



CITY OF COLORADO SPRINGS

PROCUREMENT RULES AND REGULATIONS

FINANCE DEPARTMENT
PROCUREMENT SERVICES DIVISION
JANUARY, 2011

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PART I - GENERAL PROVISIONS

1-100 BASIC PROVISIONS

1-101 Basis & Purpose

These regulations are promulgated in accordance with the Code of the City of Colorado Springs, Section 1.5 as amended. (1968 Code §3-4-402; Ord. 80-1; Ord. 80-132; Ord. 88-234; Ord. 01-42; Ord. 04-109)

These regulations set forth the following elements of a centralized purchasing function:

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

These regulations are designed to simplify, clarify, and update the procurement and contracting process of the City of Colorado Springs. The regulations are meant to encourage effective competition and to ensure that expenditures are carried out in a prudent manner. The regulations are also designed to assure a procurement system of quality and integrity.

1-102 Application

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

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

1-103 Terms Defined in These Regulations

- a) "AVAILABILITY OF FUNDS CERTIFICATION" – A certification in the form of a contract requisition inclusive of the department's proper account number from which these funds are sufficient and available to obligate the City of Colorado Springs contractually. The certification of availability of funds must be made prior to soliciting bids or proposals.

- b) "AWARD" – The acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a bidder.
- c) "BEST BID" – A bid that is not necessarily the lowest, but rather best fits the needs and interest of the City when taking into account the responsibility of the bidders.
- d) "BEST INTEREST OF THE CITY" – A term granting a City Contracting official the authority to use discretion to take action felt to be the most advantageous to the City, including award of a contract to the lowest best bid.
- e) "BID" – An offer, as a price, whether for payment or acceptance, given to the City by a bidder on a City contract.
- f) "BID BOND" – An insurance agreement in which a third party surety agrees to be liable to pay a certain amount of money in the event that the bidder's bid is accepted by the City and the bidder fails to accept the contract as awarded and approved as to form by the City Attorney.
- g) "BRAND NAME SPECIFICATION" – A specification that cites the brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.
- h) "BRAND NAME OR EQUAL SPECIFICATION" – A specification that cites brand names, model numbers, or other identifications as representing quality or performance called for, when inviting bids on comparable items or products of any manufacturer.
- i) "CALCULATION OF SOLICITATION DOLLAR VALUE" – When calculating the estimated value of procurement to determine whether it is solicited under informal or formal procedures, the agency shall use the estimated value of the services or items being purchased plus the value of any applicable option years.
- j) "CITY" – The City of Colorado Springs, including all City Departments/Divisions.
- k) "CENTRALIZED" – A system of purchasing in which the authority, responsibility, and control of purchasing activities is concentrated in one administrative unit.
- l) "COMPETITIVE SEALED BIDDING" – The submission of firm prices by individuals or firms for a contract, privilege, or right to supply merchandise or services. The Invitation for Bid (IFB) is the instrument used to solicit competitive sealed bids.
- m) "COMPETITION DOLLAR THRESHOLD" – The maximum dollar amount for a requirement that does not require competitive quotes (up to \$19,999).
- n) "CONFIDENTIAL INFORMATION" – Subject to the Open Records Act, any information that is available to a City employee only because of the employee's status as a public employee and is not a matter of public knowledge, such as trade secrets and test data, which may be provided to the City on a confidential basis during the contracting process.
- o) "CONTRACT" – Any type of City agreement, regardless of what it may be called, for the procurement or disposal of supplies, equipment, materials, or services.
- p) "DIRECT OFFICIAL" – Means elected City officials, appointees, administrative officers or employees, that while a City employee is responsible for taking actions that include negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, vendor, concessionaire, land use or any other matter to which the City is a party. "Recommending" shall mean someone in the formal line of decision-making for the matter.
- q) "DISCUSSIONS" – Terminology synonymous or meaning negotiations.
- r) "EMERGENCY PURCHASE" – A purchase made without following the normal purchasing procedures in order to obtain goods or services to meet an urgent and unexpected requirement.
- s) "EVALUATION OF BID" – The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid that relate to determination of the successful bidder.

- t) "FIRM BID RULE" – The principles of contract law which govern Competitive Sealed Bids (Invitation for Bids - IFBs). The rationale for this rule is that it would be detrimental to the competitive bidding system if bidders were allowed to change their bids after they had an opportunity to discover what other bidders have offered.
- u) "FORMAL SOLICITATION PROCESS" – The process used for soliciting and awarding contracts with values that exceed \$199,999. This process involves formally advertising the requirement as per these regulations, issuing either a formal IFB or RFP, and making the resultant award on a contract. The formal solicitation process may also be used on requirements less than \$199,999 if deemed appropriate by the Procurement Services Manager.
- v) "INVITATION FOR BIDS" (IFB) – Method of formally soliciting competitive sealed bids from prospective vendors in which the intent is to award a contract to the resultant lowest responsible and responsive bidder. When the City has known specifications, cost is the overriding consideration for award, and there is more than one qualified vendor who can meet the specification, then the use of competitive sealed bids in the form of an Invitation for Bid (IFB) is the preferred method of procurement of goods, services, and construction by the City of Colorado Springs. Invitation for Bids must adhere to the legalities of the "Firm Bid Rule" for public procurement.
- w) "INFORMAL SOLICITATION PROCESS" – The process of soliciting bids or proposals for requirements up to \$199,999 from prospective contractors without formally advertising or issuing a formal IFB or RFP. Under the informal process bids or proposals may be conveyed and received by letter, telephone, fax, or other means and under conditions different from those required for formal bidding. Competition is still required using this process unless waived in writing by the Procurement Services Manager.
- x) "LEGAL NOTICE" – Notice of a proposed purchase as required by law. Depending on the legal requirement, notice may be satisfied by posting an announcement of the solicitation in a public place, notification of the appropriate bidders from the plan holders list, formal advertisement in a newspaper of general circulation, posting the solicitation on the City Contracting website, or a combination of these methods.
- y) "LOWEST RESPONSIVE BIDDER" – The bidder submitting the lowest and best bid and who meets all requirements of the bid invitation.
- z) "MISTAKE IN BID" – A miscalculation in composing a bid resulting in an incorrect price or other term that will affect the bidder's eligibility to be awarded a contract.
- aa) "MULTI-STEP BIDDING" – Source selection involving two competitive steps, the first constituting a technical proposal for furnishing the product or service described in the solicitation and the second a submission of prices.
- bb) "NO BID" – A response to an Invitation for Bid stating that the respondent does not wish to submit a bid.
- cc) "NON-RESPONSIVE BID" – A bid that does not conform to the requirements of the Invitation for Bids; non-conforming bid; unresponsive bid.
- dd) "PERFORMANCE BOND" – A contract of guaranty executed subsequent to award by a successful bidder to protect the City from loss due to contractor inability to complete the contract as agreed.
- ee) "PERFORMANCE SPECIFICATION" – A specification describing the performance characteristics sought in a product or service; a purchase description accenting performance over design; a functional rather than a generic or physical specification.
- ff) "PROFESSIONAL SERVICES" – Those services which are essentially intellectual in character and which include analysis, evaluation, prediction, planning, or recommendation. Professional services involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional services include, but are not limited to, services performed by accountants, auditors, analysts, consultants, lawyers, physicians,

planners, artists, engineers, and architects. Preferred method of procurement of Professional Services is using RFPs.

- gg) "PROTEST" – A written statement concerning an unresolved disagreement or controversy arising out of the solicitation or award of a contract.
- hh) "PRE-QUALIFICATION OF BIDDERS" – The screening of potential suppliers or contractors in which the Contracting Specialist considers such factors as financial capability, reputation, management, etc., in order to develop a list of prospective bidders qualified to be sent invitations to bid.
- ii) "PURCHASE REQUISITION" – That document whereby a using agency requests that a contract be entered into for a specific need and may include the description of a request item, delivery schedule, transportation data, criteria evaluation, suggested source of supply, and information supplied for the making of a written determination. The Purchase Requisition is required prior to soliciting bids or proposals.
- jj) "PROPRIETARY INFORMATION" – Subject to the Open Records Act, information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep confidential and restricted from public access.
- kk) "PROPOSAL" – An offer made by one party to another as a basis for negotiations for entering into a contract.
- ll) "PURCHASE ORDER" – A City document that formalizes a purchase transaction with a vendor. A purchase order contains statements as to quantity, description, price, terms, discounts, and date of performance, transportation, and other factors pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order by the vendor constitutes a contract.
- mm) "PROCUREMENT SERVICES MANAGER" – The Manager of the Division that oversees all procurement transactions..
- nn) "CITY CONTRACTING" – synonymous with Purchasing Office or City Contracting Office.
- oo) "QUALIFIED PRODUCTS LIST" – An approved list of supplies, services or construction items described by model or catalog numbers, which prior to competitive solicitation, the City has determined will meet the applicable specification requirements.
- pp) "REQUEST FOR PROPOSALS" (RFP) – All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals; the RFP procedure permits negotiation of proposals and prices as distinguished from competitive bidding and Invitation for Bids.
- qq) "RESPONSIBLE BIDDER" – A bidder who in the City's sole judgment, has the financial capability, technical ability, and a record of satisfactory past performance in all respects, to perform in full the contract requirements, and the integrity and reliability that will assure good faith performance.
- rr) "SEALED BID" – A bid that has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission of all bids. Sealed Bids are associated with IFBs. Sealed bids are awarded without discussions/negotiations and are subject to the "Firm Bid Rule".
- ss) "SIMPLIFIED PURCHASE PROCEDURES" – Procedure in which purchases for goods or services up to \$199,999 may be purchased by using the informal bid process.
- tt) "SPECIFICATIONS" – Any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- uu) "SUBSTANTIAL COMPLETION" – Means the date when the construction is sufficiently complete in accordance with the construction contract, as modified by any Change Order or Change Directive, so that the work or designated portion thereof is available for use and occupancy by the owner.
- vv) "TASK ORDER" – Terminology used for an order (normally a Purchase Order is issued as the obligating or funding document) that is placed against an existing Annual or Requirements Contract for specific services within the contract, defining the specific delivery requirements, and to obligate the

City financially for the actual cost of the service or product being ordered. A task order is the actual funding and ordering instrument used for Requirements contracts.

- ww) "TRADE SECRET" – Any aspect of a business or its operation not made available to competitors.
- xx) "VALUE ANALYSIS" – An organized effort to analyze the function(s) of products, systems specifications and standards, and practices and procedures, intended to satisfy the required function(s) in the most economical manner.
- yy) "WAIVER OF BIDS" – A process authorized by the Procurement Services Manager to procure items without competitive bidding procedures because of unique circumstances related to a particular need or procurement, including emergency provisions.
- zz) "SOLE SOURCE JUSTIFICATION" – The written justification that rationalizes or justifies a specified procurement that was accomplished without using full and open competition.

PART II - ADMINISTRATIVE MATTERS

2-100 ESTABLISHMENT OF THE CITY CONTRACTING SECTION

There is hereby established a City Contracting Section in accordance with City Code 1980, Section 1-5-203, as amended. (1968 Code §3-4-402; Ord. 80-1; Ord. 80-132; Ord. 88-234; Ord. 01-42; Ord. 04-109)

2-100.1 Procurement Services Manager

The City Contracting Section shall be administered by and shall be under the general supervision of the Procurement Services Manager who shall be appointed by the Financial and Administrative Services Director for the Mayor. The Procurement Services Manager shall develop standard form contracts that are reviewed and approved as to form by the City Attorney's Office. The approved contracts shall be used whenever possible to execute contracts on behalf of the City of Colorado Springs.

2-100.2 Authority

The Procurement Services Manager has the power, responsibility, and duty to purchase or contract for all supplies, services, and construction needed by all departments, divisions, offices, or agencies that derive their support wholly or in part from the City of Colorado Springs, in accordance with these regulations.

MAYOR: The Mayor per City Code 1.2.313 may execute any contracts on behalf of the City of Colorado Springs subject to approval as to form by the City Attorney's Office. Furthermore, it shall be the Mayor's duty to ensure that all City contracts are procured in compliance with the requirements of City of Colorado Springs, City Procurement Rules and Regulations, as written by the Procurement Services Manager and approved by the Mayor.

The Mayor has expressed authority over all procurements and the respective procurement processes outlined within these regulations and may at any time be specifically involved in the approval process for specific, part, or all procurements if desired.

DEPARTMENT MANAGER/DIRECTOR: The Department Manager/Director has the authority to make their own small purchases up to \$19,999 using purchase orders and up to \$10,000 per transaction on the City's VISA card (excluding IRS defined 1099 vendors). This authority may be increased upon prior approval from the Procurement Services Manager or the assigned Contracting Specialist. (All purchase orders and VISA transactions are subject to audit by the City Contracting Section to ensure compliance with the City's procurement regulations and VISA policies.)

The Department Manager/Director is responsible for establishing internal procedures for procurements up to \$19,999. All purchases which are estimated to exceed \$19,999 but not to exceed \$199,999 shall be coordinated with the City Contracting Office prior to initiating purchasing actions such as obtaining quotes. It is further recommended that Managers/Directors should especially consider a process for approving or coordinating all prospective procurements in excess of \$199,999 before they are sent to City Contracting to ensure the validity of the requirement and to properly ascertain the required funding is budgeted and available.

The Manager/Director must also approve all sole source justifications for requirements which exceed \$199,999 prior to submission to the Procurement Services Manager for final approval.

PROCUREMENT SERVICES MANAGER: The Procurement Services Manager is responsible for all procurements which exceed \$199,999. The Procurement Services Manager may delegate contract approval and execution authority to the Contracting Section Supervisor via written memo. The memo shall specify the limits, if any, of the delegated authority and acknowledged by the Financial and Administrative Services Director. The Procurement Services Manager is also responsible for issuing final decisions related to procurements such as protests and appeals, and for terminations of contracts either for default or

convenience, which exceed the competition threshold (up to \$19,999). Furthermore, the Procurement Services Manager shall have the discretion to require procurements which exceed the competition threshold, to be competed by the City Contracting Section either informally or formally. The Procurement Services Manager shall formally solicit and approve all contracts over \$199,999 unless otherwise waived in accordance with these regulations, and approve all sole source requirements over \$199,999.

When interpreting the City's procurement regulations the Procurement Services Manager may use applicable State of Colorado or federal procurement regulations and cited legal precedence as a basis for rendering a decision.

CITY ATTORNEY'S OFFICE: Must review and approve all non-standard contracts that exceed \$50,000 as to form. Also see Section 6-107.

2-200 MISCELLANEOUS ADMINISTRATIVE MATTERS

2-200.1 Unauthorized Contractual Actions

In accordance with City Code and these regulations, the Mayor, Financial and Administrative Services Director and the Procurement Services Manager are the only individuals with expressed contractual authority to bind the City of Colorado Springs on contractual actions greater than \$19,999, unless specifically authorized or delegated to other individuals, divisions, or departments by either these regulations or in writing by the Mayor. Unauthorized commitments or contractual actions by individuals without expressed authority or approval by the Mayor or Procurement Services Manager may be subject to appropriate disciplinary action under the City's Policies and Procedures Manual (PPM). A few examples of unauthorized contractual acts are as follows:

- a) Ordering, receiving, and acceptance of goods or services in excess of \$19,999 without an approved contract or purchase order.
- b) Directing a contractor to proceed with work without a fully executed contract. A fully executed contract is defined as an agreement that has been signed by both the contractor and the proper contract authority of the City clearly describing the goods or services being contracted for and to what extent financially the City is obligated.
- c) Directing a change order to an existing contract without ascertaining the availability of funds or obtaining approval that change is within the scope of contract if applicable. See Section 2-200.4 Change Orders and Changes in Scope of Contract.
- d) Any contractual obligation that is made by an individual, division or department that obligates the City of Colorado Springs to another party without the current availability of sufficient funds to cover the obligation. See Section 2-200.2 Sufficiency of Funds below.
- e) Splitting purchases which exceed \$19,999 into distinctly different purchase orders as an effort to circumvent the City's competition requirements or to avoid obtaining proper contract approval.

2-200.2 Sufficiency of Funds

Except in cases of a declared emergency, the Procurement Services Manager shall not issue any order for delivery on an existing contract or proceed with an open market purchase until the appropriate group or department manager certifies, after pre-audit, that there is sufficient funds available within the department's budget in excess of all unpaid obligations, to defray the cost of the contract or open market purchase. (1968 Code §3-4-403; Ord. 80-1; Ord. 01-42)

2-200.3 Contractor Equal Employment Opportunity Requirements

The City of Colorado Springs is committed to equal employment opportunity for all and maintains and implements equal opportunity and affirmative action where necessary in all of its daily operations. The City's policy is that no person shall be discriminated against because of race, color, national origin or ancestry, sex, age, religious convictions, veteran status, disability or political beliefs. Contractors shall comply with all federal and state nondiscrimination laws and have an equal employment opportunity policy. Contractors

shall also comply with the City of Colorado Springs Equal Employment Opportunity/Affirmative Action policies regarding nondiscrimination and harassment, and includes sexual harassment, in the conduct of their business while on City property and/or interacting with City employees. Contractors will cooperate with the City of Colorado Springs in using the contractor's best efforts to ensure the Disadvantaged Business Enterprises are afforded the full opportunity to compete for subcontracts or work under any City of Colorado Springs contracts.

2-200.4 Change Orders and Changes in Scope of Contract

The City may make written changes to the plans, specifications, scheduling, and performance period of a contract as long as the change is determined to be within the original scope of the contract. Any change order that exceeds fifteen percent (15%) of the original cost of the contract (aggregate or single), shall be justified in writing by the Division Manager of the department responsible for contract administration and approved by the Procurement Services Manager, to be within the original scope of the contract prior to issuance of the change order to the contractor. This requirement does not apply to change orders that are issued as a mechanism to implement or exercise options contained within the contract (i.e., exercising the option to extend the term of the contract if the contract contains option to extend language).

2-200.5 Conflicts of Interest

In accordance with any applicable prohibitions listed in the City's Policies and Procedures Manual and Section 1 Article 3 of the City Code entitled "Code Of Ethics" as amended and adopted by Ordinance 07-59, any employee of the City of Colorado Springs whom is involved in negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, vendor, concessionaire, land use or any other matter to which the City is party is considered by definition a "Direct Official" and is strictly prohibited from accepting gifts or gratuities, regardless of value, from vendors, subcontractors, concessionaires, or contractors that could be considered a bribe or means of improper influence, or could be perceived to influence objectivity when interacting with or conducting business for or on behalf of the City.

In addition to the City of Colorado Springs Code of Ethics Section 1, Article 3, of the City Code as amended by City Ordinance 07-59, contracts or purchase orders will not be awarded to consultants, engineers, architects, or other professionals, for contract administration services that allow contractual and financial authority and responsibility for oversight, including change order and payment approval, if they were either paid or otherwise were directly involved in design or specification preparation of the subject project by the City, without approval by the Procurement Services Manager. In no event shall the consultant or contractor be granted authority for conducting the bidding process, approving change orders or obligating the City financially on the contract for which they are providing oversight or design services.

Furthermore, a contractor or any affiliated firm of that contractor, is not allowed to bid or propose on contracts in which they are being paid or volunteered their services for either contract oversight or design, without written consent or approval from the Procurement Services Manager.

The City will not entertain or accept a bid or proposal, and in no event will a contract or purchase order be awarded to a former City employee meeting the definition of a direct official for a minimum period of six-months from their separation date from the City of Colorado Springs.

DEFINITIONS: For the purpose of this provision, "direct official" means elected City officials, appointees, administrative officers, or employees that while a City employee was responsible for taking actions that included negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, vendor, concessionaire, land use or any other matter to which the City is a party. "Recommending" shall mean someone in the formal line of decision-making for the matter.

2-200.6 Employee-Owned Business

The City of Colorado Springs shall not contract/purchase goods or services for any department if the contract is with an employee of that department.

Furthermore, contracting for goods or services with an employee, administrative officer, member of the employee's immediate family, or a company that is owned in whole or in part by an employee, administrative officer, or a member of his/her immediate family, or a company in which an employee, administrative officer, or a member of his/her immediate family has a financial interest (as defined below), is permitted providing strict adherence to the following requirements;

- a) The City Contracting Section shall be notified immediately in writing of such an ownership interest or financial interest. No contract for goods or services shall be written to an employee-owned business if it could be construed or there is an appearance that the City employee-owned business has an advantage over other competitors.
- b) No solicitation of business by the employee shall take place during his/her normal duty hours.
- c) All purchases or contracts involving employee-owned businesses, regardless of estimated cost, shall be competed by the City Contracting Section.
- d) No master agreements or annual purchase orders will be allowed.

DEFINITIONS: For the purpose of this provision, "owned in part" means having an ownership interest of more than ten percent (10%) of the business. "Financial Interest" means any interest in the business by means of a loan or other evidence of indebtedness, in excess of ten percent (10%) of said business's outstanding indebtedness. "Immediate family" is defined as a spouse, parent, child, or sibling.

PART III - METHODS OF SOURCE SELECTION

3-100 COMPETITIVE SEALED BIDDING – (INVITATION FOR BIDS) FOR EQUIPMENT, SUPPLIES, MATERIALS, SERVICES & CONSTRUCTION (FORMAL PROCESS)

3-101 Invitation for Bids (IFBs) – Sealed Competitive Bids

The statement of work or specifications of the Invitation for Bids is critical for the success of the procurement since the award using sealed bidding must be made without negotiations, unless only one bid was received. Basic considerations include the contractual terms and conditions that must be written to protect the interest of the City; openness of specifications; requirements for transportation and delivery; and instructions as to how the bidder is to submit the proposal. A solicitation should seek full and open competition for all purchases and provide fair and equal opportunity for all qualified persons or firms to compete. Invitation for Bids (IFBs) is the preferred method of procurement for the City of Colorado Springs.

3-101.1 Applicability

All acquisitions for supplies, equipment, materials, services, and construction which are estimated to exceed \$199,999 shall be processed formally using Competitive Sealed Bid procedures contained herein Section 3-100, unless the acquisition is otherwise documented to use other formal methods as described in Section 3-200 Two-Step Sealed Bidding, Section 3-300 Requests for Proposals, or has been determined by written justification to be exempt from formal competition for reasons allowed by these regulations. Sealed competitive bids may be used to acquire any goods, services or construction regardless of dollar amount if the Procurement Services Manager determines it to be the most appropriate method of procurement. Sealed competitive bids shall be awarded to the lowest responsive and responsible bidder and must adhere to the contract law principles of the "Firm Bid Rule."

3-101.2 Responsive Bid

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

3-101.3 Responsible Bidder

To be considered eligible for an award of a contract using Sealed Competitive Bids, a bidder must be determined to be responsible by the Procurement Services Manager using the criteria and procedures outlined in these regulations in Part IV Small Purchases – Informal and Other Purchases. A determination of non-responsibility by the Procurement Services Manager is grounds for rejection of a bid. (See also Section 3-102.4 Rejection of Bids.)

3-101.4 Invitation for Bids – Content

The Invitation for Bid shall include the following:

- a) Instructions and information to bidders concerning the bid submission requirements (furnished by Contracting), including the time and closing date, the address of the office to which bids are to be delivered;
- b) The project description (furnished by the requesting Department/Division), basis of award, delivery or performance schedule and inspection and acceptance requirements; and
- c) A sample contract and contract terms and conditions, including warranty and bonding or security requirements as applicable.

3-101.5 Incorporation by Reference

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

3-101.6 Bidder Submissions – Bid Form

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

3-101.7 Multiple or Alternate Bids

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

3-101.8 Vendor Registrations

The City Contracting Section shall offer vendors the opportunity to register via the City's website through CityWire who may be interested in competing for various types of City contracts. This registration allows vendors to be automatically notified when a formal solicitation is advertised for the service or commodity they registered to provide.

3-101.9 Minority Business Enterprises

No provision is made in these regulations for preferences or set-asides for minority or women-owned businesses. It is, however, the policy of the City Contracting Section to make a special effort to solicit and encourage small, minority or women-owned business participation for City contracts. The City Contracting Section has established a Small/Disadvantaged Business Enterprise Program to ensure utilization of small and/or disadvantaged businesses to track business activities and to provide assistance to such businesses in participating in the City's procurement and contracting process.

3-101.10 Local Business Preferences

No provision is made in these regulations for dollar percentage or other types of preferential considerations for local vendors or contractors. It is, however, the policy of the City Contracting Section to solicit bids from local suppliers whenever and wherever such competitive local sources exist, and where no sacrifice or loss in price or quality would result. In the event of a tie bid between a local vendor and an out of town vendor, award will be made to the local vendor if all factors, including price, quality, terms, and delivery are determined to be equal.

3-101.11 Full and Open Competition

The City Contracting Section shall be responsible for ensuring the procurement of products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete on a full and open competition basis, without restricting qualified bidders from participating.

3-101.12 Specifications

Using agencies and the City Contracting Section shall issue product, supply, and service specifications that are not unduly restrictive. This may include the utilization of life cycle costing and/or value analysis in determining the lowest responsible bidder, provided the specifications indicate the procedure and evaluative factors to be used. Performance specifications may be used provided they include evaluative criteria to be used in making the award. (See Also Section 5-100 General Purpose and Policy.)

3-101.13 Adequate Competition

It is the responsibility of the City Contracting Section to ensure that an adequate selection of bidders is solicited for every requirement for achieving optimum competition. This responsibility includes using other advertising methods or vehicles when sources may be limited, and personally contacting potential bidders either via phone, mail, or fax if deemed necessary.

3-101.14 Competition Exceptions

All purchases and contracts shall be procured competitively either informally or formally if the aggregate total is more than \$19,999 with the exception of purchases or contracts made using the following exceptions. The applicable exceptions must be cited in the comments section of the purchase order or in a formal memo signed by the proper approving authority when applicable and placed in the file for audit purposes.

- a) When time is of the essence, purchases may be made off of another contract or agreement written by another State, County, or Federal Government agency for identical goods or services. The agreement or contract must be currently in use or active (including option periods) and have been formally competed by the State, County or Federal Government agency.
- b) Purchases directly from Federal, State, County or other local government units.
- c) Purchases made off of contracts awarded through a joint purchasing alliance such as the Innovations Group National Purchasing Alliance, Airport Purchasing Group Alliance, WSCA, US Communities, or MAPO, etc. of which the City of Colorado Springs is a member and the contract was formally competed by the alliance or group.
- d) Subscriptions for magazines, books or periodicals.
- e) Purchases from nonprofit organizations up to \$50,000 if the price has been determined to be fair and reasonable.
- f) Training classes or instructors up to \$50,000 if the price is determined to be fair and reasonable.
- g) Purchases for inventory items intended for the purpose of resale for City of Colorado Springs enterprises.
- h) Professional services up to \$100,000 annually with justification approved by Procurement Services Manager.
- i) Personal service contracts up to \$25,000, if price is determined to be fair and reasonable.
- j) Unusual and compelling urgency precluding full and open competition, and the delay in award of a contract would result in serious injury, financial or other, to the City.
- k) Advertisements in appropriate publications.
- l) Obtaining professional legal services for trials, research, opinions, and testimony such as expert witnesses, trial consultants, case advisors and consultants, etc. No limit on cost as long as the City Attorney's Office has determined the need for such service is appropriate and the cost is fair and reasonable.
- m) Other exceptions as approved by the Procurement Services Manager. (See Section 3-101.17 Sole Source Procurement.)
- n) Council directed contract/agreements.

3-101.15 Minimum Competition Requirements

These minimum competition requirements apply to the purchase of goods and services that are not exempted from competition under Section 3-101.14 Competition Exceptions above.

- a) Purchases up to \$19,999 do not require competitive bids; however, at least two documented quotes are highly encouraged for every purchase.
- b) Purchases over \$19,999 and up to \$199,999 must be coordinated with the assigned Contracting Specialist prior to pursuing procurement action in order to determine the most appropriate method to use procure the requirements. As a minimum, after coordination purchases made within this dollar range will require a minimum of two (2) actual bids that are written. The bids may be informally solicited telephonically or written and may be received via fax, e-mail, or hand-delivered. If two (2) bids are not received, the file must be documented showing the efforts made to obtain at least two (2) bids. The City Contracting Section Contracting Specialist shall approve the purchase order and documentation prior to issuance. If the award is not made to the lowest bidder, then the file must be documented to include the rationale for awarding to other than the lowest bid received. (Section 3-400 Small Purchases – Informal and Other Purchases.)
- c) The City Contracting Section will solicit all purchases over \$199,999 using formal methods and procedures. The City Contracting Section shall follow the formal procedures unless otherwise waived as

per the requirements under Section 3-101.14 Competition Exceptions, Section 3-101.15 Minimum Competition Requirements, and Section 3-404 Emergency Procurement, of the regulations.

- d) It may be required by other funding sources to use the "stricter of the two" regulations, i.e., federal funds, grants, FEMA, etc. It is the responsibility of the using department to be cognizant of those specific requirements.

3-101.16 Waiver of Competition

The Procurement Services Manager may elect to waive the competitive bidding process under certain conditions including:

- a) A needed product or service that is available from only one supplier (sole source),
- b) A particular product is wanted for experiment or trial basis,
- c) Additional products are required to complete a current ongoing task,
- d) The amount of the purchase is too small to justify the expense of soliciting quotations (see Section 3-402 Competition Not Required), or
- e) Justified emergencies as defined in Section 3-404 Emergency Procurement.

The Procurement Services Manager shall require competition wherever practicable, and except for small purchases, the basis and reasons for each waiver shall be documented as public record. If the requirement is estimated to be in excess of \$199,999, the waiver of competition must be prepared by the Department Manager and approved by the Procurement Services Manager. (See Section 3-101.17 Sole Source Procurement.)

3-101.17 Sole Source Procurement

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

- a) The purchase of an item or service where compatibility is the overriding consideration.
- b) The purchase of a particular product for trial or testing. (If this justification is used and additional items are required after testing, then competition must be sought if possible.)
- c) The Procurement Services Manager, in writing, determines use of a sole source to be in the best interest of the City based on unusual or clear and compelling urgency, such as in emergency situations.
- d) The use of other than OEM parts would void a still valid warranty.
- e) The purchase of a used item that becomes immediately available and cost is determined to be fair market value.
- f) The Procurement Services Manager or the Contracting Specialist (for acquisitions up to \$199,999) shall make a written determination that procurement is sole source, setting forth the reasons. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that procurement be restricted to one potential supplier shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need.

3-101.18 Written Justification

A written justification approved by the Procurement Services Manager or the Contracting Specialist (for purchases up to \$199,999) and any other approving authority listed in Section 2-100.2 Authority, depending on total value of the procurement, shall be included in the file for all procurements that exceed the competition threshold of \$19,999 that were awarded as "Sole Source." This justification shall completely explain the rationale used in determining "sole source," as well as the determination that the awarded price is "Fair and Reasonable" using an element of price analysis justifying the total cost.

3-101.19 Purchase of Items Separately from Construction Contract

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

3-101.20 Disposition of Bid Security

Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted, contract is awarded to another firm, or Invitation for Bid are cancelled after opening. Normally bid securities in the form of bonds will not be returned to unsuccessful bidders unless requested since they normally expire after contract is awarded and become invalid automatically.

3-101.21 Solicitation Time

Except as provided for under Section 3-400 Small Purchases – Informal and Other Purchases, and declared emergencies, the minimum time for solicitation of bids shall be twenty-one (21) calendar days from the date the advertisement is posted on the City Contracting website. When extenuating circumstances exist, the Procurement Services Manager may lengthen or shorten the bid time, but in no case shall the time cycle be shortened if it will reduce, restrict, or limit full and open competition. Complicated procurements may have a time period that is longer than the standard twenty-one (21) calendar days. Solicitation times of less than twenty-one (21) days shall be documented by the appropriate Contracting Specialist as to why a reduced bid period was required. Requests for Proposals (RFPs) for services must allow a minimum of thirty (30) calendar days for response, unless justification for shorter times are approved by the Procurement Services Manager for requirements in excess of \$199,999.

3-101.22 Estimated Magnitudes for Solicitations

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

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

3-101.23 Contract Duration

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

3-101.24 Exercising Option Periods

Contractors should be notified in writing of the City's intent to exercise an option period or not, within the time period specified in the contract. If the contract is silent on the minimum time period for notifying the contractor, then the City should consider the minimum time for notification to be thirty (30) calendar days

from the expiration date of the current contract period. The City of Colorado Springs will consider the following criteria prior to exercising or entering in to an extension of a contract under an option provision:

- a) Contractor has performed satisfactorily under original contract term.
- b) Services are still required to be performed under the contract.
- c) Current market conditions have not changed significantly from original contract, therefore the contractor's prices under the option period are still considered fair and reasonable.
- d) Scopes of services have not significantly changed from original contract. (If scopes of services are significantly changed then re-bid of contract is recommended.)
- e) Exercising the option period is considered the most advantageous method of fulfilling the City's needs, price, performance, and other factors considered.

3-101.25 Bidding Option Periods

The City of Colorado Springs may require contractors to bid option periods in solicitations. If option periods are bid in solicitations, then they should be considered to some extent when evaluating the overall low bidder prior to making an award. If options periods are bid in solicitations, contractors will not be allowed to increase their prices when an option period is entered into unless there have been drastic economic changes that could not be realistically considered by the contractor when they submitted their original bid. In such cases the contractor must submit proper justification of their proposed increase prior to entering into the option period. The Procurement Services Manager will then determine if the contractor's request is reasonable, or if it is in the best interest of the City to re-bid the requirement.

3-102 Receipt of Bids

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

3-102.1 Opening and Recording of Bids

A member of the City Contracting Section, in the presence of one or more witnesses, shall open bids publicly, at the time and place designated in the Invitation for Bids. The clock in the City Contracting Office will be used as the official clock for calling the time for bids. The name of each bidder, the bid price(s), and other information as is deemed appropriate by the Procurement Services Manager shall be read aloud or otherwise be made available. (Responsiveness and responsibility are not determined during the bid opening.) The bid abstract or tabulation shall be available at the conclusion of the bid opening for public inspection and distribution. Except for those items identified as proprietary information, trade secrets or other information protected under the Open Records Act, all data regarding any particular bid becomes public information immediately after a decision as to responsiveness and responsibility for award relating to that bid has been made.

3-102.2 One Bid Received

If only one responsive bid is received in response to the Invitation for Bids, an award may be made to the single contractor if the Procurement Services Manager finds that the price(s) submitted are fair and reasonable and that all other prospective bidders had reasonable time to respond, or there is not adequate time for re-solicitation; otherwise, the bid may be rejected, and:

- a) New bids may be solicited (if new bids are solicited, the prices originally submitted shall not be released to the public in order to maintain the integrity of the procurement);
- b) The proposed procurement may be cancelled; or
- c) If the Procurement Services Manager and Division Manager determine that the price of the one bid is not fair and reasonable and that re-solicitation would likely be futile, negotiations may be entered into with the lone bidder. (See also Section 3-500 Cancellation or Rejection of Bids or Proposals.)

3-102.3 Extension of Time for Bid or Proposal Acceptance

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

3-102.4 Rejection of Bids (See also Section 3-500 Cancellation or Rejection of Bids or Proposals)

The Procurement Services Manager has the authority to reject any bid based on, but not limited to, the following:

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

3-102.5 Notice to Bidders of Rejected Bid

The Procurement Services Manager shall notify any bidder whose bid has been rejected in writing with an explanation as to why their bid has been rejected and the file documented accordingly.

3-103 Bid Evaluation

All products or services shall be evaluated against the requirements stated in the City's solicitation. In addition to price, the following factors may be considered in evaluating any bid response: delivery date after receipt of order, cash discounts, warranties (type/length), future availability, results of product testing, local service, cost of maintenance agreements, future trade-in value or availability of re-purchase agreement, availability of training courses, financial terms, space limitations, aesthetics, adaptability to environment, cost of operation (if any), safety and health features relating to regulatory codes or requirements.

3-103.1 Bid Evaluation – Product Acceptability

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

3-104 Award Using Sealed Bidding

- a) The contract shall be awarded to the lowest responsive and responsible bidder whose bid meets the requirements and the criterion set forth in the Invitation for Bids and is determined to be in the best interest of the City. Negotiations are not allowed when using sealed bidding unless only one bid was received. The Procurement Services Manager may determine to make whole or partial awards, or may reject all bids if prices are determined to be unreasonably high or unrealistically low. If insufficient funds are available to award a contract, the solicitation may be cancelled or the Procurement Services Manager may choose to re-scope the project and re-solicit bids, as may be determined to be in the best interest of the City.
- b) In cases where the City of Colorado Springs is restricted by a budgetary control amount for specified project(s), the City may include language in solicitations that allows for the budgetary control amount to be announced prior to opening bids and then use that number to determine the apparent low bidder. This will be accomplished through a method of using deduct alternates from the base bid. Each deduct item will be listed in the bid schedule and is required to be completed by each bidder. If all bidders exceed the budgetary control amount for the base bid, then the bid opening official will announce the first deduct item from each of the bids and subtract it from the base bid. If there is a bidder or bidders that are then under the budgetary control amount after the first deduct, then the award will go to the lowest responsible bidder for the base bid less the deduct. This process will continue when using this method until such time all deducts are read or until a bidder is under the budgetary control amount. When this method is used, the process shall be explained within the Invitation for Bid.
- c) ADD ALTERNATES – In some cases it may be determined that add alternates method may be more advantageous to include in the bid schedule. The City's preferred method is to use deductive items under a competitive scenario as described in Section 3-104b Award Using Sealed Bidding of this provision; however, if determined appropriate, add alternates may be used if it is determined beneficial and the solicitation describes how the add alternates will be considered in determining how the contract will be awarded.

3-104.1 Low Tie Bids

Tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids. At the discretion of the Procurement Services Manager, award shall be made if possible by methods including split orders, rotations, or if not possible to make split or rotational awards, then drawing of lots or flipping of a coin will be used to determine the award. If a local vendor is involved in a tie bid, award shall be made in accordance with Section 3-101.10 Local Business Preferences.

3-105 Telephone Bids

Telephone bids will not be accepted in formal solicitations except as provided for in Section 3-400 Small Purchases – Informal and Other Purchases, or unless the Contracting Specialist or City Department shall make written determination that market conditions are of such a nature that it is in the best interest of the City to solicit telephone bids, such as the purchase of petroleum fuels on a daily basis, under changing market conditions, or under solicitations during a declared emergency.

3-105.1 Electronic and Facsimile Bids

Facsimile or electronic transmissions of bids to the City Contracting Office will not be accepted in the formal competitive sealed bid process unless the Invitation for Bids specifically allows them.

If the solicitation allows bids to be submitted by facsimile or electronically, then the bids must be received by the City Contracting Office prior to the scheduled bid opening. These bids may be accepted under the following conditions: 1) the facsimile bid must refer specifically to the applicable Invitation for Bids; 2) it must set forth the items, quantities, prices, and deliveries offered; and 3) it shall state that the bid complies with the terms and conditions of the Invitation for Bids and is being confirmed by submission of the properly executed bid documents.

3-106 Modification or Withdrawal of Bids

Bids may be modified or withdrawn by written correspondence or facsimile notice to the City Contracting Office prior to the time set for bid opening.

3-106.1 Withdrawal of Bid Prior to Bid Opening

The bidder, prior to the specified bid opening time and date, may withdraw any bid if the bidder's representative appears at the City Contracting Office, or the Procurement Services Manager receives a written request for withdrawal at the City Contracting Office.

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

No bid may be withdrawn or contract negated unless the bidder or contractor can establish that the bid or contract contains mistakes despite the exercise by the bidder or contractor of reasonable care. The test of reasonable care shall be that; 1) the mistake relates to a material feature of the contract; 2) the mistake occurred despite the exercise of reasonable care; and 3) withdrawal is deemed by the Procurement Services Manager to be in the best interest of the City.

3-106.3 Records

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

3-106.4 Minor Informalities/Irregularities in Bids

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

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

3-107 Late Bids

Any bid, withdrawal or modification to bids received after time and date set for opening, shall be considered late and shall be rejected and returned unopened to the bidder, except as provided herein. All Sealed Competitive Bids shall be opened as soon as possible after the time designated by the invitation. Bids

received after the bid opening time shall not be opened, but shall be rejected as a late bid. The responsibility to ensure that bid solicitations are obtained and that bids are received prior to the opening date and time rests with the vendor. Situations such as "flat tires, accidents, or parking problems" shall not be cause for acceptance of late bids. The Procurement Services Manager may permit the following exceptions:

- a) In the event of a public labor unrest (strike, work slow-down, etc.) that may affect mail delivery, the Procurement Services Manager may develop and issue emergency procedures.
- b) There is conclusive evidence that the bid was submitted to the office designated in the IFB or RFP on time and was mishandled by the City of Colorado Springs Contracting personnel responsible for handling/receiving bids (i.e., lost or misplaced). Mishandling by other departments or offices of the City of Colorado Springs does not constitute City Contracting personnel.
- c) It was the only bid received.
- d) The Procurement Services Manager shall rule any other situation that is beyond the control of both the City and the vendor as to the acceptability of the bid.

3-108 Public Notice- Advertisement

Invitations for Bids or notices of the availability of Invitations for Bids shall be posted on the City Contracting website, mailed, faxed or otherwise furnished to a sufficient number of prospective bidders to secure adequate competition. For formal bids in excess of \$199,999, public notices may be published in a newspaper of general circulation and/or in as many trade publications, secondary newspapers, in conjunction with the City Contracting website to assure competition is maximized at least twenty one (21) calendar days prior to the date for bid opening, except as outlined in Section 3-108.1 Waiver of Public Notice - Advertisement, Section 3-402 Competition not Required, and Section 3-404 Emergency Procurement.

3-108.1 Waiver of Public Notice - Advertisement

The Procurement Services Manager or Mayor may authorize the waiver of public notice for requirements in excess of \$199,999 upon written determination that circumstances call for quick procurement action. Supplies or equipment may be needed promptly for backup to ensure against downtime; a significant price increase on a needed item may be imminent; the scope of an ongoing task may be unexpectedly expanded. In these types of situations, the Procurement Services Manager will make special effort to obtain written competition or sealed bids, but may waive the public notice.

3-108.2 Public Availability

A copy of the Invitation for Bids shall be made available for public inspection at the City Contracting Office or via the City Contracting website.

3-108.3 Pre-Bid Conferences

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

3-109 Addenda/Amendments to Invitations for Bids

Amendments to Invitations for Bids shall be identified as such and may require that the bidder acknowledge receipt of all amendments issued. The amendment shall reference the portions of the invitation it amends. Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids as well as made available on the City Contracting website. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time set for bid opening will not permit such preparation, to the extent possible the bid preparation time shall be increased in the amendment,

or if necessary, by telephone and confirmed in the amendment. Questions received by prospective bidders concerning the Invitation for Bid, both technical and contractual in nature, will be answered in the form of an amendment to allow all potential bidders to share the same information. The City Contracting Section shall issue all amendments.

3-109.1 Addenda/Amendments to Invitation for Bids - Form

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

3-109.2 Distribution

Addenda/Amendments shall be sent to all prospective bidders known to have received an Invitation for Bids and posted on the City Contracting website for electronic distribution (downloading). Regardless of the distribution, it is still the overall responsibility of the bidder to ensure they have received all previously issued Addenda/Amendments prior to submission of their bid.

3-110 Confidential Data

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

3-111 Mistakes in Bids - Confirmation of Bid

When it appears from a review of the bid that a mistake has been made, the City Contracting Office shall be responsible for requesting the bidder to confirm their bid in writing. Situations in which the confirmation should or may be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges a mistake, the bid may be withdrawn only if the provisions of Section 3-106.2 Withdrawal of Bid after Opening but Prior to Award are followed.

Bidders may request in writing to the Procurement Services Manager that they be allowed to correct a mistake in their bid, however, the mistake has to be apparent and substantiated by evidence provided by the bidder that the mistake was valid. The Procurement Services Manager shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence such as, but not limited to: contractor's file copy of bid, contractor's original worksheets including supporting data used to prepare bid, subcontractor or supplier quotes, and any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended. The evidence provided has to prove without a doubt that a mistake was indeed made. If there is not clear and convincing evidence to support the alleged mistake, then the mistake will not be allowed to be corrected.

The Procurement Services Manager will evaluate the request and make a determination in writing as to whether or not the correction of the mistake is allowed.

NOTE: In no event will bidders be allowed to correct, other than apparent typographical errors, if their requested correction would displace another bidder.

3-111.1 Mistakes Where Intended Correct Bid is Evident

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

3-111.2 Mistakes Where Intended Correct Bid is not Evident to the Manager

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

3-111.3 Mistakes Discovered Before Opening

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

3-111.4 Determination Required

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

3-111.5 Mistakes after Award of Contract

When a mistake in a contractor's bid is not discovered until after award of a contract, the mistake may be corrected by contract change order if correcting the mistake would be favorable to the City without changing the specifications. If the mistake is not in the favor of the City, the Procurement Services Manager will have the following options:

- a) To rescind the contract via termination;
- b) Deny the contractor's request to correct the mistake; or
- c) To reform the contract by the following actions:
 1. Delete the item(s) involved in the mistake.
 2. To increase the price of the contract by allowing the correction of the mistake, as long as the correction or increase in price does not exceed the price of the next lowest bidder. Note: Partial corrections will not be allowed in order to stay below the next lowest bidder's price.

In all cases, the burden of proof rests with the contractor. The alleged mistake must be proven by clear and convincing evidence that a mistake was indeed made. The Procurement Services Manager shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence such as, but not limited to: contractor's file copy of bid, contractor's original worksheets (including supporting data used to prepare bid), subcontractor or supplier quotes, and any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended. If there is not clear and convincing evidence to support the alleged mistake, no action will be taken.

3-200 TWO-STEP SEALED BIDDING

3-201 Definition

Two-step sealed bidding is a two-step process consisting of a technical phase, composed of one or more steps in which offerors are required to submit unpriced technical offers to be evaluated by the City, and a pricing phase in which those bidders whose technical offers are determined to be acceptable during the technical phase have their price considered. It is designed to obtain the benefit of competitive sealed bidding by award of a contract to the lowest responsive, responsible offeror, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to determine the acceptability of technical offers.

3-202 Conditions for Use

The two-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase or contract description that will be suitable to permit an award based on price alone.

3-203 Procedure for Phase One of Two-Step Sealed Bids

Two-step sealed bids shall be initiated by the issuance of an Invitation for Bid (IFB). In addition to requirements set forth in Section 3-101 Invitation for Bids (IFBs) – Sealed Competitive Bids, the two-step solicitation shall state:

- a) That an unpriced technical offer is requested.
- b) Whether prices are to be submitted at the same time as unpriced technical offers and if they are, such prices shall be submitted in a separate sealed envelope.
- c) That it is a two-step sealed bid procurement and prices will be considered only in the second phase and only from those offerors whose unpriced technical offers are found to be acceptable in the first phase.
- d) The criteria to be used in evaluating the unpriced technical offer.
- e) That the City, to the extent the Procurement Services Manager or using Department/Division finds necessary, may conduct oral or written discussions of the unpriced technical offers.
- f) That offerors may designate those portions of the unpriced technical offers that contain trade secrets, or other proprietary data as confidential.
- g) That the item or contract being procured shall be furnished generally in accordance with the offeror's technical offer as found to be acceptable and shall meet the requirements set forth in the Invitation for Bids.

3-203.1 Addenda/Amendments to the Invitation

After receipt of unpriced technical offers, addenda to the IFB shall be distributed only to offerors who submitted unpriced technical offers or to amend those submitted. If, in the opinion of the Procurement Services Manager, a contemplated addendum will significantly change the nature of the procurement, the invitation shall be cancelled and a new IFB issued.

3-203.2 Receipt of Unpriced Technical Offers

Unpriced technical offers shall not be opened publicly. Such offers shall not be disclosed to unauthorized persons. Offerors may request nondisclosure of trade secrets and other proprietary data identified in writing.

3-203.3 Evaluation of Unpriced Technical Offers

The unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the IFB. The unpriced technical offers shall be categorized as: (a) acceptable; (b) potentially acceptable, that is, reasonably susceptible of being acceptable; or (c) unacceptable. The Procurement Services Manager shall record in writing the basis for finding an offer unacceptable and make it a part of the procurement file. The Procurement Services Manager may initiate phase two if it is determined that there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without entering into technical discussions. If the Procurement Services Manager and using agency find that such is not the case, the Procurement Services Manager shall issue an amendment to the Invitation or engage in technical discussions, whatever is deemed appropriate.

3-203.4 Discussion of Unpriced Technical Offers

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

3-203.5 Notice of Unacceptable Unpriced Technical Offer

When the Procurement Services Manager or using agency determines an offeror's unpriced technical offer to be unacceptable, such offeror shall not be afforded additional opportunities to supplement technical offers.

3-203.6 Mistakes During Two-Step Process

Mistakes may be corrected or proposals withdrawn during phase one (a) before unpriced technical offers are considered; (b) after any discussions have commenced; or (c) when responding to any amendment of the Invitation for Bid.

3-204 Procedure for Phase Two of Two-Step Sealed Bids - Initiation

Upon completion of phase one, the Procurement Services Manager shall: (a) open prices submitted in phase one (if prices were required to be submitted) from offeror's whose unpriced technical offers were found to be acceptable; or (b) if prices have not been submitted, technical discussions have been held, or amendments to the IFB have been issued, invite each acceptable offeror to submit a price proposal.

3-204.1 Conduct

Phase two shall be conducted as any other competitive sealed bid except:

- a) As specifically set forth in this Section 3-200 Two-Step Sealed Bidding.
- b) No public notice of the IFB to submit price proposals needs to be given because such notice was previously given.
- c) After award, the unpriced technical offer of the successful offeror shall be disclosed as follows. The Procurement Services Manager and using agency shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of the offeror to determine the validity of such requests. If the parties do not agree as to the disclosure of data, the Procurement Services Manager shall inform the bidder in writing that portion of the unpriced technical offer that will be disclosed. Unless the bidder protests under Section 4-105 Protested Solicitations, the offer will be so disclosed.
- d) Unpriced technical offers of offeror's who are not awarded the contract shall not be open to public inspection unless the Procurement Services Manager determines in writing that public inspection of such offers is necessary to assure confidence in the integrity of the procurement process; provided, however, that the provisions of (c) above shall apply with respect to the possible disclosure of trade secrets and proprietary data.

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

3-301 Definition

Requests for Proposals (RFP), also known as Competitive Sealed Proposals, is an objective method of contracting for goods or services whereby proposals are solicited from qualified contractors and evaluated in accordance with specified criteria. RFPs are considered negotiated procurements and following submission and review, discussions and changes in proposals and prices are allowed. The offer or proposal deemed by the City to be most advantageous in terms of criteria as designated in the Request for Proposals and is determined by the Procurement Services Manager to be in the best interest of the City may then be accepted. An RFP should not be used when the service or equipment to be contracted is standard, routine or common "off the shelf" type items or if there is an industry standard associated with the service or commodity to be contracted. Requests for Proposals (RFP) are a very time consuming and costly method of procurement that should only be used when sealed bidding is not appropriate.

3-302 When Requests for Proposals are Practicable

Factors to be considered in determining whether requests for proposals are practicable include:

- a) Estimated contract value is more than \$199,999.
- b) Requirement is highly technical, unusual, is not a standard "off the shelf" item or there is not any clear standards or specifications available to use in the solicitation.
- c) If the contract needs to be other than fixed-price type.
- d) If it may be necessary to conduct oral or written discussions with offerors concerning technical and price aspects of their proposals.
- e) If it may be necessary to afford offerors the opportunity to revise their proposals.

- f) If it may be necessary to base award on a comparative evaluation as stated in the Request for Proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the City.
- g) If the primary consideration(s) in determining award may be factors other than price(s).
- h) When it is necessary to make an award using a Best Value decision, thus requiring evaluation and consideration of other criteria along with price to determine overall Best Value to the City of Colorado Springs.
- i) When negotiations would be the preferred method to finalize the contractual arrangement.

3-303 Determinations

The Procurement Services Manager may make determinations by category of supply, service, or construction item(s) that it is either not practicable or not advantageous to the City to procure specified types of supplies, services, or construction by competitive sealed bidding. Procurements of the specified types may then be made by competitive sealed proposals based on this determination. The Procurement Services Manager may revoke such determination at any time, and all such determinations shall be reviewed from time to time for current applicability.

3-304 Dollar Thresholds for RFPs

Formal Requests for Proposals shall be issued by the City Contracting Section for requirements that are estimated to exceed \$199,999. Solicitations in the form of informal RFPs may be issued for requirements estimated up to \$199,999 if more than one vendor is known to exist that has the capabilities of providing the product or service. The Procurement Services Manager may accept written justification from the using agency for a sole source professional service contract, even though it may exceed \$199,999. The Department Manager, prior to submission to the Procurement Services Manager, must approve this justification.

3-305 Content of the Request for Proposals

The Request for Proposals shall be prepared using the following sections as a minimum:

- a) SECTION I – Proposal Information: This section includes where to submit proposals, how many copies, when they are due, information regarding amendments, basis of award, and acceptance time period.
- b) SECTION II – Minimum Specifications: This section will include project scope, location, performance period, and general information.
- c) SECTION III – Proposal Content: This section includes a list of the requirements a potential offeror must address and include in his proposal.
- d) SECTION IV – Evaluation Criteria: This section includes the evaluation process, the evaluation criteria and its order of importance, and how the proposals will be evaluated.
- e) SECTION V – Terms and Conditions/Attachments/Exhibits: This section includes attachments such as sample evaluation score sheets, drawings, sketches, sample contract, general conditions, special instructions, insurance requirements, etc.

3-305.1 Evaluation of Proposals

RFPs shall be evaluated as per the stated criteria in the Request for Proposal. The Request for Proposals shall clearly define all evaluation factors, including price if applicable. Numerical rating or ranking systems may be used for evaluation. Factors not specified in the Request for Proposals shall not be considered.

3-305.2 Best and Final Offers (BAFOs)

- a) Upon completion of discussions, the evaluation selection committee may issue to all offerors still within the competitive range a request for best and final offers. Oral requests for Best and Final Offers shall be confirmed in writing.
- b) The request shall include:
 - Notice that discussions are concluded.

- Notice that this is an opportunity to submit a Best and Final Offer.
- A due date for submission of the Best and Final Offer.
- Note that this is only an opportunity to revise their proposals. If they chose not to submit a Best and Final Offer, then their original proposal as submitted will be considered.
- After receipt of Best and Final Offers, the evaluation selection committee shall evaluate them accordingly and recommend award be made to the offeror whose Best and Final Offer is most advantageous to the City of Colorado Springs, considering price and the other factors included in the RFP.

3-305.3 Evaluation Committee

The evaluation of proposals shall be an objective process using the specified evaluation criteria in the Request for Proposal to evaluate all proposals. The actual evaluation of proposals shall be conducted by the committee, and chaired by a Contracting Specialist from the City's Contracting Office. It is recommended that the committee be made up of a diverse group of individuals from a few different organizations within the City. In most cases, the recommended committee should contain at least five (5) members with one (1) member being from an organization that is not the user of the end product or services. There will be cases when it may not be practicable to have five (5) members on the committee and there may be cases when more than five (5) members would be more appropriate.

Furthermore, all committee members shall read and sign the "Procurement Integrity Non-Disclosure Statement" prior to reviewing any of the received proposals. This statement serves as a briefing to each evaluator of the confidentiality that must be maintained while evaluating the proposals.

3-306 Proposal Preparation Time

Proposal preparation time should be set to provide offerors thirty (30) calendar days under normal circumstances to prepare and submit their proposals. The Procurement Services Manager may modify this requirement to require less time on less complicated requirements, but in no event will the period be less than fourteen (14) calendar days, unless there is written justification that warrants an emergency procurement approved by the Procurement Services Manager.

3-307 Form of Proposal

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals in Section III.

3-308 Public Notice - Advertisement

Public Notice shall be given by advertising the Request for Proposals in the same manner provided for the Invitation for Bids. (See 3-108 Public Notice – Advertisement.)

3-309 Pre-Proposal Conference

Pre-proposal conferences may be held. Any such conference should be held a minimum of ten (10) calendar days prior to the submission of initial proposals.

3-310 Amendments to RFP

Amendments to Requests for Proposals may be made in accordance with Amendments to Invitation for Bids prior to submission of proposals. After submission of proposals, any amendments shall be distributed to all offerors who submitted proposals.

3-311 Modification or Withdrawal of Proposal

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

3-312 Receipt of Proposals

The time and date for Receipt of Proposals will be included in the RFP and may read a specific time or "close of business" on a certain date. If a specific time is cited, then proposals must be received by the time specified or they are considered late and will not be accepted. If "close of business" is cited then proposals may be accepted at any time during business hours on the date specified. Proposals shall be safeguarded in a way as to protect and to avoid any disclosure of information that could harm the City's negotiation position. This includes, as a minimum, non-disclosure of the number and names of offerors until such time that an award is made. A list containing the names of the offerors shall be released and their proposals subject to any proprietary or confidentiality requirements shall be made available for public inspection after contract award.

3-312.1 Late Proposals

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

3-313 Only One Proposal Received

If only one proposal is received in response to a Request for Proposal (RFP), the Procurement Services Manager has the following options:

- a) Determine if there was sufficient time allotted for offerors to submit a proposal. If not, the solicitation may be amended to extend the receipt of proposal date and the only proposal received shall be returned unopened to the only offeror.
- b) Proceed with the evaluation of the proposal from the single offeror. If the offer meets the requirements of the City as stated in the RFP and the cost is determined to be fair and reasonable through negotiations, an award may be made.
- c) If the evaluation determines that the only offeror does not meet our needs, or negotiations of the cost do not result in a fair and reasonable price, then the solicitation may be cancelled and re-solicited at a later date. Note: If the solicitation is cancelled, the proposal shall be returned to the offeror upon request and the cancelled solicitation file shall be documented as to why it was cancelled.

3-314 Evaluation of Proposals

The Request for Proposals shall clearly define all evaluation criteria in order of importance, including price. Numerical rating systems and/or weights may be used but are not mandatory to be listed in the RFP. However, the criteria listed in the RFP must be listed in order of importance, and the weights or points assigned by the evaluation committee prior to evaluating proposals must follow the listed importance accordingly. The evaluators shall not consider criteria that are not specified in the Request for Proposals when evaluating proposals. Selection for the award shall be conclusive based on scoring criteria as specified in the RFP. The City reserves the right to enter into contractual negotiations with the highest ranked firm selected by the evaluation committee. If a mutual contractual relationship cannot be established that will meet the City's needs, then the City reserves the right to enter into negotiations with the second highest ranked firm and so on.

3-314.1 Disclosure of Information after Receipt of Proposals

Evaluation committee members shall not discuss the names of proposers, numbers of proposals received, or answer any questions outside of the realm of the evaluation committee from any of the offerors, or outside agencies such as the media, during the evaluation process. The primary responsibility lies with the City Contracting Office for answering questions regarding status of the evaluation process or clarifications of proposals from interested offerors both prior to receiving proposals and during the evaluation of proposals.

3-314.2 Clarifications

Clarifications may be requested from offeror's on their proposals during initial evaluations to determine the acceptability of their proposal. Clarifications shall be limited to items contained in an offerors proposal that the evaluation committee has determined requires further explanation by the offeror in order to properly evaluate their proposal. Clarifications shall not be used to allow offerors to revise or modify their initial proposal.

3-314.3 Discussions with Individual Offerors

Discussions are held to promote complete understanding of the City's requirements and the offeror's proposal to facilitate arriving at a contract that will be most advantageous to the City taking into consideration price and the other evaluation factors set forth in the Request for Proposals. Furthermore, offerors determined to be within the competitive range shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals. If discussions are conducted with one offeror within the competitive range, then discussions may be conducted with all prior to award for the purpose of obtaining best and final offers. Auction techniques or disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.

3-315 Mistakes in Proposals

Since proposals are considered to be competitive negotiations, there is more leeway allowed for correction of mistakes by an offeror. When it appears from a review of the proposal during evaluation and before award that a mistake has been made, the offeror may be asked to clarify their proposal in lieu of withdrawal.

3-316 Award of Contract

Award shall be made to the responsible offeror whose proposal is determined to be most advantageous to the City and in the best interest of the City based on the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. If an evaluation committee is established, that committee may make that determination or may make recommendation to other levels of the City organization and the Procurement Services Manager. The contract file shall contain the basis on which the award is made.

3-317 Debriefing Unsuccessful Offerors

If requested, within thirty (30) days after notice of selection and award of the contract an unsuccessful offeror shall be debriefed and furnished the basis for the selection and award of the contract. Debriefings shall include the following information:

- a) Copies of the ranking matrix showing the strengths and weaknesses of their proposal as evaluated by the committee.
- b) The overall evaluated cost and technical rating of the winning contractor.
- c) The overall ranking of all offerors.
- d) A summary of the rationale for award.
- e) Answer any relevant questions about the process the offeror may have.
- f) DO NOT provide point by point comparisons of the debriefed offeror's proposal with those of other offerors, or any items listed in other offerors proposals that may be marked confidential or proprietary.

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

3-318 Alternate RFP Method - Lowest Price Technically Acceptable

The lowest price technically acceptable RFP selection process is appropriate when "Best Value" is reasonably expected to result from selection of the technically acceptable proposal with the lowest price. When using the lowest price technically acceptable process, the following will apply;

- a) Similar to the RFP format described in Section 3-300 Requests for Proposals, the evaluation factors or criteria to be used to determine technically acceptable shall be included in the RFP.
- b) The RFP will specify that the selection process to be used to make award will be "Technically Acceptable Lowest Cost."
- c) Cost proposals will be submitted either in a separate envelope at the time due for receipt of proposals, or they shall be requested only from the firms that are deemed to be technically acceptable after review of their technical proposal. In no event shall cost be evaluated when determining technical acceptability.
- d) Proposals are evaluated for technical acceptability – pass/fail

- e) Discussions, clarifications, interviews, and revisions to proposals (Best and Final Offers) are all applicable and may be used as specified in these regulations under Section 3-300 Requests for Proposals for conventional RFPs, if necessary. However, when the process is completed, "Best Value" is determined and the contract awarded to the firm whose proposal was deemed to be acceptable but has the lowest overall cost.
- f) The City of Colorado Springs has the right to enter into further negotiations with the firm rated as Best Value – Technically Acceptable Lowest Price, for the purposes of value engineering or reducing the cost of the requirement if deemed necessary.

3-400 SMALL PURCHASES - INFORMAL AND OTHER PURCHASES

3-401 Definition

The procurement of supplies, equipment, materials, or services having an estimated value up to \$199,999 may be made on the open market by informal methods without public notice and advertisements and without following steps outlined in Section 3-100 Competitive Sealed Bidding if the Procurement Services Manager determines adequate competition will be obtained using informal procedures.

3-402 Competition Not Required

The City of Colorado Springs may acquire supplies, materials, equipment, or services costing up to \$19,999 without benefit of documented telephone quotations or written competitive bids. The Contracting Specialist or City Department acquiring goods or services in this manner shall be expected to use professional judgment to ensure that the City is receiving overall best value. This rule does not preclude the option to receive written or telephone quotations. Procurement requirements shall not be artificially divided (split) so as to constitute a small purchase under this rule. The preferred method for placing orders under \$10,000 is the City VISA card.

3-402.1 Additional Decentralized Authorities for City Groups/Units

This regulation allows the Procurement Services Manager to decentralize limited purchasing authority to every Department/Division, agency, commission, bureau or other units of the City of Colorado Springs as follows:

- a) Authority to use the City's Purchasing Card (P-card is also synonymous with VISA) for purchase of goods and services (that are not IRS defined 1099 vendors) up to \$10,000 (see Purchasing Card Manual).
- b) Authority to solicit competitive quotes via telephone or fax (see Section 3-403 Document Telephone/Written Quotations), and write and issue City purchase orders up to \$19,999. All purchase orders are subject to audit by the City Contracting Section to ensure compliance with the City's procurement regulations.
- c) The City Contracting Section has the authority, if necessary, to require formal solicitation of bids or proposals for procurements over \$19,999. In cases where a department is requiring to contract for services that are longer than sixty (60) days and there are numerous known sources that provide these services, such as janitorial services, the City Contracting Section may determine it necessary to formally solicit bids or proposals regardless if the procurement is less than \$199,999. Therefore, City Departments should contact their assigned Contracting Specialist when procuring services or construction which exceeds \$19,999.

3-403 Documented Telephone/Written Quotations

The individual departments within the City may be permitted to procure supplies, equipment, materials, and services which exceed \$19,999 (see Section 3-402.1 Additional Decentralized Authorities for City Groups/Units), after coordination with their assigned Contracting Specialist from the City Contracting Office, by securing documented telephone or written quotations that provide:

- a) The name of the company or firm;
- b) The person providing the quotation;

- c) The delivery date;
- d) FOB information;
- e) Cash terms; and
- f) Price(s) of item(s).

3-404 Emergency Procurement - Definition

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

3-404.1 Scope of Emergency Procurements

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

3-404.2 Authority

Subject to emergency disaster declarations, any using agency may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods. In the event an emergency arises after normal working hours, the using agency shall notify the Procurement Services Manager on the next business day.

3-405 Equipment Leasing

A municipal lease is a contract under which title to the equipment will not pass to the lessee. A municipal lease with an option to purchase, however, allows title to pass if the purchase option is exercised. It has, or has the effect, of a conditional sales agreement. Leases and purchase options should never be used to circumvent the requirements for competition. The soundest and safest approach is that any lease of equipment be subject to the requirements for competition that apply to outright purchases, either as outlined in Section 3-100 Competitive Sealed Bidding or Section 3-300 Requests for Proposals. Municipal leases with the option to purchase should normally not be considered unless over \$100,000, there are insufficient funds available for the outright purchase of the equipment, and there is a written justification reviewed by the Financial and Administrative Services Director concurring that the municipal lease purchase is the preferred method of procurement and funds are available for the term of the proposed lease. If the requirement is less than \$100,000, then the Department Manager must submit the justification for approval by the Procurement Services Manager. NOTE: Contact your assigned Contracting Specialist for information on leasing copiers. Copiers do not fall within the requirements of this provision.

3-405.1 Equipment Rentals

An equipment rental agreement is defined as equipment in which the title is held by the owner (not the individual or group renting the equipment). Rental payments are normally established through a competitive bid. The resulting rental payments are determined by the owner of the equipment through the bid process. Title will not transfer to the City unless the City chooses to actually purchase the equipment at the end of the rental period. Rentals are differentiated from leases by: payments are not an amortization of the value of the equipment; and primarily rentals are for short periods of time to allow for one-time or temporary usage of equipment necessary to perform a job or project and should not be used to actually purchase the equipment, unless otherwise specified in the solicitation or determined to be in the City's best interest.

3-406 Execution of Lease Agreements

All lease agreement for capital equipment shall be reviewed by the Procurement Services Manager and City Attorney, and shall be signed by the Procurement Services Manager after appropriate review and negotiation of terms and conditions. The Procurement Services Manager may elect to seek additional proposals from third party leasing companies. Lease agreements signed by unauthorized parties may be voided and may

result in personal liability. The Mayor may designate other members of City government to sign contracts, that have been reviewed and approved by the Procurement Services Manager, and approved as to form by the Office of the City Attorney.

3-407 City-Wide Master Agreements

City-wide master agreements are established with a variety of vendors who offer goods or services. City Departments may place single orders against these agreements up to \$19,999 without having to obtain additional competitive quotes. It should be noted that there are a few master agreements that have been formally competed. Calls or orders may be placed on competed master agreements over \$19,999, but are limited to the specified dollar amount listed in the actual master agreement itself. It is highly recommended that City Departments compare the pricing between similar master agreements before an order is actually placed since prices on the master agreements vary in cost from one vendor to another for particular items.

3-408 City Purchasing Cards

The City of Colorado Springs Purchasing Card (P-Card) may be used for small purchases in accordance with the rules and regulations set forth in the VISA Purchasing Program Manual. The P-Card is the preferred method of procurement for small purchases (less than \$10,000). This includes orders placed using master agreements. The Procurement Services Manager may authorize limit increases on a case by case basis for purchases which exceed \$10,000 based on purchases from contracts or purchases that were competed and the vendor will accept the City's P-card for payment.

3-500 CANCELLATION OR REJECTION OF BIDS OR PROPOSALS

3-501 Scope

The provisions of this rule shall govern the cancellation of any solicitation issued by the City Contracting Section under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part, whether rejected for being non-responsive or non-responsible.

3-502 Policy

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

3-503 Cancellation or Rejection of All Bids or Proposals Prior to Opening

Prior to opening of bids, a solicitation may be cancelled in whole or in part when the Procurement Services Manager and using agency determine in writing that such action is in the City's best interest for reasons including:

- a) The City no longer requires the supplies, equipment, materials, or services.
- b) The City can no longer reasonably expect to fund the procurement.
- c) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

3-503.1 Notice

When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited and posted on the City Contracting website. The notice of cancellation shall identify the solicitation, explain the reason for the cancellation, and where appropriate, explain that an opportunity will be given to compete on any re-solicitation.

3-503.2 After Opening

After opening, but prior to award, any or all bids or proposals may be rejected in whole or in part when the Procurement Services Manager determines in writing that such action is in the City's best interest for reasons including, but not limited to:

- a) The supplies, equipment, materials, or services being procured are no longer needed.
- b) Ambiguous or otherwise inadequate specifications were part of the solicitation.
- c) The solicitation did not provide for consideration of all factors of significance to the City.
- d) All acceptable bids received exceed the budgetary constraints of the proposed contract and the City is unable to obtain additional funds. (See Section 3-503.3 Cancellation - Negotiation of Bids.)
- e) All otherwise acceptable bids or proposals received are at clearly unreasonable prices or terms.
- f) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, bids may have been collusive, bids may have been submitted in bad faith, or bidder(s) have been determined to have unfair advantage over other bidders.

3-503.3 Cancellation - Negotiation of Bids

It is a strict rule that sealed bids are never negotiable unless only one bid was received and the budgetary constraints associated with the project necessitate negotiations. However, the City of Colorado Springs in rare, urgent and compelling situations, when it can be documented that time is of the essence or the City would be harmed financially if the solicitation is cancelled and re-solicited at a later date under a reduced scope as normally required, reserves the right to consider negotiations as follows: In the event that all bids for a capital improvement or construction project exceed the available funds and the solicitation will be otherwise cancelled citing Section 3-503.2d After Opening, the Procurement Services Manager is authorized, with the documented approval by the Mayor, to cancel the solicitation and enter into negotiations with only the responsible bidder(s) who responded to the original sealed bid acquisition. The Procurement Services Manager shall be required to give written notice to each of the respective bidders that negotiations will be conducted, and each bidder that responded will be given the opportunity to participate in the negotiations by responding to a formal Request for Proposal. The resultant award will be made to the responsible bidder offering the lowest negotiated price.

3-503.4 Documentation

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

3-503.5 Disposition of Documents

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

3-600 USE OF REQUEST FOR INFORMATION (RFI)

3-601 Requests for Information (RFIs)

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

- a) General information about the City of Colorado Springs or specific department needs and future requirements may be disclosed in the RFI.
- b) An RFI may also be used to ascertain or justify the availability of sources for use in a sole source justification.
- c) The information gathered in response to the RFI may be used to compile or prepare specifications to be used by the City of Colorado Springs in a future procurement.
- d) All information received in response to the RFI shall be made available to the public and potential future offerors as soon as practicable in order to avoid an unfair competitive advantage, unless release of the information would harm the firm's confidential business strategy such as trade secrets or information that is protected from release under the Colorado Open Records Act.
- e) All firms that submitted a response to an RFI shall be invited to propose on any future Requests for Proposals or Invitations for Bid that were a result from the information gathered from the RFI.

PART IV - RESPONSIBILITY OF BIDDERS OR OFFERORS

4-100 APPLICATION

A determination of responsibility or non-responsibility shall be governed by this rule.

4-101 Standards of Responsibility

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

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

4-101.1 Information Pertaining to Responsibility

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

4-102 Ability to Meet Standards

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

- a) Evidence that such contractor or vendor possesses such necessary items.
- b) Acceptable plans to subcontract for such necessary items.
- c) A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

4-103 Written Determination of Non-Responsibility Required

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Procurement Services Manager and using agency. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the procurement files.

4-104 Pre-Qualification

Projects in excess of \$199,999 may require that the prospective contractor be pre-qualified. On such projects, prospective contractors may be asked to submit a financial statement in accordance with the general provisions of the solicitation documents. All prospective contractors shall fill out and return a pre-qualification questionnaire. Pre-qualification shall be determined on an individual basis by the Procurement Services Manager and using agency. All contractors determined not to be qualified shall be notified in writing as to why they did not meet the qualifications.

4-105 Protested Solicitations

Any bidder, offeror, or contractor who is directly aggrieved in connection with the solicitation or award of a contract may protest in writing to the Contracting Specialist responsible for the requirement. Protests may be submitted anytime prior to award, however, a protest of an award must be submitted within three (3) business days after the City announces its intent to make the award.

4-105.1 Directly Aggrieved Bidder/Offeror

A directly aggrieved bidder, offeror, or contractor is defined as a firm that is actually a potential bidder or offeror during the solicitation phase and a firm that is either displaced from receiving the award or that is in line to receive the award if the protest is upheld during the award phase.

4-105.2 Subject of Protest

Protesters may file protest on any phase of solicitation, bid, proposal, or award including, but not limited to: procedure, specification, award, or disclosure of information marked confidential in the bid or offer.

4-105.3 Form

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

- a) The name and address of the protester.
- b) Appropriate identification of the procurement.
- c) A statement of the reasons for the protest.
- d) Any available exhibit, evidence, or documents substantiating the protest.

4-105.4 Decision

The Contracting Specialist, along with input from the requiring Department Manager, shall provide a written determination to the protester within ten (10) business days after receiving all relevant requested information.

4-105.5 Appeals

A written appeal of the decision issued by the Contracting Specialist and Division/Department Manager must be submitted in writing to the Procurement Services Manager within three (3) business days after receiving the decision. The Procurement Services Manager, prior to making the final decision, may elect to:

- a) Render an immediate decision in the matter, especially matters that are specifically addressed in these regulations; or
- b) Request additional documentation or meetings with parties involved; or
- c) Select a panel of two (2) or more professional procurement officials not associated with the City who are not involved with the protested requirement to jointly conduct a hearing with individuals on either side of the issue; or
- d) Utilize any other method deemed appropriate to bring the matter to timely resolution.

However, the decision, once issued, shall be final and will complete the administrative procedure. The Procurement Services Manager shall issue the final decision within twenty one (21) calendar days after receiving such an appeal, unless extended by mutual agreement by both parties involved. This final decision does not preclude the protestor from pursuing further legal action allowed by the laws of Colorado.

4-105.6 Stay of Procurement During Protest

In the event of a protest in accordance with this section, the Procurement Services Manager shall not proceed further with solicitation or award of contract until administrative remedies have been exhausted, or until a written determination is made that award of a contract without delay is necessary to protect substantial interests of the City.

4-106 Suspension or Debarment

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

- a) Default on awarded contract. (Debarment.)
- b) Failure to enter into a contract resulting in a demand or collection of a Bid Bond by the City of Colorado Springs. (Suspension.)
- c) Routinely perform unsatisfactory work. (Suspension or debarment.)
- d) Violated contract terms and conditions without cure or remedy. (Suspension or debarment depending on severity.)
- e) Have pending litigation against the City. (May only be suspended pending results of litigation.)
- f) Default on the payment of any taxes, license fees, or other monies due the City. (Suspension.)
- g) Convicted of fraud or criminal acts while performing as a supplier, prime contractor, or subcontractor on any City of Colorado Springs contracts, even those not associated or written by the City of Colorado Springs. (Debarment.)

- h) Contractors that have been found to have violated the City's Code of Ethics by offering gifts or gratuities to a direct official will be subject to debarment.
- i) If documentation substantiates a consistent past performance record of habitually or continuous unsatisfactory performance, safety violations, repeated violations of contract provisions, or delinquent performance by a contractor. (Suspension.)
- j) On capital improvement projects (construction) – failure to complete all punch list items within a timely manner including final closeout requirements of the contract. (Suspension.)

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

The suspended or debarred vendor may, at the conclusion of the suspension or debarment period, submit a formal request to be removed from such status. Upon receipt of this request, the Procurement Services Manager will be required to investigate current and past performance since the suspension or debarment by the suspended contractor to determine responsibility.

PART V - SPECIFICATIONS

5-100 GENERAL PURPOSE AND POLICY

The purpose of a specification is to serve as a basis for obtaining a supply item or service adequate and suitable for the City's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the City Contracting Section that specifications permit maximum practicable competition consistent with this purpose.

5-100.1 Use of Functional or Performance Descriptions

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

5-100.2 Preference for Commercially Available Products

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

5-101 Brand Name or Equal Specifications - Conditions for Use

Brand name or equal specifications may be prepared when it is in the best interest of the City and when the item to be procured is best described by the use of such a specification. Brand name or equal specifications shall seek to designate as many different brands as are practicable as "or equal" references, and shall further state those substantially equivalent products that will be considered for award.

5-102 Brand Name Specifications - Conditions for Use

Since use of a brand name specification is restrictive, it may be used only when the brand name or items will satisfy the using agency's needs or the item is to be used for resale purposes. The Procurement Services Manager shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under provisions of Section 3-101.17 Sole Source Procurement.

5-103 Qualified Products List - Conditions for Use

A qualified products list may be developed when testing or examination of the materials or equipment is required prior to the issuance of the solicitation.

5-104 Specifications Prepared by Other Than City Staff

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

PART VI - BONDS, INSURANCE & CONTRACTS

6-100 BID SECURITY - GENERAL

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

6-100.1 Acceptable Bid Security

Acceptable bid security shall be limited to:

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

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

6-101 Contract Bonds

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

6-102 Legal Review of Bonds/Insurance Certificates

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

6-103 Insurance Requirements

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

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

6-104 Additional Bonding

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

6-105 Exceptions

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

6-106 Execution of Contracts

All City contracts shall be procured in accordance with provisions of City Code Chapter 1, Article 5, Part 2, and may be executed in accordance with City Code Sections 1-4-213 and 1-4-713, and these regulations. No City contract shall be approved or executed unless and until sufficient funds have been appropriated by the City Council and are available for the contract. All contracts shall be written on City of Colorado Springs contract forms (not other company's contracts unless authorized by the Procurement Services Manager) and include provisions for termination in the event of non-appropriation of funds. The City Contracting Section shall maintain the original copy of all contracts.

6-107 Legal Review of Contracts

All City contracts in excess of \$50,000 and any other contracts determined necessary by the Procurement Services Manager, may be reviewed as to legal form by the City Attorney's Office, except as may otherwise be provided in these regulations or by written agreement between the City Attorney and the Procurement Services Manager. City contracts shall utilize only those contract terms and standard forms, including purchase orders, that have been approved for use by the Procurement Services Manager, unless the Procurement Services Manager and the City Attorney determine that an alternative term or form should be used.

6-108 Legal Notice to Bidders – Required Contract Provisions

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