quotes; however, at least two documented quotes are highly encouraged for every purchase. All federally-funded procurements over the prevailing micro-purchase threshold are required to be competed to the maximum extent practicable.
- b) Purchases over \$14,999 and up to \$150,000 must be processed and executed by the Procurement Services Division. As a minimum, purchases made within this dollar range require three (3) written quotes. The quotes may be informally solicited telephonically or written and may be received via fax, e-mail, or hand-delivered. If three (3) quotes are not received, Procurement Services Division staff must document in the file efforts to obtain at least three (3) quotes. Receiving two (2) quotes constitutes competition in the event that three (3) quotes cannot be obtained. The Procurement Services Division Contracting Specialist or Buyer shall approve the Purchase Order and documentation prior to issuance. If the Award is not made to the lowest Offeror, then the file must be documented to include the rationale for awarding to other than the Offeror that submitted the lowest Bid. (Section 3-400 Small Purchases – Informal and Other Purchases.) This rationale must clearly demonstrate that the City is receiving the best value, considering price and other related factors.
- c) The Procurement Services Division will solicit all purchases of \$150,000 or more using formal methods and procedures. The Procurement Services Division shall follow the formal procedures unless otherwise waived as per the requirements under Section 2-301.2 Competition Exceptions, Section 2-301.3 Minimum Competition Requirements, and Section 3-403 Emergency Procurement, of the Regulations.
- d) Other funding sources may require the use of the stricter regulations than those outlined in these Regulations. The Using Department and the Procurement Services Division are responsible to be aware of those specific requirements.

#### 2-301.4 Waiver of Competition

The Procurement Services Manager may elect to waive the competitive bidding process under certain reasonable conditions, including but not limited to the following:

- a) a needed product or service that is available from only one supplier (sole source);
- b) a particular product is wanted for experiment or trial basis;
- c) additional products are required to complete a current ongoing task;

- d) the amount of the purchase is too small to justify the expense of soliciting quotations (see Section 3-401 Competition Not Required); or
- e) justified Emergencies as defined in Section 3-403 Emergency Procurement.

The Procurement Services Manager shall require competition to the maximum extent practicable, and except for small purchases of \$14,999 or less (or below the prevailing micro-purchase threshold if federally funded), the basis and reasons for each waiver shall be documented as public record. If the requirement is estimated to be in excess of \$14,999, a Sole Source Justification must be prepared by the Department Manager and approved by the Procurement Services Manager. (See Section 2-302 Sole Source Procurement.)

### **2-302 Sole Source Procurements**

Sole Source Procurement is permissible if a requirement is available from only a single supplier. A requirement for a particular Proprietary item does not justify Sole Source Procurement if there is more than one potential Offeror for that item or service. Sole Source purchase requirements may arise from a number of circumstances including, but not limited to:

- a) the purchase of an item or service where compatibility is the overriding consideration;
- b) the purchase of a particular product for trial or testing. (If this justification is used and additional items are required after testing, then competition must be sought if possible.);
- c) the Procurement Services Manager, in writing, determines use of a sole source to be in the Best Interest of the City based on unusual or clear and compelling urgency, such as in an Emergency situation;
- d) the use of other than original equipment manufacturer parts would void a still valid warranty;
- e) the purchase of a used item that becomes immediately available and cost is determined to be fair market value;
- f) use of another Vendor would involve substantial added costs;
- g) the purchase requires use of Proprietary data that cannot be released in a public solicitation;
- h) the use of cooperative agreements, intergovernmental agreements, or other service level agreements;
- i) modifications to existing Contracts within scope; or
- j) the Procurement Services Manager (for acquisitions up to \$150,000) shall make a written determination that procurement is sole source, setting forth the reasons. In the absence of a compelling reason to sole source, competition should be solicited. Any request by a Using Department that procurement be restricted to one potential supplier shall be accompanied by a Sole Source Justification.

#### **2-302.1 Written Justification**

If a Using Department requests a Sole Source Procurement for a purchase that exceeds the competition threshold of \$14,999, the Using Department must submit a Sole Source Justification to the Procurement Services Division. The Procurement Services Manager is responsible for evaluating whether the written justification establishes sufficient benefit to the City for a Sole Source Procurement. The Procurement Services Manager must make a determination that the total cost of the Sole Source Procurement is fair and reasonable using an element of price analysis (See Section 3-318 Fair and Reasonable Price).

### **2-303 Disadvantaged and Local Business**

#### **2-303.1 Minority Business Enterprises**

No provision is made in these Regulations for preferences or set-asides for minority or women-owned businesses. It is, however, the policy of the Procurement Services Division to make an affirmative effort to solicit and encourage small, minority, women-owned or other small or historically disadvantaged business participation for City Contracts. The City encourages participation and is willing to provide assistance to interested businesses. Certain City departments have established Disadvantaged Business Enterprise

Programs to ensure utilization of small and/or disadvantaged businesses to track business activities and to provide assistance to such businesses in participating in the City's procurement and contracting process.

2-303.2 Local Business Enterprises

No provision is made in these Regulations for dollar percentage or other types of preferential considerations for local Vendors. It is, however, the policy of the Procurement Services Division to solicit Bids from local suppliers whenever and wherever such competitive local sources exist, and where no sacrifice or loss in price or quality would result. In the event of a tie Bid between a local Vendor and an out of town Vendor, Award will be made to the local Vendor if all factors, including price, quality, terms, and delivery are determined to be equal.

## **PART III – METHODS OF SOURCE SELECTION**

### **3-100 INVITATION FOR BIDS (IFB) IN COMPETITIVE SEALED BIDDING**

The statement of work or Specifications of the IFB is critical for the success of the procurement since the Award using sealed bidding must be made without Discussions, unless only one Bid was received. Basic considerations include the contractual terms and conditions that must be written to protect the interest of the City; openness of Specifications; requirements for transportation and delivery; and instructions as to how the Offeror is to submit the Proposal. A Formal Solicitation should seek full and open competition for all purchases and provide fair and equal opportunity for all qualified persons or firms to compete. IFB is the preferred method of procurement for the City in cases where Discussions are not desired or needed and where technical, management, and other areas are not evaluated.

### **3-101 Uses**

All acquisitions for supplies, equipment, materials, services, and construction which are estimated to exceed \$149,999 shall be processed formally using Section 3-100 Invitation for Bids in Competitive Sealed Bidding unless the acquisition is otherwise documented to use other formal methods as described in Section 3-200 Two-Step Sealed Bid Process, Section 3-300 Requests for Proposals, or has been exempted by the Procurement Services Manager from formal competition for reasons allowed by these Regulations. Competitive Sealed Bids may be used to acquire any goods, services or construction regardless of dollar amount if the Procurement Services Manager determines it to be the most appropriate method of procurement. Competitive Sealed Bids shall be awarded to the lowest responsive and responsible Offeror and must adhere to the Firm Bid Rule.

In calculating the estimated value of a procurement to determine whether it is solicited under informal or formal procedures, the Using Department shall use the estimated value of the services or items being purchased plus the value of any applicable option years.

#### **3-101.1 Responsive Bid**

To be considered for an Award using Competitive Sealed Bids, a Bid must comply in all material respects with the IFB including the instructions to Offerors, Bid schedule, Specifications, drawings, and terms and conditions. Such compliance enables Offerors to stand on an equal footing and maintains the integrity of the sealed bidding system. (See also Section 3-102.4 Rejection of Bids.)

#### **3-101.2 Responsible Offeror**

To be considered eligible for an Award of a Contract using Competitive Sealed Bids, an Offeror must be determined to be responsible by the Procurement Services Manager using the criteria and procedures outlined in Section 4-100 Standards of Responsibility. A determination of non-responsibility by the Procurement Services Manager is grounds for rejection of a Bid. (See also Section 3-102.4 Rejection of Bids.)

#### **3-101.3 Invitation for Bids – Content**

The IFB shall include the following:

- a) Instructions and information to Offerors concerning the Bid submission requirements (furnished by the Procurement Services Division), including the time and closing date and the address of the office to which Bids are to be delivered;
- b) The project description (furnished by the Using Department), basis of Award, delivery or performance schedule, and inspection and acceptance requirements; and
- c) A sample Contract and Contract terms and conditions, including warranty and bonding or security requirements as applicable.

#### 3-101.4 Incorporation by Reference

The IFB may incorporate documents by reference provided that the invitation specifies where such documents may be obtained.

#### 3-101.5 Offeror Submissions – Bid Form

The IFB shall provide a form that shall include space(s) in which the Bid price(s) shall be inserted and that the Offeror shall sign and submit along with all other necessary submissions.

#### 3-101.6 Multiple or Alternate Bids

The Formal Solicitation shall prohibit multiple or alternate Bids unless such Bids are specifically provided for in the IFB. Alternate Bids for this provision are defined as Bids that are received in response to an IFB that were not requested in the Bid schedule or Bids that offer alternate pricing to be considered when the City's IFB does not ask for alternate solutions or pricing from Offerors. When prohibited, the multiple or alternate Bids shall be rejected, and a clearly indicated base Bid will be considered for Award as though it were the only Bid or offer submitted by the Offeror.

#### 3-101.7 Vendor Registrations

The Procurement Services Division shall offer Vendors who may be interested in competing for various types of City Contracts the opportunity to register for certain website(s), selected by the City and maintained by a third party, which facilitate access to government procurement opportunities.

#### 3-101.8 Specifications

Using Departments and the Procurement Services Division shall issue product, supply, and service Specifications that are not unduly restrictive. This may include the utilization of life cycle costing and/or value analysis in determining the lowest responsible Offeror, provided the Specifications indicate the procedure and evaluative factors to be used. Performance Specifications may be used provided they include evaluative criteria to be used in making the Award. (See also Section 5-100 General Purpose and Policy.)

#### 3-101.9 Purchase of Items Separately from Construction Contract

The Procurement Services Manager and Using Department are authorized to determine whether a supply item or group of supply items shall be included as a part of, or procured separately from, any Contract for construction.

#### 3-101.10 Disposition of Bid Security

Bid security, if any, shall be returned to the Offeror when withdrawal of the Bid is permitted, a Contract is awarded to another firm, or IFB is cancelled after opening. Bid securities in the form of bonds will not be returned to unsuccessful Offerors unless requested since they normally expire after Contract is awarded and become invalid automatically.

#### 3-101.11 Solicitation Time

Except as provided in Section 3-400 Small Purchases – Informal and Other Purchases, and Section 3-403 Emergency Procurement, the minimum time for Formal Solicitation of Bids shall be twenty-one (21) Days from the date the advertisement is posted on the Procurement Services Division website. When extenuating circumstances exist, the Procurement Services Manager may lengthen or shorten the Bid time. Complicated procurements may have a time period that is longer than the standard twenty-one (21) Days. Procurement Services Division staff shall document the reason for a reduced Bid period if the solicitation time is less than twenty-one (21) Days. Requests for Proposals (RFPs) for services in excess of \$149,999 must allow a minimum of thirty (30) Days for response unless the Procurement Services Manager approves a justification for shorter times is approved.

**3-101.12 Estimated Magnitudes for Formal Solicitations**

Invitations for Bids (IFBs) and all associated Notices to Offerors or advertisements shall contain an estimated project magnitude in order to inform potential Offerors what the City anticipates the project to cost, without releasing the actual project estimate. The magnitude is for informational purposes only and should be used by Offerors as a guide to determine if they have the necessary bonding capacity and capabilities to perform a project within this magnitude. The following magnitude ranges may be used for this purpose, or the Procurement Services Manager may establish other ranges not listed in order to accommodate project budgetary limits:

\$50,000 to \$100,000	\$1,500,000 to \$2,500,000
\$100,000 to \$250,000	\$2,500,000 to \$5,000,000
\$250,000 to \$500,000	\$5,000,000 to \$7,500,000
\$500,000 to \$750,000	\$7,500,000 to \$10,000,000
\$750,000 to \$1,000,000	\$10,000,000 to \$15,000,000
\$1,000,000 to \$1,500,000	

**3-101.13 Bidding Option Periods**

The City may require Vendors to bid option periods in Formal Solicitations. If option periods are bid in Formal Solicitations, then they should be considered to some extent when evaluating the overall low Offeror prior to making an Award. If option periods are bid in Formal Solicitations, Vendors may not increase their prices when an option period is entered into, unless there are provisions for economic price adjustments. In such cases, the Vendor must submit proper justification of their proposed increase prior to entering into the option period. The Procurement Services Manager will then determine if the Vendor's request is reasonable, or if it is in the Best Interest of the City to re-bid the requirement.

**3-102 Receipt of Bids**

Upon receipt, each Bid shall be time-stamped by machine or by hand and shall be stored in a secure place until Bid opening time. Bids shall not be opened upon receipt, with the exception of Bids that must be opened in order to identify those Bids that cannot be visibly identified by the information on the envelope. If Bids are opened for identification purposes only, they will be opened and resealed in the presence of at least one (1) witness and documented as such on the front of the envelope.

**3-102.1 Opening and Recording of Bids**

A member of the Procurement Services Division, in the presence of at least one (1) witness, shall open Bids publicly, at the time and place designated in the IFB. The clock in the Procurement Services Division will be used as the official clock for calling the time for Bids. The name of each Offeror, the Bid price(s), and other information deemed appropriate by the Procurement Services Manager shall be read aloud or otherwise made available. (Responsiveness and responsibility are not determined during the Bid opening.) The Bid abstract or tabulation shall be available at the conclusion of the Bid opening for public inspection and distribution. Except for those items identified as Proprietary or Confidential Information, all data regarding any particular Bid becomes public information immediately after a decision has been made as to responsiveness and responsibility for Award relating to that Bid.

**3-102.2 One Bid Received**

If only one responsive Bid is received in response to the IFB, an Award may be made to the single Vendor if the Procurement Services Manager finds that the price(s) submitted are fair and reasonable, in accordance with Section 3-318 Fair and Reasonable Price, and that all other prospective Offerors had reasonable time to respond, or there is not adequate time for re-solicitation; otherwise, the Bid may be rejected, and:

- a) new Bids may be solicited (if new Bids are solicited, the prices originally submitted shall not be released to the public in order to maintain the integrity of the procurement);
- b) the proposed procurement may be cancelled; or



- c) if the Procurement Services Manager and Department Manager determine that the price of the one Bid is not fair and reasonable, in accordance with Section 3-318 Fair and Reasonable Price, and that re-solicitation would likely be futile, Discussions may be entered into with the lone Offeror. (See also Section 3-500 Cancellation or Rejection of Bids or Proposals.)

#### 3-102.3 Extension of Time for Bid or Proposal Acceptance

After opening of Bids, the Procurement Services Manager may request low Offeror(s) to extend the time during which the City may accept their Bids, provided that no other change is permitted. The reasons for requesting such extensions shall be documented.

#### 3-102.4 Rejection of Bids

The Procurement Services Manager has the authority to reject any Bid based on, but not limited to, the following (See also Section 3-500 Cancellation or Rejection of Bids or Proposals):

- a) Any Bid that fails to conform to the essential requirements of the IFB shall be rejected.
- b) Any Bid that does not conform to the applicable Specifications shall be rejected unless the IFB specifically authorizes the submission of alternate Bids or deviations.
- c) Any Bid that fails to conform to the specified delivery schedule.
- d) A Bid shall be rejected when the Offeror imposes conditions that would modify the requirements of the invitation or limit the Offeror's liability to the City, since to allow Offerors to condition their Bid would be prejudicial to other Offerors. For example, Bids shall be rejected in which the Offeror:
  - 1. protects against future changes in conditions, such as increased costs, if total cost to the City cannot be determined by Bid. This would include failure to completely fill out required Bid schedule;
  - 2. fails to state price and indicates that price shall be "price in effect at time of delivery or award;"
  - 3. states a price but qualifies it as being subject to change; or
  - 4. when the invitation does not authorize it, the Offeror conditions or qualifies a Bid by stipulating their own terms and conditions, includes additional prices not required by the Formal Solicitation, or stipulates a product that has not been approved by the Formal Solicitation.
- e) Any Bid in which the price is considered to be unreasonable or is over budget.
- f) Any Bid if the prices are determined to be unbalanced.
- g) Bids received from any person or Vendor that is suspended, debarred, proposed for debarment, or under investigation for fraud, including failure to pay either Federal, State or City taxes.
- h) When a Bid Bond or guarantee is required and the Offeror fails to furnish the Bid Bond or guarantee in accordance with the requirements of the invitation.
- i) Low Bids received from Offerors who have been determined to be non-responsible in accordance with Part IV of these Regulations.
- j) Any Bid that was prepared and submitted by a Vendor who the Procurement Services Manager has determined had an unfair advantage over the other Offerors. Examples of an unfair advantage include, but are not limited to, the following:
  - 1. a previous or prior employee who in the last six (6) months was directly involved in the design or Specification preparation of the competed procurement; or
  - 2. a Vendor who was directly involved in design or Specification preparation of the competed project either paid or unpaid.

#### 3-102.5 Notice to Offerors of Rejected Bid

The Procurement Services Manager shall provide a written notification explaining to any Offeror whose Bid has been rejected the reason(s) the Bid has been rejected, and will document the file accordingly.

### **3-103 Bid Evaluation**

All products or services shall be evaluated against the requirements stated in the City's Formal Solicitation. In addition to price, factors which may be considered in evaluating any Bid response include but are not limited to delivery date after receipt of order, cash discounts, warranties (type/length), future availability, results of product testing, local service, cost of maintenance agreements, future trade-in value or availability of re-purchase agreement, availability of training courses, financial terms, space limitations, aesthetics, adaptability to environment, cost of operation (if any), safety, and health features relating to regulatory codes or requirements.

#### **3-103.1 Bid Evaluation – Product Acceptability**

The IFB may require the submission of Bid samples, descriptive literature, technical data, or other material necessary to determine product acceptability. The acceptability Evaluation is not conducted for the purpose of determining whether one Offeror's item is superior to another, but only to determine whether an Offeror's offering will meet the City's needs as set forth in the invitation. Any Offeror's Bid that does not meet acceptability requirements will be rejected as non-responsive.

### **3-104 Award Using Sealed Bidding**

- a) The Contract shall be awarded to the lowest responsive and responsible Offeror whose Bid meets the requirements and criteria set forth in the IFB and whose Bid is determined to be in the Best Interest of the City. Discussions are not allowed when using sealed bidding unless only one Bid was received. The Procurement Services Manager may make whole or partial Awards, or may reject all Bids if prices are determined to be unreasonably high or unrealistically low. If insufficient funds are available to award a Contract, the Formal Solicitation may be cancelled or the Procurement Services Manager may choose to re-scope the project and re-solicit Bids, as determined to be in the Best Interest of the City.
- b) In cases where the project has a maximum budget, the City may include language in Formal Solicitations that allows for the budgeted amount to be announced prior to opening Bids and for that number to determine the apparent low Offeror. This will be accomplished using an additive alternates plus base Bid method. Each additive item will be listed in the Bid schedule and is required to be completed by each Offeror.

The Contracting Specialist will announce the base Bid and then will read the base Bid plus first additive alternative totaled. Then, the Contracting Specialist will read the total of the first and second additive alternatives, plus base Bid. This process will continue until such time as all additive alternatives are read or until an Offeror exceeds the budgeted amount. The Award will go to the lowest responsible Offeror for the base Bid plus alternatives beneath the budgeted amount. When this method is used, an explanation of the process will be included in the IFB.

#### **3-104.1 Low Tie Bids**

Tie Bids are low responsive Bids from responsible Offerors that are identical in price and which meet all the requirements and criteria set forth in the IFB. At the discretion of the Procurement Services Manager, Award shall be made if possible by methods including split orders, rotations, or, if it is not possible to make split or rotational Awards, then drawing of lots or flipping of a coin will be used to determine the Award. If a local Vendor is involved in a tie Bid, Award shall be made in accordance with Section 2-303.2 Local Business Enterprises.

### **3-105 Telephone Bids**

Telephone Bids will not be accepted in Formal Solicitations except as provided for in Section 3-400 Small Purchases – Informal and Other Purchases. Telephone Bids may also be accepted if the Procurement Services Division or Using Department makes written determination that market conditions are of such a nature that it is in the Best Interest of the City to solicit telephone Bids, such as the purchase of petroleum fuels on a daily basis, under changing market conditions, or under solicitations during an Emergency.

### 3-105.1 Electronic Bids

Electronic transmissions of Bids to the Procurement Services Division will not be accepted in the formal Competitive Sealed Bid process unless the IFB specifically allows them.

If the Formal Solicitation allows Bids to be submitted electronically, then the Bids must be received by the Procurement Services Division in the manner provided in the IFB and prior to the scheduled Bid opening. These Bids may be accepted under the following conditions:

- a) the electronic Bid specifically refers to the applicable IFB;
- b) the electronic Bid sets forth the items, quantities, prices, and deliveries offered; and
- c) the electronic Bid states that the Bid complies with the terms and conditions of the IFB and is being confirmed by submission of the properly executed Bid documents.

### **3-106 Modification or Withdrawal of Bids**

Bids may be modified or withdrawn by written correspondence to the Procurement Services Division prior to the time set for Bid opening.

#### 3-106.1 Withdrawal of Bid Prior to Bid Opening

The Offeror may withdraw any Bid prior to the specified Bid opening time and date if the Offeror's representative appears at the Procurement Services Division, or sends the Procurement Services Manager a written request for withdrawal.

#### 3-106.2 Withdrawal of Bid after Opening but Prior to Award

No Bid may be withdrawn unless the Offeror can establish that the Bid contains mistakes despite the exercise by the Offeror of reasonable care. The test of reasonable care shall be that:

- a) the mistake relates to a material feature of the Formal Solicitation;
- b) the mistake occurred despite the Offeror's careful preparation of the documents or materials involved; and
- c) withdrawal is deemed by the Procurement Services Manager to be in the Best Interest of the City.

#### 3-106.3 Records

All documents relating to the modification or withdrawal of Bids shall be made part of the appropriate file.

#### 3-106.4 Minor Informalities/Irregularities in Bids

A minor informality or irregularity is one that is merely a matter of form and not of substance and that pertains to some immaterial defect in a Bid or variation of a Bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other Offerors. The defect or variation is considered immaterial when the effect on price, quantity, quality, or delivery is negligible in contrast with the total cost or scope of the services being acquired. If the Procurement Services Manager determines that the Bid submitted contains a minor informality or irregularity, then he/she shall either give the Offeror an opportunity to cure any deficiency resulting from a minor informality or irregularity in a Bid, or may waive the deficiency, whichever is in the Best Interest of the City. In no event will the Offeror be allowed to change the Bid amount. Examples of minor informalities or irregularities include, but are not limited to, the following:

- a) Offeror fails to return the number of copies of signed Bids required by the IFB;
- b) Offeror fails to sign the Bid, but only if the unsigned Bid is accompanied by other material evidence, that indicates the Offeror's intention to be bound by the unsigned Bid (such as Bid Bond, or signed cover letter that references the Bid number or title, and amount of Bid); or
- c) Offeror fails to acknowledge an addendum/amendment. This may be considered a minor informality only if the addendum/amendment, that was not acknowledged, is insignificant, and involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item or services bid upon.

### **3-107 Late Bids**

Any Bid, withdrawal or modification to Bids received after the time and date set for opening, shall be considered late and shall be rejected and returned unopened to the Offeror, except as provided herein. All Sealed Competitive Bids shall be opened as soon as possible after the time designated in the IFB. Bids received after the Bid opening time shall not be opened, but shall be rejected as a late Bid. The responsibility to ensure that Formal Solicitations are obtained and that Bids are received prior to the opening date and time rests with the Offeror. Routine inconveniences such as flat tires, accidents, or parking problems shall not be cause for acceptance of late Bids. The Procurement Services Manager may permit the following exceptions:

- a) In the event of a public labor unrest (i.e. a strike or work slow-down) that may affect mail delivery, the Procurement Services Manager may develop and issue emergency procedures.
- b) There is conclusive evidence that the Bid was submitted on time to the office designated in the IFB or RFP and was mishandled by City personnel responsible for handling/receiving Bids.
- c) It was the only Bid received.
- d) The Procurement Services Manager shall rule on any other situation that is beyond the control of both the City and the Vendor as to the acceptability of the Bid.

### **3-108 Public Notice – Advertisement**

Invitations for Bids or Notices of the availability of Invitations for Bids shall be posted on the Procurement Services Division's website, posted on a public third party website selected by the City, mailed, faxed, or otherwise furnished to a sufficient number of prospective Offerors to secure adequate competition. For formal Bids in the amount of \$150,000 or more, public notices may be published in a newspaper of general circulation and/or in as many trade publications or secondary newspapers, in addition to the Procurement Services Division's website, to assure competition is maximized. Generally, public Notices shall be posted for at least twenty-one (21) Days prior to the date for bid opening, except as outlined in Section 3-108.1 Waiver of Public Notice – Advertisement, Section 3-401 Competition not Required, and Section 3-403 Emergency Procurement.

#### 3-108.1 Waiver of Public Notice – Advertisement

The Procurement Services Manager or Mayor may authorize the waiver of public Notice for requirements in the amount of \$150,000 or more upon written determination that circumstances call for quick procurement action. Justification for a Waiver of Public Notice may include Emergency procurements as defined in Section 3-403 Emergency Procurement; a Sole Source Procurement as defined in Section 2-302 Sole Source Procurements; or in the event that the Procurement Services Division has a pre-qualified list of vendors for the subject commodity. In these situations, the Procurement Services Manager will make special effort to obtain written competition or sealed Bids, but may waive the public Notice.

#### 3-108.2 Public Availability

A copy of the IFB shall be made available for public inspection at the Procurement Services Division or via the Procurement Services Division website or designated third-party website.

#### 3-108.3 Pre-Bid Conferences

Pre-bid conferences may be conducted for the purpose of explaining the procurement requirements. They shall be announced to all prospective Offerors known to have received the IFB. The conference should be held long enough after the invitation has been issued to allow Offerors to become familiar with it, but with adequate time before Bid opening to allow consideration of the conference results in preparing the Bid. A pre-bid conference may be mandatory if the Procurement Services Division or Using Department determines it is necessary to ensure familiarity with the project by all Offerors prior to bidding. If the conference is determined to be mandatory, the Procurement Services Manager shall consider more than one date to ensure adequate competition is obtained. Nothing stated at such conference shall change the IFB unless the change is made by written addendum/amendment.

### **3-109 Addenda/Amendments to Invitations for Bids**

Addenda/Amendments to Invitations for Bids shall be identified as such and may require that the Offeror acknowledge receipt of all addenda/amendments issued. The addendum/amendment shall reference the portions of the invitation it amends. Addenda/Amendments shall be communicated to all prospective Offerors known to have received an IFB as well as made available on the Procurement Services Division website. Addenda/Amendments shall be distributed within a reasonable time to allow prospective Offerors to consider them in preparing their Bids. If the time set for Bid opening will not permit such preparation, to the extent possible, the Bid preparation time shall be increased in the addendum/amendment, or if necessary, by telephone and confirmed in the amendment. Questions received by prospective Offerors concerning the IFB, both technical and contractual in nature, will be answered in the form of an addendum/amendment to allow all potential Offerors to share the same information. The Procurement Services Division shall issue all addenda/amendments.

#### **3-109.1 Addenda/Amendments to IFB - Form**

Addenda/Amendments to Invitations for Bids shall be identified as such and shall require that the Offeror acknowledge receipt of all addenda/amendments issued with their Bid or Proposal. The addenda/amendment shall reference that portion of the invitation it amends.

#### **3-109.2 Distribution**

Addenda/Amendments shall be sent to all prospective Offerors known to have received an IFB and posted on the Procurement Services Division website, or a designated third party website, for electronic distribution. Regardless of the distribution, it is still the responsibility of the Offeror to ensure they have received all Addenda/Amendments prior to submission of their Bid.

### **3-110 Confidential Information**

The Procurement Services Manager shall examine all Bids to determine the validity of any requests for nondisclosure of trade secrets or other Proprietary data identified in writing by the Offeror. The Offeror, prior to the Bid opening, shall submit such requests under separate cover. If the parties do not agree as to the disclosure of confidential data, the Procurement Services Manager shall inform the Offeror in writing what portions of the Bid will be disclosed and that, unless the Offeror protests in accordance with Section 4-105 Protested Solicitations of these Regulations, the data will be so disclosed.

### **3-111 Mistakes in Bids - Confirmation of Bid**

When it appears from a review of the Bid that a mistake has been made, the Procurement Services Division shall be responsible for requesting the Offeror to confirm their Bid in writing. Situations in which the confirmation may be requested include obvious, apparent errors on the face of the Bid or a Bid unreasonably lower than the other Bids submitted. If the Offeror alleges a mistake, the Bid may be withdrawn only in compliance with Section 3-106.2 Withdrawal of Bid after Opening but Prior to Award.

Offerors may request in writing to the Procurement Services Manager that they be allowed to correct a mistake in their Bid; however, the mistake must be apparent and substantiated by evidence provided by the Offeror that the mistake was valid. The Procurement Services Manager shall request the Vendor to support the alleged mistake by submission of written statements and pertinent evidence such as, but not limited to: Vendor's file copy of Bid, Vendor's original worksheets including supporting data used to prepare Bid, subcontractor or supplier quotes, and any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the Bid actually intended. The Procurement Services Manager will determine, given all the evidence provided by the Offeror, whether the alleged mistake will be considered by the City to be a mistake. If the Procurement Services Manager determines the Offeror has proven a mistake, the Procurement Services Manager will then determine whether it is in the Best Interest of the City to allow the mistake to be corrected, and notify the Offeror in writing. In no event will Offerors be allowed to correct mistakes, other than apparent typographical errors, if their requested correction would displace another Offeror.

3-111.1 Mistakes Where Intended Correct Bid is Evident

If the mistake and the intended correct Bid are clearly evident to the Procurement Services Manager on the face of the Bid document, the Bid shall be corrected and may not be withdrawn. Examples include, but are not limited to, typographical errors, obvious errors in extending unit prices, and transposition errors.

3-111.2 Mistakes Where Intended Correct Bid is not Evident

An Offeror may be permitted to withdraw a Bid if the Offeror submits proof of evidentiary value in accordance with provisions of Section 3-106.2 Withdrawal of Bid after Opening but Prior to Award.

3-111.3 Mistakes Discovered Before Opening

A Offeror may correct mistakes discovered before Bid opening by withdrawing or correcting the Bid as outlined in 3-106.1 Withdrawal of Bid Prior to Bid Opening.

3-111.4 Determination Required

Any decision to permit or deny correction or withdrawal of a Bid under this section shall be supported by a written determination by the Procurement Services Manager or the Manager's written designee.

3-111.5 Mistakes after Award of Contract

When a mistake in a Vendor's Bid is not discovered until after Award of a Contract, the mistake may be corrected by Contract change order if correcting the mistake would be favorable to the City without changing the Specifications. If the mistake is not in the favor of the City, the Procurement Services Manager may:

- a) rescind the Contract via termination;
- b) deny the Vendor's request to correct the mistake; or
- c) reform the Contract by deleting the item(s) involved in the mistake; or increasing the price of the Contract by allowing the correction of the mistake, as long as the correction or increase in price does not exceed the price of the next lowest Offeror. Partial corrections will not be allowed in order to stay below the next lowest Offeror's price.

**3-200 TWO-STEP SEALED BID PROCESS**

Two-Step Sealed Bidding is a two-step process consisting of a technical phase and a pricing phase. The technical phase is composed of one or more steps in which Offerors are required to submit unpriced technical Bids to be evaluated by the City. The pricing phase consists of a price evaluation of those Offerors whose technical Bids are determined to be acceptable. This process is designed to obtain the benefit of Competitive Sealed Bidding by Award of a Contract to the lowest responsive, responsible Offeror.

**3-201 Conditions for Use**

The Two-Step Sealed Bid process may be used when it is not practical for the Procurement Services Division to initially prepare a definitive purchase or Contract description that will be suitable to permit an Award based on price alone.

**3-202 Procedure for Phase One of Two-Step Sealed Bids**

Two-Step Sealed Bids are initiated when the Procurement Services Division issues an IFB. In addition to requirements set forth in Section 3-100 Invitation for Bids (IFB) in Competitive Sealed Bidding, the solicitation for a Two-Step Sealed Bid shall state:

- a) that an unpriced technical offer is requested;
- b) whether offerors are to submit prices at the same time as unpriced technical Bids and that such prices, if required, shall be submitted in a separate sealed envelope;
- c) that it is a Two-Step Sealed Bid procurement and prices will be considered only in the second

phase and only from those Offerors whose unpriced technical offers are found to be acceptable in the first phase;

- d) the criteria to be used in evaluating the unpriced technical Bid;
- e) that the City, to the extent the Procurement Services Manager or Using Department finds necessary, may conduct oral or written Discussions of the unpriced technical Bids;
- f) that Offerors may designate those portions of the unpriced technical Bids that contain trade secrets or other Proprietary data as Confidential; and
- g) that the item or Contract being procured shall be furnished generally in accordance with the Offeror's technical Bid as found to be acceptable and shall meet the requirements set forth in the IFB.

#### 3-202.1 Addenda/Amendments to the Invitation

After the Procurement Services Division receives unpriced technical Bids, addenda/amendments to the IFB will be distributed only to Offerors who submitted unpriced technical Bids. If, in the opinion of the Procurement Services Manager, a contemplated addendum/amendment will materially change the nature of the procurement, the invitation shall be cancelled and a new IFB issued.

#### 3-202.2 Receipt of Unpriced Technical Bids

Unpriced technical Bids shall not be opened publicly. Such Bids shall not be disclosed to unauthorized persons. Offerors may request nondisclosure of trade secrets and other Proprietary data that they identify in writing.

#### 3-202.3 Evaluation of Unpriced Technical Bids

The unpriced technical Bids shall be evaluated solely in accordance with the criteria set forth in the IFB. The unpriced technical Bids shall be categorized as acceptable or unacceptable. The Procurement Services Manager shall record in writing the basis for finding an offer unacceptable and make it a part of the procurement file. The Procurement Services Manager may initiate phase two if it is determined that there are sufficient acceptable unpriced technical Bids to assure effective price competition in the second phase without entering into technical Discussions. If the Procurement Services Manager and Using Department find that such is not the case, the Procurement Services Manager shall issue an addendum/amendment to the invitation or engage in technical Discussions, whichever the Procurement Services Manager deems appropriate.

#### 3-202.4 Discussion of Unpriced Technical Bids

Discussion of its unpriced technical Bid may be conducted by the Procurement Services Manager and Using Department with any Offeror who submits an acceptable or potentially acceptable technical Bid. During the course of such Discussions, the Procurement Services Manager and Using Department shall not disclose any information derived from one unpriced technical Bid to any other Offeror. Once Discussions have commenced, any Offeror who has not been notified that its Bid has been found unacceptable may submit supplemental information amending its technical offer at any time until the closing date and time published in the IFB. Such submission may be made at the request of the Procurement Services Manager or Using Department or upon the Offeror's own initiative.

#### 3-202.5 Unacceptable Unpriced Technical Offer

When the Procurement Services Manager or Using Department notifies an Offeror that their unpriced technical offer is unacceptable, such Offeror shall not be afforded additional opportunities to supplement technical Bids.

#### 3-202.6 Mistakes During Two-Step Sealed Bid Process

Mistakes may be corrected or Proposals withdrawn during phase one (a) before unpriced technical Bids are considered; (b) after any Discussions have commenced; or (c) when responding to any addendum/amendment of the IFB.





### **3-203 Procedure for Phase Two of Two-Step Sealed Bids**

Upon completion of phase one, the Procurement Services Manager shall:

- a) open prices submitted in phase one (if prices were required to be submitted) from Offerors whose unpriced technical Bids were found to be acceptable; or
- b) if prices have not been submitted, technical Discussions have been held, or addenda/amendments to the IFB have been issued, invite each acceptable Offeror to submit a price Proposal.

#### **3-203.1 Conduct**

Phase two shall be conducted as any other Competitive Sealed Bid except as specifically set forth in this Section 3-200 Two-Step Sealed Bid Process and:

- a) no public Notice of the IFB to submit price Proposals needs to be given because such Notice was previously given;
- b) after Award, the unpriced technical offer of the successful Offeror shall be disclosed as follows: The Procurement Services Manager and Using Department shall examine written requests for confidentiality for trade secrets and Proprietary data in the technical Bid of the Offeror to determine the validity of such requests. If the parties do not agree as to the confidentiality of the data, the Procurement Services Manager shall inform the Offeror in writing that portion of the unpriced technical Bid that will be disclosed. Unless the Offeror protests under Section 4-105 Protested Solicitations, the offer will be so disclosed; and
- c) unpriced technical Bids of Offerors who are not awarded the Contract shall not be open to public inspection unless the Procurement Services Manager determines in writing that public inspection of such Bids is necessary to assure confidence in the integrity of the procurement process; provided, however, that the provisions of (b) above shall apply with respect to the possible disclosure of trade secrets and Proprietary data.

### **3-300 REQUESTS FOR PROPOSALS (RFP) (FORMAL)**

Requests for Proposals (RFPs) are used in negotiated acquisitions to communicate City requirements to prospective Vendors and to solicit Proposals. RFPs for competitive acquisitions shall, at a minimum, describe the following:

- a) the City's requirements;
- b) anticipated terms and conditions that will apply to the Contract; which may include but are not limited to the following:
  - 1. whether the Formal Solicitation authorizes Offerors to propose alternative terms and conditions, including the Contract Line Item Number (CLIN) structure; and
  - 2. when alternative CLIN structure Proposals are permitted, the Evaluation approach should consider the potential impact on other terms and conditions of the requirement (e.g., place of performance or payment and funding requirements.);
- c) information required to be in the Offeror's Proposal; and
- d) factors and significant sub-factors that will be used to evaluate the Proposal and their relative importance.

#### **3-301 When Requests for Proposals are Practicable**

Factors to be considered in determining whether an RFP is practicable include but are not limited to:

- a) estimated Contract value is in the amount of \$150,000 or more;
- b) requirement is highly technical, unusual, not a standard "off the shelf" item, or there are not any clear standards or Specifications available to use in the Formal Solicitation;
- c) whether the Contract needs to be other than fixed-price type;
- d) whether it may be necessary to conduct oral or written Discussions with Offerors concerning technical and price aspects of their Proposals;
- e) whether it may be necessary to afford Offerors the opportunity to revise their Proposals;
- f) whether it may be necessary to base Award on a comparative Evaluation of differing price,

- quality, and contractual factors in order to determine the most advantageous offering to the City;
- g) whether the primary consideration(s) in determining Award may be factors other than price(s);
- h) whether it is necessary to make an Award using a Best Value decision, thus requiring Evaluation and consideration of other criteria along with price to determine overall Best Interest of the City; and
- i) whether Discussions would be the preferred method to finalize the contractual arrangement.

### **3-302 Determinations**

The Procurement Services Manager may make determinations to use RFPs by category of supply, service, or construction item(s) at his/her discretion.

### **3-303 Dollar Thresholds for RFPs**

Formal RFPs shall be issued by the Procurement Services Division for requirements that are estimated to exceed \$149,999. Informal Solicitations may be issued for requirements estimated up to \$149,999 if more than one Vendor is known to exist that has the capabilities of providing the product or service. The Procurement Services Manager may accept written justification from the Using Department for a sole source professional service Contract, even though it may exceed \$149,999.

### **3-304 Content of the RFP**

RFPs shall contain the information necessary to solicit uniform Proposals, and the following information as a minimum:

- a) SECTION I – Proposal Information: This section includes where to submit Proposals, how many copies, when they are due, information regarding addenda/amendments, basis of Award, and acceptance time period;
- b) SECTION II – Proposal Content: This section includes a list of the requirements a potential Offeror must address and include in its Proposal;
- c) SECTION III – Evaluation Factors: This section includes the Evaluation process, the Evaluation criteria and their order of importance, and how the Proposals will be evaluated;
- d) SECTION IV – Terms and Conditions/Attachments/Exhibits: This section includes attachments that are specific to the procurement and in addition to those included in other sections; and
- e) SECTION VI – Schedules: Required forms for the Offeror to complete, such as representations, certifications, and insurance requirements; and
- f) Other information as appropriate, such as sample Evaluation score sheets, drawings, sketches, sample Contract, general conditions, and special instructions.

#### **3-304.1 Evaluation of Proposals**

Proposals shall be evaluated according to the stated criteria in the RFP. The RFP shall clearly define all Evaluation factors, including price if applicable. Numerical rating or ranking systems may be used for Evaluation. Factors not specified in the RFP shall not be considered.

#### **3-304.2 Best and Final Offers (BAFOs)**

- a) Upon completion of Discussions, the Evaluation selection committee may issue to all Offerors still within the competitive range a request for BAFOs. Oral requests for BAFOs shall be confirmed in writing.
- b) The request shall include:
  - 1. notice that Discussions are concluded;
  - 2. notice that this is an opportunity to submit a BAFO;
  - 3. a due date for submission of the BAFO; and
  - 4. a note that this is only an opportunity to revise their Proposals; if Offerors chose not to submit a BAFO, then their original Proposal as submitted will be considered.
- c) After receipt of BAFO, the Evaluation selection committee shall evaluate them accordingly and recommend Award be made to the Offeror whose BAFO is most advantageous to the City,

considering price and the other factors included in the RFP.

### **3-304.3 Evaluation Committee**

The Evaluation of Proposals shall be an objective process using the Evaluation criteria specified in the RFP to evaluate all Proposals. The actual Evaluation of Proposals shall be conducted by the committee, and chaired by a member of the Procurement Services Division. The committee should be made up of a diverse group of individuals from different departments or divisions of the City. In most cases, the committee should consist of at least five (5) members, with one (1) member coming from an organization that is not the user of the subject product or services. In cases when the Procurement Services Manager believes that it is not practical to have five (5) members on the committee, or when more than five (5) members would be more appropriate, the Evaluation committee may have a smaller or larger membership.

All Evaluation committee members shall read and sign the "Procurement Integrity Non-Disclosure Statement," which serves as a briefing to each evaluator of the confidentiality required during Evaluation of Proposals, prior to reviewing any Proposals. To encourage honest and frank discussion during the evaluation process, evaluator names shall be protected from disclosure.

### **3-305 Proposal Preparation Time**

Proposal preparation time, which is the time between the posting of a solicitation and the Bid due date, should be at least thirty (30) Days under normal circumstances, in order to allow Offerors sufficient time to prepare and submit their Proposals. The Procurement Services Manager may require less time on simpler solicitations requirements, but in no event may the period be less than fourteen (14) Days, unless the Procurement Services Manager approves a written justification from the Using Department that justifies an Emergency procurement.

### **3-306 Form of Proposal**

The manner in which Proposals are to be submitted, including any forms for that purpose, may be designated in the RFP.

### **3-307 Public Notice – Advertisement**

Public Notice shall be given by advertising the RFP in the same manner provided for an IFB. (See Section 3-108 Public Notice – Advertisement.)

### **3-308 Pre-Proposal Conference**

Pre-Proposal conferences may be held by the Procurement Services Division. Any such conference should be held at least ten (10) Days prior to the due date for initial Proposals.

### **3-309 Addenda/Amendments to RFP**

An RFP may be amended in accordance with Section 3-109 Addenda/Amendments to Invitation for Bids prior to submission of Proposals. After submission of Proposals, any addenda/amendments shall be distributed to all Offerors who submitted Proposals.

### **3-310 Modification or Withdrawal of Proposal**

Proposals may be modified or withdrawn by any Offeror prior to the established due date and time.

### **3-311 Receipt of Proposals**

The time and date Proposals are due will be included in the RFP and may include a specific time or "close of business" on a certain date. If a specific time is cited, then Proposals must be received by the time specified or they are considered late and will not be accepted. If "close of business" is cited then Proposals may be accepted at any time during business hours on the date specified. Proposals shall be safeguarded so as to avoid any disclosure of information that could harm the City's negotiation position.

This includes, as a minimum, non-disclosure of the number and names of Offerors until such time that an Award is made. A list containing the names of the Offerors shall be released and their Proposals subject to any Proprietary or confidentiality requirements shall be made available for public inspection after Contract Award.

#### 3-311.1 Late Proposals

Late Proposals shall be handled in the same manner as Section 3-107 Late Bids.

#### **3-312 Only One Proposal Received**

If only one Proposal is received in response to an RFP, the Procurement Services Manager has the following options:

- a) determine if there was sufficient time allotted for Offerors to submit a Proposal. If not, the solicitation may be amended to extend the deadline and the only Proposal received shall be returned unopened to the only Offeror;
- b) proceed with the Evaluation of the Proposal from the single Offeror. If the offer meets the requirements of the City as stated in the RFP and the cost is determined to be fair and reasonable through Discussions, an Award may be made or
- c) if the Evaluation determines that the only Offeror does not meet the Using Department's needs, or Discussions of the cost do not result in a fair and reasonable price, then the solicitation may be cancelled and re-solicited at a later date. If the solicitation is cancelled, the Proposal shall be returned to the Offeror upon request and the cancelled solicitation file shall be documented as to why it was cancelled.

#### **3-313 Evaluation of Proposals**

- a) The RFP shall clearly define all Evaluation criteria in order of importance, including price. Numerical rating systems and/or weights may be used, but are not required to be listed in the RFP. However, the criteria listed in the RFP must be listed in order of importance, and the weights or points assigned by the Evaluation committee prior to evaluating proposals must follow the listed importance accordingly. The evaluators shall not consider criteria that are not specified in the RFP when evaluating proposals. Selection for the Award shall be based on scoring criteria as specified in the RFP. The City reserves the right to enter into Discussions with the highest ranked firm selected by the Evaluation committee. If a contractual relationship that meets the City's needs cannot be negotiated, the City reserves the right to enter into Discussions with the second highest ranked firm and so on.
- b) If there is only one Proposal, the Contracting Specialist shall conduct a price analysis in order to determine whether the price in the Proposal is fair and reasonable (see Section 3-318 Fair and Reasonable Price). The Contracting Specialist may consider adequate competition as a basis for the fair and reasonable determination in the price analysis only if there was a reasonable expectation, based on market research or other assessment, that two or more responsible Offerors, competing independently, would submit price Bids in response to the solicitation's expressed requirements and if, based on the offer received, the Contracting Specialist can reasonably conclude that the offer was submitted with the expectation of competition. In addition, the designated Project Manager shall analyze the Proposal in order to determine technical acceptability.

#### 3-313.1 Disclosure of Information after Receipt of Proposals

Evaluation committee members shall not discuss the names of Offerors or numbers of Proposals received, or answer any question from those who are not Evaluation committee members, including from any of the Offerors, members of the public, or the media, during the Evaluation process. The Procurement Services Division will answer questions regarding status of the Evaluation process or clarifications of Proposals from interested Offerors both prior to receiving Proposals and during the Evaluation of Proposals.



### 3-313.2 Clarifications

Clarifications may be requested from Offerors on their Proposals during initial Evaluations to determine the acceptability of their Proposal. Clarifications shall be limited to items contained in an Offeror's Proposal that the Evaluation committee has determined requires further explanation by the Offeror in order to properly evaluate their Proposal. Clarifications shall not be used to allow Offerors to revise or modify their Proposal.

### 3-313.3 Discussions with Individual Offerors

Discussions are held to promote complete understanding of the City's requirements and the Offeror's Proposal to facilitate arriving at a Contract that will be most advantageous to the City, taking into consideration Evaluation factors included in the RFP. Furthermore, Offerors whose offers are within the competitive range shall be accorded fair and equal treatment with respect to any opportunity for Discussion and revisions of Proposals. If Discussions are conducted with one Offeror within the competitive range, then Discussions may be conducted with all Offerors prior to Award for the purpose of obtaining Best and Final Offers. Auction techniques or disclosure of any information derived from competing Proposals are prohibited. Any substantial oral clarification of a Proposal shall be reduced to writing by the Offeror.

### **3-314 Mistakes in Proposals**

Since Proposals are considered to be competitive Discussions, there is more leeway allowed for correction of mistakes by an Offeror. When it appears from a review of the Proposal during Evaluation and before Award that a mistake has been made, the Offeror may be asked to clarify their Proposal in lieu of withdrawal.

### **3-315 Award of Contract**

Award shall be made to the responsible Offeror whose Proposal is determined to be most advantageous to the City and in the Best Interest of the City based on the Evaluation factors set forth in the RFP. No other factors or criteria shall be used in the Evaluation. If an Evaluation committee evaluates the Proposals, that committee may decide to which Offeror to make the Award, or may make such a recommendation to the Procurement Services Manager or Using Department. The Contract file shall contain the basis on which the Award is made.

### **3-316 Debriefing Offerors**

Upon an Offeror's request, the Offeror shall be debriefed by the Procurement Services Division on the procurement process within thirty (30) Days after issuance of a Notice of Award. Debriefings shall include the following information:

- a) basis for the selection and award of the Contract;
- b) copies of the ranking matrix showing the strengths and weaknesses of their Proposal as evaluated by the committee;
- c) the overall evaluated cost and technical rating of the winning Vendor;
- d) the overall ranking of all Offerors;
- e) a summary of the rationale for Award; and
- f) answers to relevant questions about the process the Offeror may have.

The debriefing will not include point by point comparisons of the debriefed Offeror's Proposal with those of other Offerors, evaluator identities, or any items listed in other Offerors Proposals that may be marked Confidential or Proprietary.

Debriefings are held for the purpose of providing lessons learned and as a type of feedback tool to improve competition and provide an objective process.

### **3-317 Alternate RFP Method - Lowest Price Technically Acceptable**

The lowest price technically acceptable RFP selection process is appropriate when "Best Value" is

reasonably expected to result from selection of the technically acceptable Proposal with the lowest price. When using the lowest price technically acceptable process, the following will apply;

- a) similar to the RFP format described in Section 3-300 Requests for Proposals, the Evaluation factors or criteria to be used to determine whether a Proposal is technically acceptable shall be included in the RFP;
- b) the RFP will specify that the selection process to be used to make the Award will be "Lowest Price Technically Acceptable;"
- c) cost Proposals will be submitted either in a separate envelope at the time due for receipt of Proposals, or they shall be requested only from the firms that are deemed to be technically acceptable after review of their technical Proposal. In no event shall cost be evaluated when determining technical acceptability;
- d) Proposals are evaluated for technical acceptability – pass/fail;
- e) Discussions, clarifications, interviews, and revisions to Proposals (3-304.2 Best and Final Offers) are all applicable and may be used as specified in these Regulations under Section 3-300 Requests for Proposals for conventional RFPs, if necessary. However, when the process is completed, "Best Value" is determined and the Contract awarded to the firm whose Proposal was deemed to be acceptable but has the lowest overall cost; and
- f) the City has the right to enter into further Discussions with the firm rated as Best Value –Lowest Price Technically Acceptable, for the purposes of value engineering or reducing the cost of the requirement if deemed necessary.

### **3-318 Fair and Reasonable Price**

In the absence of adequate competition, defined as two or more Bids submitted, no Award over \$150,000 shall be made without a price analysis and a technical analysis conducted by the Using Department. To justify an Award, the price analysis must include a determination that the Contract price is fair and reasonable in accordance with one or more of the following means:

- a) Comparison of proposed prices to historical prices paid, whether by the City or other buyers, for the same items.
  1. The prior price must be a valid basis for comparison. If there has been a significant time lapse between the prior acquisition and the present one, if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison.
  2. The prior price must be adjusted to account for materially different terms and conditions, quantities and market and economic factors. For similar items, the Contracting Specialist must also adjust the prior price to account for material differences between the similar item and the item being procured.
  3. Expert technical advice should be obtained when analyzing similar items, or commercial items that are "of a type" or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes.
- b) Use of parametric estimating methods (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- c) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- d) Comparison to independent price estimate.
- e) Comparison to prices obtained through market research for same or similar items.
- f) Value analysis.
- g) Any other reasonable means substantiated in the file.

### **3-400 SMALL PURCHASES – INFORMAL AND OTHER PURCHASES**

The procurement of supplies, equipment, materials, or services having an estimated value up to \$149,999 may be made on the open market by informal methods without public Notice and advertisements and without following steps outlined in Section 3-100 Invitation for Bids in Competitive Sealed Bidding if the

Procurement Services Manager determines adequate competition will be obtained using informal procedures.

### **3-401 Competition Not Required**

The City may acquire supplies, materials, equipment, or services costing up to \$14,999 (or the prevailing micro-purchase threshold if federally-funded) without benefit of documented telephone quotations or written competitive Bids. The Contracting Specialist or Using Department acquiring goods or services in this manner is expected to use professional judgment to ensure that the City is receiving overall best value. This rule does not prohibit a Using Department from receiving written or telephone quotations. Procurement requirements shall not be arbitrarily split so as to constitute a small purchase under this rule. The preferred method for placing orders under \$10,000 is the City's Purchasing Card, provided the purchase is allowed under the City's Purchasing Card Policies.

#### **3-401.1 Additional Decentralized Authorities for City Groups/Units**

The Procurement Services Manager may decentralize limited purchasing authority to any City Department/Division or other unit of the City as follows:

- a) Authority to use the City's Purchasing Card for purchase of goods and services (that are not IRS defined 1099 Vendors) up to \$10,000 (see Purchasing Card Policies).
- b) Authority to solicit competitive quotes via telephone, email, or fax (see Section 3-402 Documented Telephone/Written Quotations), and write and issue City Purchase Orders up to \$14,999. All Purchase Orders are subject to audit by the Procurement Services Division to ensure compliance with these Regulations.
- c) All purchases over \$14,999 shall be conducted by the Procurement Services Division. The Procurement Services Division may require Formal Solicitation of Bids or Proposals for procurements over \$14,999. In cases where a Using Department needs to Contract for services that are longer than sixty (60) Days in duration and there are numerous known sources that provide these services, such as janitorial services, the Procurement Services Division may determine that it is necessary to formally solicit Bids or Proposals regardless of their amount. Therefore, a Using Department should contact their assigned Contracting Specialist when procuring goods or services which exceed \$14,999.

### **3-402 Documented Telephone/Written Quotations**

Purchases over \$14,999 (or the prevailing micro-purchase threshold if federally-funded) and less than \$150,000 require adequate competition unless a sole source is justified under the rules and guidance provided herein. Adequate competition for such purchases is defined as three (3) quotations from three (3) qualified sources in response to an Informal Solicitation given verbally or in writing. Two (2) quotations may constitute adequate competition if there is reasonable, written justification for obtaining only two (2) quotations. Telephone or written quotations must include:

- a) the name of the company or firm;
- b) the person providing the quotation;
- c) the delivery date;
- d) FOB information;
- e) cash terms; and
- f) price(s) of item(s).

### **3-403 Emergency Procurement**

For the purposes of these Regulations, an Emergency condition is a situation that creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or other reason as may be encountered by a Using Department. The existence of such a condition creates an immediate and serious need for supplies, equipment, materials, and services that cannot be met through normal procurement methods and the lack of which would threaten the function of City government, or the health, safety or welfare of City residents. An Emergency as defined in these



Regulations may or may not be accompanied by a Mayoral emergency proclamation.

#### 3-403.1 Scope of Emergency Procurements

Emergency procurement shall be limited to a quantity of those supplies, equipment, materials, or services necessary to address the Emergency.

#### 3-403.2 Authority

A Using Department may make Emergency procurements when an Emergency condition arises and the need cannot be met through normal procurement methods. In the event an Emergency arises after normal working hours, the Using Department shall notify the Procurement Services Manager no later than the next Day. However, Using Departments must remain aware of these Regulations and rules that may be related to any federal grants or reimbursements that may fund the procurement, including the Uniform Grant Guidance (UGG) (2 CFR 200), as applicable.

#### **3-404 Equipment Leasing**

A municipal lease is a Contract under which title to the equipment will not pass to the lessee. A municipal lease with an option to purchase, however, allows title to pass to the lessee if the purchase option is exercised. It is, or has the effect of, a conditional sales agreement. Leases and purchase options may not be used to circumvent the requirements for competition outlined in these Regulations. Any lease of equipment is subject to the requirements for competition that apply to outright purchases, either as outlined in Section 3-100 Invitation for Bids in Competitive Sealed Bidding or Section 3-300 Requests for Proposals, unless the Procurement Services Manager determines that there is a compelling justification to make an exception. Municipal leases with the option to purchase should not be considered unless the lease amount is over \$100,000, there are insufficient funds available for the outright purchase of the equipment, and there is a written justification approved by the Chief Financial Officer concurring that the municipal lease purchase is the preferred method of procurement and funds are available for the term of the proposed lease. Any lease in an amount less than \$100,000 must be approved by the Procurement Services Manager. Copiers do not fall within the requirements of this provision; Using Departments should contact their assigned Contracting Specialist for information on leasing copiers.

#### 3-404.1 Equipment Rentals

An equipment rental agreement is defined as involving equipment for which the title is held by the owner (not the individual or group renting the equipment). Rental amounts should be established through a competitive Bid. Under equipment rental agreements, title to the equipment does not transfer to the City unless the City chooses to purchase the equipment at the end of the rental period. Rentals are different from leases in the following ways:

- a) payments are not an amortization of the value of the equipment; and
- b) rentals are for short periods of time to allow for one-time or temporary usage of equipment necessary to perform a job or project and should not be used to actually purchase the equipment, unless otherwise specified in the solicitation or determined to be in the Best Interest of the City.

#### 3-404.2 Execution of Lease Agreements

All lease agreements for capital equipment must be reviewed by the Procurement Services Manager and City Attorney's Office, and must be signed by the Procurement Services Manager after review and Discussion of terms and conditions. The Procurement Services Manager may elect to seek additional Proposals from other leasing companies. Lease agreements signed by unauthorized parties may be voided and may result in personal liability. The Mayor may designate other members of City government to sign lease agreement Contracts that have been reviewed and approved by the Procurement Services Manager, and approved as to form by the City Attorney's Office.

#### **3-405 City-Wide Master Agreements**

City-wide master agreements may be established with Vendors who offer goods or services of use to the

City, and may or may not be formally competed. Using Departments may place single orders against these agreements up to \$14,999 without having to obtain additional competitive quotes. Using Departments may place orders against competed master agreements over \$14,999, but those orders are limited to the dollar amount(s) listed in the master agreement, and must be executed by the Procurement Services Division. Using Departments should compare prices between similar master agreements before placing an order since prices contained in master agreements vary among Vendors.

### **3-406 Purchasing Cards**

Using Departments may use Purchasing Cards for small purchases in accordance with the policies set forth in the Procurement Services Division's Purchasing Card Policies. Purchasing Cards are the preferred method of procurement for purchases less than \$10,000, including orders placed using master agreements. The Procurement Services Manager may authorize limit increases on a case by case basis for purchases which exceed \$10,000, are made from existing Contracts or were otherwise competed, and for which the Vendor will accept the City's Purchasing Card for payment.

### **3-500 CANCELLATION OR REJECTION OF BIDS OR PROPOSALS**

The following provisions shall govern the cancellation of any Formal Solicitation issued by the Procurement Services Division under Competitive Sealed Bidding, competitive sealed Proposals, small purchases, or any other source selection method, and rejection of Bids or Proposals in whole or in part, whether rejected for being non-responsive or non-responsible.

### **3-501 Policy**

Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to "test the water." A solicitation may be cancelled only when there are valid and compelling reasons to believe that the cancellation is in the Best Interest of the City.

### **3-502 Cancellation or Rejection of All Bids or Proposals Prior to Opening**

Prior to opening of Bids, a Formal Solicitation may be cancelled in whole or in part when the Procurement Services Manager and Using Department determine in writing that such action is in the Best Interest of the City for reasons including:

- a) the City no longer requires the supplies, equipment, materials, or services;
- b) the City can no longer reasonably expect to fund the procurement; or
- c) proposed addenda/amendments to the solicitation would materially alter the terms of the solicitation and responses prepared on the basis of the original solicitation would no longer be useful or accurate.

#### **3-502.1 Notice**

When the Procurement Services Division cancels a Formal Solicitation prior to opening, Notice of cancellation shall be sent to all businesses solicited, and shall be posted on the Procurement Services Division website or third party website. The Notice of cancellation shall identify the solicitation, explain the reason for the cancellation, and where appropriate, explain that an opportunity will be given to compete on any re-solicitation.

#### **3-502.2 After Opening**

After opening, but prior to Award, any or all Bids or Proposals may be rejected in whole or in part when the Procurement Services Manager determines in writing that such action is in the Best Interest of the City for reasons including, but not limited to:

- a) the supplies, equipment, materials, or services being procured are no longer needed;
- b) ambiguous or otherwise inadequate Specifications were part of the solicitation;
- c) the solicitation did not provide for consideration of all factors of significance to the City;
- d) all acceptable Bids received exceed the budgetary constraints of the proposed Contract and the City is unable to obtain additional funds. (See Section 3-502.3 Cancellation – Negotiation of

- Bids);
- e) all otherwise acceptable Bids or Proposals received are at clearly unreasonable prices or terms; or
  - f) there is reason to believe that the Bids or Proposals may not have been independently arrived at in open competition, Bids may have been collusive, Bids may have been submitted in bad faith, or Offeror(s) have been determined to have unfair advantage over other Offerors.

#### 3-502.3 Cancellation – Negotiation of Bids

Sealed Bids are never negotiable unless only one Bid was received and the budgetary constraints associated with the project necessitate Discussions. However, the City, in rare, urgent, and compelling situations, when it can be documented that time is of the essence or the City would be harmed financially if the Formal Solicitation is cancelled and re-solicited at a later date under a reduced scope as normally required, reserves the right to consider Discussions. In the event that all Bids for a capital improvement or construction project exceed the available funds and the Formal Solicitation will be otherwise cancelled citing Section 3-502.2(d) After Opening, the Procurement Services Manager may, with the documented approval by the Mayor, cancel the Formal Solicitation and enter into Discussions with only the responsible Offeror(s) who responded to the original sealed Bid. The Procurement Services Manager must give written Notice to each of the Offerors that Discussions will be conducted, and each Offeror that responds will be given the opportunity to participate in the Discussions by responding to a formal Request for Proposal. The resultant Award will be made to the responsible Offeror offering the lowest negotiated price.

#### 3-502.4 Documentation

The reasons for cancellation or rejection shall be made a part of the procurement files and shall be available for public inspection.

#### 3-502.5 Disposition of Documents

When Bids or Proposals are rejected, or a solicitation cancelled after Bids or Proposals are received, the Bids or Proposals that have been opened shall be retained in the procurement files; or if unopened, returned to the Offerors upon request, or otherwise disposed of.

### **3-600 REQUEST FOR INFORMATION**

A Request for Information (RFI) may be used by the City to gather information necessary for planning purposes regarding estimated prices or delivery, to research market trends, or to determine capabilities of industry or technology. An RFI may only be used to gather information and shall not be used to enter into a binding agreement or Contract. There is no required format for RFIs.

- a) General information about the City or Using Department needs and future requirements may be disclosed in the RFI.
- b) An RFI may also be used to ascertain or justify the availability of sources for use in a Sole Source Justification.
- c) The information gathered in response to the RFI may be used to compile or prepare Specifications to be used by the City in a future procurement.
- d) All information received in response to the RFI shall be made available to the public and potential future Offerors as soon as practicable in order to avoid an unfair competitive advantage, unless release of the information would harm the firm's Confidential business strategy such as trade secrets or information that is protected from release under the Colorado Open Records Act.
- e) All firms that submitted a response to an RFI shall be invited to propose on any future RFPs or IFBs that were a result from the information gathered from the RFI.

## **PART IV – RESPONSIBILITY OF OFFERORS**

### **4-100 STANDARDS OF RESPONSIBILITY**

Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective Vendor has:

- a) the appropriate financial, material, equipment, facility, and personnel resources and expertise (or the ability to obtain them) necessary to meet all contractual requirements;
- b) a satisfactory record of past performance, including conduct and cooperation; and
- c) a satisfactory record of integrity.

### **4-101 Information Pertaining to Responsibility**

The prospective Vendor shall supply information requested by the Procurement Services Manager or Using Department concerning the responsibility of such Vendor. If the prospective Vendor fails to supply the requested information, the Procurement Services Manager and Using Department shall base the determination of responsibility upon any available information or may find the prospective Vendor non-responsible if the requested information is necessary for making the determination.

### **4-102 Ability to Meet Standards**

The prospective Vendor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- a) evidence that the prospective Vendor possesses such necessary items;
- b) acceptable plans to subcontract for such necessary items; or
- c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

### **4-103 Written Determination of Non-Responsibility Required**

If an Offeror who otherwise would have been awarded a Contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Procurement Services Manager and Using Department. Notice of the determination shall be sent promptly to the non-responsible Offeror, and shall be made part of the procurement files.

### **4-104 Pre-Qualification**

For projects in excess of \$150,000, the Procurement Services Manager may require that prospective Vendors be pre-qualified. On such projects, prospective Vendors may be asked to submit a financial statement in accordance with the general provisions of the solicitation documents. All prospective Vendors shall complete and return a pre-qualification questionnaire. The Procurement Services Manager and Using Department shall determine whether a prospective Vendor is qualified. All prospective Vendors determined not to be qualified shall be notified in writing as to why they did not meet the qualifications.

Before Award of any procurement over \$14,999 (or the prevailing micro-purchase threshold if federally-funded), the Procurement Services Division shall ensure that the prospective Vendor is not debarred, suspended, or rendered ineligible for Award by the federal government through certification by the prospective Vendor or verification through SAM.gov (or other website approved by the federal government). The Procurement Services Division is prohibited from conducting business with debarred, suspended, or ineligible Vendors on procurements involving federal funds.

### **4-105 Protested Solicitations**

Any Offeror or Vendor who is directly aggrieved in connection with the solicitation or Award of a Contract may protest in writing to the Contracting Specialist responsible for the requirement. Protests may be submitted any time prior to Award; however, a protest of an Award must be received by the Contracting

Specialist no later than seven (7) Days after the City delivers Notice of Intent to Award.

#### 4-105.1 Directly Aggrieved Offeror

A directly aggrieved Offeror is defined as a firm that is actually an Offeror during the solicitation phase and that is either displaced from receiving the Award or is in line to receive the Award if the protest is upheld during the Award phase.

#### 4-105.2 Subject of Protest

Protesters may protest any element of the solicitation, Bid, Proposal, or Award including, but not limited to procedure, Specification, Award, or disclosure of information marked Confidential in the Bid.

#### 4-105.3 Form

The written protest shall include, as a minimum, the following:

- a) the name and address of the protester;
- b) appropriate identification of the procurement;
- c) a statement of the reasons for the protest; and
- d) any available exhibit, evidence, or documents substantiating the protest.

#### 4-105.4 Decision

The Procurement Services Manager, with input from the Contracting Specialist and the Using Department shall issue written Notice of decision regarding whether the protest is denied or upheld to the protester within fourteen (14) Days after receiving all relevant requested information.

#### 4-105.5 Appeals

An aggrieved party must submit a written appeal of the decision issued by the Procurement Services Manager to the Mayor within seven (7) Days after receiving the decision. The Mayor may:

- a) render a decision and that decision shall rule; or
- b) assemble a committee to review the protest and all relevant data from involved parties. This committee may include the Chief Financial Officer, a representative of the Chief of Staff, and the division head of the Using Department. This committee shall issue a final decision. The majority decision made by the committee shall rule.

Regarding the final decision, the committee or the Mayor may:

- a) render an immediate decision in the matter, especially matters that are specifically addressed in these Regulations;
- b) request additional documentation or meetings with parties involved; or
- c) utilize any other method deemed appropriate to bring the matter to timely resolution.

The decision, once issued, is final and will exhaust the administrative remedies. The Mayor or the committee shall issue the final decision within twenty-one (21) Days after receiving such an appeal, unless extended by agreement between the protester and the Mayor or the committee. This final decision does not preclude the protestor from pursuing further legal action allowed by the laws of Colorado. Once the final decision is issued, the stay of procurement shall be immediately lifted.

#### 4-105.6 Stay of Procurement During Protest

In the event of a protest in accordance with this section, the Procurement Services Manager shall not proceed further with solicitation or Award of a Contract until administrative remedies have been exhausted, or until the Procurement Services Manager issues a written determination that Award of a Contract without delay is necessary to protect substantial interests of the City. A stay of procurement is lifted automatically upon either the exhaustion of administrative remedies or the failure of the aggrieved Vendor or Contractor to meet any deadline for appeal of a protest decision expires (see Section 4-105.5 Appeals).

#### **4-106 Suspension or Debarment**

The Procurement Services Manager shall have the authority to suspend or debar any Vendor for any of the following:

- a) default on awarded Contract (Debarment);
- b) failure to enter into a Contract resulting in a demand or collection of a Bid bond by the City (Suspension);
- c) removal of a Bid or Proposal after the due date (Suspension);
- d) routinely performing unsatisfactory work (Suspension or debarment);
- e) violation of Contract terms and conditions without cure or remedy (Suspension or debarment depending on severity);
- f) having pending litigation against the City (May only be suspended pending results of litigation);
- g) default on the payment of any taxes, license fees, or other monies due the City (Suspension);
- h) conviction of fraud or criminal acts while performing as a supplier, prime contractor, or subcontractor on any City Contracts, even those not associated or written by the City (Debarment);
- i) being found to have violated the City's Code of Ethics by offering gifts or gratuities to a Covered Person (Debarment);
- j) a documented, consistent past performance record of habitual or continuous unsatisfactory performance, safety violations, repeated violations of Contract provisions, or delinquent performance by a Vendor (Suspension);
- k) failure to complete all punch list items in a timely manner on capital improvement projects, including final closeout requirements of the Contract (Suspension); or
- l) debarment or suspension by any other government agency or otherwise being rendered ineligible for Award (Debarment.)

The Procurement Services Manager may suspend or debar Vendors from bidding on, or performing as a subcontractor on, all City Contracts for a minimum of one (1) year up to a maximum of three (3) years. Vendors may be suspended from doing business with the City for a minimum of three (3) months, up to a maximum of twelve (12) months. However, if a Vendor under suspension fails to correct or cure the deficiency for which they have been suspended during the suspension period, the Procurement Services Manager may convert the suspension into a debarment. Prior to formally suspending or debarring any Vendor, the Procurement Services Manager shall review and investigate all evidence supporting such a decision and shall inform the suspended or debarred Vendor in writing of such decision.

The suspended or debarred Vendor may, at the conclusion of the suspension or debarment period, submit a formal request to be removed from such status to the Procurement Services Manager. Upon receipt of this request, the Procurement Services Manager must investigate the Vendor's performance since the suspension or debarment to determine whether the Vendor's suspension or debarment should be lifted.

# PART V – SPECIFICATIONS

## **5-100 GENERAL PURPOSE AND POLICY**

The purpose of a Specification is to serve as a basis for obtaining goods or services adequate and suitable for the City's needs in a cost-effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the Procurement Services Division that Specifications permit maximum practicable competition consistent with this purpose.

## **5-101 Use of Functional or Performance Descriptions**

Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the need of the Using Department.

## **5-102 Preference for Commercially Available Products**

To the extent practicable, preference shall be given to the procurement of standard commercial products. In developing Specifications, accepted commercial standards should be used and unique requirements should be avoided to the extent possible.

## **5-103 Brand Name or Equal Specifications**

Brand Name or Equal Specifications may be prepared when it is in the Best Interest of the City and when the item to be procured is best described by the use of such a Specification. Brand Name or Equal Specifications shall seek to designate as many different brands as are practicable as "or equal" references, and shall further state those substantially equivalent products that will be considered for Award.

## **5-104 Brand Name Specifications**

Since use of a Brand Name Specification is restrictive, it may be used only when the brand name or items will satisfy the Using Department's needs or the item is to be used for resale purposes. The Procurement Services Manager shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under provisions of Section 2-302 Sole Source Procurements.

## **5-105 Qualified Products List**

A Qualified Products List may be developed when testing or examination of the materials or equipment is required prior to the issuance of the solicitation.

## **5-106 Specifications Prepared by Other Than City Staff**

All Specifications prepared by other than City staff, including consultants, architects, engineers, and designers, shall not be restrictive but shall, to the extent practicable, allow for maximum competition.

## **PART VI – BONDS, INSURANCE AND CONTRACTS**

### **6-100 BID SECURITY**

IFBs for construction, labor, and public improvement Contracts in excess of \$50,000 that require Performance, Labor and Material (Payment) Bonds shall require the submission of Bid security in an amount equal to at least five percent (5%) of the Bid at the time the Bid is submitted. The Procurement Services Manager may set Bid security requirements, in an amount of not more than five percent (5%) of the Contract amount, for other types and dollar amounts of Contracts if deemed necessary. The Procurement Services Manager may determine that it is necessary to require Bid security on projects less than \$50,000 if Performance, Labor and Material (Payment) Bonds are necessary. If an Offeror fails to accompany the Bid with the required Bid security, the Bid may be rejected as nonresponsive.

### **6-101 Acceptable Bid Security**

Acceptable Bid security shall be limited to:

- a) a one-time Bid Bond underwritten by a company licensed to issue bonds in the State of Colorado;
- b) a bank cashier's check made payable to the City of Colorado Springs; or
- c) a bank certified check made payable to the City of Colorado Springs.

The Bid security is submitted as a guarantee that the Bid will be maintained in full force and effect for a period of not less than sixty (60) Days after opening of the Bids or as specified in the IFB.

### **6-102 Contract Bonds**

For Contracts in excess of \$50,000, a separate Performance Bond, Labor and Materials Payment Bond, and/or Maintenance Bond may be required for all construction, labor, and public improvement Contracts, each in the amount of one hundred percent (100%) of the Contract price. The Vendor shall deliver these bond(s) to the City within ten (10) Days after receipt of the Notice of Award, or at the same time the Contract is executed. If the Vendor fails to deliver the required bond(s), the Vendor's Bid or Contract may be rejected or terminated for default. The bond(s) must be submitted on bond form(s) prepared and approved by the City Attorney's Office and executed by a surety company authorized to do business in the State of Colorado. Performance, Labor and Material (Payment), and Maintenance Bonds may be required on Contracts less than \$50,000 if the Procurement Services Manager determines it to be in the Best Interest of the City.

### **6-103 Legal Review of Bonds**

All bonds shall be on bond forms prepared and approved by the City Attorney's Office, including bonds required on solicitations or Contracts less than \$50,000. All Contract bonds or other sureties shall be reviewed with the Contract for legal sufficiency. Deletions or additions to the bond terms by Vendors or sureties are not permitted.

### **6-104 Insurance Requirements**

The Procurement Services Manager may require such insurance as deemed necessary for the protection of the City, or as may be required by City Code or regulation. When a Contract requires Vendor insurance, the insurance certificates shall be provided with the Contract, including all exceptions and riders attached to the certificate, and shall be reviewed for legal sufficiency by the City Attorney's Office and/or the City's Risk Management Office, as appropriate. All City Contracts shall include a requirement for the provision of workers' compensation insurance, and all Vendors shall carry workers' compensation insurance. At a minimum, this insurance coverage shall be in the statutory amount. Independent contractors shall carry workers' compensation insurance to cover themselves and any employees or agents working, or who may work, under the City Contract. Workers and contractors who are not protected by workers' compensation insurance shall not participate in a City Contract.

Owners or corporate officers of firms that do not have employees may sign a workers' compensation waiver for the Contract file.



### **6-105 Additional Bonding**

If at any time during the continuance of a Contract, a surety on the Vendor's bond(s) becomes irresponsible, the City shall have the right to require additional and sufficient sureties that the Vendor shall furnish within ten (10) Days after written Notice to do so. Such surety bond shall cover the entire Contract amount, regardless of changes in total Contract amount.

### **6-106 Exceptions**

If it is deemed by the Procurement Services Manager to be in the Best Interest of the City, the Procurement Services Manager may waive or reduce the dollar amounts of any bonds or insurance, except workers' compensation insurance, if the actual Contract price is less than \$100,000. However, in the event that the price or any construction, labor, or public improvement Contract for which the Procurement Services Manager has reduced or waived bonds should reach a value of \$100,000 or more, through change orders or otherwise, then the Vendor may be required to provide separate bonds, each in the amount of one hundred percent (100%) of the new Contract price, and additional insurance as determined by the Procurement Services Manager.

### **6-107 Execution of Contracts**

All City Contracts shall be procured in accordance with provisions of the City's Purchasing Code, and may be executed in accordance with City Code § 1.2.313, and these Regulations. No City Contract shall be approved or executed unless and until sufficient funds have been appropriated by the City Council and are available for the Contract. All Contracts shall be written on City Contract forms, not on another company's contracts unless authorized by the Procurement Services Manager. All Contracts shall include provisions for termination in the event of non-appropriation of funds. The Procurement Services Division shall maintain the original copy of all Contracts.

### **6-108 Legal Review of Contracts**

All City Contracts must be reviewed as to legal form by the City Attorney's Office, except as may otherwise be provided in these Regulations or by written agreement between the City Attorney and the Procurement Services Manager. City Contracts shall utilize only those Contract terms and standard forms, including Purchase Orders, which have been approved for use by the Procurement Services Manager, unless the Procurement Services Manager and the City Attorney determine that an alternative term or form should be used.

### **6-109 Legal Notice to Offerors – Required Contract Provisions**

All City Contracts shall contain the City appropriation of funds clause, and shall contain a clause designating the law governing the Contract as Colorado Law. The venue and court jurisdiction for all legal actions shall be in the Courts of El Paso County, Colorado, unless otherwise specifically required by Federal or State Law.

#### **6-109.1 Contract Duration**

The length or duration of Contracts for goods or services may be written for a period not to exceed five (5) years unless circumstances or conditions exist that are documented to be in the Best Interest of the City to enter into Contracts for longer periods. Each requirement will be closely reviewed by the Procurement Services Manager to determine the duration of the requirement to ensure the City will benefit from Contracts with longer or shorter durations. The normal procedure for Contracts that are longer than one (1) year in duration will be to write them on a yearly basis with an option to extend provision that will be exercised at the sole discretion of the City each year.

#### **6-109.2 Exercising Option Periods**

Vendors must be notified in writing of the City's intent to exercise an option period or not, within the time period specified in the Contract. If the Contract is silent on the minimum time period for notifying the Vendor, then the City should consider the minimum time for notification to be thirty (30) Days from the expiration date of the current Contract period. The City will consider the following criteria prior to

exercising or entering in to an extension of a Contract under an option provision:

- a) vendor has performed satisfactorily under original Contract term;
- b) services are still required to be performed under the Contract;
- c) current market conditions have not changed significantly from original Contract, therefore the Vendor's prices under the option period are still considered fair and reasonable;
- d) scopes of services have not significantly changed from original Contract (if scopes of services are significantly changed then re-bid of Contract is recommended); or
- e) exercising the option period is considered the most advantageous method of fulfilling the City's needs, price, performance, and other factors.

#### **6-110 Change Orders and Changes in Scope of Contract**

The City may make written changes to the plans, Specifications, scheduling, and performance period of a Contract as long as the change is determined to be within the original scope of the Contract. Any change of the original cost of the Contract shall be justified in writing by the Department Manager of the department responsible for Contract administration and approved by the Procurement Services Division, to be within the original scope of the Contract prior to issuance of the change order to the Vendor. Additionally, all change orders must be properly executed by the Procurement Services Division in accordance with the applicable Contract and administrative regulations.

#### **6-111 Contract Administration and Termination**

It is the Using Department's responsibility to maintain, administer, and ensure compliance with all provisions of a City Contract. If a Vendor is determined by the Using Department to be performing in an unacceptable manner according to the terms of a Contract, they must work with the City Attorney's Office and the Procurement Services Division to adequately and timely notify the Vendor of the City's intent to terminate the Contract in accordance with the terms of the Contract.