

TITLE 4
PROCUREMENT CODE ¹

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Chapter 4.04

GENERAL PROVISIONS

Sec. 4.04.010. Purposes, interpretation of rules.

(a) Interpretation. This Title shall be construed and applied to promote its underlying purposes and policies.

(b) Purposes and policies. The underlying purposes and policies of this Title are:

(1) To simplify, clarify and standardize the law governing procurement by this City;

(2) To permit the continued development of procurement policies and practices;

(3) To provide for increased public confidence in the procedures followed in public procurement;

(4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this City;

(5) To provide increased economy in City procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the City;

(6) To foster effective broad-based competition within the free enterprise system; and

(7) To provide safeguards for the maintenance of a procurement system of quality and integrity. (Code 1971, § 3-1; Ord. No. 46-1991, § 1)

Sec. 4.04.020. Procurement contrary to this Title.

Except as otherwise may be provided by law, it shall be unlawful for any City officer or employee to order a procurement contrary to the provisions of this Title. Any procurement or contract so made shall be void and wholly without effect and shall not be binding upon the City in any manner. (Code 1971, § 3-2; Ord. No. 46-1991, § 1)

Sec. 4.04.030. Requirement of good faith.

This Title requires all parties involved in the negotiation, performance, or administration of City contracts to act in good faith. (Code 1971, § 3-3; Ord. No. 46-1991, § 1)

Sec. 4.04.040. Application of this Title.

This Title shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies, by this City, acting through a governmental body as defined herein, under any contract, except that this Title shall not apply to either grants or contracts between the City and other governments. Nothing in this Title or in regulations promulgated hereunder shall prevent any governmental body from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. (Code 1971, § 3-4; Ord. No. 46-1991, § 1)

Sec. 4.04.050. Definitions.

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

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

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

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

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

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

(f) *Contract modification* means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract. Before a contract is executed, modifications are typically processed as an addenda to the invitation for bids or Request for Proposals; after the contract is executed, modifications are processed as change orders.

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

(h) *Cost-reimbursement contract* means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Title and a fee, if any.

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

(j) *Department head* means the person in charge of each major administrative division of the City who has overall management responsibility for an operation or a group of related operations within a functional area, as determined by the City Manager. Any authority for procuring supplies, services or construction granted to department heads pursuant to this Chapter are intended to be granted similarly to agency heads and assistant city managers.

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

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

(m) *Established catalog price* means the price included in a catalog, price list, schedule or other form that:

(1) Is regularly maintained by a manufacturer or contractor;

(2) Is either published or otherwise available for inspection by customers; and

(3) States prices at which sales are currently or were last made to a significant number of any category of buyers constituting the general buying public for the supplies or services involved.

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

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

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

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

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

(s) *May* denotes the permissive.

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

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

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

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

(x) *Professional services* means the furnishing of labor, time, effort or expertise by a contractor with specialized knowledge in a field including but not limited to architecture, engineering, medicine, finance, accounting, appraisal and land surveying.

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

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

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

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

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

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

(ee) *Shall* denotes the imperative.

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

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

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

(ii) *Using agency* means any governmental body of the City which utilizes any supplies, services, or construction procured under this Code. (Code 1971, § 3-5; Ord. No. 46-1991, § 1)

Sec. 4.04.060. Public access to procurement information.

Procurement information shall be a public record to the extent provided by law and shall be available to the public as provided by law. (Code 1971, § 3-6; Ord. No. 46-1991, § 1)

Sec. 4.04.070. Specifications.

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

(b) Preparation. Before appropriate approvals are obtained in accordance with Section 4.08.040 above, for a procurement in excess of one thousand dollars (\$1,000.00), the Procurement Officer shall cause to be prepared written specifications detailing the City's requirements for the supplies, services or construction.

(c) Brand name specifications. A brand name specification may be used when the Procurement Officer has determined that sufficient sources for competition exist for the procurement of the supply and that the use of the brand name specification is not intended to limit or restrict competition. A brand name specification may also be used to describe the standard of quality, performance and other salient characteristics. In such cases, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard desired and that the substitution of equivalent supplies is permitted. (Code 1971, § 3-7; Ord. No. 46-1991, § 1)

Chapter 4.08

PROCUREMENT ORGANIZATION AND AUTHORITY

Sec. 4.08.010. Authority and duties of the Finance Department.

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

(b) Except as otherwise provided in this Title, the Finance Department shall have the authority and responsibility to promulgate regulations with the written approval of the City Manager, consistent with this Title, governing the procurement, management, control and disposal of any and all supplies, services and construction to be procured by the City. Said regulations shall include, but not necessarily be limited to the following subject matters:

- (1) City owned vehicles;
- (2) A city-wide system for utilizing purchase orders for all procurements;
- (3) Travel by employees and elected officials on City business;
- (4) The establishment and use of petty cash funds;

(5) The appointment and utilization of special procurement officers for the procurement of specialized supplies, services or construction items pursuant to Subsection 4.08.010(a) above; and

(6) Supply management systems, including the disposition of surplus supplies and inventory maintenance of capital supplies.

(c) No regulation shall change any commitment, right or obligation of the City or of a contractor under a contract in existence on the effective date of such regulation. The Finance Department shall consider and decide matters of policy within the provisions of this Title including those referred to it by department heads. The Finance Department shall have the power to audit and monitor the implementation of its regulations and the requirements of this Title, but shall not exercise authority over the award or administration of any particular contract or over any dispute, claim, or litigation pertaining thereto. (Code 1971, § 3-8; Ord. No. 46-1991, § 1)

Sec. 4.08.020. Duties of department heads and procurement officers.

(a) Duties of department heads. Department heads shall, in accordance with regulations which may be promulgated by the finance department, work closely with special procurement officers appointed for the procurement of specialized supplies, services or construction pursuant to Section 4.08.010(a) herein, the City Manager and other department heads to ensure compliance by all employees and departments of the City with the provisions of this Chapter and any regulations which may be promulgated pursuant thereto.

(b) Duties of procurement officers. Except as otherwise provided in this title, procurement officers shall, in accordance with regulations which may be promulgated by the finance department:

(1) Act to procure for the City the highest quality in supplies, services and construction at the least expense to the City consistent with the provisions of this Title and regulations promulgated pursuant to this Title by the finance department;

(2) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales;

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

(4) Explore the possibilities of "bulk purchasing" so as to take full advantage of discounts;

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

(6) Cooperate with the finance department, with other department heads and other governmental bodies, so as to secure for the City the maximum efficiency in budgeting and accounting;

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

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

(9) Make a special effort to solicit and encourage local, minority and women-owned businesses and suppliers to participate in the City's procurement process. (Code 1971, § 3-9; Ord. No. 46-1991, § 1)

Sec. 4.08.030. Authority of City Attorney.

The City Attorney shall have the same authority with respect to procurements for the City Attorney's office as set forth herein for the City Manager. Notwithstanding any provision to the contrary in this Title relating to competition or otherwise, the City Attorney shall have the authority to contract for litigation services, as defined herein, by any method that the City Attorney believes is in the City's best interests. (Code 1971, § 3-10; Ord. No. 46-1991, § 1)

Sec. 4.08.040. Approvals.

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

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

(b) City Manager. All procurements subject to the terms of this Chapter in excess of two thousand dollars (\$2,000.00) shall be approved by the City Manager.

(c) Department heads. Department heads shall have the authority to approve procurements in an amount which does not exceed two thousand dollars (\$2,000.00), without the prior approval of the City Manager or City Council; provided, however that sufficient funds are available in the department head's department budget for the item(s) purchased.

No procurement shall be divided so as to avoid the approvals that would otherwise be required by the above. (Code 1971, § 3-11; Ord. No. 46-1991, § 1)

Sec. 4.08.050. Formal contract procedure.

Except as otherwise provided herein, all procurement in excess of ten thousand dollars (\$10,000.00), or whenever a department head or City Manager requests the same, shall be purchased by a formal written contract approved as to form by the City Attorney. Unless the department head seeking approval from the City Manager explains the lack of a need for same, all procurement in excess of two thousand dollars (\$2,000.00) shall be purchased by formal written contract approved as to form by the City Attorney and executed by the City Manager. (Code 1971, § 3-12; Ord. No. 46-1991, § 1)

Chapter 4.12

SOURCE SELECTION AND CONTRACT FORMATION

Sec. 4.12.010. Methods of source selection; affirmative action goals.

(a) Unless otherwise authorized by law, all City contracts shall be awarded by competitive sealed bidding, pursuant to Section 4.12.020, (Competitive sealed bidding), except as provided in:

- (1) Section 4.12.030 (Competitive sealed proposals);
- (2) Section 4.12.040 (Small purchases);
- (3) Section 4.12.050 (Miscellaneous exemptions);
- (4) Section 4.12.060 (Emergency procurement);
- (5) Section 4.12.070 (State bid).

(b) The following preferences shall be considered in source selection for all City contracts as part of the City's affirmative action goals relating to local, women- and minority-owned businesses:

(1) Preference shall be given in the procurement of supplies and services produced, manufactured, sold, distributed, offered or grown in the City, if such preference is not for supplies or services of inferior quality to those offered by competitors outside of the City; and, in the procurement of services and construction contracts to bidders with offices or a place of business located within the City if all other evaluation criteria set forth herein or in the invitation for bids or request for proposals are equal to bidders with offices located outside of the City. Secondary preference may be given by the City in procurement of supplies and services produced, manufactured, sold, distributed or grown in the Roaring Fork River valley if such preference is not for supplies or services of inferior quality to those offered by competitors outside of said valley; and, in the procurement of services and construction contracts to bidders located in the Roaring Fork River valley if all other evaluation criteria set forth herein, or in the invitation for bids or requests for proposals, are equal to bidders located outside of said valley.

For any procurement not exceeding ten thousand dollars (\$10,000.00) the preference given pursuant to this Subsection 4.12.010(b)(1) may be in an amount not to exceed five percent (5%) of the total price.

(2) Preference shall be given in the procurement of supplies, services and construction to minority- and women-owned businesses provided all other evaluation criteria set forth herein, or in

the Invitation for bids or Request for Proposals, are equal to other bids or proposals received. (Code 1971, § 3-13; Ord. No. 46-1991, § 1)

Sec. 4.12.020. Competitive sealed bidding.

(a) Conditions for use. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 4.12.010 (Methods of source selection).

(b) Invitation for bids. An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement. The purchase description shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs and it shall not be unduly restrictive.

(c) Public notice. Adequate public notice of the Invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids. If a state or federal law or regulation controls the procurement process for any particular purchase, adequate public notice may be mandated by applicable state or federal laws or regulations. In the absence of exigent or emergency circumstances described in Section 4.12.060 (Emergency procurement), *adequate notice* shall mean publication of a public notice which summarizes the Invitation for bids in a newspaper of general circulation for two (2) consecutive weeks with the last publication being not more than one (1) week prior to the date set forth therein for the opening of bids.

(d) Bid opening. Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

(e) Facsimile transmissions. Facsimile transmissions shall not be accepted for either bids or corrections to previously submitted bids. The City by receiving facsimile transmissions makes no representation with respect to its ability to maintain the confidentiality of the contents of such transmissions.

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

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

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

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

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

(9) The affirmative action goal preferences set forth at Section 4.12.010(b) herein.

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

(h) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth at Subsection (f) herein and in the invitation for bids or request for proposals. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than ten percent (10%), the Procurement Officer is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. If the low bid exceeds available funds by ten percent (10%) or more, the City Manager may authorize the Procurement Officer to negotiate an adjustment of the bid price after determining in writing that such action is in the best interests of the City. Even if the lowest bid does not exceed available funds, a procurement officer, with the City Manager's prior approval, shall have the authority, consistent with the general underlying purposes and policies of this title as set forth in Subsection 4.04.010(b) herein and in the best interests of the City, to negotiate with the lowest responsible and responsive bidder to adjust the bid price, alter the quantity or quality of supplies to be procured or alter the scope of services or construction to be provided. If the procurement is subject to City Council approval pursuant to Section 4.08.040 herein, the written notice shall indicate that the award is subject to City Council approval.

(i) Multi-step sealed bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. (Code 1971, § 3-14; Ord. No. 46-1991, § 1)

Sec. 4.12.030. Competitive sealed proposals.

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

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

not practicable or not advantageous to the City to procure specified types of supplies, services or construction by competitive sealed bidding; or

(2) For professional services.

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

(c) Public notice. Adequate public notice of the Request for Proposals shall be given in a reasonable time prior to the date set forth therein for the receipt of proposals. If a state or federal law or regulation controls the procurement process for any particular purchase, adequate public notice may be mandated by applicable state or federal laws or regulations. In the absence of exigent or emergency circumstances described in Section 4.12.060, (Emergency procurement), *adequate notice* shall mean publication of a public notice which summarizes the Request for Proposals in a newspaper of general circulation for two (2) consecutive weeks with the last publication being not more than one (1) week prior to the date set forth therein for the opening of bids.

(d) Receipt of proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A list of proposals received shall be prepared and shall be open for public inspection after contract award.

(e) Evaluation factors. The Request for Proposals shall state the relative importance of price and other evaluation factors.

(f) Discussion with responsible offerors and revisions to proposals. As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the Request for Proposals and the additional criteria set forth at Subsection 4.12.020(f) above. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. (Code 1971, § 3-15; Ord. No. 46-1991, § 1)

Sec. 4.12.040. Small purchases.

(a) Small purchases. Any procurement not exceeding ten thousand dollars (\$10,000.00) may be made by the Procurement Officer by negotiation without formal competition for the purchase of supplies, services or construction; subject, however, to the approval process required by Section 4.08.040.

(b) Negotiated procurement. Negotiated procurement shall be made on the open market, but whenever practical or advantageous, the Procurement Officer shall obtain quotes from at least two (2) suppliers or vendors. Negotiated procurement shall be awarded to the person supplying the lowest responsible bid or offer.

(c) Division of procurement. No contract shall be divided so as to constitute a small purchase under this Section. (Code 1971, § 3-16; Ord. No. 46-1991, § 1)

Sec. 4.12.050. Miscellaneous exemptions.

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

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

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

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

(4) The supply is perishable;

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

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

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

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

(9) The supply, service or construction is the subject of a change order to an existing contract for construction which does not exceed a cumulative cost of fifteen percent (15%) of the original contract awarded pursuant to an invitation for bids.

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

(b) The Procurement Officer shall submit each determination made under this Section to the City Manager for prior approval. (Code 1971, § 3-17; Ord. No. 46-1991, § 1)

Sec. 4.12.060. Emergency procurement.

(a) Notwithstanding any other provision of this Title, in the case of an apparent emergency which threatens the public health, welfare or safety requiring the immediate purchase of a supply, service or construction, the City Manager shall have the power to authorize the Procurement Officer to secure the necessary items in the open market without competition regardless of the amount of the expenditure.

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

(c) A full written report of the circumstances of all emergency purchases over ten thousand dollars (\$10,000.00) shall be made by the City Manager to the City Council. The report shall be received by the City Council at a regular meeting and such report shall be open to public inspection. (Code 1971, § 3-18; Ord. No. 46-1991, § 1)

Sec. 4.12.070. State bid.

A contract may be awarded for a supply, service or construction item on the terms and to the contractors that have been selected under the State's competitive bid system for use by local government. (Code 1971, § 3-19; Ord. No. 46-1991, § 1)

Sec. 4.12.080. Cancellation of invitations for bids or requests for proposals.

An invitation for bids, a Request for Proposals or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation. The reasons therefor shall be made a part of the contract file. (Code 1971, § 3-20; Ord. No. 46-1991, § 1)

Sec. 4.12.090. Responsibility of bidders and offerors.

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

(b) Right of nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the City Manager's office, the City Attorney's office, the Finance Department or the Procurement Officer without prior written consent by the bidder or offeror. (Code 1971, § 3-21; Ord. No. 46-1991, § 1)

Sec. 4.12.100. Pre-qualifications of suppliers.

Prospective suppliers may be pre-qualified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified suppliers. (Code 1971, § 3-22; Ord. No. 46-1991, § 1)

Sec. 4.12.110. Bid security.

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

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

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

(d) Withdrawal of bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in Subsection 4.12.020(f) (Competitive sealed bidding, correction or withdrawal of bids; cancellation of awards). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

(e) Forfeiture of security. Unsuccessful bidders or offerors shall be entitled to the return of any cash deposit following the execution of an agreement with the successful bidder. Unless a specific extension is granted in writing, a successful bidder or offeror shall forfeit any bid bond or equivalent

security required by the procurement officer upon its failure to enter into a contract within fifteen (15) days after the award. (Code 1971, § 3-23; Ord. No. 46-1991, § 1)

Sec. 4.12.120. Contract performance and payment bonds.

(a) When required; amounts. When a construction contract is awarded in excess of ten thousand dollars (\$10,000.00) or it is deemed necessary by the Procurement Officer or the City Manager, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

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

(2) A payment bond or other security satisfactory to the City, executed by a surety company authorized to do business in this state 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.

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

(1) The Colorado State Legislature has determined that for construction contracts in excess of fifty thousand dollars (\$50,000.00), it is prudent to obtain performance and payment bonds in amounts equal to fifty percent (50%) of the price specified in the contract. (See Sections 24-105-202 and 38-26-106, C.R.S.)

(2) The City has a policy of encouraging local, minority- and women-owned businesses to participate in the City's procurement process. (See Section 4.08.020(b)(9) herein.) The cost of obtaining performance and payment bonds may discourage local, minority- and women-owned businesses from bidding on City construction projects.

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

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

(5) Certain construction projects may be required by state or federal law to be bonded in a particular manner or in a certain amount. (See Section 31-25-516, C.R.S., special improvement districts.)

(6) Phasing of bond amounts should be considered, when appropriate, for projects that are constructed in discrete and identifiable phases. (Code 1971, § 3-24; Ord. No. 46-1991, § 1)

Sec. 4.12.130. Bond forms and copies.

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

(b) Certified copies of bonds. Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original. (Code 1971, § 3-25; Ord. No. 46-1991, § 1)

Sec. 4.12.140. Type of contracts.

Subject to the limitations of this Section, any type of contract which will promote the best interests of the City may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such a contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract. (Code 1971, § 3-26; Ord. No. 46-1991, § 1)

Sec. 4.12.150. Multi-term contracts.

(a) Specified period. No contract for supplies, services or construction, including all renewals, shall be made by the City for a period longer than five (5) years, unless authorized by resolution. All contracts extending beyond one (1) year in duration shall be contingent upon and subject to duly enacted appropriations of the City.

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

(1) That estimated requirements cover the period of the contract and are reasonably firm and continuing;

(2) That such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting economies in City procurement;

(3) That the contract beyond the first fiscal year shall be expressly contingent upon the annual budgeting and appropriation of sufficient funds on an annual basis or by nonlapsing appropriations; and

(4) That the contract clearly states that when funds are not appropriated or otherwise made available to support the continuation of the City's performance or obligations in a subsequent fiscal period, the contract shall be canceled. (Code 1971, § 3-27; Ord. No. 46-1991, § 1)

Sec. 4.12.160. Contract clauses.

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

(1) Liquidated damages as appropriate;

(2) Specified excuses for delay or nonperformance;

(3) Termination of the contract for default;

(4) Termination of the contract in whole or part for the convenience of the City;

(5) Non-discrimination;

(6) Insurance and indemnification requirements;

(7) Notice of the applicability of the City Procurement Code. (Code 1971, § 3-28; Ord. No. 46-1991, § 1)

Sec. 4.12.170. Contract modifications and change orders; fiscal responsibility.

Every contract modification, change order or contract price adjustment under a contract with the City shall be subject to prior written certification by the Finance Department as to the effect of the contract modification, change order or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, the Procurement Officer shall not execute or make such contract modification, change order or adjustment in contract price unless sufficient funds are available therefor or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order or adjustment in contract price under consideration. (Code 1971, § 3-29; Ord. No. 46-1991, § 1)

Sec. 4.12.180. Right to inspect plant.

The City may at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the City. (Code 1971, § 3-30; Ord. No. 46-1991, § 1)

Sec. 4.12.190. Right to audit records.

The City shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing. (Code 1971, § 3-31; Ord. No. 46-1991, § 1)

Sec. 4.12.200. Finality of determinations.

The determinations required by Subsections 4.12.020(f) (Competitive sealed bidding, correction or withdrawal of bids; cancellation of awards), 4.12.030(a) (Competitive sealed proposals, conditions for use), 4.12.030(g) (Competitive sealed proposals, award), Sections 4.12.050 (Miscellaneous exemption), 4.12.060 (Emergency procurement), Subsections 4.12.090(a) (Responsibility of bidders and offerors, determination of nonresponsibility), 4.12.020(g) (Competitive sealed bidding, award), Sections 4.12.140 (Types of contracts) and 4.12.150 (Multi-term contracts determination prior to use) are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law as determined by a court of competent jurisdiction. (Code 1971, § 3-32; Ord. No. 46-1991, § 1)

Sec. 4.12.210. Reporting of anti-competitive practices.

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the City Attorney. (Code 1971, § 3-33; Ord. No. 46-1991, § 1)

Sec. 4.12.220. Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the law. All retained documents shall be made available to the City Attorney or a designee upon request and proper receipt therefor. (Code 1971, § 3-34; Ord. No. 46-1991, § 1)

Sec. 4.12.230. Record of procurement actions taken under Sections 4.12.050 (Miscellaneous exemptions) and 4.12.060 (Emergency procurement).

The Finance Department and City Clerk shall maintain a record listing all contracts made under Section 4.12.050, (Miscellaneous exemption) or Section 4.12.060 (Emergency procurement) for a minimum of three (3) years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the supplies, services or construction procured under each contract. (Code 1971, § 3-35; Ord. No. 46-1991, § 1)

Chapter 4.16

LEGAL AND CONTRACTUAL REMEDIES

Sec. 4.16.010. Authority to resolve protested solicitations and awards.

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

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

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

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

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

(e) Finality of decision. A decision under Subsection (c) of this Section shall be final and conclusive, unless the protestant appeals administratively to City Council acting as the Procurement Appeals Board. (Code 1971, § 3-36; Ord. No. 46-1991, § 1)

Sec. 4.16.020. Authority to debar or suspend.

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

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

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

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

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

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

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

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

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

(6) For violation of the ethical standards set forth in Chapter 4.20 (Ethics in Public Contracting).

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

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

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

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

(e) Finality of decision. A decision under Subsection (c) above shall be final and conclusive, unless the debarred or suspended person appeals administratively to City Council acting as the Procurement Appeals Board. (Code 1971, § 3-37; Ord. No. 46-1991, § 1)

Sec. 4.16.030. Authority to resolve contract and breach of contract controversies.

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

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

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

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

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

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

(f) Failure to render timely decisions. If the City Manager or his or her designee does not issue the written decision required under Subsection (c) above within one hundred twenty (120) days after written request for a final decision or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received. (Code 1971, § 3-38; Ord. No. 46-1991, § 1)

Sec. 4.16.040. Applicability of this Chapter.

The provisions of this Chapter apply where it is determined administratively or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law. (Code 1971, § 3-39; Ord. No. 46-1991, § 1)

Sec. 4.16.050. Remedies prior to award.

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

- (a) Canceled; or
- (b) Revised to comply with the law. (Code 1971, § 3-40; Ord. No. 46-1991, § 1)

Sec. 4.16.060. Remedies after an award.

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

- (a) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (1) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the City; or
 - (2) The contract may be terminated upon payment of a reasonable profit to the person awarded a contract.
- (b) If the person awarded the contract has acted fraudulently or in bad faith:
 - (1) The contract may be declared null and void; or
 - (2) The contract may be ratified and affirmed if such action is in the best interests of the City, without prejudice to the City's rights to such damages as may be appropriate. (Code 1971, § 3-41; Ord. No. 46-1991, § 1)

Sec. 4.16.070. Interest.

Interest on amounts ultimately determined to be due to a contractor or the City shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later. (Code 1971, § 3-42; Ord. No. 46-1991, § 1)

Sec. 4.16.080. Creation of the Procurement Appeals Board.

The City Council shall act as the Procurement Appeals Board. (Code 1971, § 3-43; Ord. No. 46-1991, § 1)

Sec. 4.16.090. Decision of the Procurement Appeals Board.

Acting by one (1) or more of its members and with the assistance of the City Attorney, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties and the City Manager. (Code 1971, § 3-44; Ord. No. 46-1991, § 1)

Sec. 4.16.100. Jurisdiction of the Procurement Appeals Board.

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

(a) Any protest of a solicitation or award of a contract addressed to the board by an aggrieved actual or prospective bidder or offeror or a contractor; and

(b) Any appeal by an aggrieved party from a determination by the City Manager or a designee which is authorized by:

(1) Section 4.16.010 (Authority to resolve protested solicitations and awards);

(2) Section 4.16.020 (Authority to debar or suspend); and

(3) Section 4.16.030 (Authority to resolve contracts and breach of contract controversies). (Code 1971, § 3-45; Ord. No. 46-1991, § 1)

Sec. 4.16.110. Protest of solicitations or awards.

(a) Scope. This Section applies to:

(1) A protest of solicitation or award of a contract addressed to the Procurement Appeals Board by an aggrieved actual or prospective bidder or offeror or a contractor; and

(2) An appeal addressed to the board of a decision under Subsection 4.16.010(c) below (Authority to resolve protested solicitations and awards, decision).

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

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

(2) For an appeal under this Subsection (2), the aggrieved person shall file an appeal within seven (7) days of the receipt of a decision under Subsection 4.16.010(c) below (Authority to resolve protested solicitations and awards, decision).

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

(d) Standard of review for factual issues. A determination of an issue of fact by the board under Subsection (c) above shall be final and conclusive. (Code 1971, § 3-46; Ord. No. 46-1991, § 1)

Sec. 4.16.120. Suspension or debarment proceedings.

(a) Scope. This Section applies to a review by the Procurement Appeals Board of a decision under Section 4.16.020, (Authority to debar or suspend).

(b) Time limitation on filing an appeal. The aggrieved person shall file its appeal with the board within thirty (30) days of the receipt of a decision under Subsection 4.16.020(c) (Authority to debar or suspend, decision).

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

(d) Standard of review for factual issues. A determination of an issue of fact by the board under Subsection (c) above shall be final and conclusive. (Code 1971, § 3-47; Ord. No. 46-1991, § 1)

Sec. 4.16.130. Contract and breach of contract controversies.

(a) Scope. This Section applies to a review by the Procurement Appeals Board of a decision under Section 4.16.030 (Authority to resolve contract and breach of contract controversies).

(b) Time limitation on filing an appeal. The aggrieved contractor shall file its appeal with the board within thirty (30) days of the receipt of the decision under Subsection 4.16.030(c) (Authority to resolve contract and breach of contract controversies, decision).

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

(d) Standard of review for factual issues. A determination of an issue of fact by the board under Subsection (c) above shall be final and conclusive. (Code 1971, § 3-48; Ord. No. 46-1991, § 1)

Sec. 4.16.140. Finality of a decision on an issue of law.

A determination by the Procurement Appeals Board on an issue of law shall be final and conclusive. (Code 1971, § 3-49; Ord. No. 46-1991, § 1)

Sec. 4.16.150. Appeal and review of Procurement Appeals Board decisions.

Any person receiving an adverse decision from the Procurement Appeals Board may initiate an appeal to the courts. (Code 1971, § 3-50; Ord. No. 46-1991, § 1)

Sec. 4.16.160. Discontinuance of contractor's appeal.

After notice of an appeal to the Procurement Appeals Board has been filed, a contractor may not discontinue such appeal without prejudice, except as authorized by the board. (Code 1971, § 3-51; Ord. No. 46-1991, § 1)

Chapter 4.20

ETHICS IN PUBLIC CONTRACTING

Sec. 4.20.010. Definitions of terms used in this Chapter.

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

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

(c) *Direct or indirect participation* means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

(d) *Financial interest* means:

(1) Ownership of any interest or involvement in any relationship from which or as a result of which, a person within the past year has received or is presently or in the future entitled to receive, more than one dollar (\$1.00) per year or its equivalent;

(2) Ownership of such interest in any property or any business as may be specified by the City Council; or

(3) Holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.

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

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

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

(h) *Purchase request* means the document whereby a using agency requests that a contract be entered into for a specified need and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply and information supplied for the making of any written determination required by this Code. (Code 1971, § 3-52; Ord. No. 46-1991, § 1)

Sec. 4.20.020. Statement of policy.

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

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

To achieve the purpose of this Chapter, it is essential that those doing business with the City also observe the ethical standards prescribed herein. (Code 1971, § 3-53; Ord. No. 46-1991, § 1)

Sec. 4.20.030. General standards of ethical conduct.

(a) General ethical standards for employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in: Sections 4.20.040 (Employee conflict of interest); 4.20.050 (Employee disclosure requirements); 4.20.060 (Gratuities and kickbacks); 4.20.070 (Prohibition against contingent fees); 4.20.080 (Restrictions on employment of present and former employees); and 4.20.090 (Use of confidential information).

(b) General ethical standards for nonemployees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section and in Sections 4.20.050 through 4.20.090 of this Chapter is also a breach of ethical standards. (Code 1971, § 3-54; Ord. No. 46-1991, § 1)

Sec. 4.20.040. Employee conflict of interest.

(a) Conflict of interest. Unless a specific exemption is obtained pursuant to Subsection 4.20.080(a) below, it shall be a breach of ethical standards for any employee to participate directly or indirectly in drafting or preparing specifications, obtaining or processing approvals, participating in source selection or contract formation or granting approval for any procurement when the employee knows that:

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

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

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

(b) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon the discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the City Attorney in accordance with Subsection 4.20.130(a) for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

(c) Notice. Notice of this prohibition shall be provided in accordance with regulations promulgated by the finance department. (Code 1971, § 3-55; Ord. No. 46-1991, § 1)

Sec. 4.20.050. Employee disclosure requirements.

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

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

(c) Notice. Notice of this requirement shall be provided in accordance with regulations promulgated by the finance department. (Code 1971, § 3-56; Ord. No. 46-1991, § 1)

Sec. 4.20.060. Gratuities and kickbacks.

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

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

(c) Contract clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefor. (Code 1971, § 3-57; Ord. No. 46-1991, § 1)

Sec. 4.20.070. Prohibition against contingent fees.

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

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

(c) Contract clause. The representation prescribed in Subsection (b) above shall be conspicuously set forth in every contract and solicitation therefor. (Code 1971, § 3-58; Ord. No. 46-1991, § 1)

Sec. 4.20.080. Restrictions on employment of present and former employees.

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

- (1) Judicial or other proceeding, application, request for a ruling or other determination;
- (2) Contract;
- (3) Claim; or

(4) Charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise under the provisions of this code or which is the subject of the employee's official responsibility under the provisions of this code, where the City is a party or has direct or substantial interest. (Code 1971, § 3-59; Ord. No. 46-1991, § 1; Ord. No. 19-2003, § 2)

Sec. 4.20.090. Use of confidential information.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of another person. (Code 1971, § 3-60; Ord. No. 46-1991, § 1)

Sec. 4.20.100. Civil and administrative remedies against employees who breach ethical standards.

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

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

- (1) Oral or written warnings or reprimands;
- (2) Suspension with or without pay for a specified period of time; and
- (3) Termination of employment.

(c) Right to recover from employee value received in breach of ethical standards. The value of anything received by an employee in breach of the ethical standards of this article or regulations promulgated hereunder shall be recoverable by the City as provided in Section 4.20.120 (Recovery of value transferred or received in breach of ethical standards).

(d) Due process. All procedures under this Section shall be in accordance with due process requirements and existing law. In addition, notice and an opportunity for a hearing shall be provided prior to imposition of any suspension or termination of employment. (Code 1971, § 3-61; Ord. No. 46-1991, § 1)

Sec. 4.20.110. Civil and administrative remedies against nonemployees who breach ethical standards.

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

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

- (1) Written warnings or reprimands;
- (2) Termination of transactions; and

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

(c) Right to recover from nonemployee value transferred in breach of ethical standards. The value of anything transferred in a breach of ethical standards of this article or regulations promulgated hereunder by a nonemployee shall be recoverable by the City as provided in Section 4.20.120 (Recovery of value transferred or received in breach of ethical standards).

(d) Right of the City to debar or suspend. Debarment or suspension may be imposed in accordance with the procedures set forth in Section 4.16.020 (Authority to debar or suspend) for breach of the ethical standards of this article, provided that such action may not be taken without the concurrence of the City Attorney.

(e) Due process. All procedures under this Section shall be in accordance with due process requirements, including but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment or suspension from being a contractor or subcontractor under a City contract. (Code 1971, § 3-62; Ord. No. 46-1991, § 1)

Sec. 4.20.120. Recovery of value transferred or received in breach of ethical standards.

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

(b) Recovery of kickbacks by the City. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery from the other offending parties. (Code 1971, § 3-63; Ord. No. 46-1991, § 1)

Sec. 4.20.130. Opinions and waivers.

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

(b) Waiver. On written request of an employee, with the prior concurrence of the City Manager, the City Council may grant an employee a written waiver from the application of Section 4.20.040 (Employee conflict of interest) and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the City so require or when the ethical conflict is insubstantial or remote. (Code 1971, § 3-64; Ord. No. 46-1991, § 1)

Chapter 4.24

SUPPLY MANAGEMENT

Sec. 4.24.010. Supply management regulations required.

The Finance Department, with the prior written approval of the City Manager, shall promulgate regulations governing:

(a) The management and inventory of supplies during their entire useful life; and

(b) The sale, lease or disposal of surplus supplies by public auction, competitive sealed bidding or other appropriate method designated by regulation. (Code 1971, § 3-65; Ord. No. 46-1991, § 1)