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## **13.04: GENERAL PROVISIONS**

### **13.04.010: PURPOSES, RULES OF CONSTRUCTION**

- (1) Interpretation. This Code shall be construed and applied to promote its underlying purposes and policies.
- (2) Purpose. The purpose of the Pitkin County Procurement Code is to provide Procurement procedures that will promote competition and maximize the purchasing power of public funds, increase organizational effectiveness, efficiency and accountability, and assure fair and equitable treatment of all Persons participating in County Procurement. (*Adopted Ord. 026-2005*)

### **13.04.020: APPLICATION OF THIS CODE**

- (1) General Application. This Code applies only to Contracts solicited or entered into after the effective date of this Code.
- (2) Application to County Procurement. Unless specifically exempted, this Code shall apply to each expenditure of public funds irrespective of their source, including federal assistance monies, by this County. In addition, this Code shall also apply to rights to use Property for commercial or private purposes for one year or more. Nothing in this Code, 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.
- (3) Exemptions to County Procurement. The following are exempt from the requirements of this Code:
  - a. licenses, permits, easements, and leases, or other rights to use County real property for less than one year for commercial or private purposes;
  - b. leases for County affordable housing;
  - c. the sale or purchase of real property;
  - d. the hiring of a broker or other consultant to assist in the sale or purchase of real property;
  - e. the acquisition of professional services of legal counsel and expert witnesses;
  - f. the investment of County funds;
  - g. sole source procurements, as described in Section 3-104;
  - h. small purchases, as described in Section 3-103;
  - i. emergency procurements, as described in Section 3-105;
  - j. outside agency bids, as described in Section 3-106;
  - k. the disposition of Surplus County Property; and
  - l. Grants or Contracts (including but not limited to Intergovernmental Agreements) between the County and other governments, or the agencies or departments of other governments. (*Adopted Ord. 026-200, amended (part) Ord. 06-003*)

### **13.04.030: EFFECTIVE DATE AND REPEAL OF PRIOR CODES**

This Code is effective as of July 8, 2005 and repeals all prior County codes pertaining to the same subject matter. (*Adopted Ord. 026-2005*)

#### **13.04.040: DEFINITIONS**

The words defined in this Section shall have the meanings set forth below whenever they appear in this Code:

- (1) Construction means the process of building, altering, repairing, improving, or demolishing any fixed public asset, including without limitation any public structure or building, roads, sidewalks, parks, lighting, and landscaping. It does not include the routine operations or routine maintenance of existing structures, buildings, real property or other fixed assets.
- (2) Contract means all types of agreements, regardless of what they may be called, for Procurement.
- (3) Contractor means any Person having a Contract with a Governmental Body.
- (4) Designee means a duly authorized representative of a Person holding a superior position.
- (5) Goods means personal property or materials, including without limitation, supplies, equipment, parts, printing and other tangible end products.
- (6) Governmental Body means the Board of County Commissioners of this County.
- (7) Grant means the furnishing or receipt by the County of assistance, whether financial or otherwise, to or from 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 Goods, Services, or Construction; a Contract resulting from such an award is not a Grant but a Contract.
- (8) Person means any entity, business, union, committee, club, or other organization, or individual, or group of individuals.
- (9) Procurement means buying, purchasing, renting, leasing, or otherwise acquiring or disposing of any Property, Goods, Services, or Construction. It also includes all functions that pertain to the obtaining or disposing of any Property, Goods, Services or Construction, including a description of requirements, selection and solicitation of sources, preparation and award of Contract, and all phases of Contract administration.
- (10) Procurement Officer means any individual authorized to negotiate and to administer County Procurement
- (11) Property means all County property, including but not limited to equipment, materials, documents, water rights, insurance, supplies, and leases of one year or more of real property, but not including any category of County property listed as an exemption in Section 1-102(3).

- (12) Proposer means any Person submitting a proposal to the County in response to a Request for Proposals or Request for Qualifications issued by the County.
- (13) Request for Proposals means all documents utilized for soliciting proposals.
- (14) Request for Qualifications means all documents utilized for soliciting qualifications for prospective Contractors.
- (15) Responsible Proposer means a Person who has the capability to perform fully the Contract requirements.
- (16) Selection Committee – a group of not less than three individuals designated to review proposals and recommend a selection from the participants.
- (17) Services mean the furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product or for which the end product component is minimal in relation to the services component.
- (18) Surplus County Property means Property that is scheduled for replacement, has outlived its useful life, or is otherwise no longer needed in or for County operations. *(Adopted Ord. 026-2005)*

#### **13.04.050: 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. Confidential data, if identified as such by the Proposer, will be held confidential upon request, if the request is made as part of the Proposal and if the County Attorney determines that the data meets the requirements for confidentiality under the Colorado Public Records Act. *(Adopted Ord. 026-2005)*

## **13.08: PROCUREMENT ORGANIZATION**

### **13.08.010: AUTHORITY AND DUTIES OF THE COUNTY MANAGER**

(1) **Regulatory Authority.** Except as otherwise provided in this Code, the County Manager, or his/her Designee, shall have the authority and responsibility to promulgate regulations, consistent with this Code, governing Procurement and the management and control of any and all Goods, Services, and Construction procured by the County. The County Manager, or his/her, Designee shall consider and decide matters of Procurement policy within the provisions of this Code. The County Manager, or his/her Designee, shall have the power to audit and monitor the implementation of Procurement regulations and the requirements of this Code. Policy determinations, current internal operating procedures, and interpretations by the County Manager, or his/her Designee, shall be maintained by the County Manager's Office in a Procurement Code Policy Book. The County Manager also has responsibilities in emergency procurements, as set forth in Article 3, and in appeals, as set forth in Article 4.

(2) **Signature Authority.** The Board of County Commissioners of Pitkin County, Colorado delegates signature authority on its contracts to the County Manager and his/her Designees, provided that the County Manager must sign all contracts in the amount of \$50,000.00 or more. For contracts in amounts less than \$50,000.00, contracts may be signed by persons so designated and duly authorized through internal operating policies. This delegation of authority does not apply to Intergovernmental Agreements or to those contracts or grants that require Board of County Commissioner signature through regulations of the other contracting party. (*Adopted Ord. 026-200, amended (part) Ord. 06-003*)

### **13.08.020: COUNTY PROCUREMENT OFFICERS**

Many purchasing functions are decentralized in Pitkin County, with employees in the various departments responsible as Procurement Officers for the purchasing decisions. (*Adopted Ord. 026-2005*)

## **13.12: SOURCE SELECTION AND CONTRACT FORMATION**

### **Part 1-Source Selection**

#### **13.12.010: METHODS OF SOURCE SELECTION**

Unless otherwise authorized by law or exempt from this Code, all County Contracts shall be awarded by one of the methods in this Section. (*Adopted Ord. 026-2005*)

#### **13.12.020: PROPOSALS FROM PRE-QUALIFIED CONTRACTORS**

(1) Conditions for Use. When the only criteria for selection are price and timeline, a Contract may be entered into using a pre-qualification process.

(2) Request for Qualifications/Disqualification Process. At least annually, a Request for Qualifications may be advertised for Persons to submit qualifications for advertised types of Construction, Goods, and Services desired by the County. A Selection Committee will evaluate and weigh submitted qualifications and a master list of qualified

Persons shall be maintained. For purchases that do not qualify as small purchases that will be using the pre-qualification process, the County will advertise and qualify Persons for a period of time prior to a Request for Proposals. The Procurement Officer or County Manager shall have the authority to disqualify any bidder or Contractor who has defaulted on quotations or awarded Contracts, and remove them from the qualified prospective Contractors list.

(3) Use of Pre-qualification Process

- a. Request for Proposals. Proposals specifying the scoring criteria for price and time line shall be solicited from the approved list of qualified prospective Contractors. No other criteria will be considered.
- b. Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing Proposers during the process of negotiation.
- c. Discussion with Responsible Proposers and Revisions to Proposals. Discussions may be conducted with Responsible Proposers to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Any 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 Proposers.
- d. Award. Award shall be made to the Proposer whose total score is highest, considering the selection criteria of price and time line. The Contract file shall contain the basis on which the award is made. (*Adopted Ord. 026-2005*)

**13.12.030: SMALL PURCHASES**

Any Procurement not exceeding an amount determined by the County Procurement Operations Policy may be made in accordance with small purchase procedures. (*Adopted Ord. 026-2005*)

**13.12.040: SOLE SOURCE PROCUREMENT**

(1) A Contract may be awarded for Goods, Services, or Construction without competition after the Procurement Officer determines in writing, with appropriate approval, that there is only one source for the required Goods, Services, or Construction.

(2) The county manager determines that extension of an existing contract is in the best interests of the County due to one or more of the following circumstances:

(a) An offer by the existing contractor to provide, in return for renewal of the existing contract, capital improvements that will provide a significant benefit to a County asset;

(b) A determination by the County Manager after investigating the prevailing market for the relevant Goods, Services, or Construction that re-bidding the contract would result in higher costs or lower returns to the County than those enjoyed under the existing contract. Any decision to extend a contract under this subsection (2) shall document the circumstances justifying

the extension, and such documentation shall be treated as a public record pursuant to the Colorado Open Records Act. (***Adopted Ord. 026-2005 amended (part) Ord. 003, 2006***)

### **13.12.050: EMERGENCY PROCUREMENTS**

(1) Notwithstanding any other provision of this Code, the County Manager may authorize emergency Procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency Procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular Contractor shall be included in the Contract file. (***Adopted Ord. 026-2005***)

### **13.12.060: OUTSIDE AGENCY BID**

A Procurement Officer may award a Contract for Goods, Services, or Construction on the terms and to the Persons that have been selected by the State of Colorado, or other governmental jurisdiction, agency, or department, through a competitive procurement process. (***Adopted Ord. 026-2005***)

### **13.12.070: COMPETITIVE SEALED PROPOSALS-REQUESTS FOR PROPOSALS (RFP)**

- (1) Conditions for Use. Contracts shall be awarded by competitive sealed proposals whenever no other method of source selection is applicable.
- (2) Requests for Proposals. Proposals shall be solicited through a Request for Proposals. The solicitation shall include a proposed Contract for the proposal received. A bid bond may be required if it is determined to be in the best interest of the County.
- (3) Public Notice. Adequate public notice of the Request for Proposals shall be given a reasonable time prior to the date of the opening of the proposals.
- (4) Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing Proposers during the process of negotiation.
- (5) Evaluation Factors. The Request for Proposals shall state the specific scoring criteria to be used in selecting the winning Proposer.
- (6) Discussion with Responsible Proposers and Revisions to Proposals. Discussions may be conducted with Responsible Proposers to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers 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 Proposers.
- (7) Award. Award shall be made to the Responsible Proposer whose total score is highest, considering all selection criteria. No other factors or criteria shall be used in the evaluation. The Contract file shall contain the basis on which the award is made. (***Adopted Ord. 026-2005***)

### **13.12.080: CANCELLATION OF REQUESTS FOR PROPOSALS**

A Request for Proposals or other method of selection may be cancelled, or any or all proposals may be rejected in whole or in part when it is in the best interest of the County. *(Adopted Ord. 026-2005)*

### **13.12.090: CONTRACT PERFORMANCE AND PAYMENT BONDS**

(1) When Required - Amounts. The County shall require performance and payment bonds in an amount no less than that required by state law.

(2) Authority to Require Additional Bonds. Nothing in this Section shall be construed to limit the authority of the County to require a performance bond, or other security in addition to those bonds, in circumstances other than those specified in Subsection (1) of this Section. *(Adopted Ord. 026-2005)*

### **13.12.100: CONTRACT CLAUSES AND THEIR ADMINISTRATION**

The County Attorney's office has approved standard Contracts for the County. Procurement Officers may vary the clauses in approved Contracts in accordance with internal County policy. *(Adopted Ord. 026-2005)*

## **13.16: APPEALS**

### **13.16.010: AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS**

(1) Right to Protest. Any actual or prospective Proposer or Contractor who is aggrieved in connection with the solicitation or award of a Contract may protest to the County Manager or his/her Designee. The protest shall be submitted in writing within five days after such aggrieved Person knows, or should have known of the facts giving rise thereto, or within five days of receipt of notice to a non-winning Proposer, whichever first occurs.

(2) Authority to Resolve Protests. The County Manager, or his/her Designee, shall have the authority to settle and resolve a protest of an aggrieved Proposer or Contractor, actual or prospective, concerning the solicitation or award of a Contract.

(3) Written Response from Procurement Officer. In connection with any written protest, the County Manager, or his/her Designee, shall provide a copy of the written protest to the Procurement Officer whose solicitation or award is the subject of the protest. The Procurement Officer shall submit to the County Manager, within a reasonable time, a written response to the protest, including relevant documents from the Procurement Officer's file.

(4) Decision. If the protest is not resolved by mutual agreement, the County Manager, or his/her Designee, shall promptly issue a decision in writing. The decision shall:

- (a) state the reason for the action taken;
- (b) inform the protestant of the right to appeal as provided in this Article; and
- (c) advise the protestant of the amount of bond necessary for the appeal.

(5) Notice of Decision. A copy of the decision under Subsection (4) of this Section shall be mailed or otherwise furnished promptly to the protestant and to the Procurement Officer.

(6) Finality of Decision. A decision under Subsection (4) of this Section shall be final and conclusive, unless the protestant appeals administratively to the Board of County Commissioners acting as the Procurement Appeals Board. (*Adopted Ord. 026-2005*)

**13.16.020: CREATION OF THE PROCUREMENT APPEALS BOARD**

The Board of County Commissioners shall act as the Procurement Appeals Board. (*Adopted Ord. 026-2005*)

**13.16.030: DECISIONS OF THE PROCUREMENT APPEALS BOARD**

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 County Manager. (*Adopted Ord. 026-2005*)

**13.16.040: JURISDICTION OF THE PROCUREMENT APPEALS BOARD**

Within seven days after receipt of notice of a decision under Section 4-101, a Contractor, prospective or actual, or Proposer may appeal the County Manager's decision to the Procurement Appeals Board by submitting a notice of appeal to the County Manager. No other appeals are permitted. (*Adopted Ord. 026-2005*)

**13.16.050: RECORD ON APPEAL**

Upon receipt of the notice of appeal, the County Manager, or his/her Designee, shall promptly prepare the record on appeal for review by the Procurement Appeals Board. The record on appeal shall consist of the written protest, the documents in the Procurement Officer's file used in response to the protest, any written decision of the County Manager, or his/her Designee, and the notice of appeal. This record on appeal shall be submitted to the Procurement Appeals Board, and no other evidence may be considered on the appeal. (*Adopted Ord. 026-2005*)

**13.16.060: SECURITY REQUIREMENT**

At the time an appeal to the Procurement Appeals Board is filed, it must be accompanied by cash or security in a form satisfactory to the County Attorney to cover the County's costs in defending the decision and the County's costs for delay in initiating the purchase or Contract. The security shall be in an amount determined by the County Attorney, payable to or for the benefit of the Board of County Commissioners of Pitkin County, Colorado. The full amount of cash security, without interest, shall be refunded, and any other form of security cancelled or released, in the event of a successful appeal. (*Adopted Ord. 026-2005*)

**13.16.070: DECISION ON APPEAL**

Within fifteen days of receipt of the record on appeal, the Procurement Appeals Board shall decide the appeal. The action of the County Manager, or his/her Designee, shall be upheld unless the Procurement Appeals Board determines that the County Manager, or his/her Designee, acted arbitrarily or capriciously. The decision will be memorialized in a written resolution, and shall be final upon adoption. (*Adopted Ord. 026-2005*)

**13.16.080: REMEDY FOR A SUCCESSFUL APPEAL**

In the event an appeal is successful, the sole remedy shall be to re-initiate the Procurement process. (*Adopted Ord. 026-2005*)

## **13.20: OTHER PROVISIONS**

### **13.20.010: CONFLICT OF INTEREST**

No Procurement Officer shall participate directly or indirectly in a Procurement when the Procurement Officer knows that:

- (a) the Procurement Officer, or any member of his/her immediate family, has a financial interest pertaining to the Procurement.; for purposes of this Section, “immediate family” means a spouse, significant other, children, parents, brothers or sisters;
- (b) a business or organization in which the Procurement Officer, or any member of the Procurement Officer's immediate family, has a financial interest is involved in the Procurement; or
- (c) a Person is involved in the Procurement with whom the Procurement Officer, or any member of his/her immediate family, has, or is negotiating an arrangement concerning prospective employment.

In addition to this conflict of interest provision, certain specified County employees, members of the Board of County Commissioners, County Hearing Officers, and County citizen board members are subject to conflict of interest provisions in the Pitkin County Home Rule Charter and/or the Standard of Conduct. All employees are also subject to the Employee Handbook. (*Adopted Ord. 026-2005*)

### **13.20.020: COMPLIANCE WITH FEDERAL OR STATE REQUIREMENTS**

When a Procurement involves the expenditure of federal or state assistance or contract funds, the Procurement Officer shall comply with applicable federal or state law or Grant conditions. (*Adopted Ord. 026-2005*)

### **13.20.030: SEVERABILITY**

Should any one or more sections of this Procurement Code be judicially declared invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining sections of this Procurement Code, the intention being that the various sections are severable. (*Adopted Ord. 026-2005*)

