



## Legislation Text

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Ordinance No. 19-1 adopting revised Procurement Rules and Regulations for the City of Colorado Springs

**Presenter:**

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**Summary:**

One of the City's major strategic goals is to "Make it easy to do business with the City." Many firms do business with the City by bidding on products or services needed by the City to complete projects. These firms rely on clear, complete, and consistently applied rules and regulations to make the bidding process efficient and easy to participate in. The Institute for Public Procurement outlines several characteristics of an effective procurement policy manual, including that it "...clearly defines authority, responsibility, and establishes guidelines for the organization and the procurement professional to follow when carrying out their responsibilities."

The City's Procurement Services Division (PSD) staff (currently 6 employees) was dramatically reduced in 2009 due to the economic downturn and subsequent budget constraints. Certain rules and processes were adjusted to accommodate staff reductions. In 2010, the City's voters approved a change in the form of government which required that procurement rules and regulations be adjusted to fit the Mayor-Council form of government, as reflected in the City Charter. The rules and regulations were last updated in early 2011, and since then, a number of updates, corrections, clarifications and policy changes have become necessary to meet the City's current strategic goals and to conform with industry best practices and advances in technology. Those changes are incorporated in this proposal.

**Previous Council Action:**

City Council approved Ordinance 11-5, adopting revisions to the City's Procurement Rules & Regulations, in January 2011. The changes at that time involved primarily updates relating to the change in the City's form of government. Prior to the change in the form of government, the City Manager approved changes to the Procurement Rules & Regulations. The last City Manager-approved change occurred on April 22, 2009, and included changes to the competition thresholds.

City Council heard a presentation on the proposed changes at their December 10, 2018 work session meeting, and the consensus supported the changes as presented. Since that meeting, City Auditor Denny Nester has expressed his support for the proposed revisions; a letter to that effect is attached to the item.

**Background:**

#### Housekeeping Changes:

“Housekeeping” changes you’ll see reflected throughout the document include the following:

- Office hours of operation extended by an hour, to 5PM (to reflect current actual operations)
- Office location updated;
- Spelling and typographical corrections
- Technology references updated (e.g., websites, fax machines, electronic submissions vs. hard copies)
- Clarified language (e.g. “written” submissions, “Department” Manager/Director, updated job titles to reflect current/Charter), eliminated passive voice, capitalized defined terms, improved table of contents
- “City Contracting” to “Procurement Services Division” throughout
- Sections moved to more appropriate places, others renumbered
- Terminology made consistent (e.g. “bidders” to “Offerors”, “contractor” to “Vendor” throughout)

#### Procurement Dollar Thresholds:

A major change you’ll see reflected throughout the document relates to dollar thresholds that trigger certain types of solicitations. The history and the proposed revisions are reflected in the table on slide 9 of the attached presentation. In summary, the threshold for formal solicitations is proposed to be decreased from \$200,000 to \$150,000; the threshold for informal solicitations decreased from \$199,999 to \$149,999; and the threshold below which no competition is required decreased from \$20,000 to \$14,999.

#### Proposed Revisions by Section:

Other recommended revisions include the following, listed in order of where they appear in the revision:

#### Part I - General Provisions:

1-100 Basis & Purpose: added language encourages maximum practical amount of competition, emphasize ethics, efficiency and accountability.

#### 1-102 Definitions:

- specifies “Department Manager/Director” as those appointed by Mayor under Charter § 4-40(f), plus other specific department heads
- clarify “Notice of Intent to Award” as distinct from “Notice of Award”
- deleted a few definitions because they are not used elsewhere in the document or are not actually definitions, but rather policy statements that have been moved to other places in the document.

1-103 Procurement Rules and Regulations: adds maintenance & revision provisions for COOP and FEMA purposes.

#### Part II - Administrative Matters

2-101 Procurement Services Manager: specifies this position is appointed by Mayor (definition of Mayor includes designee). Concurs with a comment from Councilmember Knight.

2-102 Authority: minor changes to comply with current operations and adopt procurement best practices.

- Removes authority to increase the small purchase threshold (\$14,999) from Contracting Specialist; only PSM is authorized to increase.
- Extends compliance audit provision to include Office of City Auditor.
- Clarifies department's responsibility to establish internal processes for small purchases, and requirement for purchase requisition in large procurements (> \$14,999).

#### 2-201 Unauthorized Contractual Actions:

- Includes Chief of Staff (with Mayor, CFO and PSM) in authority to bind City on procurements over \$14,999; changes reflect current Charter provisions.
- Requires ratification of unauthorized contractual actions by the Mayor or designee; provides a vehicle to "cure" contractual actions short of re-soliciting.

#### 2-204 Conflicts of Interest

- Includes current employees in list of those prohibited from bidding on any City contracts, unless PSM approves.
- Bars former employees from bidding for six months after separation.
- Outlines PSM's responsibility to prevent unforeseen conflicts of interest

2-205 Employee-Owned Business: defines such as owning more than 10% of the business, and links the section to the City's Code of Ethics

#### New sections:

- 2-206 - City prohibited from indemnifying Vendors.
- 2-207 - City does not pre-pay contracts.

2-301.1 Adequate Competition: removes "personally" from contact requirements. Concurs with a comment from Councilmember Knight.

2-301.3 Minimum Competition Requirements: tightens minimum competition requirements; requires 3 quotes rather than 2 for informal solicitations, in line with procurement best practices.

2-302 Sole Source Procurement: expands circumstances that may justify sole-source procurements

2-302.1 Written Justification: Determination on sole source by PSM only.

2-303.1 Minority Business Enterprises: encourage participation by and provide assistance to small and historically disadvantaged business enterprises

### Part III - Methods of Source Selection

3-100 Invitation for Bids: clarifies circumstances when IFB is preferred method of procurement

3-108 Public Notice: qualifies the 21-day posting requirement for IFBs to increase flexibility

3-300 Requests for Proposals: adjusts definition of RFP to emphasize negotiation and evaluation elements.

3-302 Determinations: expands discretion of Procurement Services Manager regarding use of RFPs

3-313 Evaluation of Proposals: requires & describes price analysis in cases where only one proposal is received

3-316 Debriefing Offerors: allows successful offerors to be debriefed as well as those who are unsuccessful

3-318 Fair and Reasonable Price: new section describing determination of “fair and reasonable price” in the absence of adequate competition

3-403.2 Authority: notes using agencies’ responsibility to be aware of procurement guidelines related to federal grants/reimbursements in emergencies

#### Part IV - Responsibility of Offerors

4-104 Pre-Qualification: specifies PSD’s responsibility to ensure contractors are not suspended, debarred, or ineligible

4-105.1 - 6 Protests & Appeals: outlines more detailed process options for reviewing and deciding protests/appeals and specifies when a stay of procurement can be lifted (see table on slide 18 of attached presentation). In summary, the proposed revisions increase the time limit to protest and appeal from 3 to 5 business days, vests the Procurement Service Manager with the authority to issue decisions on protests, adjusts the appeal process to specify that the Mayor renders a final decision on appeals and authorizes an internal committee to assist if needed; and specifies that a stay of procurement is lifted upon final decision on or abandonment of an appeal.

4-106 Suspension or Debarment: expands PSM’s authority to suspend/debar contractors to include bid abandonment.

Part V - Specifications  
No substantive changes.

#### Part VI - Bonds, Insurance & Contracts

6-110 Change Orders: requires justification of all change orders (not just those over 15% of contract), and change orders must be executed by Procurement Services Division.

6-111 Contract Administration and Termination: New section added to specify responsibility for contract administration and termination.

#### **Financial Implications:**

There are no financial implications to the City for the proposed changes to the rules and regulations; however, we do anticipate efficiencies as a result of clearer processes and procedures. PSD staff will track metrics in the department and report any significant savings that can be attributed to the changes.

#### **Board/Commission Recommendation:**

N/A

**Stakeholder Process:**

N/A

**Alternatives:**

City Council could adopt the ordinance as presented, or could suggest changes for the Mayor's consideration.

**Proposed Motion:**

Adopt the ordinance as presented.

An ordinance adopting revised Procurement Rules and Regulations for the City of Colorado Springs.