



PURCHASING POLICY AND PROCEDURE MANUAL

December 2018

2013-AP-01 Ratified by Resolution 2013-R-71 and Associated Administrative Directives

13133 East Arapahoe Road
Centennial, Colorado 80112
303-325-8000

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SECTION ONE: INTRODUCTION

1.1 Purchasing Policy and Procedures Manual Introduction.

- (a) This City of Centennial Purchasing Policy and Procedures Manual (“Manual”) dated December 2018, is a compilation of the City’s administrative purchasing policy, 2013-AP-01, approved and ratified by Resolution 2013-R-71, and administrative purchasing directives to include Administrative Directive No. 2018-FI-AD-01, First Amendment. This Manual supersedes and replaces all prior policies or directives addressing purchasing. Purchases subject to the policy and directives shall be made in accordance with and conforming to the rules and regulations as published in this Manual, as may be revised from time to time.
- (b) The forms and processes and directives described herein can be modified only with approval of the City Manager, but such changes shall not affect the competitive bidding and approval requirements which shall remain consistent with administrative purchasing policy 2013-AP-01 of the City as approved by Resolution 2013-R-71.

1.2 Purpose of Manual. Procurement decisions in the City are administrative in nature. The purpose of this Manual is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City, to maximize the purchasing value of public funds, to standardize the City’s purchasing rules and regulations for orderly and efficient administration, to provide safeguards for maintaining a procurement system of quality and integrity, and to foster effective, broad-based competition to ensure that the City receives best value.

This Manual has been prepared as a reference for employees and certain contractors delegated purchasing authority in the name of the City. Detailed explanations of individual department responsibility and role in the procurement function are included within this Manual. All City employees and contractors with delegated purchasing authority, if any, shall familiarize themselves with the requirements and processes set forth and shall adhere to the policies and practices established herein.

Nothing in this Manual shall create any third-party cause of action or right to enforce, this Manual guiding only internal processes and procedures for administrative procurement actions.

1.3 Applicability. This Manual shall apply to the procurement of all materials, equipment, construction and services required by the City. The policies and procedures set forth shall apply to purchases made for the City by City employees and by contractors for the City acting as purchasing agents for the City if the City pays directly for the procured goods or services. Contractor purchases for goods or services related to a contract with the City are not subject to this policy unless the City pays directly for such goods or services.

When any procurement involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with any mandatory applicable federal and/or state laws or regulations. The procurement requirements for any procurement involving the expenditure of federal funds shall, at a minimum, comply with the requirements of Appendix B, incorporated herein. In the event of a conflict between such federal fund procurement requirements and the requirements of the City as otherwise set forth herein, the stricter requirements shall apply.

1.4 De-centralized Procurement Authority.

- (a) All rights, power, duties and authority relating to the procurement of supplies, services and construction are vested in the individual departments of the City except as specifically set forth herein.
- (b) All Procurement Classification 3 purchases (defined in Section 2.3) must be coordinated with the City's Purchasing Manager.
- (c) All procurements of \$5,000 or more, regardless of the formality of the purchasing process, must be in writing and approved by the Purchasing Manager.

1.5 Procurement Contrary to this Manual. Except as may be otherwise provided by law, it shall be unlawful for any City officer or employee to order or purchase goods and/or services contrary to the policy and rules set forth in this Manual. Any procurement or contract so made shall be void and wholly without effect and shall not be binding upon the City.

1.6 Responsibility.

- (a) The City Manager is responsible for the City's purchasing system.
- (b) The Purchasing Manager is the principal public purchasing official of the City. The Purchasing Manager's responsibilities are as enumerated in this Manual (Section 4).
- (c) Department Directors are responsible for ensuring their departments' purchasing activities are in accordance with the rules and regulations set forth herein.
- (d) Any individual making a purchase that violates the policies defined in this Manual may have personal financial responsibility imposed equal to the value of such unauthorized purchase. In addition, violation of these policies may be grounds for disciplinary action, to include termination and/or criminal prosecution.

1.7 Changes. Any person using this Manual is encouraged to comment and/or recommend changes. Address such in writing to the following:

Purchasing Manager
Finance Department
City of Centennial
13133 East Arapahoe Road
Centennial, CO 80112
(303) 325-8000

SECTION TWO: PROCUREMENT PROCESSES

2.1 Pre-Procurement Requirements.

- (a) Any purchase of Information Technology must be submitted to the City's Systems Analyst for approval regardless of dollar amount. *See Section 6.*
- (b) **Prior to** initiating any *Procurement Classification 2 or 3 processes*, the Purchasing Manager must be consulted to determine whether a purchase order or other form of contract should be issued and that proper procurement procedures are followed. In addition, the Purchasing Manager shall determine whether the City Attorney's Office shall be consulted prior to initiation of such procurement to address issues identified by the Purchasing Manager.
- (c) In addition to (b) above, **prior to** initiating any *Procurement Classification 3 processes*, the Finance Department must provide in writing that the proposed expenditure is authorized within the City's approved budget and appropriations. This written statement must accompany the contract or other procurement document at the time it is circulated for execution by the appropriate level of authority in the City. *See Section 3.2 Table.*
- (d) **Prior to** initiating any *Procurement Classification 3 processes for purchases over the City Manager Approval Amount*, the City Manager must be consulted to ensure proper procurement procedures are followed.

"City Manager Approval Amount" shall mean either (a) \$300,000 for public works or capital improvement related purchases, or (b) \$150,000 for all other purchases. If a purchase amount is identified and authorized in the relevant annual City Council budget approval resolution, neither of these limits shall apply but the limit for City Manager Approval Amount for such purchases shall be the amount identified in such resolution.

2.2 Valuing Procurement for Purpose of Proper Classification and Permissible Renewals/Extensions.

- (a) Purchases shall not be artificially divided to circumvent the procurement classification and associated procurement process.
- (b) If numerous items are being purchased from one vendor on a single order, the aggregate price is the determining factor regarding procurement classification.
- (c) In determining procurement value when purchasing services by contract, the following guidelines shall be used:
 - (1) If services are provided on a lump sum basis, the lump sum amount shall determine the value of the procurement. If lump sum services are compensated on an annual basis (instead of on a one-time basis) the procurement value shall be determined by multiplying the annual lump sum amount by the number of years in the term (not to include optional renewal terms contemplated by the contract).
 - (2) If services are provided on a time and materials basis, the value of the procurement shall be determined by multiplying the annual maximum or not-to-exceed compensation by the

number of years in the term (not to include optional renewal terms contemplated by the contract).

- (3) If a contract is for fees to be retained by a vendor (such as banking agreements) and not actual expenditures of the City (no additional checks or payments are issued to the vendor), an estimate of the cost to the City (retained fees) shall provide the basis for procurement value determination. If the estimate is erroneous, actual cost shall be used for determining value at renewal time or when resoliciting for such services.
 - (4) The Finance Department shall have the ultimate authority to determine final procurement value for any contract or other form of purchase agreement.
- (d) Contracts may be extended, renewed or amended to extend or renew without further procurement action or additional approvals only if:
- (1) The Soliciting Document contemplated amendment or optional renewal terms; and
 - (2) the contract specifically recognized that renewal or amendment was an option; and
 - (3) approval of the contract as set forth in Section 3.2 was at the level that would be required for the contract adding in the additional compensation payable due to the extension, renewal or amendment; and
 - (4) any additional services or service scope change are reasonably related to the services contracted for in the original contract; and
 - (5) the aggregate dollar value of the compensation payable under the term and the renewal or extension term(s) (with or without additional compensation for reasonably related additional services) does not equal a value greater than a threshold amount for an elevated procurement classification level (ex. 2 year contract for \$10,000/year can be renewed for additional one year term as the value of the term (\$20,000) plus the renewal (\$10,000) equals \$30,000 and does not reach the Classification 3 threshold).

2.3 Procurement Classifications. The following procurement classifications shall determine the procurement method and approvals required as set forth in this Manual.

PROCUREMENT CLASSIFICATION 1: Small Purchase Procurement. Small purchase procurement is used for the purchase of goods and services **up to \$5,000** and such purchases require only that the City staff member making the purchase ensures that a reasonable and adequate number of price checks or quotes is made by email, personal inspection, or discussions with vendors to ensure a quality product or service is obtained and best value is determined.

PROCUREMENT CLASSIFICATION 2: Simplified Procurement. Simplified Procurement is utilized for simple purchase activities of goods and services of **over \$5,000 up to \$30,000**. A reasonable and adequate number of price checks or quotes of no less than three (3) should be solicited by email, personal inspection, or discussions with vendors to ensure a quality product or service is obtained and best value is determined. Prior to commencing any purchase classified as Simplified Procurement, the proposed purchase and process shall be reviewed by the Purchasing Manager.

The following procedures may be utilized to fulfill Simplified Procurement requirements, at the direction of the Department Director.

- a. **Quotations Solicitation (QS) Procedure.** This process requires the solicitation of at least three competitive firm price quotes through informal negotiation which are documented in writing and maintained on file. Price does not necessarily constitute the only consideration, although the lowest-priced quotation is generally awarded the contract or order unless a demonstrable value is added by the selection of another quotation.
- b. **Letter of Proposal Procedure.** This process requires solicitation of at least three written competitive letters of proposal outlining the scope of work, performance standards and structure of costs, which are maintained on file. The proposals shall be reviewed based upon the predetermined review criteria.

PROCUREMENT CLASSIFICATION 3: Formal Procurement. Formal Procurement is utilized for purchase activities of goods and services of **\$30,000 and over** and requires a competitive sealed process such as an Invitation for Bid (IFB), Reverse Auction or Request for Proposal (RFP) process. Prior to commencing any purchase classified as Formal Procurement, the proposed purchase and process shall be reviewed by the Purchasing Manager. Formal Procurement requirements are set forth in Section 12 of this Manual.

2.4 Exemptions to Formal Procurement.

- (a) Procurement Classification 1 and 2 purchases do not require formal procurement processes, as set forth in Section 2.3.
- (b) Regardless of dollar amount, the following purchases are exempted from the requirement to engage in formal procurement processes:
 - (1) Cooperative Purchases. Purchases made cooperatively with other units of government such as the State of Colorado and government cooperative groups utilizing extended awards from other governmental agencies.
 - (2) Piggybacked Purchases. Purchases made by piggybacking on prices, bids and offers made to other units of government such as the State of Colorado or other counties, municipalities or special districts when agreeable by the vendor and the Purchasing Manager determines such approach is in the best interests of the City.
 - (3) Government Contracts. Purchases/contracts with federal, state and local government and political subdivisions of the state.
 - (4) Published Materials. Purchases of magazines, books, publications and periodicals.
 - (5) Hardship. Purchases in the presence of hardship, which exemption requires satisfaction of the criteria and approval procedure set forth in Section 5.1.
 - (6) Sole Source. Purchases of supplies, products or services indispensable to the City for which there is only one source practicably or reasonably available, which exemption requires satisfaction of the criteria and approval procedure set forth in Section 5.2.
 - (7) Professional Services. Contracts for professional services from certain professional, technical and expert service providers which exemption requires satisfaction of the criteria and approval procedure set forth in Section 5.3.
 - (8) Emergency Purchases. Emergency purchases which exemption requires satisfaction of the criteria and approval procedure set forth in Section 5.4.

- (9) Fine Art. The material qualifies as an object of fine art.
- (10) Materials Conformity. A particular material is required to match materials currently in use by the City.
- (11) OEM Parts. Original Equipment Manufacturer (OEM) repair parts purchased from the source vendor.
- (12) Original Provider Maintenance and Support. Annual maintenance and service agreements when the terms of the original purchase specify that the original provider performs ongoing maintenance.
- (13) Additional Materials or Services. Procurement resulting from a formal procurement process may be used as the basis for the negotiated purchase of additional quantities of the same materials or services at any time; provided, however, that subsequent procurements are expressly limited to the specific terms, conditions and pricing established by the original procurement.

2.5 Costs of Compliance. The costs of producing, compiling and submitting any bid, proposal or other submittal as part of a competitive process shall always be borne by the submitting entity and the City shall never reimburse or offset such costs for a prevailing or unsuccessful bidder or proposer.

2.6 Cancellation. Any RFP, IFB or other Soliciting Document may be cancelled, and proposals or bids rejected in whole or in part when the Department Director, in consultation with the Purchasing Manager, deems such cancellation or rejection is in the best interest of the City. The City shall issue notice of cancellation to all proposers or bidders solicited.

2.7 Unsolicited Proposals. The City may consider unsolicited proposals submitted by external entities. This section of the Purchasing Manual identifies the internal processes that will be utilized in considering such a proposal and provides general considerations for the Submitter. The City will not consider unsolicited proposals for routine purchases of goods or services that may be readily available on a competitive market. The intent of this section is to comply with the purpose of the Purchasing Manual (Section 1.2); specifically maintaining a procurement system of quality and integrity and to foster effective, broad-based competition to ensure that the City receives best value.

- (a) In accordance with Section 2.5 of the Purchasing Manual, any costs of producing, compiling, or submitting an unsolicited proposal shall be borne by the Submitter. The submission of an unsolicited proposal does not create any obligation for action on the part of the City.

By accepting an unsolicited proposal, the City does not agree to and will not be limited to its use or reproduction in any manner regardless of any language contained in such unsolicited proposal which purports to impose any such limits, except as identified in Section 2.7(d).

- (b) The City shall utilize the following internal processes in evaluating and responding to an unsolicited proposal:
 - (1) Acknowledgement: The City shall acknowledge receipt of an unsolicited proposal as described in Section 2.7(c).
 - (2) Evaluation: Within a reasonable time, the City Manager or designee may consider and evaluate a proposal and identify next steps or may decline to do so, based on the interests of the City.

The City Manager or designee may consider assigning an identified Project Manager. Notification of the decision will be communicated to the Submitter.

Upon completion of the initial evaluation, if the unsolicited proposal is in the best interests of the City, the Purchasing Manager will make a recommendation as to the commencement of a formal procurement process for the project generally described in the unsolicited proposal. The formal procurement processes are discussed in Section Two of this Manual (Procurement Processes). The exemptions to formal procurement as specified in Section 2.4(b) of this Manual shall apply.

- (3) Cancellation: Any evaluation or formal procurement commenced as a result of the submission of an unsolicited proposal may be cancelled when the City Manager or designee, in consultation with the Project Manager, deems such cancellation or rejection in the best interest of the City. The City shall issue notice of cancellation to all affected proposers or bidders.
- (c) Except as otherwise determined by the Purchasing Manager, the City will only consider an unsolicited proposal for formal evaluation if the submitting entity includes an executive summary covering major elements of the proposal. This executive summary is intended to serve as a public document, including but not limited to use of excerpts in solicitation of comparable proposals or in the processes identified in Section 2.7(a)(2). As an example, and not a limitation, this executive summary may include:
- (1) The name, contact information, and website of the Submitter;
 - (2) The name and contact information of all individuals authorized to represent the Submitter before the City; and
 - (3) Major elements of the proposal, not addressing any information considered confidential or proprietary that the Submitter intends to be exempt from disclosure, such as financial plans, corporate structure, or other information.
- (d) Unless otherwise provided by law, information submitted as part of an unsolicited proposal is open to public inspection and subject to the Colorado Open Records Act (“CORA”), consistent with the purchasing practices of the City. It is the Submitter’s responsibility to be familiar with the CORA. A Submitter may specifically identify any information it considers proprietary or confidential. If the City receives a request from another party to disclose information the Submitter has identified as proprietary or confidential, the City will tender to the Submitter the request and the Submitter shall have an opportunity to defend against release as set forth in the CORA request. The City shall not be required to take any position other than to disclose in accordance with CORA or to withhold disclosure if so permitted by court order. By submitting an unsolicited proposal containing information identified as proprietary, confidential, or otherwise exempt from disclosure, the Submitter agrees to defend and hold harmless the City from any claims, costs, fees or damages awarded as a result of a failure to comply with a CORA request for information submitted by a Submitter, including but not limited to any expenses including out-of-pocket costs and attorneys’ fees, as well as any judgment entered against the City for the attorney fees of the party requesting disclosure. Before the City will open and consider any unsolicited proposal, the City shall require all Submitters to sign an agreement at the time of submission acknowledging this indemnification and hold harmless obligation.

SECTION THREE: PROCUREMENT APPROVALS

3.1 Definitions.

For purposes of this Section Three:

“*City Manager Approval Amount*” shall mean either (a) \$300,000 for public works or capital improvements related purchases, or (b) \$150,000 for all other purchases. If a purchase amount is identified and authorized in the relevant annual City Council budget approval resolution, neither of these limits shall apply but the limit for City Manager Approval Amount for such purchases shall be the amount identified in such resolution.

“*Department Director*” shall mean the person holding the position set forth in the first column of the following table who shall have approval authority for procurement of goods and services by approval of contracts, agreements and purchase orders up to \$30,000 for the limited department/function as set forth in the second column of the table, provided:

- a. sufficient funds for such purchase(s) have been budgeted and appropriated by City Council; and
- b. the Department Director has executed the Department Director Acknowledgement attached as Appendix A, Form 1, a copy of which executed form shall be kept in the personnel file of the appropriate Department Director and on file with the Purchasing Manager.

<u>POSITION</u>	<u>APPROVAL AUTHORITY LIMITED TO PURCHASES NECESSARY TO CARRY OUT THE DUTIES OF THE FOLLOWING DEPARTMENTS/FUNCTIONS</u>
Deputy City Manager	Municipal Court, City Clerk's Office, IT Department, Office of Strategic Initiatives and Human Resources Department
Assistant City Manager	Economic Development as well as purchasing authority specified for the Community Development Director and Public Works Director
Chief Innovations Officer	IT Department
Communications Director.	Communication Department
Community Development Director	Community Development Department including purchases made for Building Services, Code Compliance, Open Space, Parks and Trails.
Finance Director.	Finance Department
Human Resources Director	Human Resources Department.
Public Works Director	Public Works/Facilities Department.
Director of Strategic Initiatives	Office of Strategic Initiatives.

3.2 Final Procurement Expenditures Approvals.

The following table indicates the authority level required for final expenditure approval dependent on the dollar threshold of the expenditure:

Procurement Process	Expenditure Range	Procurement Process	Procurement Approval Required By:
1	\$0 - \$5,000	Small Purchase	Department Director and (and for <i>Contracts, including POs, only</i> , Purchasing Manager). To the extent any person other than the Department Director within a department has been issued a P-Card or other form of payment by the City, the Department Director for the relevant department as set forth in the Section 3.1 Table has the authority to delegate purchasing authority by use of such P-Card to the delegee to allow purchases in amounts up to \$5,000.00 subject to approval of all such purchases by the Department Director prior to City payment. Any purchases on a P-Card in amounts of \$5,000.00 or greater shall require the advance written approval of the relevant Department Director for the purchasing department as set forth in the Section 3.1 Table.
2	Over \$5,000 to \$30,000	Simplified Procurement	Department Director and Purchasing Manager
3	Over \$30,000 to maximum City Manager Approval Amount	Formal Procurement	Department Director and Purchasing Manager and City Manager. Purchasing Manager shall determine whether City Attorney approval shall also be required.
	Over City Manager Approval Amount	Formal Procurement	Department Director and Purchasing Manager and City Manager and City Attorney and City Council For Procurement Classification 3 procurements over the City Manager Approval Amount the required procurement level may be deemed satisfied if the City Council approves by resolution authority of the City Manager to execute the applicable contract in an amount over the City Manager Approval Amount.

SECTION FOUR: PURCHASING AUTHORITY

4.1 City Council.

- (a) Authority for Policy. The responsibility for adopting the purchasing policy, processes and rules set forth in this Manual is delegated by the City Council to the City Manager pursuant to Centennial Municipal Code Section 2-2-130(b)(7) which authorizes the City Manager to establish purchasing policies consistent with federal, state and local law and within the annually approved budget with approval of Council. Such approval is set forth in Resolution 2013-R-71.
- (b) Authority for Delegation of Purchasing Determinations and Approvals. In accordance with Centennial Municipal Code Section 2-2-130(d), City Council approval of administrative purchasing policy, 2013-AP-01, as approved and ratified by Resolution 2013-R-71, constituted approval by the City Council for the City Manager to delegate authority in conformity with the requirements and limitations of this Manual, provided that sufficient funds have been budgeted and appropriated for any amounts awarded in such contracts, agreements or purchase orders.

4.2 City Manager.

- (a) Authority. The City Manager, consistent with the policy set forth in this Manual, may establish additional rules and regulations for the procurement of all goods and services and such rules and regulations shall be applicable to all City purchases to which this policy applies as set forth in Section 1.3.
- (b) Certain purchases of goods and services must be approved by the City Manager consistent with Sections 2 and 3 of this Manual. Pursuant to adopted policy and Section 3.1 of this Manual, the City Manager has authority to delegate the approval of contracts, agreements and purchase orders for goods and services (a) up to \$30,000 to Department Directors if such delegation is in writing signed by the City Manager and sufficient funds have been budgeted and appropriated by the City Council and (b) up to \$5,000 to Department Directors or Division Managers provided that sufficient funds have been budgeted and appropriated by the City Council.
- (c) If improper purchasing practices occur, the City Manager may invoke disciplinary action(s) upon the individual and/or department. Disciplinary action may be in the form of restricted purchasing delegation, restitution, suspension, termination or any other form of disciplinary action deemed appropriate by the City Manager.
- (d) Except as specifically limited in subsections (a) through (c) of this Section, all other authority given to the City Manager under the policy set forth in this Manual may be delegated by the City Manager.

4.3 Department Directors.

- (a) Authority. By authority of the City Manager, Department Directors or their designated representatives shall be delegated purchasing authority and responsibility consistent with Section 3.1 of this Manual.
- (b) Department Directors are responsible to ensure that all personnel in their department are knowledgeable of and fully understand purchasing procedures as set forth in this Manual. By following the

requirements established within this Manual, Department Directors may be able to make better use of budgeted funds for their department. **Through proper planning of purchases so as to allow sufficient time to obtain proposals, quotations or bids (with an allowable lead time for delivery), departments shall not only be able to realize savings through competition between vendors but shall also preclude unnecessary delays.**

- (c) Department Directors may delegate purchasing authority to their employees as required to facilitate the activities within their scope of responsibility. However, the ultimate responsibility remains with the Department Director for the activities of their subordinate employees.

4.4 Purchasing Manager.

Authority. By the authority of the City Manager, the Purchasing Manager shall be responsible for coordinating with Department Directors to ensure compliance with the contents of this Manual. It shall be his or her responsibility to comply with the following:

- (1) Procurement Classification 1 Purchases or Contracts. The Purchasing Manager is a resource for all Procurement Classification 1 purchases and persons making such purchases for the City are encouraged to confer with the Purchasing Manager to determine which Procurement Classification is appropriate and on relevant procurement practices.
- (2) Procurement Classification 2 and 3 Purchases or Contracts. The Purchasing Manager shall work directly with the Department Director or Director's designee on all Procurement Classification 2 and 3 purchases to determine the appropriate classification and procurement process consistent with this Manual.
- (3) Exemptions Approvals. The Purchasing Manager shall be responsible for providing written recommendations for all waiver and exemption request approvals as set forth in Section 5 of this Manual.
- (4) Minimum Expenditure. The Purchasing Manager shall act to procure for the City the highest quality in supplies, equipment and contractual services at the least expense to the City.
- (5) Encourage Competition. The Purchasing Manager shall endeavor to obtain as full and open competition as possible on all purchases consistent with this Manual.
- (6) Rules and Regulations. The Purchasing Manager may propose amendments to all City procurement rules and regulations authorized by this Manual and others necessary to its operation, for consideration and approval by the City Manager.
- (7) Purchasing Analysis. The Purchasing Manager shall keep informed on current developments in the field of purchasing, pricing, market conditions and new products and secure for the City the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition and by private businesses and organizations.
- (8) Forms. The Purchasing Manager shall prescribe and maintain such official City of Centennial forms as necessary for compliance with this Manual. Only official City of Centennial purchasing forms shall be used.

- (9) Bulk Purchases. When beneficial to the City, the Purchasing Manager shall maximize the benefits and the possibilities of buying “in bulk” so as to take full advantage of the economies of scale through quantity discounts.
- (10) Federal and State Tax Exemptions. The Purchasing Manager shall ensure that all federal and state tax exemptions which benefit City procurements are realized in the procurement process.
- (11) Cooperative Purchasing. When in the best interest of the City, the Purchasing Manager shall participate in, sponsor, conduct or administer cooperative purchasing agreements.
- (12) Training. The Purchasing Manager shall, from time to time, train City staff and elected officials on the policy set forth herein and its implementation.

4.5 All City Employees and Contractors with Contractual Procurement Services Authority.

Authority and Responsibility. All City employees and contractors with contractual procurement services authority have responsibility to make procurements for the benefit of the City only in accordance with the policies set forth herein. Compliance with this policy may be a factor in evaluation of employee and/or contractor job performance and disciplinary actions may be imposed in accordance herewith for failure to comply.

SECTION FIVE: HARDSHIP WAIVER AND EXEMPTIONS APPROVALS

5.1 Hardship Waiver from Formal Procurement. When otherwise applicable, formal procurement processes may be waived to take advantage of the exemption set forth in Section 2.4(b)(5), under the following conditions and in conformity with the following procedure.

- (a) Waiver shall be granted when formal procurement is deemed not to be in the best interest of the City because, due to circumstances beyond the reasonable control of the person or department requesting the waiver:
 - (1) the process may cause unavoidable time delay or unavoidable hardship for a department of the City; or
 - (2) the process may cause undue expense for the City.
- (b) In order for a waiver to be granted:
 - (1) the Department Director requesting the waiver must complete the Waiver Request Form as shown in Appendix A as Form 2;
 - (2) the completed Waiver Request Form must be submitted to the Purchasing Manager for a recommendation and signature; and
 - (3) the Waiver Request Form with the Purchasing Manager's recommendation must be submitted to the City Attorney and /or the Finance Director for final authorization of the waiver.

5.2 Sole Source Exemption from Formal Procurement.

- (a) Criteria. To take advantage of the exemption set forth in Section 2.4(b)(6), the following criteria must be met:
 - (1) The vendor is the original equipment supplier/manufacturer and similar parts, or equipment are not available from another manufacturer; or
 - (2) The vendor is the only source of equipment, materials or goods compatible with or conforming to City-owned equipment, materials or goods and addition of nonconforming equipment, materials or goods would require the expenditure of additional funds; or
 - (3) No other equipment, materials or goods are available that can meet the specialized needs of the department or perform the intended function; or
 - (4) Detailed justification is available which reasonably establishes that the vendor is the only source practicably available to provide the item or service required; or
 - (5) The product, equipment or service is functionally superior to all other competitive products.
- (b) Over \$5,000 and up to \$30,000. To take advantage of the sole source exemption for purchases over \$5,000 and up to \$30,000, Department Directors are responsible for selection and contract

administration. Simplified procurement processes are not required; however, Department Directors are responsible for selection based on applicable and appropriate qualifications, experience, referenced successes and cost factors. The Purchasing Manager must approve reliance on this exemption in writing in advance.

- (c) Over \$30,000. To take advantage of the sole source exemption for purchases with a total cost of over \$30,000, Department Directors are responsible for selection and contract administration. Formal procurement processes are not required; however, Department Directors are responsible for providing the written justification for the exemption and obtaining written approval before engaging any such exempted services or procuring exempted goods. Approval must be obtained in accordance with the following procedure.
- (1) the Department Director requesting the exemption must complete the Exemption Approval Form as shown in Appendix A as Form 3;
 - (2) the completed Exemption Approval Form must be submitted to the Purchasing Manager for a recommendation and signature; and
 - (3) the Exemption Approval Form with the Purchasing Manager's recommendation must be submitted to the City Attorney and /or the Finance Director for final authorization of the exemption.

5.3 Professional Services Exemption from Formal Competitive Bidding.

- (a) Criteria. To take advantage of the exemption set forth in Section 2.4(b)(7), the following criteria must be met:
- (1) The service provider has such required specialized knowledge, skill, reputation and/or experience to satisfy the specialized needs of the department or City; and
 - (2) the service provider provides services recognized as professional in nature by licensure, certification or other specialized training such as accountants, actuaries, appraisers, architects, attorneys, business consultants, business development managers, specialized engineers, public relations professionals, public finance professionals, recruiters, researchers, real estate brokers, or translators.
- (b) Over \$5,000 and up to \$30,000. To take advantage of the professional services exemption for purchases over \$5,000 and up to \$30,000, Department Directors are responsible for selection and contract administration. Simplified procurement processes are not required; however, Department Directors are responsible for selection based on applicable and appropriate qualifications, experience, referenced successes and cost factors. The Purchasing Manager must approve reliance on this exemption in writing in advance.
- (c) Over \$30,000. To take advantage of the professional services exemption for purchases with a total cost of over \$30,000, Department Directors are responsible for selection and contract administration. Formal procurement processes are not required; however, Department Directors are responsible for providing the written justification for the exemption and obtaining written approval before engaging any such exempted services or procuring exempted goods. Approval must be obtained in accordance with the following procedure.
- (1) the Department Director requesting the exemption must complete the Exemption Approval Form as shown in Appendix A as Form 3;

- (2) the completed Exemption Approval Form must be submitted to the Purchasing Manager for a recommendation and signature; and
- (3) the Exemption Approval Form with the Purchasing Manager's recommendation must be submitted to the City Attorney and /or the Finance Director for final authorization of the exemption.

5.4 Emergency Purchases Exemption from Formal Competitive Bidding.

(a) Criteria. To take advantage of the exemption set forth in Section 2.4(b)(8), the following criteria must be met:

- (1) dangerous condition, potentially dangerous condition, or immediate need for supplies, equipment or services exists requiring the purchase to protect the public safety, health or welfare of citizens when in imminent jeopardy;
- (2) immediate repair is necessary to prevent further damage to public property, machinery or equipment;
- (3) the functioning and operation of a City department would be seriously hampered or delayed through use of the normal purchasing process; or
- (4) equipment breakdown or act of God threatens to terminate essential services.

(b) Process.

- (1) To take advantage of the emergency purchase exemption, the appropriate Department Director must contact the City Manager and provide the following information:
 - a. The nature of the emergency;
 - b. The estimated cost of the services/goods required; and
 - c. The vendor recommended to receive/fulfill the order.
- (2) The City Manager may authorize the procurement of such emergency needs by informal procedures, as expeditiously as possible, at not more than commercially reasonable prices. When expenditures exceed the then-effective City Manager's approval authority, a full report of the circumstances necessitating the emergency action shall be timely reported to the City Council by the City Manager.

SECTION SIX: INFORMATION TECHNOLOGY (IT) PURCHASES

6.1 Authority of Information Technology Staff. All purchases of Information Technology (IT) must have prior written approval of the City's IT Staff.

6.2 General Guidelines.

- (a) Each department shall be responsible for ensuring no unauthorized software or programs are installed on their machines by their assigned personnel. Should an unauthorized installation be discovered on a department machine by IT Staff or IT consultants, the assigned department head shall be notified.
- (b) Only software/hardware properly licensed or owned by the City of Centennial may be installed on City-owned machines. All City computer hardware/software classified as "infrastructure" or "City-wide" shall be under the jurisdiction of the City's IT Staff.
- (c) Any software or browser plug-ins downloaded from the internet needed to view, hear or read web pages shall be the responsibility of the user to install and trouble shoot. Patches, minor updates and hardware drivers for approved software and hardware may be downloaded from the internet.

SECTION SEVEN: ETHICS IN PUBLIC PROCUREMENT

7.1 General Statement. The objectives of public procurement include conserving public funds and inspiring public confidence. Any erosion of honesty, integrity and openness is more injurious to public procurement than to most other public pursuits. The appearance of impropriety may be as harmful to public confidence in its government as an actual case of misconduct. For that reason, all personnel, employed or contracted, involved directly or indirectly in procurement transactions, from the original purchase to the ultimate disposal, must be guided by the highest standards of ethical conduct.

The City has a generally applicable Code of Ethics which shall also govern procurement activities.

7.2 Employee Conflict Policy. No public employee or contractor having official responsibility for a procurement transaction shall represent the City in that transaction when the employee knows that:

- (a) He or she is contemporaneously employed by a bidder, proposer or contractor involved in the procurement transaction;
- (b) He or she or his or her partner or any member of his or her immediate family holds a position with a bidder, proposer or contractor, such as officer, director, trustee or partner, has a personal and substantial participation in the transaction, or owns or controls more than five percent of the firm;
- (c) He or she, or his or her partner or any immediate family member has a pecuniary interest in or arising from the transaction; or
- (d) He or she, or his or her partner or any immediate family member is negotiating or has an arrangement concerning prospective employment with a bidder, proposer or contractor.

7.3 Employee Non-disclosure Policy. Whenever Procurement Classification 3 processes are utilized, no employee or contractor having official responsibility for a procurement transaction shall disclose the identity or information derived from competing proposals to any bidder or proposer that might provide an unfair advantage over a competing bidder or proposer.

7.4 Vendor Requirements. The City of Centennial stipulates certain ethical requirements for vendors participating in procurement transactions. Those statements are generally stated as follows:

- (a) No bidder, proposer, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services, present or promised;
- (b) As required in any Soliciting Document, all bidders, proposers, contractors or subcontractors shall complete a disclosure of interest form to disclose any personal interest of any public official with such bidder, proposer, contractor or subcontractor and any other conflict information as requested in such Soliciting Document;
- (c) Failure to make the required disclosure may result in disqualification, disbarment, suspension from bidding and/or rescission of contracts;

- (d) No contractor or subcontractor shall give, demand or receive from any suppliers, subcontractors or competitors any bribe or kickback or anything of value in return for participation in a procurement transaction or agreeing not to compete in a transaction; and
- (e) Architects or engineers employed or contracted by the City may not furnish building materials, supplies or equipment for any structure on which they are providing professional services unless the Soliciting Document specifically seeks and authorizes design/build services. The City also does not accept bids or proposals from consultants or bidders who have solely and directly prepared specifications for a specific requirement, regardless of whether the consultant/bidder was paid for the specification.

7.5 Gratuities and Kickbacks.

- (a) Gratuities. It is a breach of ethical standards for any person to offer, give or agree to give any employee or public official or contractor on a project involving procurement on the City's behalf by the contractor, having official responsibility for a procurement transaction, a financial gratuity or offer of employment or employment in connection with any decision or recommendation concerning a possible or actual purchase by and/or on behalf of the City.
- (b) Kickbacks. It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract and solicitation thereof.

7.6 Confidential Information. It shall be a breach of ethical standards for any employee or public official or contractor on a project involving procurement on the City's behalf by the contractor, having official responsibility for procurement transactions, to knowingly use confidential information for his or her personal or financial gain or the personal gain of others.

7.7 Employee Personal Purchases. It is a breach of ethical standards for any employee or public official or contractor on a project involving procurement on the City's behalf by the contractor, having official responsibility for procurement transactions, to solicit or request personal monetary discounts or other financial consideration from vendors based on employment with the City of Centennial.

7.8 Public Disclosure Record. State statutes codified at C.R.S. § 31-4-401 et seq. and § 24-18-101 et seq. allow the City to accept a bid, quotation or proposal which complies with the City's procurement policies and this Manual, and is the lowest received in an competitive open process, even if the bidder is an employee or officer of the City, if the employee or officer has disclosed real or potential conflicts of interest and has abstained from voting on related issues. To qualify, an employee or officer shall file a public disclosure record (PDR) outlining the individual's financial interest. Completed forms shall constitute a public record filed in the office of the City Clerk.

7.9 Sanctions.

- (a) Employees. The City Manager may impose any one or more of the following sanctions on a City employee for violations of the ethical standards set forth in this section and the City's personnel policies:
 - (1) Oral or written warnings or reprimands;
 - (2) Reassignment, transfer or suspension with or without pay for specified periods of time; or
 - (3) Termination of employment.

(b) Nonemployees. The City Manager may impose one or more of the following sanctions on a nonemployee for violation of the ethical standards:

- (1) Written warnings or reprimands;
- (2) Termination of contracts; or
- (3) Disbarment or suspension from consideration for future award of contracts.

SECTION EIGHT: PURCHASE ORDER

8.1 Purpose. A purchase order is a document that states the terms and conditions of a proposed transaction and creates a contractual relationship between a vendor and the City. It describes the quantity and quality of the required goods or services and includes other information, such as shipping terms, delivery dates and location, and prices quoted in the solicitation response.

8.2 When to Use Purchase Orders. Purchase orders are required for all invoiced purchases of commodities, materials or supplies and services with an expected expenditure of City funds of \$5,000 or more unless another form of contract is previously approved by the Purchasing Manager.

8.3 Process. Purchase orders shall be completed in accordance with the instructions posted, along with the purchase order form, on the City's intranet.

SECTION NINE: SHIPPING HANDLING AND RECEIPT OF GOODS

9.1 Meaning of FOB Terms.

Freight Term	Ownership	Payment Term
Shipping Point	Ownership passes to City when product is signed for by the carrier at the vendor's shipping point. (City owns product in transit.)	City is billed by and pays vendor for freight charges.
Destination / Add	Ownership passes to City when the carrier delivers the product to the delivery point specified by City. (Vendor owns product in transit.)	City is billed by and pays vendor for freight charges.
Destination	Ownership passes to City when the carrier delivers the product to the delivery point specified by City. (Vendor owns product in transit.)	Freight charges are added to product unit price.
F.O.B. Origin / Freight Prepaid & Allowed	Ownership passes to City when product is signed for by the carrier at the vendor's shipping point. (City owns product in transit.)	City is not billed. Vendor pays the freight charges.
F.O.B. Origin / Freight Collect	Ownership passes to City when product is signed for by the carrier at the vendor's shipping point. (City owns product in transit.)	Upon delivery, City is billed by or pays the carrier for freight charges.
F.O.B. Destination / Freight Collect	Ownership passes to City when the carrier delivers the product to the delivery point specified by City. (Vendor owns product in transit.)	Upon delivery, City is billed by or pays the carrier for freight charges.

9.2 FOB Destination (Free on Board Destination). The City's preferred shipping and handling term is FOB Destination (Centennial).

FOB Destination means the vendor maintains title for the goods until the purchaser receives them. The vendor pays the shipping costs and is responsible for claims against the carrier.

9.3 FOB Origin. Accepting a quote of FOB origin has consequences for the City if the shipment is lost or damaged because the City accepts title to the goods from the moment they are picked up by the carrier. The City pays shipping costs and is responsible for claims against the carrier.

9.4 Receipt of Goods Procedure. When the material is delivered to the department, the authorized agent of the department, as assigned by the Department Director, shall inspect the delivery to ensure the material(s) are as listed on the shipping document and are in acceptable condition.

If all materials are received in acceptable condition, the receiving department shall submit the invoice for approval to their authorized department personnel who then process the invoice for payment.

If materials received are damaged or defective, they should not be used. If possible, notation should be made upon the receipt in the presence of the delivery agent. Departments shall notify the Purchasing Manager immediately when damaged or defective commodities are received.

SECTION TEN: CONTRACTS

10.1 General. “Contract” shall mean any agreement enforceable by law between the City and one or more outside parties, regardless of form or title, for the procurement of materials or services. To be effective, a contract must include offer and acceptance by competent parties and the furnishing of some good or service for an agreed monetary consideration.

10.2 Origin of Contracts. Contracts for purchases can be originated in several ways:

- (a) City Form. These contracts for purchases are initiated by use of a City created form of purchase order, services agreement or other similar form of purchase agreement. These contracts must be on a form available through the Purchasing Manager who may determine that the City Attorney’s Office should be consulted to customize or create such form depending on the nature of the purchase.
- (b) Vendor Form. Under certain circumstances such as sales of software, music, standard services or other goods or products involving a large intellectual property component, purchases can be made through use of a vendor supplied form with the prior approval of the Purchasing Manager.
- (c) State Contracts and Price Agreements. Under a permissive State law (C.R.S. § 24-110-101 *et seq.*), the City may purchase from State contracts and price agreements. These contracts are entered into by the State of Colorado, Department of Administration, Division of Purchasing or other State departments with contractual authority. If these agreements have a clause acknowledged by the contractor, they may be used by other political jurisdictions, such as the City. When available and in the best interest of the City, the Purchasing Manager may forego the bid process and purchase directly from the State award vendor(s).
- (d) Cooperative Purchase Contracts. These contracts are created by a voluntary pooling of interests by governmental units. If required by the bid documents or if the contractors agree, they may be used by other political jurisdictions such as the City. When in the best interest of the City, the Purchasing Manager has authority to “piggyback” such agreements for the acquisition of supplies and services without going through the formal bid/proposal process. Final authorization shall adhere to Section 3 requirements.

10.3 Contract Approval. Unless a specific delegation or exemption is made by City Council by resolution, code, regulation or letter of authority to another official or employee, required approval thresholds are as delineated in Section 3.2.

10.4 Contracts for Personal Services.

- (a) Before contracting with any service provider to provide personal services to the City, the Department should be certain that the relationship conforms to federal and state law for determining whether an employment relationship has been inadvertently created. Care must be taken to make sure the personal services contract does not establish an employer-employee relationship with the City under the Fair Labor Standards Act, the Internal Revenue Code, or state unemployment and workers’ compensation statutes.
- (b) Generally, the following tests support a personal services contract with an individual:

- (1) The service provider performs similar services on a contractual basis for other clients and does not combine its business operations with those of the City;
- (2) The service provider pays tax withholding and social security withholding as a self-employed person and agrees to do so during its contract with the City;
- (3) The service provider shall perform the duties independently without training or direct detailed supervision by the City to include independence in establishing work hours and location of performance of duties and the manner in which the work is to be performed; and
- (4) Payment for services is made to the trade or business name of the service provider and is in the form of a fixed or contract rate (rather than an hourly or salaried rate).

10.5 Contract Oversight.

- (a) The Department receiving the goods and/or services shall be responsible for administering or overseeing the performance of obligations under any relevant contract. The Department Director is responsible for designating the contract administrator or coordinator within the department prior to the solicitation of service contracts by name and title.
- (b) The departmental contract administrator or coordinator shall be responsible for assuring that the contractual relationship is completed successfully and in accordance with contract terms and conditions. The contract administrator or coordinator may or may not be a City employee.
- (c) Among the activities of a contract administrator or coordinator is the following:
 - (1) Inspecting, accepting and recording contractor performance;
 - (2) Communicating the City's requirements to and with contractors;
 - (3) Evaluating contractor performance;
 - (4) Notifying the City's Purchasing Manager promptly of any disputes, failures to perform or other problems with contractors;
 - (5) Documenting all activities of the contract and assuring copies of important documents are retained and/or forwarded to purchasing; and
 - (6) Processing payments and contract close-out documents.

10.6 Contract Issues to Be Addressed. All City contracts for services must contain a thorough detailed scope of services or work, clearly outlining the City's expectations of the service provider and the desired outcomes, deliverables and timeframes. In addition, all such contracts must contain sufficient standards by which the work or services may be evaluated to determine if the City is achieving value in exchange for compensation paid under the contract.

10.7 Contracts for Public Improvements/Construction.

- (a) When a contract for public improvements is awarded in excess of fifty thousand dollars (\$50,000), the following bonds or security shall be delivered to the City and shall become binding on the parties upon execution of the contract prior to the contractor initiating any work under the contract for the specified public improvements:

- (1) A Performance, Payment, Maintenance and Warranty Bond (“Bond”) satisfactory to the City, executed and guaranteed by a surety company authorized to do business in the State of Colorado, in an amount equal to one hundred percent (100%) of the price and/or compensation specified in the contract; or
 - (2) Alternative security deemed sufficient to guarantee payment of all obligations incurred by the contractor in an amount equal to one hundred percent (100%) of the price and/or compensation specified in the contract, in a form reviewed and approved by the City Attorney’s Office.
- (b) In accordance with Article 26 of Title 38, C.R.S., the City reserves the right to require a Bond for any contract for public improvements that is equal to or less than Fifty Thousand Dollars (\$50,000) if the City determines in its sole discretion that requiring such Bond is in the best interests of the City. Nothing in this section shall be construed to limit the authority of the City to require a performance bond or other security in addition to these bonds or in circumstances other than those specified.

10.8 Multiyear Contracts. Unless otherwise provided by law, a contract for supplies or services may be entered into for a period of time deemed to be in the best interest of the City. Payment and performance obligations for succeeding fiscal years shall be subject to availability and appropriation of funds.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled, and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

Renewals, extensions and/or amendment of contracts are addressed in Section 2.2(d).

SECTION ELEVEN: CHANGE ORDERS - ACCEPTANCE - PAYMENT

11.1 When Change Orders Are Executed. Change orders are appropriate for public improvement and/or construction contracts. Changes to contracts for professional services should not be memorialized by change order but shall require an amendment or renewal or extension of the agreement, as the case may be.

11.2 Purpose of this Section. The purpose of this Section 11 is to delineate the authorities and procedures of the City's change order control system. The purpose of a change order is to recognize changes occurring on jobs that may result in amendments to the project time schedule and/or cost. Change orders that affect time schedules shall be approved by the appropriate Department Director. Change orders that result in additional costs shall comply with the approval authority thresholds set forth in Section 11.4. These thresholds apply to both the design phase (professional service agreements) and construction phase (construction contracts).

11.3 Procurement Requirements for Change Orders – Public Improvement Projects/Construction. Any construction change order which authorizes additional work and associated compensation under an existing construction contract may be executed without formal procurement (if otherwise applicable) when:

- (a) the additional work is required for the completion of an improvement that is currently under construction; and
- (b) there are sufficient budgeted and appropriated funds for the amounts due for the work contemplated under the change order; and
- (c) either or both
 - (1) the additional work results from the unforeseen physical conditions at the site of the improvement under construction and is required for the completion of the improvement under construction, and/or
 - (2) a written finding has been made by the Department Director of the department overseeing the contract, or his or her designee, that it is in the City's best interest to negotiate with a specific, generally on-site, contractor for the construction of the improvement(s).

11.4 Authority to Execute Change Orders and Dollar Thresholds.

- (a) If the requested change shall affect only time or shall increase the contract amount by \$5,000 or less and the aggregate of change orders, including the proposed change order, plus the original contract amount are less than the amount budgeted and appropriated for that contract and/or project, the change order may be approved by the Department Director.
- (b) If the requested change shall increase the contract amount by \$30,000 or less and the aggregate of change orders, including the proposed change order, plus the original contract amount, are less than the amount budgeted and appropriated for that contract and/or project, the change order must be approved by the Department Director and Purchasing Manager.

- (c) If the requested change in contract amount is more than \$30,000 and less than the City Manager Approval Amount and the aggregate of change orders, including the proposed change order, plus the original contract amount are less than the amount budgeted and appropriated for that contract and/or project, the change order must be approved by the Department Director, Purchasing Manager and the City Manager.
- (d) If the requested change in contract amount is at or more than the City Manager Approval Amount or the aggregate of change orders, including the proposed change order, plus the original contract amount, is more than the amount budgeted and appropriated for that contract and/or project, the change order must be approved by the Department Director, Purchasing Manager, City Manager and City Council except that procurements over the City Manager Approval Amount are authorized if the City Council has approved by resolution authority of the City Manager to execute the applicable contract and all change orders in an amount over the City Manager Approval Amount.

11.5 Payment. A request for change must be completed and approved before any change order is effective. Funds shall be encumbered after approval of the change order.

SECTION TWELVE: PROCUREMENT CLASSIFICATION 3 FORMAL PROCUREMENT

12.1 Public Notice Required. Unless the Department Director of the department making a procurement has determined that pre-qualification in accordance with Section 12.2(C) is appropriate, purchases of Procurement Classification 3 commodities and/or services estimated to cost \$30,000 or more shall be publicly noticed by such methods as advertising on the internet, on a bid site, by published notice in a newspaper, or such other public method as determined by the Purchasing Manager. Public notice of solicitations shall state the place, date and time of the bid or proposal opening.

12.2 Processes for Formal Procurement. One of the following procedures may be utilized to fulfill Formal Procurement requirements at the direction of the Department Director in consultation with the Purchasing Manager:

(a) Invitation for Bid (IFB). Unless otherwise provided in a specific IFB, the following shall control:

- (1) Generally. The IFB is a method of source selection in which the award is made to the responsive and responsible bidder submitting the lowest cost bid that complies with the detailed specifications and/or scope of work contained in the IFB. An IFB shall include specifications and all contractual terms and conditions applicable to the procurement, as well as the bid opening place, time and date. Bids are sealed and opened in public at the time and place as set forth in the IFB, unless all bidders have been notified by the City of a change in the time or place by written addendum to the IFB. A tabulation of all received and opened bids shall be formulated and made available for public inspection.
- (2) Bid Submission and Bid Evaluation. Bids shall be unconditional and submitted without alteration or correction except as authorized in this subsection. Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that shall affect the price and be considered in evaluation for award shall be objectively measurable, such as discounts, allowances, transportation costs and total or life cycle costs.
- (3) Specifications. Specifications shall be made available to all interested parties as stated in the IFB. If for any reason whatsoever it is necessary to change the specifications or any other of the formal data and there is adequate time as determined by the Purchasing Manager prior to the date of bid opening, an addendum shall be issued setting forth the changes. It shall be the obligation of bidders to ensure they have received all addenda.
- (4) Bid Submission. Bids must be received prior to the specified time as established in the IFB. Bids may be received earlier and shall be kept sealed and confidential until the bid opening. Bids received after the specified deadline may be immediately returned to the nonresponsive submitter unopened.
- (5) Bid Opening. The opening of sealed bids shall be conducted in a manner to protect confidentiality and to ensure fairness.
- (6) Correction or Withdrawal of Bids. Correction or withdrawal of inadvertently erroneous bids before and after a bid opening may be permitted in accordance with the IFB.

- (7) Award. Generally, an award shall be made by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB including, without limitation, consideration of performance on similar projects or contracts, letters of reference and prior performance with the City. The City retains the right to reject or modify any bids, awards always being subject to negotiation and execution of a mutually acceptable agreement. The City reserves the right to review and award bids at its discretion to responsive and responsible companies which may or may not be the low bidder.

(b) Request for Proposal (RFP). Unless otherwise provided in a specific RFP, the following shall control:

- (1) Competitive Sealed Proposal/Competitive Negotiation Process. Proposals shall be solicited through a RFP process when, for example: (1) the Purchasing Manager or his/her designee determines that the complex nature or technical details of a particular procurement make the use of competitive sealed bidding either not practical or not advantageous to the City; (2) specifications cannot fairly or objectively be prepared as to permit sufficient competition; (3) high technology and electronic equipment is available from a limited number of sources; or (4) specifications cannot practically be prepared except by reference to specifications of the equipment of a single source of supply.
- (2) Receipt of Proposals. Sealed proposals shall be submitted at the time and place as set forth in the RFP. Only the names of the proposer will be read in public at the time proposals are due. No proposals shall be opened until the time designated in the proposal document or addenda.
- (3) Evaluation Factors. Proposal evaluation criteria shall be as set forth in the RFP. Final consideration for awarding of contract shall not be based solely on price. A combination of qualifications, experience, demonstrated successes, references, fees and costs, capacity to fulfill all requirements of the contract and other qualifying considerations may be considered for evaluation purposes.
- (4) Discussion with Responsible Proposers and Revisions to Proposals. As provided in the RFP, discussions may be conducted with responsible proposers who submit proposals determined to have a reasonable likelihood of being selected for award.
- (5) Award. Award shall be made to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration price and evaluation factors. This process may include discussions and negotiation between the City and proposer. The City retains the right to reject or modify any proposals, awards always being subject to negotiation and execution of a mutually acceptable agreement.

(c) Request for Qualifications (RFQ).

- (1) Pre-Qualifying Submitters or Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, prior to the issuance of a Soliciting Document, the City may determine to issue a Request for Qualification, RFQ, requesting the submission of un-priced offers to be followed by a Soliciting Document limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation. Only the providers of products or services that meet the specifications or experience will be permitted to submit bids or cost proposals. In addition, the RFQ process is used when the desired services are not as well defined and depend on the submitter's ability to appropriately

identify and address the problem(s) or issue(s). This process is most often used for selection of professional services. The submitters submit statements of qualifications, and the City then issues a Soliciting Document limited to those submitters whose response to the RFQ have indicated ability and satisfied other criteria such that the City desires to seek a proposal from such Submitter.

- (2) In determining whether to issue an initial Soliciting Document only to Pre-Qualified Submitters, the Purchasing Manager shall consider the best interests of the City and may consider whether a project or contract:
 - a. requires complex or unusual expertise or techniques;
 - b. involves a particularly tight time frame;
 - c. involves experience in a very specific field; or
 - d. has a projected budget of \$500,000 or more.
 - (3) The method of submitting pre-qualification information and the information required in order to be pre-qualified shall be determined by the Purchasing Manager.
- (d) Reverse Auction. Reverse Auction is an alternative competitive procurement method. This method is an electronic bidding process in which suppliers competitively bid for a defined product or service over a period of time. Bids are sealed; therefore, bidders know only their position during the auction and are permitted to re-bid until the process closes.

12.3 Nonresponsive bids/proposals.

- (a) Defined. A responsive bid/proposal is one that is in substantial conformance with the requirements of the Soliciting Document.
- (b) Determination of Nonresponsiveness. The following are examples of nonresponsive Submitters:
 - (1) A Submitter who fails to deliver a bid/proposal prior to the specified place, time and date as shown on the Soliciting Document is considered late and the bid/proposal shall not be opened.
 - (2) A Submitter who fails in the bid/proposal to conform to required delivery schedules as set forth in the Soliciting Documents or in the permissible alternatives.
 - (3) A Submitter who qualifies prices in such a manner that the firm's bid/proposal price cannot be determined (such as "price in effect at time of delivery").
 - (4) A Submitter who fails to offer goods or services that comply with the specifications of the Soliciting Document.
 - (5) A Submitter who makes the City the responsible party for determining that the bidder's alternative products or services conform to the specifications.
 - (6) A Submitter who fails to furnish bid surety when required.
 - (7) A Submitter who limits the rights of the City under any contract clause unless information on such limitations are invited.

12.4 Solicitation Irregularities. The Purchasing Manager has authority to waive irregularities if: (a) the item being waived is only a matter of form or is an immaterial variation from the exact requirements set forth in the Soliciting Document; (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 proposers or be otherwise prejudicial to them. Examples of minor irregularities that may be waived are:

- (a) Failure to furnish with the bid certain required information regarding the vendor's qualifications to perform the contract.
- (b) Failure to submit required descriptive information on the products offered.
- (c) Failure to return the proper number of executed bids or attachments, including certifications and affidavits.
- (d) Failure to return a bid addendum or amendment if on the face of such bid the bidder acknowledges receipt of addendum or amendment or if the addendum or amendment does not have material effect on the bidder's liability under the terms of the contract.
- (e) Failure to sign a bid, when evidence is submitted with the bid that clearly shows that the bid was the one intended by the bidder and that failure to sign was strictly an oversight.

When such minor irregularities are discovered by the Purchasing Manager, the Submitter is requested to remedy the problem within a reasonable timeframe by later submitting omitted data or by providing a written statement of intent.

12.5 Rejection of Bids. Unless otherwise specified in the Soliciting Document, bids/proposals may be rejected when one or more of the following occur:

- (a) Bids/proposals exceed the budgeted amount;
- (b) There are no responsible Submitters;
- (c) There are no responsive Submitters;
- (d) The project is abandoned;
- (e) The specifications, scope and/or terms and conditions are revised; or
- (f) Irregularities exist in the procurement process as determined by the Purchasing Manager and/or the City Manager.

12.6 Protested Solicitations or Awards.

- (a) **Protest.** Any actual or prospective bidder, contractor or vendor who is aggrieved in connection with the solicitation or award of a contract and purchase order may protest to the Purchasing Manager, or City Manager as set out in this section. The protest shall be submitted in writing to the Purchasing Manager or his designated representative within seven working days after the aggrieved person knows or should have known of the facts giving rise thereto.
 - (1) Protests in connection with a solicitation or award of a contract involving an amount less than \$30,000 shall be filed with and determined by the Purchasing Manager.
 - (2) Protests in connection with a solicitation or award of a contract involving an amount of \$30,000 or more shall be filed with and determined by the City Manager.

(b) Authority. The City Purchasing Manager or City Manager, as set out in this section, shall have the authority to settle and resolve a protest of an aggrieved bidder, contractor or vendor, actual or prospective, concerning a solicitation or award of a contract. A written decision regarding the protest shall be rendered within 30 working days after the protest is filed. The City reserves the right to make determinations that are deemed in the best interest of the City. If 30 days have passed without a decision, the written protest shall be forwarded to the City Attorney's office for resolution.

12.7 Confidentiality. To the extent permitted by the Colorado Open Records Act, after solicitations are opened, they become confidential documents until the Purchasing Manager or designee awards the contract or the solicitation project is cancelled. Staff, contractors and City officials shall not discuss solicitations with competing vendors. Vendor questions must be referred to the Purchasing Manager. Unless directed to do so by the Purchasing Manager, Staff shall not discuss with any vendor the recommended award or the reasons for awarding or not awarding.

SECTION THIRTEEN: SPECIFICATIONS

13.1 Specifications. The term “specification” or “specifications” refers to that portion of a Soliciting Document that describes the required characteristics of a commodity or service. It is used interchangeably with the terms “purchase description”, “purchase specification”, “purchase requirement”, “commercial item description”, “scope of work” and “statement of work.” A specification may include requirements for samples, prototypes, inspection, testing, warranty and packaging. The specifications are the communication medium between the purchaser and the seller and the basis on which the bids are prepared. Specifications for each item should be definite and precise to eliminate the possibility of misunderstanding on the part of the vendor or the purchaser.

The fundamental premise of public procurement is that maximum price competition minimizes government costs. Specifications shall be prepared accordingly. Specifications should be detailed to provide a basis for full and fair competitive bidding upon a common standard and should be free from any restrictions that would have the effect of stifling competition.

Specifications which call for only one “brand or trade name” item to be furnished shall not be issued unless prior approval is granted by the Department Director. “Brand names” may be used to establish acceptable or minimum standards that all vendors must meet or exceed.

13.2 Authority for Specifications. The Purchasing Manager is responsible for and has the authority to accept or reject any specification. Since the purpose of a specification is to translate a user’s need into the delivery of a good or service, the development of specifications must be a cooperative effort between the department making the purchase and the Purchasing Manager. However, prior to release of a specification as part of a Soliciting Document, the Department Director and Purchasing Manager must be satisfied that it shall result in a fair and equitable competitive procurement.

13.3 Types of Specifications. There are several types of specifications. The development, selection and use of a particular type depends on the situation, time, information available and needs of the user.

(a) For Goods:

- (1) Performance Specifications. Performance specifications are preferred since they communicate what a product is to do, rather than how it is to be built. Among the ingredients of a performance specification would be the following:
 - a. A general nomenclature or description;
 - b. Required performance characteristics (minimum/maximum) to include speed, storage, production capacity, usage, ability to perform a specific function;
 - c. Operational requirements, such as limitations on environment, water or air cooling, electrical requirements;
 - d. Site preparation requirements for which the contractor shall be responsible, such as electricity or plumbing, or for which the City shall be responsible;
 - e. Compatibility requirements with existing equipment or programs;

- f. Conversion requirements for maintaining a current equipment or system until switching to the new equipment or system;
- g. Installation requirements;
- h. Delivery date;
- i. Maintenance requirements;
- j. Supplies and parts requirements;
- k. Quantity and method of pricing;
- l. Warranty; and
- m. Service location and response time.

Note: Performance specifications shall be developed by City departments unless impractical or unnecessary to fully and accurately describe department requirements.

- (2) Design Specifications. Design specifications employ dimensional and other physical requirements and concentrate on how a product is fabricated, rather than on what it should do. Design specifications are normally prepared by architects and engineers for construction or custom manufactured products. Among the ingredients of a design specification would be the following:

- a. Dimensions, tolerances and specific manufacturing or construction processes;
- b. References to a manufacturer's brand name or model number; and
- c. Use of drawings and other detailed instructions to describe the product.

- (3) Brand Name Specifications.

- a. A brand name specification may be used only when the Purchasing Manager, in consultation with the Department Director, has determined that sufficient sources of competition exist for the procurement of the material and that the use of the brand name specification is not intended to limit or restrict competition.
- b. A brand name specification may also be used to describe the standard of quality, performance and other salient characteristics of a material in lieu of a description of its physical or functional characteristics. In such cases, the solicitation shall contain explanatory language that the use of the brand name is for the purpose of describing the standard desired and that the substitution of equivalent materials is permitted.
- c. When a specification mentions a manufacturer's brand name or model number, it may also include the words, "or equal." In this regard, "or equal" is interpreted to mean, "substantially (real, actual and/or true, not imaginary) equal and capable of performing the essential functions of the referenced brand name or model." The Soliciting Document should identify any specific features of the referenced brand that must be met.

- (b) For Services (Service Delivery Specifications (aka – Scope of Work/Services)): The following is an outline of the types of information that should be included in a scope of work or scope of services developed for procurement of independent contractors providing services *other than construction*.
- (1) General Requirements. Describe, in general terms, the contractor’s responsibility to provide a service or produce a final product.
 - (2) Specific Requirements. Next, address the specific tasks, sub-tasks, parameters and limitations which must be considered in producing the service or final project. Such factors as the following should be included:
 - a. Details of work environment;
 - b. Minimum or desired qualifications;
 - c. Amount of service needed;
 - d. Expected results;
 - e. Location of service;
 - f. Definition of service unit;
 - g. Time limitations;
 - h. Travel regulations or restrictions;
 - i. Special equipment required; and
 - j. Other factors affecting working environment.
 - (3) City-Provided Materials or Services. List any plans, reports, statistics, space, personnel or other City-provided items that must be used, or are available for use, by the contractor.
 - (4) Deliverables, Reports and Delivery Dates. Identify the specific delivery dates for all services and products the contractor must furnish.
 - (5) Performance Measurements. Identify clear expectations for the contractor’s performance and how and by what methods (quantitative or qualitative) performance shall be measured for compliance with the contract.

13.4 Specifications “Do’s and Don’ts.”

(a) Do:

- (1) Use the word “must” or “shall” to describe a command or mandatory requirement;
- (2) Use the word “may” to describe an advisory or optional requirement;
- (3) Be specific and detailed in presenting mandatory requirements; and
- (4) State a requirement of fact once and avoid duplication.

(b) Don’t:

- (1) Present something as mandatory if it is really only optional;

- (2) Write specifications or scope of work that restrict response to a single bidder/proposer; and
- (3) Place bid/proposal administrative or contractual terms in the specification portion of the document.

13.5 Preparation of Specifications. All specifications shall be drafted so as to promote overall economy for the purpose intended to encourage competition in satisfying the City's needs and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including, but not limited to, those prepared for the City by independent architects, engineers, designers and draftsmen.

Departments are responsible for the first draft of specifications to be submitted to the Purchasing Manager. Lengthy and complex specifications should be submitted to the Purchasing Manager via e-mail attachment. The Purchasing Manager and purchasing department shall collaborate to develop the final document.

Bids and quotations should be based on concise but adequate specifications. A lengthy specification composed or designed solely to eliminating competition, other than those able to supply a brand name commodity, should be avoided and the actual brand name or common description should be used when no other of its kind would be equally satisfactory. The Purchasing Manager has authority to require modifications or alterations to a specification to permit competitive bidding. The Purchasing Manager shall furnish the requesting department representative with a written report of any change(s) and why change(s) is desired and/or necessary.

13.6 Changing Specifications. Once a Soliciting Document has been posted, no changes in the specifications may be made unless an addendum is issued, clearly pointing out such changes. The addendum shall instruct each vendor responding to the Soliciting Document to indicate receipt in their response. Once a decision has been reached on the specification(s), all responses must be based upon the same specifications and no vendor has a right to substitute other specifications for those contained in the Soliciting Document unless such variation is specifically invited in the Soliciting Document.

SECTION FOURTEEN: TERMS AND DEFINITIONS

14.1 Terms and Definitions.

Bid: A competitive price offer made by an intended seller, usually in reply to an invitation to bid.

Bid bond: An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific awarded bidder fails to sign the contract as bid.

Bid deposit: A sum of money or check deposited with and at the request of the City to guarantee that the bidder (depositor) shall, if selected, sign the contract as bid. If the bidder does not sign the contract, the deposit is forfeited in the amount of the deposit.

Bid opening: The act of opening the bids received.

Brand name description: A description that identifies a single item or source for a product or service on a proprietary basis. Products are usually referenced by model or part number.

Change order: Purchaser's written modification or addition to a purchase order or a contract.

City: City of Centennial, State of Colorado.

City Manager: The City Manager or his or her designee, except that the authority to delegate final procurement approvals must follow 4.2(b).

City Manager Approval Amount: See Section 3.1.

Competitive sealed bid: The offer of set bids by individuals or firms competing for a contract, privilege or right to supply specified services or merchandise. Bids are submitted in sealed envelopes to prevent dissemination of the contents before the deadline for the submission of all bids.

Contract: An agreement, enforceable by law, between two or more competent parties, to do or not to do something not prohibited by law, for a consideration; any type of City agreement, regardless of what it may be called, for the procurement or disposal of supplies, services or construction.

Contract administration: The management of all actions, after the award of a contract, that must be taken to assure compliance with the contract; e.g., timely delivery, acceptance, payment, closing contract, etc.

Contractor: Contractor means any person having a contract with the City.

Delivery: The formal handing over of property; the transfer of possession, as by carrier to purchaser.

Department Director: See Section 3.1.

Immediate family: A spouse, child, parent, brother, sister and any other person living in the same household as the employee.

Information Technology: Any computer hardware or computer software to be loaded onto any City computer or plugged or wirelessly connected into the City's computer system or server, or services related to installation thereof, regardless of price, including monitors, printers, plotters, scanners, memory and

multi-function cards, co-processor chips, disk drives, backup units and/or any other device/component which is controlled by computers.

Invitation for bids (IFB): Means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Invoice: Seller's itemized document stating prices and quantities of goods and/or services delivered and sent to buyer for payment.

Net price: Price after all discounts, rebates, etc. have been allowed.

Payment Bond: A bond which assures payments, as required by law, to all persons supplying labor or material for the completion of work under the contract.

Performance bond: A contract of guarantee executed after award by a successful bidder to protect the City from loss due to his inability to complete the contract as agreed.

Procurement: Means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. "Procurement" includes all the functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

Procurement classification: Classifications of procurement based on the value of the purchase as fully described in Section 2.3.

Procurement transaction: All functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

Proprietary information: Defined as any information which is not generally known to competitors and which provides a competitive advantage. Unrestricted disclosure of proprietary information places it in the public domain.

Protest: A complaint about a City administrative action or decision brought by a bidder or vendor to the appropriate administrative official seeking a remedial result.

Purchase order: A purchaser's written document to a supplier formally stating all terms and conditions of a proposed transaction.

Purchasing Manager: The City staff member designated by the City manager with authority to oversee the purchasing/procurement functions for the City, regardless of job title.

Quotation: Generally, a sales proposal including price, sales terms and conditions; a price statement as an offer; a bid.

Services: The furnishing of labor, time or effort.

Software: A set of programs, procedures and possibly associated documentation concerned with the operation of a data processing system.

Solicitation: The process of notifying prospective vendors that the City wishes to receive bids or proposals to provide goods or services. The process might consist of public advertising, the mailing of invitations for bid or requests for proposal, the posting of notices, telephone calls to prospective vendors, etc.

Soliciting Document: The issued document detailing the scope, qualifications, specifications and/or scope of work and terms and conditions of the proposed contract or acquisition, including, if applicable, in the City's discretion, any bonds or security required to secure any bid or performance.

State: State of Colorado.

Submitter: A person or entity who submits a bid, proposal or response to an RFQ in response to a Soliciting Document, or a person or entity who submits an Unsolicited Proposal to the City.

Systems Analyst: The staff member charged with oversight of the City's information technology system, regardless of job title.

Unsolicited Proposal: The written submittal of a proposal to the City on the initiative of a Submitter for entering into an agreement with the City, not in response to a formal or informal request, as described in Section 2.7.

Vendor: Any firm, individual, corporation, agent or company who may desire to quote on the City's requirements or who wants to purchase items offered for sale by the City; a supplier.

APPENDIX A
FORMS

Form 1: Acknowledgment of Department Director



Employee Name _____

Employee Position:

___ Deputy City Manager for the purpose of approving purchases necessary to carry out the duties of the following departments/functions: Municipal Court, City Clerk's Office, IT Department, Office of Strategic Initiatives and Human Resources Department.

___ Assistant City Manager for the purpose of approving purchases necessary to carry out the duties of the Economic Development as well as purchasing authority specified for the Community Development Director and Public Works Director

___ Chief Innovations Officer for the purpose of approving purchases necessary to carry out the duties of the IT Department only.

___ Communications Director for the purpose of approving purchases necessary to carry out the duties of the Communication Department.

___ Community Development Director for the purpose of approving purchases necessary to carry out the duties of the Community Development Department including purchases made for Building Services, Code Compliance, Open Space, Parks and Trails.

___ Finance Director for the purpose of approving purchases necessary to carry out the duties of the Finance Department.

___ Human Resources Director for the purpose of approving purchases necessary to carry out the duties of the Human Resources Department.

___ Public Works Director for the purpose of approving purchases necessary to carry out the duties of the Public Works/Facilities Department.

___ Director of Strategic Initiatives for the purpose of approving purchases necessary to carry out the duties of the Office of Strategic Initiatives.

I have read and understand the Purchasing Policy and Procedure Manual last amended in December 2018, understand an ongoing obligation to review and comply with such purchasing policies as may be amended from time to time, and understand that violating the Purchasing Policy and Procedure Manual may result in disciplinary action, including termination of employment, as deemed appropriate by the City Manager.

Employee Signature

Date

December 2018

Form 2: Purchasing Policy Waiver Form



Purchasing Policy Waiver Form (Hardship)	
Date:	
Form Submitted By: Title/Department:	
Description of Goods or Services to Be Procured:	
Basis for Waiver of Purchasing Policy: (1) Description of circumstances beyond the reasonable control of the department and (2) Description of how formal procurement process may cause unavoidable time delay, unavoidable hardship or undue expense.	
Special Conditions, If Any, To Be Placed on This Procurement:	
Purchasing Manager Recommendation/Signature:	_____ Purchasing Manager Date: _____
Approved:	_____ <input type="checkbox"/> City Manager or Designee Date: _____

This form to be filed in the office of Purchasing Manager



Purchasing Policy Exemption Approval Form (Sole Source or Professional Services Exemption)	
Date:	
Form Submitted By: Title/Department:	
Description of Goods or Services to Be Procured:	
Requested Professional or Sole Source Provider and Grounds:	
Basis for Exemption from Purchasing Policy: <small>(Address each criterion in relevant Section 5.2 or 5.3 of Policy)</small>	
Purchasing Manager Recommendation/Signature:	_____ Purchasing Manager Date: _____
Approved:	_____ <input type="checkbox"/> City Manager or Designee <input type="checkbox"/> Finance Date: _____

This form to be filed in the office of Purchasing Manager

APPENDIX B

Procurement Policies and Procedures for Federally Funded Programs

Reference 2 CFR 200.318-326

1. Purpose of procurement standards. These standards establish procedures for City of Centennial (“City”) procurement of supplies and other expendable property, equipment, and services utilizing federal funds. All departments and operations of the City expending federal grant monies shall adhere to these standards, as follows, as they may be amended or supplemented over time. In the event the federal government regulations that govern procurement policies and procedures for federally funded programs or for procurements made with federal funds, these standards and procedures will be deemed automatically amended to conform to such requirements.

2. Code of conduct. No employee, officer, or agent shall participate in the selection, award, or administration of a contract or purchase order if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the entity selected for an award. The officers, employees, and agents of the City shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub agreements except for where the financial interest is not substantial, or the gift is an unsolicited item of nominal value. Members of the City Council shall comply with all relevant fiduciary duties, including those governing conflicts of interest, when they vote upon matters related to procurement contracts in which they have a direct or indirect financial or personal interest. Officers, employees, directors, and agents of the City shall be subject to disciplinary actions for violations of these standards. This code of conduct supplements the City’s Official Code of Ethics.

3. Competition. Procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The City shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the City, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the City. All bids or offers may be rejected when it is in the City’s interest to do so. In all procurement, the City shall avoid practices that are restrictive of competition. These include but are not limited to:

- (a) Placing unreasonable requirements on firms in order for them to qualify to do business
- (b) Requiring unnecessary experience and excessive bonding;
- (c) Noncompetitive pricing practices between firms or between affiliated companies;
- (d) Noncompetitive awards to consultants that are on retainer contracts;
- (e) Organizational conflicts of interest;
- (f) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement; and
- (g) Any arbitrary action in the procurement process.

4. Methods of Procurement to be followed.

- (a) Procurement by Micro-purchases. Micro-purchase is the acquisition of supplies or services under \$3,500. To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the City considers the price to be reasonable.
- (b) Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$150,000 (OMB memo dated June 20, 2018 M-18-18). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- (c) Procurement by Sealed Bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (i) A complete, adequate, and realistic specification or purchase description is available;
 - (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - (2) If sealed bids are used, the following requirements apply:
 - (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local and tribal governments, the invitation for bids must be publicly advertised;
 - (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (iv) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (v) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (v) Any or all bids may be rejected if there is a sound documented reason.
- (d) Procurement by Competitive Proposals. Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost- reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
 - (2) Proposals must be solicited from an adequate number of qualified sources;
 - (3) The City agency must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - (5) The City must use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- (e) Procurement by Noncompetitive Proposals. Procurement by non-competitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
- (1) The item is available only from a single source;
 - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City; or
 - (4) After solicitation of a number of sources, competition is determined inadequate.

5. Procurement procedures.

- (a) All procurement by the City shall comply, at a minimum, with the requirements of subsections (i), (ii), and (iii) below:
 - (i) the City avoids purchasing unnecessary items.
 - (ii) Where appropriate, an analysis is made of lease versus purchase alternatives to determine which would be the most economical and practical procurement.
 - (iii) Solicitations for goods and services provide for all of the following.
 - (A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 - (B) Requirements which must be fulfilled and all other factors to be used in evaluating proposal submitted in response to solicitations.

- (C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 - (D) When relevant, the specific features of "brand name or equal" descriptions that are to be included in responses submitted to solicitation.
 - (E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - (F) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- (b) All necessary affirmative steps shall be made by the City to utilize small businesses, minority-owned firms, women's business enterprises, and labor surplus area firms, whenever possible. The City shall take all of the following steps to further this goal.
- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or any quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
 - (iv) Establishing delivery schedules, where the requirements permit, which encourage participation by small and minority businesses, and women's business enterprises;
 - (vi) Using the services and assistance, as appropriate, of such organizations as the Small Business Development Agency of the Department of Commerce; and
 - (vii) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this section.
- (c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the City but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
- (d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.
- (e) Debarment and Suspension - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.
- (f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to

such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

- (g) Debarment and Suspension - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees. Contractors with multiple year contracts will be checked against the GSA list at each renewal time.
- (h) To foster greater economy and efficiency, and in accordance with efforts to promote cost- effective use of shared services across the Federal Government, the City is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
- (i) The City is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (j) The City is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (k) The City must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the City must not preclude potential bidders from qualifying during the solicitation period.

6. Procurement of Facilities or Land Special Requirements. There are no proposals expected for this activity. If such an activity is proposed in the future this section will be updated prior to any such procurement.

7. Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action in excess of the Simplified Acquisition Threshold (48 CFR Subpart 2.1) as Adjusted and currently at \$150,000. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

8. Procurement records - Procurement records and files for purchases in excess of the Micro purchase threshold as fixed at 48 CFR Subpart 2.1 (currently \$3,500) shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

9. Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. The City shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

10. Contract provisions. The City shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

- (a) Contracts more than the Simplified Acquisition Threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms and provide for such remedial actions as may be appropriate.

- (b) All contracts in excess of the Simplified Acquisition Threshold shall contain suitable provisions for termination by the City, including the manner by which termination shall be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c) For contracts dealing with construction or facility improvements the City shall comply with all requirements imposed by its funding sources (and the government regulations applicable to those funding sources) with regard to construction bid guarantees, performance bonds, and payment bonds.
- (d) All negotiated contracts (except those for less than the Simplified Acquisition Threshold) awarded by the City shall include a provision to the effect that the City shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- (e) All contracts, including small purchases, awarded by the City and their contractors where the source of the funds, directly or indirectly, is the federal government, shall contain the following procurement provisions as applicable.
 - (i) Equal Employment Opportunity - All contracts, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - (ii) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts in excess of \$2000 for construction or repair, when funded in whole or part by monies derived from the Federal government (either directly or indirectly) shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
 - (iii) Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) - **When required by Federal program legislation**, all construction contracts awarded by the recipients and sub recipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.
 - (iv) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - All contracts in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the

employment of mechanics or laborers, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

- (v) Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- (vi) Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and sub grants of amounts in excess of \$100,000, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (viii) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contracts for an amount above \$100,000, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall include a certification by the contracting parties that they have not and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. and to further require disclosure of any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- (ix) Third party contracting requirements (FTA Circular 4220.1F) - This circular sets forth the requirements a grantee (CITY) must adhere to in the solicitation, award and administration of its third-party contracts. Provisions of this circular will be added to all operating contracts utilizing formula funds for operating assistance. formula funds for operating assistance.