

**CITY OF RIFLE, COLORADO  
ORDINANCE NO. 7  
SERIES OF 2022**

AN ORDINANCE OF THE CITY OF RIFLE, COLORADO REPEALING AND  
REENACTING ARTICLE III (PURCHASING) OF CHAPTER 4 (REVENUE  
AND FINANCE) OF THE RIFLE MUNICIPAL CODE REGARDING  
PURCHASING.

WHEREAS, the City of Rifle (“Rifle” or the “City”) is a home-rule municipality organized pursuant to Article XX of the Colorado Constitution and with the authority of the Rifle Home Rule Charter; and

WHEREAS, Chapter 4, Article III of the City of Rifle Municipal Code (the “Code”) sets forth the City’s purchasing policy; and

WHEREAS, the City Council finds and determines that the City’s Purchasing Policy is in need of modernization and is in the best interest of the public health, safety and welfare of the citizens of Rifle to repeal and reenact Article III of Chapter 4 of the Code as set forth herein.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF RIFLE, COLORADO, ORDAINS THAT:

1. The foregoing recitals are incorporated by reference as findings and determinations of the City Council.
2. Article III of Chapter 4 of the Code is hereby repealed and reenacted to read as follows:

**Division 1- General Provisions**

**Sec. 4-3-10. Purposes, interpretation of rules.**

- (a) Interpretation. This Article shall be construed and applied to promote its underlying purposes and policies.
- (b) Purposes and policies. The purpose of this Article is to prescribe the purchasing procedure that the City will follow in contracting for or constructing public works, purchasing tangible property and insurance policies, and obtaining consulting services. The City Council adopts these rules and regulations pursuant to Section 13.9 of the City Charter.
- (c) The underlying purposes and policies of this Article are:

- (1) To simplify, clarify and standardize the law governing procurement by the City;
- (2) To permit the continued development of procurement policies and practices;
- (3) To provide for increased public confidence in the procedures followed in public procurement;
- (4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the City;
- (5) To provide increased economy in the City procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the City;
- (6) To foster effective broad-based competition within the free enterprise system; and
- (7) To provide safeguards for the maintenance of a procurement system of quality and integrity.

**Sec. 4-3-15. Procurement contrary to this Article.**

Except as otherwise may be provided by law, it shall be unlawful for any City officer or employee to order a procurement contrary to the provisions of this Article. Any procurement or contract so made shall be void and wholly without effect and shall not be binding upon the City in any manner.

**Sec. 4-3-20. Requirement of good faith.**

This Article requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

**Sec. 4-3-25. Application of this Article.**

This Article shall apply to every expenditure of public funds irrespective of their source, by this City, acting through a governmental body as defined herein, under any contract; provided, however this Article shall not apply to either grants or contracts between the City and other

governments and federal assistance monies, for which, if necessary, the City shall adopt specific purchasing policies related to such assistance monies. Nothing in this Article or in regulations promulgated hereunder shall prevent any governmental body from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

**Sec. 4-3-30. Definitions.**

The words defined in this Section shall have the meanings set forth below whenever they appear in this Article, unless: (1) the context in which they are used clearly requires a different meaning; or (2) a different definition is prescribed for a particular Article or provision.

(a) *Brand name* means a specification limited to one (1) or more items by manufacturer's name or catalog number.

(b) *Best interests of the City* means the Procurement Officer will use discretion to choose the action most favorable to the City after considering all alternatives.

(c) *Best value* means that the expected outcome of a purchase provides the greatest overall benefit in response to the solicitation for purchase.

(d) *Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

(e) *Change order* means a written order signed by a procurement officer, modifying an existing contract to authorize changes within the scope of work, additions or deletions to the work or an adjustment to any other provision of the contract.

(f) *Construction* means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property.

(g) *Contract* means any agreement enforceable by law between the City and one (1) or more outside parties, regardless of form or title, for procurement of supplies, services or construction.

(h) *Contract modification* means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract. Before a contract is executed, modifications are

typically processed as an addenda to the invitation for bids or Request for Proposals; after the contract is executed, modifications are processed as change orders.

(i) *Contractor* means any person having a contract with a governmental body.

(j) *Data* means recorded information, regardless of form or characteristic.

(k) *Department head* means the person in charge of each major administrative division of the City who has overall management responsibility for an operation or a group of related operations within a functional area, as determined by the City Manager.

(l) *Designee* means a duly authorized representative of a person holding a superior position.

(m) *Employee* means an individual drawing a salary from a governmental body.

(n) *Governmental body* means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation or other establishment or official of the executive, legislative or judicial branch of this City.

(o) *Grant* means the furnishing by the City of assistance, whether financial or otherwise to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction; a contract resulting from such an award is not a grant but a procurement contract.

(p) *Invitation for bids* means all documents, whether attached or incorporated by reference utilized for soliciting bids.

(q) *Legal services* means the advice, representation, document preparation or related services of an attorney as special counsel provided to the City upon the request of the City Attorney.

(r) *Litigation services* means professional or other services procured by the City Attorney for the purpose of evaluating, preparing, providing or presenting evidence at the trial of any lawsuit to which the City is a party. Litigation services shall not include legal services.

(s) *Local goods* means supplies and materials produced, manufactured, sold, distributed or grown in the City, or for purposes of secondary preference, within Garfield County, that may qualify for certain preferences when bidding or proposing on City contracts.

(t) *Local vendor* means contractors, vendors, suppliers or retailers with a principal place of business located within the City or within a radius of three (3) miles thereof for primary preference, or beyond three (3) miles thereof, but within Garfield County, for purposes of secondary preference. As a principal place of business, the business shall have organizational governance, warehousing operations, and at least 75% of its employees, or materials and supplies are purchased or located within the City or Garfield County, as is necessary for secondary preference. Businesses which maintain satellite offices within the City shall not be considered local for purposes of this definition. If a joint venture or teaming arrangement, including design-build construction, the general or primary contractor team leader shall meet this definition.

(u) *Lowest priced responsive and responsible bidder* means the bidder that meets the requirements and criteria set forth in the solicitation and as further described in Division 3- Source Selection and Contract Formation.

(v) *May* denotes the permissive.

(w) *Person* means any business, individual, union, committee, club, other organization or group of individuals.

(x) *Procurement* means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration. Procurement shall not include the buying, purchasing, renting or leasing of real property.

(aa) *Public notice* shall mean any publication reasonably calculated to inform responsible bidders or offerors. Public notice shall occur for a reasonable time and may be disseminated through any means of mass communication including but not limited to, newspapers, other written publications, posting, television, radio, other broadcasting media, websites, electronic procurement platforms and electronic billboards.

(bb) *Procurement officer* means the City Manager, any Department head, or the City Attorney whenever such person undertakes the duties set forth herein by approving source selection and contract formation for the procurement of any supply, service or construction on behalf of the City.

(cc) *Professional services* means the furnishing of labor, time, effort or expertise by a contractor with specialized knowledge in a field including, but not limited to, accounting, appraisal,

architecture, construction management/owner's representation, engineering, environmental consulting, executive recruiting, finance, land surveying, medicine, public relations/marketing and training specialist.

(aa) *Purchase description* means the words used in a solicitation to describe the supplies, services or construction to be purchased and includes specifications attached to or made part of, the solicitation.

(dd) *Regulation* means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret or prescribe law or policy, or describing organization, procedure or practice requirements.

(ee) *Request for Proposals* means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(ff) *Responsible bidder or offeror* means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(gg) *Responsive bidder* means a person who has submitted a bid which confirms in all material respects to the invitation for bids or request for proposals.

(hh) *Services* means the performance of maintenance or the furnishing of labor, time or effort which does not involve the delivery of a specific end product other than a report or other item which is merely incidental to the performance of the service. Services shall not include services rendered under an employment agreement nor shall it include professional services as that term is defined in this Section.

(ii) *Shall* denotes the imperative.

(jj) *Specification* shall mean any description of the physical or functional characteristics of or the nature of the supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery or a procedure for determining whether the requirements are satisfied.

(kk) *Supplies* means all property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding land or permanent interest in land.

(mm) *Surplus supplies* means any supplies no longer having any use to the City. This includes obsolete supplies, scrap materials and non-expendable supplies that no longer have a useful life or purpose.

(ll) *Using agency* means any governmental body of the City which utilizes any supplies, services, or construction procured under this Code.

**Sec. 4-3-35. Public access to procurement information.**

Procurement information shall be a public record to the extent provided by law and shall be available to the public as provided by law.

**Sec. 4-3-40. Specifications.**

(a) Intent. All specifications, including but not limited to design, performance and brand name specifications, shall be drafted so as to provide a clear and concise description of the supply, service or construction desired.

(b) Preparation. Before appropriate approvals are obtained for a procurement in excess of twenty-five thousand dollars (\$25,000), the Procurement Officer shall cause to be prepared written specifications detailing the City's requirements for the supplies, services or construction.

(c) Brand name specifications. A brand name specification may be used when the Procurement Officer has determined that sufficient sources for competition exist for the procurement of the supply and that the use of the brand name specification is not intended to limit or restrict competition. A brand name specification may also be used to describe the standard of quality, performance and other salient characteristics. In such cases, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard desired and that the substitution of equivalent supplies is permitted.

**Sec. 4-3-45. Waiver of procedures.**

Upon a majority vote, the City Council may approve a waiver of any of the provisions of this Article, after consideration of the particular facts and circumstances necessitating the request for waiver. All of the procedures herein may be modified to prevent the loss of any gift or grant to the City.

**Sec. 4-3-50. Cooperative purchasing.**

The Procurement Officer is authorized to participate in joint bidding with other public agencies or entities when deemed to be in the City's best interests. The Procurement Officer, in his or her sole discretion, may use pricing schedules of higher governmental entities to purchase materials and services based on bids established for that purpose. Cooperative purchasing includes, but is not limited to, platforms such as Sourcewell.

## **Division 2- Procurement Organization and Authority**

### **Sec. 4-3-110. Authority and duties of the City Manager.**

(a) The City Manager shall appoint procurement officers who, because of their particular knowledge and expertise, shall serve as principal procurement officials for the City and perform those duties set forth in this Article with respect to the procurement of specialized supply, service or construction items. (By way of example and not as limitation upon this authority, the specialized supply, service or construction items delegated to a designee may include data processing equipment, motor vehicles, insurance policies, office supplies and furniture and City construction projects.)

### **Sec. 4-3-115. Duties of department heads and procurement officers.**

(a) Duties of department heads. Department heads shall work closely with designees appointed for the procurement of specialized supplies, services or construction, the City Manager and other department heads to ensure compliance by all employees and departments of the City with the provisions of this Article and any regulations which may be promulgated pursuant thereto.

(b) Duties of procurement officers. Except as otherwise provided in this Article, procurement officers shall:

(1) Act to procure for the City the highest quality in supplies, services and construction for the best value and at least expense to the City consistent with the provisions of this Article;

(2) Endeavor to obtain as full and open competition as possible on all purchases and sales;

(3) Establish and maintain programs for the inspection, testing and acceptance of supplies, services and construction;

(4) Explore the possibilities of "bulk purchasing" and "Cooperative purchasing" so as to take full advantage of discounts. Quantities purchased should represent a reasonable



balance based on transportation costs, storage capability and cost, quantity discount, price, budget and cost;

(5) Act so as to procure for the City all federal and state tax exemptions to which it might be entitled;

(6) Cooperate with the Finance Department and other department heads, so as to secure for the City the maximum efficiency in budgeting, accounting, project management and contract management;

(7) Strive to uphold the local preference policy by purchasing goods and services from local vendors as required by this Article;

(8) Have the authority, upon approval of the City Manager, to identify vendors who default on their quotations, to identify irresponsible bidders and to begin disqualification proceedings against them in accordance with this Article;

(9) Endeavor to make purchases of recycled materials and other supplies that preserve, to the maximum extent possible, the environment and minimize energy consumption for their production or use; and

(10) Make a special effort to solicit and encourage local businesses and suppliers to participate in the City's procurement process.

#### **Sec. 4-3-120. Approvals.**

No procurement shall be made without the prior written approvals required to be made in accordance with this section.

(a) City Council. All procurements subject to the terms of this Article in excess of twenty-five thousand dollars (\$25,000.00) shall be approved by City Council by motion or resolution.

(b) City Manager. All procurements subject to the terms of this Article which does not exceed twenty-five thousand dollars (\$25,000.00) shall be approved by the City Manager.

(c) Department heads. Department heads shall have the authority to approve procurements in an amount which does not exceed ten thousand dollars (\$10,000.00), without the prior approval of the City Manager or City Council; provided, however that sufficient funds are available in the department head's department budget for the item(s) purchased.

No procurement shall be divided so as to avoid the approvals that would otherwise be required by the above.

**Sec. 4-3-125. Formal contract procedure.**

Except as otherwise provided herein, all procurement in excess of ten thousand dollars (\$10,000.00), or whenever a department head or City Manager requests the same, shall be purchased by a formal written contract approved and executed by the City Manager or his/her designee.

**Division 3-Source Selection and Contract Formation**

**Sec. 4-3-210. Methods of source selection**

(a) Unless otherwise authorized by law, all City contracts greater than fifty-thousand dollars (\$50,000.00) shall be awarded by competitive sealed bidding, pursuant to Section 4-3-215, (Competitive sealed bidding), except as provided in:

- (1) Section 4-3-220 (Competitive sealed proposals); Greater than ten thousand dollars (\$10,000.00) and less than fifty-thousand dollars (\$50,000.00).
- (2) Section 4-3-225 (Small purchases); Less than ten thousand dollars (\$10,000.00).
- (3) Section 4-3-230 (Miscellaneous exemptions);
- (4) Section 4-3-235 (Emergency procurement);

<b>Methods of source selection</b>	<b>Contract limits</b>
Competitive sealed bidding	Greater than \$50,000.00
Competitive sealed proposals	Greater than \$10,000.00 and less than \$50,000.00. *Greater than \$50,000 limit is allowed for Construction Manager/General Contractor proposals, or similar type proposal.
Small purchases	Less than \$10,000.00

(b) The following Local preferences shall be considered in source selection for all City contracts:

Notwithstanding other provisions of this Article, in the awarding of contracts for goods or services, the City Council and Procurement Officer shall provide the following primary and secondary percentage preferences for local goods and services provided by local vendors when quality, delivery time and services are judged by the Procurement Officer to be essentially equal:

<i>Contract Amount</i>	<i>Primary Preference City of Rifle Goods/Vendors</i>	<i>Secondary Preference Garfield County Goods/Vendors</i>
Less than \$1,000	10% discount	5% discount
\$1,001 to \$5,000	8% discount	4% discount
\$5,001 to \$25,000	6% discount	3% discount
\$25,001 to \$100,000	5% discount	2.5% discount
\$100,000 to \$200,000	4% discount	2% discount
\$200,001 to \$500,000	3% discount	1.5% discount
\$500,000 or greater	2% discount	1% discount

(c) For all competitive bonded bid purchases in excess of one hundred thousand dollars (\$100,000.00), the City shall provide these local preference provisions within the "Instructions to Bidders" documents.

(d) Exception: Local preference shall not apply to contracts required by applicable state or federal laws or regulations to be awarded to the "lowest responsible bidder" or to any contracts that are statutorily or otherwise precluded from the use of local vendor preference. No local preference shall apply where grant funds are used which expressly prohibit the use of such local preference.

(e) The Procurement Officer may establish an administrative process to pre-qualify local vendors.

**Sec. 4-3-215. Competitive sealed bidding.**

(a) Conditions for use. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 4-3-210 (Methods of source selection). Contract amounts greater than fifty-thousand dollars (\$50,000.00).

(b) All Competitive Bids/Proposals must be procured competitively through the solicitation process set forth below. The Department Head shall have:

- (1) An approved budget reflected in the current year. The project shall be planned in advance with a realistic start date to enable the Procurement Officer to strategically solicit vendors to meet the planned start date;
- (2) Department Heads are authorized to start the purchasing process when the amount for the purchase is within the approved annual budget;
- (3) Written specifications or scopes of work/service that is submitted with Purchase Requisition that contains the budget line item;
- (4) A meeting with the Procurement Officer to determine the solicitation method and the appropriate contract terms to plan, schedule and execute the solicitation. Any other affected departments shall be invited to the meeting to ensure proper City coordination. If necessary, the City Attorney may be included to ensure that the proper contract form and terms are approved prior to the solicitation; and
- (5) Upon the completion of the planning and the appropriate solicited process, as set forth below, a Purchase Order will be assigned after the award is approved by City Council. Only then will invoices be paid.

(c) Specifications and Scopes of Work/Services (See also Section 4-3-40. Specifications)

(1) Specifications and Scopes of Work/Services are the core of explaining to vendors what the City needs, with direction to the vendors on how the vendor can meet the need. The specifications and Scopes of Work/Services establish the expectations of both the City and the vendor. The information provided by the City allows the vendor to plan, price, and provide solutions to meet the City's need. The Specifications and Scopes of Work/Service will be incorporated into the contract along with the vendor's bid or proposal.

(a) A specification is a precise description of a commodity's physical characteristics, quality, or desired outcome. Specifications must be written in language that is relevant to, and easily understood by potential suppliers. Specifications can be design or performance. Design specification provides details regarding physical characteristics, materials, and product features. Performance specification describes the desired end result or outcome without specific details about the commodity's physical characteristics or features. Specifications shall describe functions and standards, materials and methods, shipment and delivery, quality assurance, warranties, product, supply, and service specifications.

(b) Brand name or equal specification should explain with reasonable detail that the brand name is used to describe a standard of quality, performance, and characteristics desired in a manner that does not limit competition.

(c) Brand name as a specification should only be used if: no other qualified product will meet the needs of the City, time is of the essence, or the City determines the need for standardization.

(d) The Procurement Officer should make brand name or brand name or equal in a manner that is in the best interests of the City.

(d) Scope of Work/Service provides a supplier with a clear understanding of what the City needs to ensure a successful procurement. A Scope of Work/Service defines the what, where, how, and when of the procurement and allows the supplier information to price the project and ensure competition while meeting the City's needs. It should not be overly restrictive. A proper Scope of Work/Service should address by its terms, risk and the City's tolerance for risk. The Scope of Work/Service will become part of the contract as a performance measure and each party will be bound by its terms. Therefore, the Scope of Work/Service shall describe the work, the physical location, the supplies and equipment, payment rate, acceptance criteria, and any special requirements.

(e) Invitation for bids. An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement. The purchase description shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and it shall not be unduly restrictive. Invitation for bids may be issued via any of the Public Notice methods indicated in this Article. The Invitation for Bids shall specify a public bid opening or an electronic procurement platform bid opening.

(f) Public notice. Adequate public notice of the Invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids. If a state or federal law or regulation controls the procurement process for any particular purchase, adequate public notice may be mandated by applicable state or federal laws or regulations. In the absence of exigent or emergency circumstances described in Section 4-3-235 (Emergency procurement), adequate notice shall mean publication of a public notice which summarizes the Invitation for bids in any one or all of the following platforms for two (2) consecutive weeks with the last publication being not more than one (1) week prior to the date set forth therein for the opening of bids:

- i. a newspaper of general circulation
- ii. The City's website

iii. An electronic procurement platform or website specified for public notification

(g) Bid opening.

i. Public bid opening-Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection. No statement shall be made regarding the apparent low bid.

ii. Electronic procurement platform bid opening- Bids shall be received and opened by the Procurement Officer. The amount of each bid and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection. No statement shall be made regarding the apparent low bid.

(i) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. In addition to the evaluation criteria set forth in the invitation to bid, the following criteria may be considered, in addition to price:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the service or construction required;
- (2) Whether the bidder can perform the contract or provide the service or construction promptly or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (4) The quality of performance of previous contracts or services;
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service or construction;

(7) The quality, availability and adaptability of the supplies, services or construction to the particular use required; and

(8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

(9) The Local Preferences set forth herein.

(j) Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after award or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the department head and approved by the City Attorney.

(k) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest priced responsive and responsible bidder whose bid meets the requirements and criteria set forth herein and in the invitation for bids or request for proposals.

Receipt of a singular bid does not automatically require issuance of a new invitation for bids to gain additional bids.

**Sec. 4-3-220. Competitive sealed proposals.**

(a) Conditions for use. Procurement for the following are eligible for award by competitive sealed proposals:

(1) When the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by competitive sealed proposals;  
or

(2) For professional services; or

(3) Construction Manager/General Contractor request for proposals, or similar type proposals; or

(4) For contract amounts greater than ten thousand dollars (\$10,000.00) and less than fifty-thousand dollars (\$50,000.00)

(b) Requests for proposals. Requests for proposals shall be approved by the Procurement Officer prior to issuance. Proposals shall be solicited through a Request for Proposals. The Request for Proposals shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and it shall not be unduly restrictive.

Requests for proposals may be issued via any of the Public Notice methods indicated in this Article. The Request for proposals shall specify a public bid opening or an electronic procurement platform bid opening.

The following minimum requirements of the Request for proposal are:

- (1) Introduction
- (2) Project Goal and Objectives
- (3) Scope of Work
- (4) General Proposal Requirements
- (5) Proposal Process
- (6) Procurement Timeline
- (7) Questions
- (8) Proposal Submission and Format
- (9) Evaluation criteria
- (10) Local Preference code
- (11) Interviews
- (12) Selection/Post-Selection Process
- (13) Contract/Legal
- (14) Reference and Supporting Documents

(c) Public notice. Adequate public notice of the Request for Proposals shall be given in a reasonable time prior to the date set forth therein for the receipt of



proposals. If a state or federal law or regulation controls the procurement process for any particular purchase, adequate public notice may be mandated by applicable state or federal laws or regulations. In the absence of exigent or emergency circumstances described in Section 4-3-235, (Emergency procurement), adequate notice shall mean publication of a public notice which summarizes the Request for Proposals in any one or all of the following platforms for two (2) consecutive weeks with the last publication being not more than one (1) week prior to the date set forth therein for the opening of bids:

- i. a newspaper of general circulation
- ii. The City's website
- iii. An electronic procurement platform or website specified for public notification

(d) Receipt of proposals.

i. Public proposal opening-Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A list of proposals received shall be prepared and shall be open for public inspection after contract award. No statement shall be made regarding the apparent low proposal.

ii. Electronic procurement platform proposal opening- Proposals shall be received and opened by the Procurement Officer. The amount of each proposal and such other relevant information as may be specified by regulation, together with the name of each proposer shall be recorded; the record and each bid shall be open to public inspection after contract award. No statement shall be made regarding the apparent low proposal.

(e) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. In addition to the evaluation criteria set forth in the invitation to bid, the following criteria may be considered, in addition to price:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the service or construction required;

(2) Whether the bidder can perform the contract or provide the service or construction promptly or within the time specified, without delay or interference;

(3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(4) The quality of performance of previous contracts or services;

(5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

(6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service or construction;

(7) The quality, availability and adaptability of the supplies, services or construction to the particular use required; and

(8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

(9) The Local Preferences set forth herein.

(f) The proposals shall be evaluated by a Selection Committee in a fair and objective manner consistent with the evaluation criteria and point value assignment. No additional criteria should be added after proposal submission date. The evaluation process is confidential, and all evaluators on the Selection Committee shall sign a document assuring that the process is confidential at all times. Following the contract award, the scoring, without disclosure of the names, positions, or scores of members of the Selection Committee, shall be public record available for inspection in accordance with state statutes.

(g) The Selection Committee shall be composed of three (3), or more, City employees or a maximum of two (2) non-City employees who are a subject matter expert on the subject addressed in the Request for Proposals. The Selection Committee should have at least one (1) member that is not from the using department. If a City Council member is selected or chooses to serve as a member of the Evaluation Committee, the City Council member shall recuse himself/herself from the final approval of the contract.

(1) Each Selection Committee member shall be assigned a number and receive all proposals with a scoring sheet setting forth the scoring criteria with space allowed for comments;

(2) The scoring by the member must be based solely on the selection criteria and not upon any additional information, including any personal knowledge, research, or relationship;

(3) Once each member has individually scored the proposal, the scoring sheets shall be tallied by the Selection Committee and shall be retained by the Procurement Officer;

(4) Based on the combined scores, a decision shall be reduced to writing with a score, and any written justification for the decision;

(5) The results of the scoring by the Selection Committee shall be verified by the Procurement Officer, and the Procurement Officer shall determine the overall highest rated proposal. If any proposer is a verified local business subject to Local Preference, the Procurement Officer shall assign the percentage preference provided by this Article.

(6) The Selection Committee shall ensure, with a maximum degree of professionalism, an objective and fair evaluation of the proposals under the pre-established criteria of the Request for Proposal.

(7) The Selection Committee may submit clarification questions or perform interviews of proposers that are ranked highest during the evaluation.

After interviews are complete, the Selection Committee shall prepare scoring sheets utilizing the process detailed above in Evaluation Factors.

(h) Discussion with responsible offerors and revisions to proposals. As provided in the Request for Proposals, discussions may be conducted with Responsible offerors. Responsible offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(i) Award. Award shall be made to the lowest priced responsive and responsible bidder whose proposal is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the Request for Proposals and the additional criteria set forth above. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

Receipt of a singular bid does not automatically require issuance of a new invitation for bids to gain additional bids.

**Sec. 4-3-225. Small purchases.**

(a) Small purchases. Any procurement not exceeding ten thousand dollars (\$10,000.00) shall require an informal evaluation of price, quality, convenience and service from any source, and the exercise of sound decision-making by the department head based on such information. Public notice or competitive quotes are not necessary. Department heads are authorized to make Small purchases when the amount to be spent is within an approved budget. Department heads shall ensure that:

- (1) The amount of a purchase cannot be divided in an attempt to qualify as a small purchase;
- (2) He or she is responsible for documenting the standard and method of selecting the vendor. The standard shall follow the principles of objective fairness, cost reasonableness, and best use of public funds;
- (3) Local vendors should be considered to the extent that the vendor meets cost reasonableness; and
- (4) All purchases are properly documented and signed via a vendor invoice, purchase order, proof of purchase, purchasing card statement or vendor contract form that will be maintained within the department.

**Sec. 4-2-230. Miscellaneous exemptions.**

(a) A contract may be awarded for a supply, service or construction item without competition when the Procurement Officer determines in writing that one (1) or more of the following conditions exist:

- (1) There exists only one (1) responsible source;

(a) Procurements may be made without competition when the Purchasing Officer reasonably determines, after conducting a good faith review of available sources, that there is only one (1) viable source within the relevant supply area with the exclusive capability to provide for the required supply, service or construction item. The Purchasing Officer shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole-source procurements shall be maintained for one (1) year from the date of purchase.

The sole source shall be approved in the following manner:

(1) The sole source approval shall be made by the Purchasing Officer only after receipt or completion of a written:

- a) description of the scope of services, work, or specifications,
- b) explanation of why no other supplier will be suitable or acceptable to meet the need of the City and why the supplier possesses an exclusive capability not possessed by other suppliers,
- c) explanation of how cost reasonableness was determined
- d) approval of the Procurement Officer or designee.

(2) The sole source purchase shall meet the requirements of this Article. All sole source purchases in excess of \$25,000 shall be approved by City Council.

(3) Sole Source refers to the supplier, not the product or service. A justification must show that the good or service is only available from a single supplier under the prevailing conditions.

(2) Although there exists more than one (1) responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise injure the City's financial interests or will substantially impede the City's administrative functions or the delivery of services to the public or to provide uniform and economical repair and maintenance.

(3) A particular supply or service is required in order to standardize or maintain standardization for the purpose of reducing financial investment or simplifying administration;

(4) The supply is perishable;

(5) The supply qualifies as an object of fine art;

(6) A particular supply is required to match supplies in use;

(7) A particular supply is required to enable use by a specific individual;

(8) A particular supply is prescribed by a professional advisor;

(9) In any case where the City has, within the preceding two (2) years, pursuant to an invitation to bid, awarded a contract for the procurement of any supply, service or construction on a unit price basis, the Procurement Officer may negotiate with the successful bidder for the purchase of additional quantities of the supply, units of service or construction. No such procurement shall be made at a price higher than the previous award.

(b) The Procurement Officer shall submit each determination made under this Section to the City Manager for prior approval.

**Sec. 4-3-235. Emergency procurement.**

(a) Notwithstanding any other provision of this Article, in the case of an apparent emergency which threatens the public health, welfare or safety requiring the immediate purchase of a supply, service or construction, the City Manager shall have the power to authorize the Procurement Officer to secure the necessary items in the open market without competition up to one hundred thousand dollars (\$100,000.00), and when the purchase cannot reasonably be delayed until one of the following events occur:

(1) A special meeting of the City Council is convened to consider the expenditure, if time allows, or ratify the decision of the Procurement Officer; or

(2) A quorum can be reached where a special meeting call has failed to achieve a quorum.

(b) In no event shall the contract price exceed commercially reasonable prices.

(c) A full written report of the circumstances of all emergency purchases over twenty-five thousand dollars (\$25,000.00) shall be made by the City Manager to the City Council. The report shall be received by the City Council at a regular meeting and such report shall be open to public inspection.

**Sec. 4-3-240. Cancellation of invitations for bids or requests for proposals.**

An invitation for bids, a Request for Proposals or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation. The reasons therefor shall be made a part of the contract file.

Receipt of a singular bid does not automatically require cancellation of an invitation to bid or request for proposals and issuance of a new invitation to bid or request for proposals to gain additional bids or proposals.

**Sec. 4-3-245. Responsibility of bidders and offerors.**

(a) Determination of nonresponsibility. A written determination of nonresponsibility of a bidder or offeror may be made by the Procurement Officer upon reasonable grounds. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(b) Disclosure. Pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-200.1 (CORA), any and all of the documents that are submitted to the City may be deemed public records subject to examination and inspection by third parties. The City reserves the right, at its sole discretion, to release for inspection or copying any document, plan, specification, proposal or other writing submitted pursuant to this request.

**Sec. 4-3-250. Pre-qualifications of suppliers.**

(a) Prospective suppliers may be pre-qualified for particular types of supplies and services. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified suppliers for supplies and services.

(b) Prospective contractors may be pre-qualified for construction projects. Issuance of the solicitation to pre-qualified contractors shall be limited to the pre-qualified contractors.

**Sec. 4-3-255. Bid security.**

(a) Requirement for bid security. When deemed necessary by a department head or the Procurement Officer, bid bonds or other equivalent security shall be required and the invitation for bids or Request for Proposals shall describe the requirements. Bid security shall be a bond provided by a surety company authorized to do business in this state or the equivalent in cash or some other instrument in a form satisfactory to the City.

(b) Amount of security bid. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

(c) Rejection of bids for noncompliance with bid security requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

(d) Withdrawal of bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in Section 4-3-215 (Competitive sealed bidding, correction or withdrawal of bids; cancellation of awards). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

(e) Forfeiture of security. Unsuccessful bidders or offerors shall be entitled to the return of any cash deposit following the execution of an agreement with the successful bidder. Unless a specific extension is granted in writing, a successful bidder or offeror shall forfeit any bid bond or equivalent security required by the procurement officer upon its failure to enter into a contract within fifteen (15) days after the award.

**Sec. 4-3-260. Contract performance and payment bonds.**

(a) When required; amounts.

(1) For a contract awarded based on a bonded competitive bid, the individual or company contracting with the City shall be required at the time the contract is executed to deliver to the City a contractor's performance bond or a labor and material payment bond in the amount of one hundred percent (100%) of the contract price, with a good and sufficient surety, for approval by the Procurement Officer. Such contractor shall properly perform work required by the contract on behalf of the City, and shall promptly pay all amounts lawfully due to all persons supplying or furnishing labor or materials, used or performed in the prosecution of the work provided for in such contract. Further, the contractor shall indemnify



and hold the City harmless for all payments or liabilities arising from the execution of the terms of the contract.

(b) When deemed necessary by the Procurement Officer or the City Manager, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

(1) A performance bond or other security satisfactory to the City, executed by a surety company authorized to do business in this state; and

(2) A payment bond or other security satisfactory to the City, executed by a surety company authorized to do business in this state, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

(3) Amount of bonds or other security. The amount of the performance and payment bonds or other security specified above shall be determined by the City Manager. In determining the amounts required, the City Manager shall weigh the following policy considerations:

(a) It is in the City's interest to ensure that construction projects will be completed according to the contract documents without the City having to expend more than the contract amount.

(b) It is in the City's interest to ensure that payment is made for all labor and materials supplied to City construction projects by contractors and subcontractors.

(c) Certain construction projects may be required by state or federal law to be bonded in a particular manner or in a certain amount.

(d) Phasing of bond amounts should be considered, when appropriate, for projects that are constructed in discrete and identifiable phases.

**Sec. 4-3-265. Bond forms and copies.**

(a) Bond forms. The City Attorney may determine the form of the bonds required by this Article.

(b) Certified copies of bonds. Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and

postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

**Sec. 4-3-270. Type of contracts.**

Any type of contract which will promote the best interests of the City may be used.

**Sec. 4-3-275. Multi-term contracts.**

(a) Specified period. No contract for supplies, services or construction, including all renewals, shall be made by the City for a period longer than five (5) years, unless authorized by resolution. All contracts extending beyond one (1) year in duration shall be contingent upon and subject to duly enacted appropriations of the City. Contracts for recurring expenditures including, but not limited to, physical maintenance services, snow removal services, electronic data/computer programs and building security systems may be issued for a 3 year term with an option to renew.

(b) Determination prior to use. Prior to the utilization of a multi-year contract, it shall be determined in writing:

- (1) That estimated requirements cover the period of the contract and are reasonably firm and continuing;
- (2) That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement;
- (3) That the contract beyond the first fiscal year shall be expressly contingent upon the annual budgeting and appropriation of sufficient funds on an annual basis or by nonlapsing appropriations; and
- (4) That the contract clearly states that when funds are not appropriated or otherwise made available to support the continuation of the City's performance or obligations in a subsequent fiscal period, the contract shall be canceled.

**Sec. 4-3-280. Contract clauses.**

The City Attorney may require the inclusion in City contracts of clauses providing for adjustments in prices, time of performance or other contract provisions, as deemed appropriate by the City Attorney and covering the following subjects:

- (1) Liquidated damages as appropriate;

- (2) Bonus to the Contractor for completion of a project earlier than agreed upon;
- (2) Specified excuses for delay or nonperformance;
- (3) Termination of the contract for default;
- (4) Termination of the contract in whole or part for the convenience of the City;
- (5) Non-discrimination;
- (6) Insurance and indemnification requirements;
- (7) Notice of the applicability of the City Procurement Code

**Sec. 4-3-285. Contract modifications and change orders; fiscal responsibility.**

Every contract modification, change order or contract price adjustment under a contract with the City shall be subject to prior written certification by the Procurement Officer as to the effect of the contract modification, change order or adjustment in contract price on the total project budget or the total contract budget.

In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, the Procurement Officer shall not execute or make such contract modification, change order or adjustment in contract price unless sufficient funds are available therefore or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order or adjustment in contract price under consideration.

**Sec. 4-3-290. Right to inspect plant.**

The City may at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the City.

**Sec. 4-3-295. Right to audit records.**

The City shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such

contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

**Sec. 4-3-300. Finality of determinations.**

The determinations required by Subsections 4-3-215(j) (Competitive sealed bidding, correction or withdrawal of bids; cancellation of awards), 4-3-220(a) (Competitive sealed proposals, conditions for use), 4-3-220(g) (Competitive sealed proposals, award), Sections 4-3-230 (Miscellaneous exemption), 4-3-235 (Emergency procurement), Subsections 4-3-245(a) (Responsibility of bidders and offerors, determination of nonresponsibility), 4-3-215(k) (Competitive sealed bidding, award), Sections 4-3-270 (Types of contracts) and 4-3-275 (Multi-term contracts determination prior to use) are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law as determined by a court of competent jurisdiction.

**Sec. 4-3-305. Reporting of anti-competitive practices.**

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the City Attorney.

**Sec. 4-3-310. Record of procurement actions taken under Miscellaneous exemptions and Emergency procurement.**

The Procurement Officer and City Clerk shall maintain a record listing all contracts made under Section 4-3-230 (Miscellaneous exemption) or Section 4-3-235 (Emergency procurement) for a minimum of three (3) years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the supplies, services or construction procured under each contract.

**Division 4-Legal and Contractual Remedies**

**Sec. 4-3-410. Authority to resolve protested solicitations and awards.**

(a) Right to protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Manager. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Authority to resolve protests. The City Manager or his or her designee shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.

(c) Decision. If the protest is not resolved by mutual agreement, the City Manager, or his or her designee shall promptly issue a decision in writing. The decision shall:

(1) State the reason for the action taken; and

(2) Inform the protestant of its right to administrative review as provided in this Article.

(d) Notice of decision. A copy of the decision under Subsection (c) above shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(e) Finality of decision. A decision under Subsection (c) of this Section shall be final and conclusive, unless the protestant appeals administratively to City Council acting as the Procurement Appeals Board.

**Sec. 4-3-415. Authority to debar or suspend.**

(a) Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the City Manager, after consultation with the City Attorney, shall have the authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The City Manager, after consultation with the City Attorney, shall also have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.

(b) Causes for debarment or suspension. The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a City contractor;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the City Manager to be so serious as to justify debarment action:

(A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(5) Any other cause the City Manager determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity or failure to pay any municipal fine, fee, business license or permit; and

(6) For violation of the ethical standards set forth in Division 5 (Ethics in Public Contracting).

(c) Decision. The City Manager shall issue a written decision to debar or suspend. The decision shall:

(1) State the reasons for the action taken; and

(2) Inform the debarred or suspended person involved of its right to administrative review as provided in this Code.

(d) Notice of decision. A copy of the decision under Subsection (c) above shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(e) Finality of decision. A decision under Subsection (c) above shall be final and conclusive, unless the debarred or suspended person appeals administratively to City Council acting as the Procurement Appeals Board.

**Sec. 4-3-420. Authority to resolve contract and breach of contract controversies.**

(a) Applicability. This Section applies to controversies between the City and a contractor and which arise under or by virtue of, a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.

This Section is not applicable to contracts for construction that have incorporated contract language and/or general conditions that specifically address resolutions methods for these controversies.

(b) Authority. The City Manager or his or her designee is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in Subsection (a) above.

(c) Decision. If such a controversy is not resolved by mutual agreement, the City Manager or his or her designee shall promptly issue a decision in writing. The decision shall:

- (1) State the reason for the action taken; and
- (2) Inform the contractor of its right to administrative review as provided in this code.

(d) Notice of decision. A copy of the decision under Subsection (c) above shall be mailed or otherwise furnished immediately to the contractor.

(e) Finality of decision. The decision under Subsection (c) above shall be final and conclusive, unless the contractor appeals administratively to City Council acting as the Procurement Appeals Board.

(f) Failure to render timely decisions. The City Manager or his or her designee does shall issue the written decision required under Subsection (c) above within one hundred twenty (120) days after written request for a final decision or within such longer period as may be agreed upon by the parties.

**Sec. 4-3-430. Applicability of this Article.**

The provisions of this Article apply where it is determined administratively or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

**Sec. 4-3-435. Remedies prior to award.**

If prior to an award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) Canceled; or
- (b) Revised to comply with the law.

**Sec. 4-3-440. Remedies after an award.**

If after an award it is determined that a solicitation or award of a contract is in violation of the law, then:

- (a) If the person awarded the contract has not acted fraudulently or in bad faith:
  - (1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City; or
  - (2) The contract may be terminated upon payment of a reasonable profit to the person awarded a contract.
- (b) If the person awarded the contract has acted fraudulently or in bad faith:
  - (1) The contract may be declared null and void; or
  - (2) The contract may be ratified and affirmed if such action is in the best interests of the City, without prejudice to the City's rights to such damages as may be appropriate.

**Sec. 4-3-445. Interest.**

Interest on amounts ultimately determined to be due to a contractor or the City shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

**Sec. 4-3-450. Creation of the Procurement Appeals Board.**



The City Council shall act as the Procurement Appeals Board.

**Sec. 4-3-455. Decision of the Procurement Appeals Board.**

Acting by four (4) or more of its members and with the assistance of the City Attorney, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties and the City Manager.

**Sec. 4-3-450. Jurisdiction of the Procurement Appeals Board.**

Unless an action has been initiated previously in court for essentially the same cause of action or unless within fifteen (15) days after the action is brought before the Procurement Appeals Board, written objection is made by either the aggrieved bidder, offeror or contractor, prospective or actual, the board shall have jurisdiction to review and determine de novo:

- (a) Any protest of a solicitation or award of a contract addressed to the board by an aggrieved actual or prospective bidder or offeror or a contractor; and
- (b) Any appeal by an aggrieved party from a determination by the City Manager or a designee which is authorized by:
  - (1) Section 4-3-410 (Authority to resolve protested solicitations and awards);
  - (2) Section 4-3-415 (Authority to debar or suspend); and
  - (3) Section 4-3-420 (Authority to resolve contracts and breach of contract controversies).

**Sec. 4-3-455. Protest of solicitations or awards.**

- (a) Scope. This Section applies to:
  - (1) A protest of solicitation or award of a contract addressed to the Procurement Appeals Board by an aggrieved actual or prospective bidder or offeror or a contractor; and
  - (2) An appeal addressed to the board of a decision under Subsection 4-3-410(c) (Authority to resolve protested solicitations and awards, decision).

(b) Time limitations on filing a protest or an appeal.

(1) For a protest under this Subsection (1), the aggrieved person shall file a protest with the board within fourteen (14) days after the aggrieved person knew or should have known of the facts and circumstances upon which the protest is based.

(2) For an appeal under this Subsection (2), the aggrieved person shall file an appeal within seven (7) days of the receipt of a decision under Subsection 4-3-410(c) (Authority to resolve protested solicitations and awards, decision).

(c) Decision. On any direct protest under Subsection (a)(1) above or appeal under Subsection (a)(2) above, the Board shall promptly decide whether the solicitation or award was in accordance with the Constitution, statutes, regulations and the terms and conditions of the solicitation. The proceedings shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

(d) Standard of review for factual issues. A determination of an issue of fact by the board under Subsection (c) above shall be final and conclusive.

**Sec. 4-3-460. Suspension or debarment proceedings.**

(a) Scope. This Section applies to a review by the Procurement Appeals Board of a decision under Section 4-3-415, (Authority to debar or suspend).

(b) Time limitation on filing an appeal. The aggrieved person shall file its appeal with the board within thirty (30) days of the receipt of a decision under Subsection 4-3-415(c) (Authority to debar or suspend, decision).

(c) Decision. The board shall promptly decide whether or the extent to which, the debarment or suspension was in accordance with the constitution and statutes of the State and the ordinances and best interests of the City and was fair. The proceedings shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.

(d) Standard of review for factual issues. A determination of an issue of fact by the board under Subsection (c) above shall be final and conclusive.

**Sec. 4-3-465. Contract and breach of contract controversies.**

(a) Scope. This Section applies to a review by the Procurement Appeals Board of a decision under Section 4-3-420 (Authority to resolve contract and breach of contract controversies).

(b) Time limitation on filing an appeal. The aggrieved contractor shall file its appeal with the board within thirty (30) days of the receipt of the decision under Subsection 4-3-420(c) (Authority to resolve contract and breach of contract controversies, decision).

(c) Decision. The board shall promptly decide the contract or breach of contract controversy. The proceedings shall be de novo. Any prior determination by administrative officials shall not be final or conclusive.

(d) Standard of review for factual issues. A determination of an issue of fact by the board under Subsection (c) above shall be final and conclusive.

**Sec. 4-3-470. Finality of a decision on an issue of law.**

A determination by the Procurement Appeals Board on an issue of law shall be final and conclusive.

**Sec. 4-3-475. Appeal and review of Procurement Appeals Board decisions.**

Any person receiving an adverse decision from the Procurement Appeals Board may initiate an appeal to the courts.

**Sec. 4-3-480. Discontinuance of contractor's appeal.**

After notice of an appeal to the Procurement Appeals Board has been filed, a contractor may not discontinue such appeal without prejudice, except as authorized by the board.

**Division 5-Ethics in Public Contracting**

**Sec. 4-3-510. Definitions of terms used in this Article.**

(a) *Confidential information* means any information which is available to an employee only because of the employee's status as an employee of this City and is not a matter of public knowledge or available to the public on request.

(b) *Conspicuously* means written in such special or distinctive format, print or manner that a reasonable person against whom it is to operate ought to have noticed it.

(c) *Direct or indirect participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing

the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

(d) *Financial interest* means:

- (1) Ownership of any interest or involvement in any relationship from which or as a result of which, a person within the past year has received or is presently or in the future entitled to receive, more than one dollar (\$1.00) per year or its equivalent;
- (2) Ownership of such interest in any property or any business as may be specified by the City Council; or
- (3) Holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.

(e) *Gratuity* means a payment, loan, subscription, advance deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(f) *Immediate family* means a spouse, children, parents, brothers or sisters.

(g) *Official responsibility* means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove or otherwise direct City action.

(h) *Purchase request* means the document whereby a using agency requests that a contract be entered into for a specified need and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply and information supplied for the making of any written determination required by this Code.

#### **Sec. 4-3-515. Statement of policy.**

Public employment is a public trust. It is the policy of the City to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the City. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service.

Public employees must discharge their duties impartially so as to assure fair, competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the City procurement organization.

To achieve the purpose of this Article, it is essential that those doing business with the City also observe the ethical standards prescribed herein.

**Sec. 4-3-520. General standards of ethical conduct.**

(a) General ethical standards for employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in this Division 5.

(b) General ethical standards for nonemployees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and in this Division 5 is also a breach of ethical standards.

**Sec. 4-3-525. Employee conflict of interest.**

(a) Conflict of interest. Unless a specific exemption is obtained pursuant to this Division 5, it shall be a breach of ethical standards for any employee to participate directly or indirectly in drafting or preparing specifications, obtaining or processing approvals, participating in source selection or contract formation or granting approval for any procurement when the employee knows that:

(1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;

(2) A business or organization in which the employee or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or

(3) Any other person, business or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(b) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon the discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the City Attorney in accordance with this Division 5 for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(c) Notice. Notice of this prohibition shall be provided in accordance with regulations promulgated by the finance department.

**Sec. 4-3-530. Employee disclosure requirements.**

(a) Disclosure of benefit received from contract. Any employee who has or obtains any benefit from, any City contract with a business in which the employee has a financial interest shall report such benefit to the City Attorney; provided, however, this Section shall not apply to a contract with a business where the employee's interest in the business

has been placed in a disclosed blind trust or a minority interest in a publicly traded company.

(b) Failure to disclose benefit received. Any employee who knows or should have known of such benefit and fails to report such benefit to the City Attorney, is in breach of the ethical standards of this Section.

(c) Notice. Notice of this requirement shall be provided in accordance with regulations promulgated by City.

**Sec. 4-3-535. Gratuities and kickbacks.**

(a) Gratuities. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

(b) Kickbacks. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(c) Contract clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor.

**Sec. 4-3-540. Prohibition against contingent fees.**

(a) Contingent fees. It shall be a breach of ethical standards for a person to be retained or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of a bona fide employee, bona fide established commercial selling agencies for the purpose of securing business or a contract for legal services.

(b) Representation of contractor. Every person, before being awarded a City contract, shall represent in writing, that such person has not retained anyone in violation of Subsection (a) above. Failure to do so constitutes a breach of ethical standards.

(c) Contract clause. The representation prescribed in Subsection (b) above shall be conspicuously set forth in every contract and solicitation therefor.

**Sec. 4-3-545. Restrictions on employment of present and former employees.**

Disqualification of business when an employee has a financial interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal or as an agent for anyone other than the City, in connection with any:

- (1) Judicial or other proceeding, application, request for a ruling or other determination;
- (2) Contract;
- (3) Claim; or
- (4) Charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise under the provisions of this code or which is the subject of the employee's official responsibility under the provisions of this code, where the City is a party or has direct or substantial interest.

**Sec. 4-3-550. Use of confidential information.**

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of another person.

**Sec. 4-3-555. Civil and administrative remedies against employees who breach ethical standards.**

- (a) Existing remedies not impaired. Civil and administrative remedies against employees which are in existence on the effective date of this Code shall not be impaired.
- (b) Supplemental remedies. In addition to existing remedies for breach of the ethical standards of this article or regulations promulgated hereunder, the City Manager may impose any one (1) or more of the following:
  - (1) Oral or written warnings or reprimands;
  - (2) Suspension with or without pay for a specified period of time; and
  - (3) Termination of employment.
- (c) Right to recover from employee value received in breach of ethical standards. The value of anything received by an employee in breach of the ethical standards of this article or regulations promulgated hereunder shall be recoverable by the City as provided in this Division 5 (Recovery of value transferred or received in breach of ethical standards).

(d) Due process. All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment.

**Sec. 4-3-560. Civil and administrative remedies against nonemployees who breach ethical standards.**

(a) Existing remedies not impaired. Civil and administrative remedies against nonemployees which are in existence on the effective date of this Code shall not be impaired.

(b) Supplemental remedies. In addition to existing remedies for breach of the ethical standards of this article or regulations promulgated hereunder, the City Manager may impose any one (1) or more of the following:

(1) Written warnings or reprimands;

(2) Termination of transactions; and

(3) Debarment or suspension from being a contractor or subcontractor under City contracts.

(c) Right to recover from nonemployee value transferred in breach of ethical standards. The value of anything transferred in a breach of ethical standards of this article or regulations promulgated hereunder by a nonemployee shall be recoverable by the City as provided in this Division 5 (Recovery of value transferred or received in breach of ethical standards).

(d) Right of the City to debar or suspend. Debarment or suspension may be imposed in accordance with the procedures set forth in this Division 5 (Authority to debar or suspend) for breach of the ethical standards of this article, provided that such action may not be taken without the concurrence of the City Attorney.

(e) Due process. All procedures under this Section shall be in accordance with due process requirements, including but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment or suspension from being a contractor or subcontractor under a City contract.

**Sec. 4-3-565. Recovery of value transferred or received in breach of ethical standards.**

(a) General provisions. The value of anything transferred or received in breach of the ethical standards of this Article or regulations promulgated hereunder by an employee or a nonemployee may be recovered from both the employee and nonemployee.

(b) Recovery of kickbacks by the City. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount



thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery from the other offending parties.

**Sec. 4-3-570. Opinions and waivers.**

(a) Advisory opinions. On written request of employees, the City Manager or City Council, the City Attorney may render advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Compliance with requirements of a duly promulgated advisory opinion of the City Attorney shall be deemed to constitute compliance with the ethical standards of this Article.

(b) Waiver. On written request of an employee, with the prior concurrence of the City Manager, the City Council may grant an employee a written waiver from the application of this Division 5 (Employee conflict of interest) and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the City so require or when the ethical conflict is insubstantial or remote.

**Division 6-Supply Management**

**Sec. 4-3-610. Sale of real and personal property**

(a) All sales of real property must be approved by City Council. Personal property, such as materials, supplies and equipment, shall be sold as follows:

(1) Any item of personal property must be designated as surplus before it may be sold. Personal property purchased by the City at a cost of twenty-five thousand dollars (\$25,000.00) or more must be declared surplus by the City Council. The City Manager may declare all personal property purchased by the City at a cost of less than twenty-five thousand dollars (\$25,000.00) to be surplus, but nothing in this Section shall prohibit the City Manager from referring surplus designation decisions on such property to the City Council.

(2) The City Manager shall destroy, dispose of, trade, solicit bids, sell, or auction surplus property purchased by the City at a cost of less than ten thousand dollars (\$10,000.00) under the most cost-effective and beneficial option as determined by the City Manager in his or her sole discretion to obtain the best value from the market considering staff resources.

(3) Unless otherwise directed by the City Council, the City Manager shall sell property purchased by the City at a cost of twenty-five thousand dollars (\$25,000.00) or more by conventional auction methods or web-hosted public surplus auctions. When using conventional auction methods, the City Manager shall provide at least ten (10) days' notice in the official newspaper of the City and, optionally, on the City's website. Surplus property shall be sold to the highest responsible bidder. The City Manager may establish minimum bid amounts and reserve prices. If no bids are received by the City in an auction of surplus property, in lieu of undertaking a second auction of the property, the City Manager, at his or her sole discretion, may donate the item to any entity of the City Manager's choosing to which charitable donations may lawfully be made, or if the surplus property is of insignificant or no value, as determined by the City Manager in consultation with appropriate City staff members, the City Manager may order its disposal.

(4) The City Manager shall report to the City Council within thirty (30) days of disposition the manner and terms of all completed dispositions of surplus property.

(5) Property impounded or seized through forfeiture by the Police Department shall be excluded from this Section.

INTRODUCED on April 20, 2022 read by title, passed on first reading, and ordered published as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the City of Rifle, Colorado held on May 4, 2022, passed without amendment, approved, and ordered published in full as required by the Charter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF RIFLE, COLORADO

By \_\_\_\_\_  
Mayor

City of Rifle, Colorado  
Ordinance No. 7, Series of 2022  
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ATTEST:

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City Clerk