

Chapter 3.14

PROCUREMENT CODE

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3.14.010 - Purpose and scope.

The purpose of this Chapter is to set forth the procedures that the City will follow in contracting for or constructing public works, purchasing equipment, materials, vehicles, and other tangible personal property, purchasing insurance policies, and obtaining professional and consulting services.

3.14.020 - Definitions.

As used in this chapter, the following definitions shall apply.

Bid blanks means forms to be completed, which may also state requirements for additional written information, in connection with the submission of sealed competitive bids.

Construction means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property including replacement of fixtures, equipment or facilities as part of such repairs or maintenance.

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

Local newspaper of general circulation and newspaper of general circulation in the City means a newspaper printed at regular intervals, available by paid subscription to any resident of the City, possessing a diverse potential subscriber base measured by the geographic region of its circulation area, generally available within City limits with or without charge, and containing news of a general character and interest to the community.

Lowest qualified bidder means the bidder with the lowest price and the highest qualifications, based on the following criteria: (1) the ability, capacity and skill of the bidder to perform under the contract or furnish the supplies required; (2) whether the bidder can perform

the contract or furnish the supplies promptly or within the time specified, without delay or interference; (3) the character, integrity, reputation, judgment, experience, and efficiency of the bidder; (4) the quality of performance on previous contracts, if any; (5) previous and existing compliance by the bidder with laws, ordinances, and regulations relating to the contract or service; (6) sufficiency of financial resources and ability of the bidder to perform the contract or furnish the supplies; (7) the ability of the bidder to provide future maintenance and service; (8) the extent to which the bidder commits to using local goods, local equipment, and local services when practical and efficient to do so; and (9) the response to the invitation for bids.

Purchasing Agent means the City Manager or the City Manager's designee.

3.14.030 - Powers and duties of City Manager or designee.

- A. The City Council hereby authorizes the City Manager or designee to exercise purchasing authority as the Purchasing Agent subject to the provisions of this Chapter. The City Manager may delegate purchasing duties to members of the City staff under their supervision and direction. The City Council hereby delegates authority to the Purchasing Agent to execute contracts, work orders, notices to proceed, and other documents in connection with procurements authorized in accordance with this Chapter.
- B. The Purchasing Agent's general duties and powers are as follows:
 - 1. Procure for the City the highest quality in supplies and services at the least reasonable expense to the City.
 - 2. Consolidate purchases in bulk quantities when practical to maximize economic benefit to the City. Quantities purchased should represent a reasonable balance based on transportation costs, quantity discount, price, budget, cost, and storage capabilities.
 - 3. Endeavor to obtain the best purchase price in accordance with this Chapter and in accordance with internal processes and procedures as may be promulgated by the City Manager in their discretion, provided that such processes and procedures shall not conflict with this Chapter.
 - 4. Establish, amend, and enforce any additional rules and regulations necessary for the proper function of the procedures established in this chapter.
 - 5. Enforce the terms and conditions of contracts and purchase orders with all vendors and suppliers, and to declare vendors who default on their quotations or contracts as noncompliant bidders who may be disqualified from receiving any business from the City for a stated period of time.
 - 6. Secure all applicable federal and state tax exemptions for the City on purchases and contracts.
 - 7. Apply for and obtain such grants as may be available to defray the costs of purchases and contracts.
 - 8. Coordinate with the finance department to secure the maximum efficiency in budgeting and accounting.

9. Consult with professionals such as attorneys and engineers hired in conformance with this chapter to draft and review contracts, plans, specifications, and other documents and to supervise work in connection with procurements.
10. All other powers enumerated in Article VI of the Charter.

3.14.040 - Methods and procedures for source selection.

Subject to the provisions of Section 3.13.050, the following methods may be applied for procurement.

- A. Sole Source Procurement. Procurements may be made without competition when the Purchasing Agent reasonably determines, after conducting a good faith review of available sources, that there is only one viable and reasonable source within the relevant supply area for the required supply, service or construction item. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery, and terms.
- B. Emergency Procurement. Notwithstanding any other provisions of this chapter, the Purchasing Agent may make or authorize others to make emergency procurement of supplies, services or construction items when there exists a threat to public health, safety or welfare and when the purchase cannot reasonably be delayed for review by the City Council. All emergency procurements shall not exceed the sum of one hundred thousand dollars (\$100,000.00) in any single fiscal year; provided that the City Council may increase this limitation at any time by resolution for the current and/or future fiscal years, subject to all budgeting and appropriation requirements. The Purchasing Agent shall encourage competition for emergency procurements to the extent practicable under the circumstances, but strict compliance with any other procurement method described in this section not be required. All emergency procurements shall be reported to the City Council at the next available meeting of the City Council.
- C. Open Market. Open market purchases involve an informal evaluation of price, quality, convenience and service from any source and the exercise of sound decision-making by the Purchasing Agent based on such information.
- D. Comparative Pricing. For purchases based on comparative pricing, the Purchasing Agent shall solicit quotes from no fewer than three vendors/suppliers, unless it is impracticable under the circumstances to obtain three quotes. Quotes may be solicited orally or in writing at the discretion of the Purchasing Agent.
- E. Requests for Proposals (RFPs). RFPs shall be in writing and shall be distributed to a minimum of three firms or individuals to be selected by the Purchasing Agent. The Purchasing Agent shall also have the discretion to solicit RFPs by advertising in a newspaper or other publication, by posting the RFP in a public place, or by posting the RFP on a website, listserve, or by other electronic means. The RFP may, but does not need to be, directed to the public at large.
- F. Competitive Bidding.
 1. Notice to Bidders. An invitation for bids shall be published by any one or more of the following methods: (a) advertisement in a local newspaper of general circulation; (b) posting on the City's official website; and/or (c) posting at City hall and all other official public posting sites as determined by the City Council for the

posting of public meeting notices. The notice shall be published at least ten (10) days prior to the date for bid opening. The notice shall include a general description of the materials and/or services to be procured; the place where bid blanks and specifications may be obtained; the closing date and time for acceptance of bids; a statement that all bids shall be submitted to the City Clerk; the time and place for opening bids; the need for bonding, if applicable; and the reservation by the Purchasing Agent of the right to reject any and all bids. In addition to the formal publication requirements described above, the Purchasing Agent shall have the authority to give informal notice of the invitation for bids to such potential vendors as the Purchasing Agent deems appropriate.

2. Bid Requirements. To be considered as a qualifying bid, each bid shall comply with the following:
 - a. Bids shall be in writing and signed by an authorized representative of the bidder, enclosed in a sealed envelope, or other secure manner to ensure the non-disclosure of the bid contents to competing offerors, and filed with the City Clerk by the deadline stated in the invitation for bids. Bids shall include all information required by the bid blanks and specifications.
 - b. Only one bid may be submitted per bidder. If a bidder submits multiple bids, then all bids of that bidder shall be rejected; provided, however, a bidder may withdraw a bid up until twenty-four (24) hours prior to the bid opening and, once withdrawn, may submit a new bid.
 - c. Where bonded bids are required, the bid shall be accompanied by a certified check or bid bond equal to five percent (5%) of the bid amount, which shall also be enclosed within a sealed envelope, to be forfeited to the City if a bid is accepted and the bidder fails to sign a contract within fifteen (15) days of acceptance; provided, however, that this deadline may be extended by the Purchasing Agent in their discretion.
3. Withdrawal/Correction of Bids. Bids may be withdrawn up to twenty-four (24) hours prior to expiration of the deadline for submitting bids. An otherwise low bidder shall be permitted to correct a material mistake in their bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value as determined by the Purchasing Agent. A low bidder shall not be permitted to correct a bid for mistakes or errors in judgment.
4. Waiver of Informalities in Bids. The Purchasing Agent may waive informalities in a bid if (a) the item is only a matter of form or is an immaterial variation from the exact requirements of the invitation for bids; (b) the item being waived has trivial or no effect on price, quality, quantity, delivery, or performance, and (c) such a waiver would not affect the relative standing of bidders or otherwise prejudice other bidders.
5. Bid Opening Procedure. At the time and place specified in the notice for bids, the Purchasing Agent shall open the sealed bids in public. The Purchasing Agent shall announce the names of those who have bid and the amounts of the bids and shall state whether any bids submitted have been withdrawn. As the bids are opened,

such details as the Purchasing Agent deems appropriate shall be read and copied on the bid tally record, which shall be open for public inspection. The person recording the bids shall sign the tally sheet.

6. Bid Evaluation; Award. The Purchasing Agent shall perform a review and analysis of all tabulated bids. Evaluation criteria include price, quantity and/or quality offered, qualifications of the bidder, and capacity to fulfill all requirements of the contract. For bonded competitive bids, unless all bids are rejected, the award shall be made to the lowest qualified bidder, as defined above. IN THE EVENT THAT, IN THE OPINION OF THE PURCHASING AGENT, OR, ALTERNATIVELY, IF CITY COUNCIL DETERMINES BY VOTE AT A PUBLIC MEETING THAT ALL BIDS RECEIVED FOR A PARTICULAR PRODUCT OR SERVICE ARE TOO HIGH, THE PURCHASING AGENT MAY ENTER INTO NEGOTIATIONS WITH THE LOWEST BIDDER TO AGREE ON TERMS MORE FAVORABLE TO THE CITY. HOWEVER, NO NEGOTIATED PRICE SHALL EXCEED THE LOWEST RESPONSIBLE BID PREVIOUSLY RECEIVED. All awards shall be made by the awarding authority (City Council or Purchasing Agent) by written notice to the bidder. Alternate bids may be awarded whenever deemed necessary by the Purchasing Agent. Other than for bonded competitive bids, the City need not award a bid to the lowest responsive and responsible bidder, but rather the bid shall be awarded to the bidder who, in the sole discretion of the awarding authority, provides the best overall value to the City based on the evaluation criteria described in this chapter.
7. Rejection of Bids. The Purchasing Agent may reject all or any part of a bid (unless the bid expressly excludes the ability to partially accept the bid) when it is determined to be in the best interest of the City, or if the vendor or contractor is in default on the payment of taxes, license fees, or other sums due to the City.
8. Nonresponsive Vendor. Any vendor/bidder who fails to comply with the terms of an awarded contract, quote or purchase order, or the required specifications contained in the bid, may be declared a nonresponsive bidder/vendor by the Purchasing Agent. Any nonresponsive vendor/bidder may be removed by the Purchasing Agent and/or the awarding authority from all vendor and bid lists compiled by the City for a period not to exceed three years.
9. Bonding; Conditions. For a contract awarded based on a bonded competitive bid, the successful bidder shall be required at the time the contract is executed to deliver to the City a contractor's performance bond or a labor and material payment bond in the amount of one hundred percent (100%) of the contract price, with a good and sufficient surety, for approval by the Purchasing Agent. Such contractor shall promptly perform all work required by the contract on behalf of the City and shall promptly pay all amounts lawfully due to all persons supplying or furnishing labor or materials used or performed in the prosecution of the work provide for in such contract. Further, the contractor shall indemnify and hold the City harmless for all payments or liabilities arising from the execution of the terms of the contract.

G. Competitive Bid Network Awards: Awards made by the Purchasing Division of the State of Colorado, or other similar cooperative bid networks, are available for use by local

governments. The Purchasing Agent may use the State bid award, or other similar cooperative bid network, in lieu of other bidding requirements contained within this code.

3.14.050 - Purchasing authority and process.

A. Authority

1. The purchasing authority and process required for all types and amounts of procurements shall be as follows, provided that all monetary limits set forth in this section are maximum ceilings, and nothing shall prohibit the Purchasing Agent from utilizing a higher level process than required by this section nor from requesting City Council consideration of a purchase when not required.

2. Any contract involving an expenditure in a year for which an appropriation ordinance has not been adopted shall be referred to the Finance Manager for a determination that adequate funds and appropriations are available.

A. Contract Approval.

1. Authority. All contracts costing over \$20,000 shall require City Council approval and shall be awarded pursuant to a competitive bid process, unless otherwise authorized by City Council. The City Manager or designee may approve contracts for \$20,000 or less, subject to the required procedures set forth below. All such contracts shall require retainage of 5% to be paid upon successful completion of any project.

2. Required Procedures.

Contract Type	Open Market	Comparative Pricing	Competitive Bid	Bonded Competitive Bid	RFP	Contract Amount
Construction		X				\$5000
			X			<\$200,000
				X		>\$200,000
Equipment	X	X				<\$20,000
					X	>\$20,000
Professional Services		X				<\$20,000
					X	>\$20,000
Technical Services	X	X			X	<\$20,000
						>\$20,000
Operation Materials & Supplies	X	X				

- B. Change Orders. The Purchasing Agent shall have authority to approve and execute written change orders with respect to any procurement authorized by this chapter; provided that the aggregate sum of all change orders for a given contract shall not exceed twenty thousand dollars (\$20,000.00) without approval by the City Council. All other change orders must be submitted to the City Council. However, the City Council shall have the authority to supersede this provision and to dictate more restrictive or less restrictive authority to the Purchasing Agent to approve and execute change orders by including specific provisions to such effect in any original contract approved by City Council, or in the motion, resolution, or ordinance approving such contract.

If a contract was approved through competitive bidding, and if one or more change orders will increase the total contract price by more than fifty (50) percent of the original contract price, then the City Council may, in its sole discretion, require that the change order be treated as a separate contract subject to new bidding in accordance with this chapter.

Additionally, or in the alternative, the City Council may require that the vendor solicit new competitive bids from subcontractors and/or suppliers prior to approving any change order.

- C. Utilities and Utility Equipment. The City Manager or designee shall have the authority to secure utility services, including necessary equipment therefore, using a sole source procedure as authorized by the City Charter.
- D. Real Property (including land with or without existing improvements, easements, rights of way, and water rights). Acquisition of real property interests shall be made by sole source or open market procedures; provided that all such acquisitions in excess of twenty thousand dollars (\$20,000.00) shall require authorization by the City Council. Sales of real property of the City shall be governed by Article XI of the Charter.

3.14.060 - Local preference. Except as otherwise provided in this Chapter, whenever competitive bidding is required by law for any contract involving materials, services and/or labor furnished to the City for which appropriation or expenditure may be reasonably expected not to exceed five hundred thousand dollars (\$500,000) in the aggregate for any fiscal year, preference shall be given to each qualified local business in the manner more particularly described in this Section.

A. A qualified local business means an individual or entity who, at the time of submitting a bid for a contract relating to a City of Delta purchase or work project, maintains a principal place of business located within the City for primary preference, or within Delta County for secondary preference. Businesses which maintain satellite offices within the City shall not be considered local for purposes of this definition.

B. Notwithstanding other provisions of this Chapter, in the course of evaluating bids or proposals pertaining to any contract for the purchase or lease of supplies, materials, equipment, or other personal property and/or any contract for labor to be performed on a public works project and/or any professional services contract, the City shall provide the following percentage

preferences for local goods and services provided by local vendors when quality, delivery time and services are judged by the Purchasing Agent to be essentially equal: five percent (5%) primary preference for goods/services in the City and two point five percent (2.5%) secondary preference for goods/services in Delta County.

1. Each otherwise eligible contract bidder must sufficiently demonstrate ownership of a qualified local business in the related bid proposal documents.

2. When applying this provision to specific contract settings, the City will continue to give appropriate consideration and weight to all other relevant information and factors customarily used for comparison of bids in the process of selecting the lowest responsible bidder including, but not limited to, the following:

- a. the relative quality of any proposed material items and their conformity with pertinent contract specifications;

- b. the relative benefit to the City of proposed delivery and discount terms and conditions and proposed terms of warranty and repair for material items; and

- c. the overall experience, qualification and reputation of the bidder for performance of similar contracts.

3. The City Council may modify these percentage preferences, provided that the modifications are advertised in the "Instructions to Bidders" prior to advertising for bids for competitive bonded bid purchases, capital construction, capital equipment and plant equipment replacement in excess of one hundred thousand dollars (\$100,000).

C. Exceptions to local preference:

1. Contracts for which application of the provisions of this Section would be prohibited by State or Federal law or regulations, including projects that exceed five hundred thousand dollars (\$500,000), which shall adhere to the requirements of C.R.S. § 8-17-101, as now existing or hereafter amended.

2. Contracts funded in whole or in part by grants, donations or gifts to the City, the conditions of which prohibit or discourage preferences of the sort allowed by Section 2.75.010.

3. Contracts for redressing emergency conditions in the City where any delay in completion or performance of the contract would jeopardize public health, safety or welfare, or where in the judgment of the City Manager, or their designee, the operational effectiveness of a significant City function would be seriously impaired if the contract were not entered into expeditiously without resort to competitive bidding processes.

4. Contracts with any single or sole source supplier for supplies, material, equipment or other personal property.

5. Any other contract setting in which the City Council determines the application of a preference would be fundamentally adverse to the City's interests.

3.14.070 Penalties for providing false bid information. If the City Manager, or their designee, determines that a person or entity submitting a bid for a City contract has made an intentional misstatement of fact to obtain a price preference under Section 3.13.060, the City may pursue all consistent legal and/or equitable remedies afforded by Colorado law and, in addition, may impose the following penalties:

A. A finding of such an intentional misstatement by a contract bidder shall furnish a basis for disqualifying all current and future bids on City contracts from that bidder and their related business for a period of at least one full year from the date of the finding.

B. An intentional misstatement made to obtain a price preference shall subject the recipient of any such price preference to a civil penalty of treble the amount of the price preference actually received, or three hundred dollars (\$300.00), whichever is greater. The City may collect such penalty, plus all reasonable attorney's fees and costs incurred in the course of collection efforts, through civil proceedings filed in the appropriate court in Delta County, Colorado.

3.14.080- Division of contracts prohibited. No contracts or purchases shall be divided to avoid the procedural requirements of this chapter.

3.14.090 - Recurring purchases. Quotes obtained for routine purchases of supplies, equipment or materials under either the open market, comparative pricing, or RFP procedures may be deemed valid for a period of two years from the date of the quote. The Purchasing Agent is not required to obtain revised quotes for such items during the two-year period, provided that the vendor is informed of the City's intention to make repeated purchases at the time of the initial purchase.

3.14.100 – Delegation of authority to City Manager or designee to execute other contracts. For all contracts or agreements not specifically governed by this Chapter, such as leases, lease extensions, and grants, and unless otherwise required by the Charter, the City Manager or designee shall have the authority to execute all such contracts under \$20,000, or as otherwise authorized by the resolution, ordinance, or motion of Council approving any such contract. Contracts for lease or sale of City owned real property or water rights shall require City Council approval.

3.14.110 - Disposition of surplus personal property.

A. Identification.

Any item of personal property with a value of \$10,000.00 or more may be declared surplus by the City Council; and all other property may be declared surplus by the City Manager or by the City Council.

B. Sale.

(1) Surplus City property may be sold as follows:

- (a) The City Manager or designee may advertise for bids in the official newspaper of the City or on the City's website or otherwise give notice to such persons or entities as they deem necessary to reach a representative sample of interested prospective buyers. All bids shall be sealed and shall be opened in public at a designated time and place no sooner than ten (10) days after publication of notice in the newspaper or posting on the City's website.
- (b) The City Manager or designee may conduct an auction at a designated time and place after first giving at least ten (10) days' notice in the official newspaper of the City or on the City's website and providing such other notice as they deem appropriate. At any auction, surplus property will be sold to the highest responsible bidder for cash, but the City Manager or designee may establish minimum sales prices.
- (c) The City Manager or designee may list such property for sale on a reputable third-party website for sale of public personal property.

(2) At an auction or bid opening or when allowed by the terms of sale or auction on a third-party website, the City Manager or designee may reject all bids and advertise or give notice again for another auction, bid opening or sale. If no one offers to purchase an item of personal property, the City Manager or designee may donate the item to any person to which donations may lawfully be made, or, if the item appears to have little or no value, they may dispose of it in any way they deem fit.

(3) In the absence of the City Manager, or if the City Manager fails or refuses to identify, sell or dispose of surplus property as set forth in this Section, the City Council may do so and may perform or delegate to a City employee or contractor all of the functions assigned in this Section to the City Manager. (Ord. 4, §4, 2021; Ord. 4, 2022)