Date: 10/19/2023
Subject: An ordinance of the City of Littleton, Colorado, repealing Title 1, Chapter 15, of the Littleton City Code entitled “Competitive Sealed Bidding” and reenacting said chapter as “Purchasing and Contracts”

Passed/Failed: Passed on first reading

CITY OF LITTLETON, COLORADO

ORDINANCE 33
SERIES 2023
AN ORDINANCE OF THE CITY OF LITTLETON, COLORADO, REPEALING TITLE 1, CHAPTER 15, COMPETITIVE SEALED BIDDING AND REENACTING SAID CHAPTER TO BE RENAMED, “PURCHASING AND CONTRACTS”

WHEREAS Sections 97, 100 and 103 of the Littleton City Charter provide the City Council of Littleton authority to establish purchasing regulations; and

WHEREAS the aforementioned Littleton City Charter sections were amended as a result of the November 2022 election to allow for revisions to the manner, amount, and best practices for the procurement of goods and services by way of ordinance; and

WHEREAS it is in the best interests of the City to repeal and reenact Chapter 15 of the Littleton Municipal Code to address the electorates’ vote for Competitive Sealed Bidding and Purchasing and Contracts.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LITTLETON, COLORADO, THAT:

Section 1: Chapter 15, Competitive Sealed Bidding of Title 1, Administration of the Littleton City Code is hereby repealed and reenacted as follows:

Chapter 15, PURCHASING AND CONTRACTS

ARTICLE 1. GENERAL PROVISIONS

1-15-1: Short title. This chapter shall be known and may be cited as "Purchasing and Contracts."

1-15-2: Purpose. The purpose of this chapter is to prescribe purchasing procedures for the city to follow in contracting for the construction of capital and other improvements, for the purchase of tangible goods, and for the acquisition of professional, consulting, and other services. This chapter shall be construed and applied to promote the following purposes: to simplify the law governing the city's procurement processes; to provide for transparency and public confidence in the city's procurement procedures; to ensure the fair and equitable treatment of all persons who deal with the city's procurement system; to facilitate city procurement activities; to maximize the purchasing value of public funds; to promote effective broad-based competition; and to maintain the quality and
integrity of the city's fiscal controls and procurement system. Nothing herein is intended to confer any direct or implied right of enforcement to any person or business due to a claim of loss or opportunity or otherwise; however, this Chapter will ensure the fair and equitable treatment of all persons who deal with the city’s procurement system.

1-15-3: Applicability.

A. Applicability. Except as otherwise provided herein, this chapter applies to the city's procurement of goods and services, and to every expenditure of public funds for purchasing, irrespective of the source of funds, and to every city purchase or contract solicited after the effective date of this ordinance. The date of the solicitation shall be the date the solicitation is first published or issued by the city. Further, when the procurement involves federal, state or other grant assistance or the expenditure of federal, state or other grant funds, the procurement will be conducted in accordance with any mandatory applicable federal or state laws and regulations or grant requirements. Nothing in this chapter prevents the city from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement that is otherwise lawful.

B. Exceptions. Except as otherwise set forth herein, the following contracts for purchase are excepted from the requirements of this chapter:

(1) Intergovernmental agreements;

(2) Advertising services;

(3) Art for display, purchase, or performance, or agreements for the maintenance of art where the maintenance is done by the artist or by a foundation or other entity authorized by the artist or the artist's estate;

(4) Purchases of materials for any library collection, including, but not limited to: manuscripts, books, instructional materials, maps, pamphlets, periodicals, or the electronic version thereof;

(5) Legal research tools, including books and software;

(6) Continuing education programs, and professional memberships, licenses, and publications for city employees;

(7) Employment contracts between the city manager, the city attorney, the presiding or other municipal court judges, and department directors;

(8) Emergency contracts awarded under 1-15-42 of this chapter or as a result of a declared civil emergency, emergency, or local disaster under the City’s charter or code;
(9) Professional Services as defined in this chapter;

(10) Real property agreements including, but not limited to, the acquisition or disposal of real property and annexations; and

(11) Veterinary or Physician services.

1-15-4: Definitions. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative Policy or policies mean the "Administrative Policy and Procedures Related to the Purchasing Ordinance" as may be adopted and amended by the city.

Award or intent to award means the selection of a bid or proposal by the city. An award does not mean that a contract has been executed or that a purchase order has been approved.

Award approval means the authorization of an award by the execution or approval of a purchase order, or by the execution of a contract by an authorized employee or city council.

Best value procurement means a technique in a competitive solicitation process which emphasizes value over price and permits the evaluation of criteria such as qualifications, experience, quality, schedule, and performance data including delivery to determine the best overall value to the city.

Bid means an offer of a price for goods or equipment.

Bidder (also offeror) means a person who files a submission in response to a city-issued solicitation and includes a person who files a response to a request for bids, proposals, qualifications, or capital improvement project competitive sealed bids. It also includes a person who responds to a city request for qualifications for the purpose of pre-qualifying as a contractor to perform work for the city on as-needed basis.

Budgeted means included in the city council's approved budget.

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

City means the City of Littleton, Colorado.

City attorney means the city attorney for the City of Littleton or designee thereof.

City manager means the manager of the City of Littleton or designee thereof.

Claim means any threatened or asserted demand or action arising from or related to the administration or completion of a city contract made by the contractor awarded the contract, and
includes without limitation, disputes arising under a contract, those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. A claim does not include an invoice or payment request submitted under the terms of a contract, although an invoice or payment request may be converted to a claim, if the amount is disputed or is not acted on within a reasonable period of time and if the contractor gives written notice to the city of the conversion. It also does not include a solicitation or bid protest.

Claimant means a person who is a party to city contract, who is aggrieved by an action or occurrence caused in whole or in part by a city employee that affects the completion of or payment on that contract, and who files an informal dispute resolution notice or a formal contract claim with the city.

Code means the Littleton City Code.

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

Construction means the process of building, altering, improving or replacing a city-owned building or structure, including but not limited to stormwater or sewer infrastructure, bridges, or other city-owned infrastructure assets. Construction includes the demolition of bridges, stormwater or sewer infrastructure, or other city-owned infrastructure assets, but does not include demolition of other city-owned structures or buildings. It also does not include the routine operation, repair, or maintenance of city-owned buildings or structures.

Contract means any type of city agreement, regardless of what the agreement may be called, where the principal purpose is to acquire goods, service, or construction or to dispose of property for the benefit of the city. Contract includes a modification to a contract.

Contractor means any person having a contract with the city, regardless of what the person may be called or how the person is described.

Cooperative contract means a valid and current purchasing agreement negotiated by another entity for use by all public agencies that are members of the purchasing cooperative group.

Day means calendar day.

Direct participation or directly participating means to be the project owner for a solicitation, or to be the director of the work system or department which initiated the solicitation.

Documented quote means a fiscal control where one or more valid written quotes are obtained as part of a solicitation process.
Electronic communication means an interactive communication that is transmitted electronically and capable of being produced in a written format, but does not include instant messaging, text messaging, or phone messages.

Emergency contract means a contract necessary to respond to urgent and compelling circumstances that create a threat to the public's health, safety, or welfare, or to a public health emergency.

Employee means a regular or probationary full- or part-time city employee, whether elected or not, any non-compensated individual performing services for the city or any department, agency, commission, council, board or other city entity and any non-compensated individual serving as an elected official of the city.

Financial interest means:

a. Any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, anything of value, except that receipt of an advertising or promotional item of minimal value by shall not be considered a financial interest;

b. Ownership of five percent or more of any property or business; or

c. Being an officer, director, trustee, or partner of, or being a manager, supervisor, employee, or holding a similar position in a business.

Exception: Assets held by an employee or an employee's family member in a disclosed blind trust shall not be deemed to be a financial interest that constitutes a conflict of interest with regard to matters pertaining to that financial interest.

Fiscal control means a financial management practice designed to ensure expenditures are authorized by and in accordance with the amounts specified in the adopted budget, to reassure city council and citizens of responsible procurement and spending strategies, and to ensure all transactions are documented appropriately and in accordance with this Code and Colorado law.

Formal solicitation means a procurement method used for contracts or purchase orders that features the issuance of a public, written announcement of, or request for, bids, proposals, or qualifications.

Former employee means a person who was employed by the city within the past 12 months, but who is no longer employed by the city.

Gift, gratuity, or kickback means anything of value including but not limited to cash, a gift certificate, a gift card, loan, advance, service, or an offer of employment, either given or promised.
It does not include an advertising or promotional item of minimal value, or the occasional donation
at a city work site of perishable items for consumption by city employees.

**Good or goods** mean anything that has economic and physical utility, excluding real property, and
includes those services incidental or necessary to providing the good or goods.

**Immediate family or family** means an employee's spouse, child, parent, sibling, grandparent, or
grandchild (including natural, step, adopted, foster, or in-law relationships); or a person whom the
employee identifies as his or her significant other or domestic partner whose primary residence or
place of primary abode is the same as the employee's place of primary abode.

**Invitation to Bid (ITB):** A competitive, formal solicitation process for interested and eligible
persons to provide the City with a formal written bid. Each such ITB includes specifications,
delivery requirements, plans, drawings, and other items that must be addressed as part of the City's
bid package.

Local Business means a business that has i) an unrevoked city sale and use tax license; ii) a physical
location operating legally within the city limits of Littleton; and iii) is not delinquent in any
payment or filing obligation related to city or state taxes.

**Modification** means any written alteration of a contract, regardless of what it may be called,
accomplished in accordance with terms of that contract, and includes a change order related to or
renewal of an existing contract. A modification may be monetary or no cost in nature. An extension
of a contract that results in the payment of additional funds to a contractor shall be deemed a
monetary modification.

**No cost procurement** means the acquisition of a good or service following an unsolicited offer or
an offer that did not arise from a competitive solicitation process, or from a provider that proposes
the acquisition of a particular good or service by the city for free, at no charge, or on a
complimentary basis.

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

**Procurement or procurement process** means the purchasing, renting, leasing, or otherwise
acquiring of any goods, services, professional services, or construction. It includes all functions
that pertain to the acquisition of any supply, service, or construction, including the description of
requirements, the selection and solicitation of sources, solicitation and bid award protests, the
preparation and award of a contract, and all phases of contract administration and claims.

**Purchasing Officer** means a city official designated by the city manager or finance director for
specific purchasing activities as provided under chapter.

**Pre-qualify or pre-qualification** means a process by which the city may solicit, evaluate, and select
contractors or vendors for the purpose of creating a list of contractors or vendors eligible to perform
work for the city on an as-needed or on-call basis, and which is completed in advance of identifying
the specific service needed or work to be done.

Professional services include those services that typically require special training in recognized
arts or sciences, which require the practitioner to hold professional degrees or licenses and possess
specific skills. For purposes of illustration only and not as a matter of limitation, this includes the
following types of services:

Accountant  Engineer   Inspector
Appraiser  Financial    Legal
Geoscientist  Management Consultant
Consultant   Investment Manager

Project owner means the director or designee thereof tasked with oversight and completion of a
particular procurement project originating from within the work system.

Real property means land and whatever is growing upon, erected upon, or affixed to land including
water, mineral, and subsurface rights and excluding personal property.

Request for Quotes (RFQ): A request for an itemized cost to provide a specific good or service
anticipated to be below the dollar threshold required for a competitive bid.

Request for Information (RFI): A formal request for information the City needs to collect
information about: (i) the ability of Contractors or suppliers to provide a good or service; (ii) the
products, services or solutions sought; and/or (iii) the market.

Request for Proposals (RFP): A competitive, formal solicitation, including all documents, whether
attached or incorporated by reference, utilized for soliciting proposals from qualified Respondents
for the provision of goods or services.

Request for Qualifications (R4Q): Process used to compare the expertise of Contractors or Vendors
that typically focuses on a potential Contractor's or Vendor's knowledge, experience and industry
reputation.

Responsible Party means a party with the capability in all respects to perform fully the contract
requirements and the integrity and reliability that will ensure good faith performance.

Responsive means a bid or proposal submitted in a form prescribed by the city that conforms, in
all material respects, to the specifications, acceptability requirements, and terms and conditions of
the solicitation.

Services mean the furnishing of labor, time or effort by a contractor, not involving the delivery of
a specific end product other than reports or items which are merely incidental to the required
performance and that do not fall under the definition of “Professional Services.” The term
“services” does not include employment agreements or collective bargaining agreements.
Signature means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature. Electronic signatures are as allowed by the Uniform Electronic Transactions Act, C.R.S. title 24, article 71.3, as amended.

Sole (or single) source procurement means that only one supplier (source), to the best of the requester's knowledge and belief, based upon thorough inquiries and/or research, can deliver the required product or service to meet the City of Littleton’s requirements. Similar types of goods and services may exist, but only one supplier, for reasons of expertise, and/or standardization, quality, compatibility with existing equipment, specifications, or availability, is the only source that is acceptable to meet a specific need.

Solicitation means the process of trying to obtain a good or service, and includes all documents and related information, whether attached or incorporated by reference, published prior to the response deadline on an electronic bidding system or otherwise in connection with that procurement effort.

Specification means any description of the physical or functional characteristics or of the nature of a good or service, or a description of any requirement for inspecting, testing, or preparing a good or service for delivery.

Variation means a statement submitted to the city by a bidder that outlines a request to alter or modify the terms of a solicitation.

Vendor means a person offering something for sale.

Writing means any written recordings, papers, books, or documentary materials, regardless of physical form or characteristics, and includes emails or other electronic communication capable of being produced in a written format, but does not include instant messaging, text messaging, or telephone messages.

1-15-5: Administrative policies and procedures.
The city manager may, with assistance from the finance director, develop or amend and promulgate administrative policies and procedures necessary to implement the city’s purchasing and contracts processes.

1-15-6: Procurement records.

A. Procurement records public. Subject to any limitations provided for by federal or state law concerning open access and right to privacy, all procurement information is hereby declared to be a public record and open for inspection pursuant to C.R.S. § 24-72-201 et seq., as may be amended. Any party submitting a bid or proposal to the city may designate certain portions confidential, proprietary or trade secret information, indicating the basis
for such designation. In the event a request is submitted for disclosure, the city will comply
with applicable law relating to public open records.

B. Records maintenance and retention. All procurement records shall be kept and maintained
in accordance with the city's records retention schedule. The city clerk is the official
custodian of city procurement records.

1-15-7: Conflicts.

To the extent of any conflict between this Code and the Administrative Policies relating to this
Code, the provisions of this Code will prevail, and then the provisions of the Administrative
Policies, in that order.


ARTICLE II. ETHICS IN CITY PROCUREMENT PROCESSES


The conduct of city employees must hold the respect and confidence of the public. Unethical
behaviors undermine the public's trust in government and the integrity of public procurement
processes. Ethics provisions are intended to protect the integrity of the city's procurement
processes and encourage ethical conduct by employees and others involved in these processes.


A. Conflicts of interest. Every employee is responsible for being a good steward of city
resources, and for carrying out procurement duties for the benefit of the city.

1. Generally. It shall be unethical for an employee to use or attempt to use their
position to gain financial benefit or avoid financial loss to the employee or their
family, if that opportunity is available only because the employee holds or held a
position at the city.

2. Financial conflict of interest. It shall be unethical for an employee to participate
directly or indirectly in a solicitation process when the employee knows the
employee or a member of the employee's immediate family has a financial interest
pertaining to the award or the contract.

3. Conflict of interest related to negotiating employment. It shall be unethical for an
employee to participate directly or indirectly in a solicitation process when the
employee is negotiating an employment arrangement with a bidder or prospective
bidder involved in that solicitation process, or when the employee knows a member
of the employee's family is negotiating an employment arrangement with a bidder
or prospective bidder involved in that solicitation process.
Discovery of actual or potential conflict of interest. Upon discovery of an actual or potential conflict of interest, employees must i) promptly notify the finance director; and ii) withdraw from further participation in the transaction(s) impacted.

B. Gift, gratuity, or kickback. It shall be unethical for an employee to solicit, demand, accept, agree to accept, or keep for their own personal use, or for that of their family, any gift, gratuity, or kickback from another person in connection with any procurement process action, advice, decision, or recommendation made or done by that city employee.

C. Contemporaneous employment. It shall be unethical for an employee who is participating directly or indirectly in a solicitation process to negotiate employment with, be, or to become the employee of any person contracting with the city while still a city employee. It shall also be unethical for an employee who has participated directly in a solicitation process to accept employment with, or to become the employee of any person contracting with the city as a result of that solicitation process within six months of leaving employment with the city. This provision shall not be construed to prevent any former employee from engaging in any lawful occupation at any place he or she sees fit, but merely to declare the practice of accepting employment under these circumstances contrary to best purchasing practices and unethical.

1. Waiver. The city manager, upon due notice to the city council, may grant a waiver from this subsection (c) upon making a written determination i) that the contemporaneous employment of the city employee has been publicly disclosed; ii) that the employee will be able to perform procurement functions without actual or apparent bias or favoritism; iii) and that the award will be in the best interests of the city.

D. Use of confidential information. It shall be unethical for an employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

E. Attempt to influence city procurement process. It shall be unethical for an employee to purposely influence or attempt to influence a city procurement process in a manner that provides the employee or their family with a personal financial gain that would not otherwise have been available to them, or that allows the employee or their family to avoid a financial loss, if it were not for the employee's position as an employee.


A. Gifts, gratuities, or kickbacks. It shall be unethical for any person to offer, give, or agree to give any city employee or former city employee a gift, gratuity, or kickback in connection with any procurement process action, advice, decision, or recommendation by that employee or former employee.
B. **Inducements.** It shall be unethical for any person to make, permit, or allow to be made to a prime or higher-tier contractor or a person associated with a prime or higher-tier contractor a gift, gratuity, or kickback as an inducement for the award of a subcontract or order in connection with a city solicitation, bid, or contract. It shall be unethical for a prime or higher-tier contractor to solicit or accept a gift, gratuity, or kickback from a prospective subcontractor in connection with a city solicitation, bid, or contract.

C. **Negotiating employment.** It shall be unethical for any bidder or person representing a bidder in a city solicitation to negotiate with or offer employment to a city employee who is participating in that solicitation. It shall be unethical for a contractor to hire or employ a city employee or former employee whom the contractor knows or should know participated in the solicitation that resulted in the work awarded to that contractor within six months of the date of the award contract to that contractor.

1-15-24: Sanctions; Recovery

A. The city manager, or designee, may impose any remedy outlined by the personnel rules of the city relating to the discipline of city employees.

B. The city is entitled to recover the value of anything transferred or received in breach of the ethical standards of this chapter from any person by bringing an appropriate action before any court of competent jurisdiction.


ARTICLE III. SOURCE SELECTION

1-15-41 **Acceptable methods of source selection.**

A. The purchasing division is responsible for determining which source selection method is appropriate to a procurement process in accordance with the provisions of this article. Unless otherwise authorized by law or provided for in the code, the city may award city contracts by any of the following methods: competitive sealed bidding; competitive sealed proposals; negotiated purchases, emergency procurement, or cooperative purchasing agreements.

B. Unless otherwise provided for in this chapter, an employee responsible for purchasing goods or services for the city will use competitive solicitation methods to effectuate the provisions of this chapter and to maximize the value of the public funds in ways that are efficient and effective in light of the degree of complexity associated with the good or service being purchased.

C. The city manager, or designee, may establish, through administrative policies, other competitive solicitation methods consistent with the provisions of this chapter and deemed to be in the best interests of the city.

A. **Best value procurement.** The city, through the purchasing division, will solicit requests for qualifications and requests for proposals based upon a best value procurement basis, which emphasizes value over price and permits the evaluation of criteria such as qualifications, schedule and prior performance, including delivery, to determine the best overall value to the city.

B. **Required solicitation methods: thresholds.**
   
a. The city, through the purchasing division, shall call for formal competitive bids for the following:
      i. Non-Capital purchases over a threshold of $100,000.00; and
      ii. Capital purchases over a threshold of $250,000.00.
   
b. The city manager, or designee, may require and establish informal competitive bidding or quote procedure(s) within the Administrative Policy for any purchase or contract for which the formal competitive bidding is not required under Subsection (a).

C. **No contingencies.** No employee shall include or add a contingency amount to a solicitation. All monetary changes to contracts or purchase orders shall be processed using a change order, and in accordance with article IV of this chapter.

1-15-43  **Award; local preference**

A. **Award.** The city will award contracts to the most qualified, responsible and responsive bidder it determines is most advantageous to the city, taking into account the provisions of this chapter, the Administrative Policy, the specifications set forth in the solicitation, and the selection criteria deemed appropriate to the solicitation. A contractor or vendor may not claim reliance upon an award until a purchase order or contract is fully executed.

B. **Local Preference.** Pursuant to Section 98 of the City Charter, whenever a product, not subject to competitive bidding herein, is available within the City, and all other award factors listed within the solicitation are comparable to that of an outside supplier’s product, the city may award a purchase order or contract to a local business, as defined in section 1-15-22 and in accordance with the Administrative Policy. Local preference shall not apply to the following:

   a. Purchases made in accordance with external funding sources, such as grants, that preclude application of local preference;
   b. Purchases where applicable state or federal laws or regulations require an award to the “lowest responsible bidder;”
C. Variations. A variation to the terms of a solicitation requested and submitted by a contractor is not agreed to by the fact of an award by the city. The city shall enter into a contract or issue a purchase order on the same terms and conditions that were included in the solicitation, except the city may, in its sole discretion, negotiate terms and conditions with the selected vendor within the scope of the solicitation. The city may also consider variation requests when selecting a bidder for an award. An award may be cancelled by the city if negotiations concerning a term or a condition or a requested variation are unsuccessful.

Sec. 1-15-44. Non-competitive solicitation methods.

A. Sole source contracts: thresholds.
   a. Sole source contracts may be approved by the city manager or finance director if written documentation clearly demonstrates, based on all surrounding facts and circumstances, that the acquisition of a good or service may only be achieved through the use of one product or vendor, and that there are no other products or vendors as suitable or acceptable to provide the good or service to the city.
   b. In determining whether a sole source purchase request meets these requirements, the city manager or finance director may seek additional information about the purchase from the director or consult any other city employees.

B. No-cost contracts. Where the city will not expend public funds in the performance of a contract, the employee evaluating a no-cost offer should evaluate whether competitive solicitation is in the best interests of the city and whether any additional terms or conditions create future obligations of any type for the city or for affected citizens.

C. Cooperative contracts. Purchases of goods and services from valid cooperative entity agreements are exempt from competitive solicitation methods, so long as the agreement was competitively bid by means of a formal solicitation within the preceding three years from the date of the execution of the purchase contract.

D. On-call contract with pre-qualified vendors. The City may purchase goods or services from a vendor who has been pre-qualified to perform work if it is in the best interests of the city.

E. Emergency contracts.

1. Notwithstanding the provisions of this chapter, the city manager may make or authorize others to make emergency procurements of supplies, services, or construction when there exists a threat to the public’s health, safety, or welfare or is necessary under an emergency declared under the city’s charter or code, provided that such emergency procurements will be made with such competition as is practicable. A written determination of the basis for the emergency and for the selection of the person or business will be included in the contract file.
2. Powers of the city manager. Except as set forth herein, nothing in this subsection (d) is intended to limit or affect the powers or authority of the city manager under a declared civil emergency, emergency, or local disaster issued City Charter or of this Code.

3. Nothing in this subsection shall be construed to limit the ability of the city to award emergency work to vendors who are pre-qualified to perform the services or work needed and who have on call or as needed contracts with the city to perform that type of work, if the other requirements of this ordinance and the administrative policy are met.


A. Required. Bid security shall be required for all competitive solicitations for construction contracts, in an amount of at least five percent (5%) of the total amount bid. Bid security shall be a bond provided by a surety company authorized to do business in Colorado, the equivalent in cash, or otherwise supplied in a form satisfactory to the city. When circumstances warrant, the finance director may reduce or waive the bid requirement.

B. Rejection for noncompliance. If a solicitation requires security, noncompliance requires that the bid be rejected as nonresponsive, unless the city determines that the bid fails to comply only in a nonsubstantial manner with the security requirements.


A. Bonds. When a construction contract is awarded, the following bonds shall be delivered to the city and shall become binding on the parties upon the execution of the contract:

1. Performance bond. A performance bond satisfactory to the city, executed by a surety company authorized to do business in Colorado or otherwise secured in a manner satisfactory to the city, in an amount equal to 100 percent of the price specified in the contract; and

2. Payment bond. A payment bond satisfactory to the city, executed by a surety company authorized to do business in Colorado or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract, in an amount equal to 100 percent of the price specified in the contract.

B. Security. In lieu of providing a performance or payment bond, a contractor may provide an unconditional letter of credit for 100 percent of the amount required. Such security must be in a form acceptable to the city attorney.
C. Reduction in amount. If a construction contract is awarded in an amount less than $100,000.00, the finance director may reduce the amount of the performance and payment bonds or security or waive these requirements entirely if deemed appropriate. For all other performance and payment bonds or security, the city manager may reduce the amount of the performance and payment bonds or security to 50 percent of the contract amount upon a written finding that it is in the best interests of the city to do so.

D. Authority to Require Additional Bond Requirements. 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 those bonds or in circumstances other than those specified in this section.


ARTICLE IV. CONTRACTING

Sec. 1-15-61. Delegations to other city officials

A. Notwithstanding any other provisions within the Code, the city manager may delegate procurement authority, in writing, with respect to certain supplies, services, or construction to other city officials when the city manager, with the concurrence of the Finance Director, deems such delegation necessary for the effective procurement of these supplies, services, or construction. All such delegated procurements will be conducted pursuant to this chapter and any regulations promulgated under Section 1-15-5.

B. In the event that the city manager designates procurement authority to other city officials, all references to specific purchasing activities by the “Purchasing Officer” under this chapter refers to and is applicable to said designated other city official for the specific delegation.

C. Temporary delegation of authority. Each authorized individual may temporarily delegate his or her purchasing duties to another employee in his or her chain of command. Any such delegation or notification must be in writing. Any person designated by the city to serve in an acting capacity for any of these positions is authorized to perform the purchasing duties set forth for that position while he or she serves in an acting capacity.

Sec. 1-15-62. Authority to approve, modify, and terminate contracts.

A. Council approval is a condition precedent to any award of procurement contracts or approval of change orders or contract modification, including capital improvement projects, for which sufficient funding is not available and appropriated in the applicable fund.

B. Approval; modification. The authority to approve or modify a contract is set forth in the table below:
TABLE 1-15-62(a)
ORIGINAL CONTRACT AND PURCHASE ORDER APPROVAL, AND EXPENSE AUTHORIZATION

<table>
<thead>
<tr>
<th>Amount of the ORIGINAL contract or purchase order</th>
<th>Authorized Approver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $500k</td>
<td>City Manager (or designee)</td>
</tr>
<tr>
<td>$500k+</td>
<td>City Council</td>
</tr>
<tr>
<td>Emergency contracts of any amount</td>
<td>City Manager</td>
</tr>
</tbody>
</table>

Calculation of original contract value and purchase order amount for purposes of approval shall be based on total contract value according to Table 1-15-62(a).

TABLE 1-15-62(b)
MODIFICATION, OR AGGREGATED MODIFICATIONS TO THE CONTRACT OR PURCHASE ORDER, AND EXPENSE AUTHORIZATION

<table>
<thead>
<tr>
<th>Amount of the MODIFICATION or aggregated modifications to the contract, or purchase order.</th>
<th>Authorized Approver</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt;10%</td>
<td>City Manager</td>
</tr>
<tr>
<td>Any amount totaling &gt;$500k</td>
<td>City Council</td>
</tr>
</tbody>
</table>

Calculation of modification value (or aggregated modification value) for purposes of approval shall be based on the total modification value (or aggregated modification value) ABOVE the original contract value according to Table 1-15-62(b).

Modifications are subject to budget appropriation.

C. Calculation of contract amount for purposes of approval or modification. The annual aggregated amount of a contract calculated by fiscal year will be used to calculate the total amount of the contract for purposes of determining who is authorized to approve or modify it under this section. The original contract amount shall be added to the modification or cumulative modifications amount totals when calculating the aggregated monetary modification totals. In the case of a multi-year contract which the city may terminate at or within one year of the beginning of the term of the contract, the amount of the first year of the contract will be used to determine who is authorized to approve or modify the contract.

D. Dividing a contract. No purchase permitted by this Chapter shall be divided for the purpose of circumventing the requirements of this section. This includes modifying contracts that would result in circumvention of the requirements of this section.

E. Special counsel contracts. The city attorney has the authority of a director to approve and modify contracts. The city council authorizes the city attorney to enter into contracts for compensation to outside or special counsel and investigators, and also gives approval for these contracts up to the monetary limit set forth for directors in Table 1-15-62(a). The city attorney may terminate a contract with outside or special counsel or with an investigator.
F. Alternative bid schedules. When formal solicitation is required where multiple schedules are bid but not initially awarded, and the total of all bid schedules, if they are all awarded, is greater than $500k, approval required and subject to provisions in Table 1-15-62(b).

G. City Manager approval in lieu of City Council. If it is determined by the city manager and the Department Director, in writing, that it is in the best interest of the city to enter into a contract and due to extenuating circumstances, a council meeting is not conveniently scheduled to effect the contract, the city manager has authority to approve and sign the contract without council approval. The city manager will notify council as soon as practical and provide an explanation of the reason.

Sec. 1-15-63. Contract Administration

A. Form of contract. Subject to the limitations of this chapter, the city may use any contract appropriate to the procurement which best promotes the interests of the city. Except for purchase orders, the city attorney must approve all contracts as to form, including contracts otherwise excepted from the provisions of this chapter under section 1-15-3.

B. Multi-year contracts authorized.

1. Unless otherwise provided by law, the city may enter into a contract for the purchase of goods or services for any period of time deemed to be in the best interest of the City. The term of the contract and conditions of renewal or extension, if any, should be included in the solicitation. Funds shall be available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds, and these conditions shall be included as a provision of the multi-term contract.

2. Pricing. Pricing in multi-year contracts shall be documented for the initial and each renewal term of the contract such that the contract serves the best interests of the city.

C. Non-appropriation. When funds are not appropriated or otherwise made available to support continuation of performance in a renewal period, the contract shall be terminated. Termination for non-appropriation shall not be deemed a breach of contract.
ARTICLE V. PROTESTS AND CLAIMS


A. Required. Before filing a formal protest of an award, an aggrieved person must first file an informal award protest notice with the finance director.

B. Standing. Only an actual bidder who is aggrieved by an award may protest that award.

Sec. 1-15-82. Informal award protest—process.

A. Deadline for filing informal award protest. An aggrieved bidder must file an informal protest arising out of an award not later than seven (7) days after the closing date of the solicitation, unless the finance director, in his or her sole discretion, finds the aggrieved bidder could not have known of the reason for the protest within those seven (7) days.

B. Method of filing informal award protest. The aggrieved bidder shall contact the finance director in writing and provide information specific enough for the finance director to understand the award at issue, the nature of the award protest, and any suggested resolution to the asserted protest. In addition, the informal award protest must contain a statement that specifies the exact nature of the competitive disadvantage created by or as a result of the alleged issues in the city's award process, other than that the aggrieved bidder was not selected for the award.

C. Resolution of informal award protest. The finance director is authorized to review and respond to an informal protest of an award. If the finance director finds there is no evidence of any competitive disadvantage created by or as a result of alleged issues in the city's award other than that the aggrieved bidder was not selected for the award, the finance director shall deny the protest. The finance director shall, within 14 days of receipt of the informal award protest, respond in writing to the aggrieved bidder, stating the reason or reasons for the decision reached by the finance director. The finance director’s response must contain a copy of the city's formal award protest form.

D. Status of the award upon filing of informal protest. Upon the filing of an informal protest, the award process shall be held in abeyance until the finance director issues a written response to the informal protest.

a. Exception: If the city manager determines work related to the contested award is necessary to protect substantial city interests, the city manager may order the award approval process and work to proceed despite the filing of an informal protest.

E. Effect of failure to file informal award protest. Failure of an aggrieved bidder to timely file an informal protest of an award shall be deemed a waiver of the right to file a formal protest of that award.
F. *Appeal from denial of informal award protest.* Should the informal protest set forth herein not resolve the matter to the aggrieved bidder's satisfaction, the aggrieved bidder may then file a formal protest of the award as set forth in section 1-15-83.


A. *Standing.* Only a person aggrieved by the response of the finance director issued under 1-15-82 may file a formal protest of an award.

B. *Deadline for filing formal award protest.* An aggrieved person must file a formal award protest not later than seven (7) days after the date the finance director issued the response to the informal protest as set forth in section 1-15-82(c).

C. *Method of filing formal award protest.* The aggrieved person must file a formal award protest with the city clerk using a form provided by the city. The filing must include a copy of the finance director’s written response to the aggrieved person's informal award protest issued under section 1-15-82(c). The formal award protest form must be complete in all respects when submitted. A protest form that is not complete in all respects or that does not include a copy of the finance director’s written response shall be promptly returned by the clerk to the aggrieved person. An aggrieved person may resubmit a protest form deemed incomplete by the clerk, and the clerk shall accept it, if the resubmitted form is complete and submitted to the clerk within the deadline set forth in subsection (b) of this section.

D. *Employee actions.* Once a completed formal award protest form has been timely submitted to the city clerk, the clerk shall notify the finance director and the city manager of receipt of the protest. The finance director shall, not later than seven (7) days after submission of the completed formal protest form, file with the city manager all relevant documentation relating to the award, and may also submit to the city manager a statement summarizing the city's actions and Code provisions relevant to the matter.

E. *Authority to settle matter or determine formal protest.* With the approval of the city attorney, the city manager is authorized to review and settle a protest of a bid award, and to issue a decision related to a bid award protest.

F. *Issue; materiality.* The issue before the city manager in a formal award protest is whether an aggrieved person with standing has demonstrated by substantial and competent evidence that the bid award process violated the Code or other applicable law. For purposes of determining the outcome of a protest, an administrative or clerical error, or a defect that is not material to the award or that may be corrected by the city, shall not be considered a violation of the Code.

(1) City manager's responsibilities. In evaluating a formal protest, the city manager shall review all information submitted by the aggrieved person and the finance director, and may ask the aggrieved person or the finance director for more
information. Any such request and response shall be made a part of the record. The city manager may take into account any relevant procurement information, any relevant information provided by the aggrieved person or the finance director, and also may notice any other relevant fact or circumstance.

G. Decision. The city manager shall, not later than twenty (21) days after submission of the completed formal award protest form, issue a written decision on the protest. The decision must contain the reason or reasons for the decision, as well as a description of the remedy, if applicable. The decision must set forth appeal rights, if any. The decision must be furnished to the aggrieved person in writing. Should the city manager fail to issue a written decision on the protest within the time frame set forth herein, the protest shall be deemed denied, and the aggrieved person may proceed as if an adverse decision has been received.

H. Delay of award. If a formal award protest is timely filed by a person with standing, the award process may not proceed until the city manager has either issued a written decision on the protest or failed to issue a decision as set forth in subsection (g) of this section.

   a. Exception: If the city manager determines work related to the contested award is necessary to protect substantial city interests, the city manager may order the award process and work to proceed despite the filing of a formal protest. The city manager shall make a written finding to this effect. The city manager shall notify the aggrieved person that the award process and work will proceed, and also that the formal protest will proceed.

I. Effect of failure to file formal award protest. Failure of a claimant to timely file a formal award protest claim shall be deemed a waiver of the contract claim.

J. Appeal. The city manager's decision, or a denial of a protest as a result of the manager's failure to issue a written decision, shall be considered a final agency decision. An appeal of the city manager's decision may proceed under Rule 106 of the Colorado Rules of Civil Procedure.


A. Remedies. If the city manager determines an award violated the Code or other applicable law, the city manager may, with the approval of the city attorney, order any remedy the city manager deems appropriate to the circumstances.

B. Termination of the contract. If the city manager allowed work on the contract to begin under the exception to section 1-15-83(h), and the manager finds cancellation of the contract is necessary as a result of the findings made in the formal award protest, the city manager may order the contract to be terminated. Termination by the manager under this provision shall not be considered a breach of the contract. The person awarded the contract will be compensated for the actual costs reasonably incurred under the contract through the
time of the termination notice, if the person submits to the city manager an itemized invoice
of those costs not later than 14 days after the termination notice.


A. **Required.** Before filing a formal contract claim, a claimant must first file an informal
contract claim dispute notice with the finance director.

B. **Standing.** Only a contractor who is a party to a city contract and who is aggrieved by an
action or occurrence caused in whole or in part by a city employee and that affects the
completion of that contract, or a person expressly authorized to act on the contractor's
behalf, may file a claim. If a subcontractor or lower tier subcontractor lacks standing to file
a claim because privity of contract does not exist between the city and the subcontract, a
contractor with privity of contract may present the subcontractor's claim about that contract
to the city on behalf of the subcontractor.

C. **Election of alternate claim process.** The city may, in any contract, include provisions that
govern the filing, consideration of, and payment of any or all claims by any party to the
agreement arising out of or related to that contract. The claims procedure established under
the agreement shall exclusively govern any claim arising out of that contract.


A. **Deadline for filing informal contract claim dispute notice.** A claimant must file an informal
contract claim dispute notice not later than 7 days after the claimant knows or should have
known of the facts giving rise to the claim, whichever is earlier.

B. **Method of filing informal contract claim dispute notice.** The claimant shall contact the
finance director in writing and provide information specific enough for the finance director
to understand which contract is at issue, the nature of the occurrence giving rise to the
contract dispute or disputes, the nature of the injury asserted by the contractor, and any
suggested resolution to the asserted claim or claims.

C. **Resolution of informal contract claim dispute.** The finance director is authorized to review
and respond to an informal contract claim dispute notice. The finance director shall, as
soon as is practicable, respond to the claimant in writing, stating the reason or reasons for
the decision reached by the finance director. The finance director’s response must contain
a copy of the city's formal contract claim form.

D. **Effect of failure to file informal contract dispute notice.** Failure of a claimant to timely file
an informal contract claim dispute notice shall be deemed a waiver of the right to file a
formal contract claim.
E. Appeal from denial of informal contract claim notice. Should the informal contract claim dispute resolution process set forth herein not resolve the matter to the claimant's satisfaction, the claimant may then file a formal contract claim as set forth in 1-15-93.


A. Standing. Before filing a formal contract claim, a claimant must first file an informal contract claim dispute notice with the finance director. Only a claimant aggrieved by the response of the finance director issued under section 1-15-92(c) may file a formal contract claim.

B. Deadline for filing formal contract claim. A claimant must file a formal contract claim not later than 14 days after the date the finance director issued the response to the informal claim as set forth in section 1-15-92(c).

C. Method of filing formal contract claim. A claimant must file a formal contract claim with the city clerk using a form provided by the City. The filing must include a copy of the finance director’s written response issued under section 1-15-92(c). The formal contract claim form must be complete in all respects when submitted. A formal contract claim form that is not complete in all respects or that does not include a copy of the finance director’s written response shall be promptly returned by the clerk to the claimant. A claimant may resubmit a claim form deemed incomplete by the clerk, and the clerk shall accept it, if the resubmitted form is complete and submitted to the clerk within the deadline set forth in subsection (b) of this section.

D. Employee actions. Once a completed formal contract claim form has been timely submitted to the city clerk, the clerk shall notify the finance director and the city manager of receipt of the claim. The finance director shall, not later than seven days of submission of the completed formal contract claim form, file with the city manager all relevant documentation relating to the claim, including a copy of the solicitation, bid award, and executed contract. The finance director may also submit to the city manager a statement summarizing the city's actions and Code provisions relevant to the matter.

E. Authority to settle or determine formal contract claim. With the written approval of the city attorney, the city manager is authorized to review and settle or determine a formal contract claim, and to issue a decision related to a formal contract claim. The city manager may take the following actions to settle or determine a claim:

1. Deny the claim;

2. Allow the claim if it is found to be valid or to have merit, and, if the claim is for an amount greater than that justly due the claimant, allow the claim in the amount justly due and deny it as to the balance; or
3. Deny or compromise the claim if the legal liability of the city or the amount justly due is disputed.

If the city manager allows the claim in whole or in part, or compromises the claim, and if the claimant accepts the amount allowed or offered to settle the claim, the manager may require the claimant to accept that amount in settlement of the entire claim.

F. **Issue; materiality.** The issue before the city manager in a formal contract claim matter is whether a claimant with standing has demonstrated by substantial and competent evidence that the claim is valid or has merit.

1. Manager's responsibilities. In evaluating a claim, the city manager shall review all information submitted by the claimant and the finance director, and may ask the claimant or the finance director for more information. Any such request and response shall be made a part of the record. The city manager may take into account any relevant information in the contract file, any relevant information provided by the claimant, and may also notice any other relevant fact or circumstance.

G. **Decision.** The city manager shall, not later than 21 days of submission of the completed formal contract claim form, issue a written decision on the claim. The decision must contain the reason or reasons for the decision, as well as a description of the remedy, if applicable. The decision must set forth appeal rights, if any. The decision must be furnished to the claimant in writing. Should the city manager fail to issue a written decision on the claim within the time frame set forth herein, the claim shall be deemed denied, and the claimant may proceed as if an adverse decision has been received.

H. **Effect of failure to file formal contract claim.** Failure of a claimant to timely file a formal contact claim shall be deemed a waiver of the contract claim.

I. **Appeal.** The city manager's decision, or a denial of a claim as a result of the city manager's failure to issue a written decision, shall be considered a final agency decision. An appeal may proceed under Rule 106 of the Colorado Rules of Civil Procedure.
2. Suspension of a person may be issued for cause at the discretion of the finance director without further action for debarment of that person. Additionally, pending hearing on debarment, the finance director has the authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall also extend to work as a subcontractor on any city contract.

B. Causes for debarment or suspension. The causes for debarment or suspension include:

1. Conviction, within the last five years, of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction, within the last five years, under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor;

3. Conviction, within the last five years, under state or federal antitrust statutes arising out of the submission of bids or proposals;

4. Violation of contract provisions within the last five years, as set forth below, of a character which is regarded by the finance director to be so serious as to justify debarment action:
   a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
   b. Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor is not a basis for debarment.

5. Any other cause the finance director determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter;

6. Default on the payment of taxes, licenses, or other monies lawfully due the city; and

7. Suspension or debarment by any other unit of government constitutes prima facie evidence of grounds for debarment by the city during the period of such suspension or debarment elsewhere. However, a party may petition for review pursuant to the appeal process provided in this code and the city will approve eligibility if the party demonstrates that it has not violated the city's standard for debarment.
8. Violation of the ethics as listed in Article II.

C. Term of suspension or debarment.

1. Suspension will not be for a period of more than one year. If, however, the suspension is issued as a precedent to debarment proceedings, suspension will not be for a period of more than three months while the debarment decision is pending. Debarment will not be for a period of more than three years.

2. After the term of the suspension or debarment has passed, the person has the right to request reinstatement to good standing with the city. The person has the burden of demonstrating and certifying to the finance director that they have remedied the cause that prompted the suspension and/or debarment. Finance director has the authority under this Article to make a final decision whether to reinstate the person.

Sec. 1-15-95. Decision to debar or suspend.

A. The finance director shall issue a written decision regarding debarment or suspension, stating the reasons for such action, and shall mail or otherwise furnish the decision directly to the debarred or suspended party and any party intervening.

B. The finance director shall issue a written decision regarding reinstatement, stating the reasons and justification for such action, and shall mail or otherwise furnish the decision directly to the debarred or suspended party and any party intervening.


A. A decision under section Sec. 1-15-95 is final and conclusive, unless the debarred or suspended person within ten days after the mailing or service of the decision takes an appeal to the city council, in writing, specifying all grounds of error alleged in the decision.

B. Nothing contained in this appeal process is designed or intended to create or confer any private right of action; rather, the appeal mechanism will serve to promote public scrutiny and remedy through public hearing and decision by the elected body of the city, before the public forum.

Section 2: Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, including each part, section, subsection, sentence, clause or phrase hereof, irrespective of the fact that one or more parts, sections, subsections, sentences, clauses or phrases may be declared invalid.

Section 3: Repealer. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that this repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.
INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council of the City of Littleton on the 17th day of October, 2023, passed on first reading by a vote of _6 FOR and _0 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

PUBLIC HEARING on the Ordinance to take place on the 7th day of November, 2023, in the Council Chamber, Littleton Center, 2255 West Berry Avenue, Littleton, Colorado, at the hour of 6:30 p.m., or as soon thereafter as it may be heard.

PASSED on second and final reading, following public hearing, by a vote of ___ FOR and ___ AGAINST on the 7th day of November, 2023 and ordered published by posting at Littleton Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

ATTEST:

Colleen L. Norton
CITY CLERK

Kyle Schlachter
MAYOR

APPROVED AS TO FORM:

Reid Betzing
CITY ATTORNEY