

ORDINANCE NO. 017, 2020  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING ARTICLE IV OF CHAPTER 8 OF THE CODE OF THE CITY OF FORT  
COLLINS RELATING TO THE CITY'S PURCHASING AND CONTRACTING  
PROCEDURES AND REQUIREMENTS

WHEREAS, the Charter of the City of Fort Collins contains provisions concerning purchasing practices in Article V, Part IV; and

WHEREAS, Chapter 8, Article IV of the City Code prescribes particular methods for competitive purchasing for the construction of improvements and the procurement of services and materials; and

WHEREAS, Chapter 8, Article IV of the Code was last broadly amended by Ordinance No. 026, 2008; and

WHEREAS, staff has undertaken a review of the procurement provisions in light of changing needs and conditions of City business, and has recommended to City Council amendments that would increase flexibility and efficiency in the purchasing process, remove ambiguity in current City Code language, increase transparency, and increase opportunities for competition; and

WHEREAS, City Council has determined the amendments described in this Ordinance are in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 8-110 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-110. - Procurement application.**

This Article shall apply to the procurement of all materials, services, professional services, and construction required or used by all departments and agencies of the City, including businesses and enterprises operated by the City, whether used in the construction of City improvements or otherwise, irrespective of the source of the funds, excepting only donations, real property, the procurement of legal and litigation services, City grants, museum exhibits, musical, dramatic and other fine arts performances, power purchases for resale, and services or activities subject to contracts between the City and other governmental bodies. When any procurement involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with any

mandatory applicable federal or state laws or regulations. This Article does not create or confer any right or entitlement upon any person to bid on or receive an award of any City contract.

Section 3. That Section 8-112 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-112. - Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

*Alternative delivery method* shall mean a process of construction using either the Alternative Project Delivery System (APDS), Construction Manager/General Contractor (CM/GC), Construction Manager At-Risk (CMAR) or Design/Build approaches.

*Alternative Project Delivery System (APDS)* shall mean a process of managing a construction project in which the design and construction of the project are contracted for separately, typically during the preliminary design phase of the project. Firms are selected utilizing a qualification based competitive sealed proposal with consideration to cost. The designer and construction contractor teams work with the City as part of an integrated team focused on risk reduction, value engineering and best value.

...

*City grants* shall mean direct monetary assistance to an organization or individual to undertake a specific project or program. Grants fund solutions to identified problems and/or opportunities within the City.

...

*Contract Manager/General Contractor (CM/GC) (also referred to as Construction Manager-At-Risk)* shall mean a process of managing a construction project in which the design and construction of the project are contracted for separately with the construction contractor typically joining the project at about thirty (30) percent design completion to provide constructability input, cost estimating, risk reduction, value engineering and best value. Firms are selected utilizing a qualification based competitive sealed proposal with consideration to cost.

...

*Design/build* shall mean a process for executing a construction project in which one (1) contractor, the design-build team, works under a single contract with the City to provide the design and construction services from initial design through project completion. Firms are selected utilizing a qualification based competitive sealed proposal with consideration to cost.

*Design/bid/build* shall mean a project delivery method in which the City contracts with separate entities for the design and construction of a project The design firm is a qualification-based

selection process and the construction contractor is selected based on the lowest responsive and responsible bid.

*Guaranteed Maximum Price (GMP)* shall mean the sum of money agreed upon between the City and the construction contractor to complete a construction project. This is a not-to-exceed total cost of the services and materials provided during the construction phase of work including direct costs, overhead, any contingency, and fees. The GMP is typically established at approximately ninety (90) percent design completion.

...

*Independent Cost Estimate (ICE)* shall mean a tool utilized to assist in determining the reasonableness of the project cost. The ICE is developed by a qualified independent third-party not associated with the project.

...

*Master Agreement* shall mean an agreement established for the completion of a project or provision of services or materials on an as-required basis establishing the terms, conditions and general scope of services. The Master Agreement works in conjunction with a Work Order, which supplements the Master Agreement.

...

*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, e-procurement systems, internet, newspapers, other written publications, posting, television, radio, other broadcasting media and electronic billboards.

*Real property* shall mean lands, lands under water, buildings, permanent structures and any and all easements, incorporeal hereditaments and every estate and right herein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

...

*Work order* shall mean a written order defining a discrete service and/or material with a definite project, price and time of completion which is used in conjunction with a work order contract to create an enforceable contract.

Section 4. That Section 8-113 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-113. - Authority and duties of purchasing agent.**

...

(b) The Purchasing Agent may formulate and promulgate rules and regulations for the administration of this Article, not inconsistent with the provisions of this Article, with respect to purchasing procedures. Any rules and regulations promulgated by the Purchasing Agent hereunder shall be effective upon the approval of the City Manager and the Purchasing Agent's filing of the same with the City Clerk.

Section 5. That Section 8-138 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-138. - Approval.**

(a) Specifications prepared primarily for a procurement for a specific department or agency of the City shall be approved by both the Purchasing Agent and the head of the using department, agency or designee thereof before being submitted for bid.

(b) If the Purchasing Agent and head of the using department or agency cannot agree, the matter shall be referred to the City Manager.

Section 6. That Section 8-139 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-139. - Brand name specification.**

(a) A brand name specification may be used to maintain standardization, interchangeability, or compatibility within a critical system or process or when the Purchasing Agent has determined that sufficient sources for competition exist for the procurement of the material and that the use of the brand name specification is not intended to limit or restrict competition.

...

Section 7. That Section 8-157 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-157. - Competitive sealed bidding.**

...

(f) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be authorized when deemed appropriate by the Purchasing Agent.

(1) Bids may be withdrawn by the offeror for any reason prior to bid opening. Any such notice of withdrawal must be received in the office designated in the invitation for bids prior to the time set for bid opening.

(2) Mistakes discovered before bid opening may be corrected or withdrawn in writing by the bidder. Any such corrections or notices of withdrawal must be received in the office designated in the invitation for bids prior to the time set for bid opening.

(3) After bid opening, the following provisions shall apply:

a. A low bidder alleging a material mistake of fact may be permitted by the Purchasing Agent to correct its bid if the mistake is clearly evident on the face of the bid document and the intended correct bid is similarly evident.

b. A low bidder alleging a material mistake of fact may be permitted by the Purchasing Agent to withdraw its bid: (i) if the mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident or (ii) if the mistake is not clearly evident on the face of the bid but the bidder submits evidence to the Purchasing Agent which clearly and convincingly demonstrates that a mistake was made, in which case the bidder must show the nature of the mistake and the bid price actually intended.

(4) No changes in bid prices or other provisions of bids prejudicial to the interests of the City or fair competition shall be permitted.

(5) All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes will be supported by a written determination made by the Purchasing Agent.

(g) The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. If the lowest responsive and responsible bid exceeds budgeted funds and either time constraints or economic considerations preclude resolicitation of work of a reduced scope, the Purchasing Agent is authorized to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder, to modify the scope of work, or to negotiate other terms and conditions, so as to bring the bid within the amount of available funds.

Section 8. That Section 8-158 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-158. - Competitive sealed proposals.**

(a) Procurements for the following are eligible for award by competitive sealed proposals:

(1) Materials and services when the Purchasing Agent determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City;

(2) Professional services; and

- (3) City improvements when the Purchasing Agent determines that the use of alternative delivery methods will benefit the City while retaining assurance of competitive pricing and contractor selection.
- (b) Procurements accomplished pursuant to this Section shall be solicited through a request for proposals.
- (c) Public notice shall be given and shall include the proposal title, place, date and time the proposal must be received at the place stated in the request for proposal. In the event of good cause as determined by the Purchasing Agent, the time set for submittal of the proposals may be extended when determined to be in the City's best interest.
- (d) Except as provided in paragraphs (e) and (m) of this Section, proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation.
- (e) A list of the offerors submitting proposals shall be maintained containing the name of each offeror and shall be open for public inspection or disclosure after the time set for submittal of the proposals. The name of the awarded firm may be disclosed to the public after the date of the written notice of award.
- (f) The request for proposals shall state evaluation factors and their relative importance.
- (g) After proposal opening, interviews may be conducted with the highest ranked responsible offeror or offerors for the purpose of clarification and to assure full understanding of, and responsiveness to, solicitation requirements. Offerors selected for interview shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and prior to award in order to reflect clarifications in the proposal's scope of work or contract amount.
- (h) Except as provided in paragraphs (e) and (m) of this Section, in conducting interviews, there shall be no disclosure by the City or any officer, employee or committee thereof, of any information derived from proposals submitted by competing offerors, nor shall there be any disclosure of information discussed by the evaluation committee in selecting the highest ranked offeror(s).
- (i) After the contract has been awarded and a written contract executed with the selected offeror(s), the total points of the evaluation committee will be retained by the Purchasing Agent for a period of time consistent with the City's record retention policy. The total points or ranking of the offerors shall not be made available for public inspection or disclosure.
- (j) Except as provided in paragraph (m) of this Section, individual rating sheets, notes, emails and other documents prepared or utilized by members of the evaluation committee shall not be made available for public inspection or disclosure.
- (k) The contract shall be awarded with reasonable promptness by written notice to the responsible offeror whose proposal is determined in writing to be the most advantageous to the

City, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.

(l) The Purchasing Agent is authorized to negotiate contract terms, including but not limited to the final price and precise scope of work, with the selected offeror.

(m) If the proposals are for the services of a public accounting firm to conduct the annual independent audit of the City's books and accounts as required in Section 17 of Charter Article II, those proposals shall be reviewed and the interviews conducted by the City Council or a committee of the Council in a public meeting and the selection by Council shall be conducted in a public meeting. In conducting such review, interviews and selection, the City Council and committees of the Council shall not be subject to the provisions in paragraphs (d), (h), (i) and (j) of this Section.

(n) No public accounting firm selected to conduct the City's annual independent audit shall be eligible to be selected under this Section to conduct that audit for more than two (2) consecutive five (5) year terms. In addition, any firm conducting the audit for five (5) consecutive years shall not be eligible to participate in a new competitive sealed proposal and be selected unless the firm assigns a new lead partner to conduct the audit under the new contract with a term of one (1) to five (5) years.

(o) To ensure competitive pricing and value in the use of an alternative delivery method, the Purchasing Agent shall require the contractor to obtain quotes from at least three (3) suppliers and/or subcontractors for all materials and services exceeding a cost of sixty thousand dollars (\$60,000.). The Purchasing Agent may waive this requirement if the Purchasing Agent determines that one of the conditions in Section 8-161(d)(1)(a) through (j) exists. The Purchasing Agent shall make such determination in writing for procurements which exceed a cost of two hundred thousand dollars (\$200,000.). Subcontractors selected by the City as part of the construction contractor team competitive process for the alternative delivery method are exempt from this requirement, subject to the discretion of the Purchasing Agent.

Section 9. That Section 8-159 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-159. - Competitive negotiated procurement.**

(a) Procurement for goods, services, professional services, products for resale or redistribution, distribution services usage and competitive business arrangements that are related to the establishment of strategic business plans or relationships of any City utility in a competitive market environment shall be eligible for award by competitive negotiation under this Section, provided that the following conditions are met:

(1) The Purchasing Agent determines in writing, with the approval of the City Manager, that the use of competitive sealed bidding or competitive sealed proposal processes are either not practicable or not advantageous to the City; and

(2) There is a minimum of two (2) vendors/businesses willing and able to provide the basic goods, services or products to be procured through competitive negotiation.

(b) In order to initiate a competitive negotiated procurement under this Section, the procuring utility shall, in a manner acceptable to the Purchasing Agent as sufficient to identify potential appropriate and qualified vendors of the goods, services, or professional services to be procured, investigate and research the market for such goods, services, or professional services; and identify those vendors determined to be appropriate and qualified candidates in light of the competitive and other interests of the procuring utility.

...

(e) Each vendor participating in competitive negotiations under this Section shall be accorded a fair and reasonable opportunity to present and explain the goods, services, or professional services to be provided by such vendor.

(f) The basis for final selection of a vendor under a competitive negotiation process, and the final terms of the contract under which goods, services, or professional services shall be procured under this Section, shall each be subject to the review and approval of the Purchasing Agent and City Manager.

(g) Prior to the renewal or extension of any contract for goods, services, or professional services under this Section beyond the original potential term of such contract, the City Manager or procuring utility shall require that an assessment of the subject vendor's performance and the benefits to the City of the terms of such contract be conducted by a qualified third party, to be selected by the Purchasing Agent.

Section 10. That Section 8-161 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-161. - Exemptions to use of competitive bid or proposal.**

(a) *Minor purchases.*

(1) The Purchasing Agent shall have the authority to negotiate without formal competition for the purchase of any materials, professional services, services or construction not exceeding a cost of sixty thousand dollars (\$60,000.) per contract or purchase order. Where a project has been previously bid, project managers may approve, pursuant to administrative guidelines approved by the Purchasing Agent, change orders up to the minor purchase limit established in this Subsection; provided, however, that no such change order shall authorize any expenditure of funds in excess of the amounts budgeted and appropriated for the project.

(2) Such negotiated purchases shall be made in the open market, but wherever practical or advantageous, the Purchasing Agent, department or agency shall obtain quotes from at least three (3) suppliers. Negotiated purchases of materials, professional services, services



or construction shall be awarded to the person supplying the lowest responsible and responsive quote. Critical attributes, such as quality, experience and delivery, may be considered in the award, but such attributes must be stated in the invitation for quote.

(3) The purchasing procedures adopted pursuant to § 8-113 of this Article may authorize the purchase of materials, services or professional services in the open market by other departments of the City, provided that no such purchase shall exceed seven thousand five hundred dollars (\$7,500.) except that the Purchasing Agent may authorize the procurement of materials and services in an amount not to exceed fifteen thousand dollars (\$15,000.) per procurement when purchased pursuant to a pricing agreement approved by the Purchasing Agent and purchased by an employee of the City authorized by the Purchasing Agent to make such purchases.

(4) No procurement shall be divided so as to constitute a minor purchase under this Subsection.

...

(c) *Construction change orders.*

(1) Notwithstanding the provisions of Paragraph (a)(1) of this Section and Subsection (2) below, one (1) or more change orders to an existing construction contract may be executed without competition unless the cumulative amount of such change orders exceeds the greater of:

- a. Fifteen (15) percent of the original contract amount; or
- b. Fifteen (15) percent of the Guaranteed Maximum Price (GMP); or
- c. Sixty thousand dollars (\$60,000.).

(2) Construction contracts utilizing an alternative delivery method shall not be subject to the limits of subsection (c)(1) of this Section 8-161, except in the event a Guaranteed Maximum Price (GMP) is established. In such event, subsection (c)(1) above shall apply.

(23) Any construction change order which authorizes a new improvement under a construction contract may be executed without competition when the Purchasing Agent makes an administrative finding that it would be justified in light of the cost savings, time savings or improved efficiency in the completion of the project to negotiate with the on-site contractor for the construction of the new improvement because:

- a. The new improvement is required for the completion of an improvement which is currently under construction pursuant to a competitive bidding or competitive proposal process; or

b. The new improvement results from the discovery of differing or unforeseen physical conditions at the site of the improvement under construction and is required for the completion of the improvement under construction.

Any change order executed under this subsection (3) is not subject to the cost limitations of subsection (c)(1) of this Section 8-161.

(d) *Miscellaneous exemptions.*

...

(4) Any procurement approved under this Section 8-161 by the City Manager or the City Council may be used as the basis for a negotiated purchase of additional quantities of the same materials or services at any time within a period of five (5) years from the date of approval; provided, however, that subsequent procurements may be expressly limited to a specific number of purchases or a period of less than five (5) years.

(e) *Materials, services, professional services and construction competitively bid within twenty-four (24) months.* In any case where the City has, within the preceding twenty-four (24) months, pursuant to an invitation for bids or request for proposals, awarded a contract for the procurement of any materials or for the procurement of services, professional services or construction bid on a unit price basis and/or hourly rate schedule, the Purchasing Agent may negotiate with the successful bidder for the purchase of additional quantities of the materials or units of services or construction under a new agreement subject to the limitations of Section 8-186. The Purchasing Agent may, based upon a reasonably prudent investigation of market conditions at the time, make procurements at a price warranted by such conditions, even if the resulting cost to the City is greater than the amount of the previous award.

(f) *Purchase of content for City-delivered video programming and streaming service.* The Purchasing Agent shall have the authority to negotiate without formal competition the purchase of video content licensing rights for the City's delivery of cable or other subscriber video content, programming, and streaming services. The Purchasing Agent is authorized to procure such licensing from local channels, individual channels and channel families, and video content aggregation companies when he or she determines i) viable market demand supports obtaining rights to deliver the specific content, and ii) the anticipated cost to acquire such rights is reasonable based on the uniqueness of the content, region, and market. The Purchasing Agent shall submit a summary of such transactions and determinations to the City Manager's Office for each purchase under this Subsection. The Purchasing Agent and the City Manager designee with direct responsibility to manage City telecommunication facilities and services, as defined in Section 7(f) of Charter Article XII, shall jointly advise City Council regarding any purchase under this Subsection that exceeds an annual cost of one million dollars (\$1,000,000).

Section 11. That Section 8-163 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-163. - Other procedural prerequisites for award of contracts.**

(a) In the case of a contract for procurement primarily for the use of a specific department or agency of the City, the head of such using department or agency or designee thereof shall also approve an award before written notice of the award is sent.

...

(c) The Purchasing Agent shall not award any contract or finalize any procurement until the funds necessary to defray the cost of such procurement are appropriated and available or will be available when the obligations become due or payable, excepting only:

(1) Cases of emergency under Subsection 8-161(b); and

(2) Cases where revenue to pay the bidder or offeror will be raised through the performance of the contract.

...

Section 12. That Section 8-164 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-164. - Prequalification of bidders and offerors.**

The Purchasing Agent may authorize the establishment of a prequalified list of vendors utilizing a competitive prequalification process. This list of vendors may be utilized in lieu of public notice for soliciting competitive sealed bids or competitive sealed proposals; provided, however, that the Purchasing Agent may use such list in lieu of public notice only if public notice of the prequalification procedure and intended use of the list has been given within the preceding twenty-four (24) months.

Section 13. That Section 8-165 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-165. - Cooperative procurement plans.**

The Purchasing Agent shall have the authority to join with other units of government in cooperative procurements, including, but not limited to, the State and the Multiple Assembly of Procurement Officials, when the best interests of the City would be served thereby. Upon written approval by the Purchasing Agent, competitive sealed bids, competitive sealed proposals or pricing agreements received by any other governmental agency shall be the equivalent of bids or proposals received by the City and may be the basis for any procurement by the City.

Section 14. That Section 8-186 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-186. - Multi-year contracts.**

(a) No contract for materials, services or professional services, including all renewals, shall be made by the City for a period longer than five (5) years, unless authorized by ordinance, which ordinance shall not be passed as an emergency ordinance. Notwithstanding the foregoing, the following shall not be subject to the five (5) year term limitation but in any event shall not have a term in excess of ten (10) years:

- (1) Software licensing and/or maintenance agreements; or
- (2) Select financial services including procurement credit cards, credit card processing, and retirement record keeping; or
- (3) Purchase of content for City-delivered video programming and streaming services; or
- (4) Master Agreements with Work Order(s) in-process may be renewed for up to a maximum of one (1) additional year if required to complete an in-process Work Order.

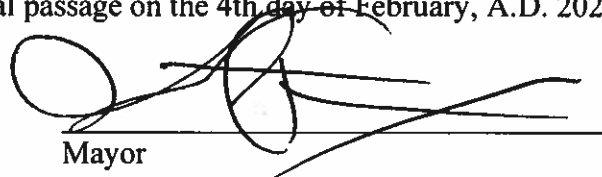
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Section 15. That Section 8-187 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 8-187. - Multiple source award.**

A multiple source award may be made when an award to two (2) or more bidders or offerors for similar supplies, services, or professional services is necessary for adequate delivery, service or product compatibility.

Introduced, considered favorably on first reading, and ordered published this 21st day of January, A.D. 2020, and to be presented for final passage on the 4th day of February, A.D. 2020.

  
Mayor

ATTEST:

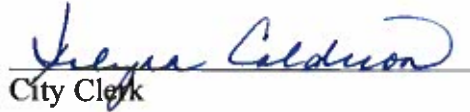
  
City Clerk



Passed and adopted on final reading on this 4th day of February, A.D. 2020.

  
Mayor

ATTEST:

  
City Clerk

