

City of Commerce City Procurement Policy

ARTICLE I – INTRODUCTION

A. Purpose and Goals

The purpose of this Policy is to establish standards for the City’s procurement process in a manner that reflects the City Values and council goals as stewards of the public trust.

As such, this Policy incorporates the following guiding principles into the procurement process:

- a. Accountability
- b. Competitiveness
- c. Ethics
- d. Local Preferences
- e. Sustainability
- f. Limitations of authority

B. Application and Scope

Except as expressly provided herein, this Procurement Policy (“Policy”) applies to all expenditures, including expenditures for capital improvements, of public funds for the procurement of goods and services irrespective of funding source, including federal and state assistance and bond proceeds. No procurement shall be made on behalf of the City except in accordance with this Policy, the Commerce City Revised Municipal Code (“Code”), and Charter of the City of Commerce City. Contracting requirements and contract approval levels are not governed by this policy. All procurements and contracts supported by Federal funding must comply with the Federal Single Audit Act and OMB A-133, 2 CFR Part 200, funding-specific laws, and funding agency-specific regulations and guidance and should comply with and include all required Federal practices and language, notwithstanding any inconsistent provisions of this policy.

C. Procurement Decisions – General Policy

All procurements shall be made from/with the responsible vendor who provides the best value to the City based on all applicable criteria and the requirements of this Policy. “Best value” is determined by the combination of the priorities set for the particular procurement and this Policy, including, but not limited to price, quality, customer service and competition. A "responsible vendor" must possess the ability to perform successfully under the terms and conditions of a proposed procurement with consideration will be given to relevant matters, including without limitation contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Notwithstanding the foregoing, the City shall not be obligated to make any procurement where doing so is determined not to be in the best interest of the City.

D. Procurement Decisions – Cost Efficiency

All procurements should strive for cost-efficiency and the most economical approach, consistent with this Policy. Procurements must avoid acquisition of unnecessary or duplicative items and services. Analysis should be conducted to determine whether cost-efficiency could be increased by consolidating or dividing procurements, using lease or purchase alternatives, using agreements for shared or common procurements, using excess or surplus property, or incorporating value engineering clauses.

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E. Procurement Procedures

The City Manager shall create, approve and maintain administrative rules in compliance with the provisions of this Policy for the implementation and day-to-day administration of the City's procurement needs.

ARTICLE II – PROCUREMENT THRESHOLDS; SOLICITATION REQUIREMENTS

TABLE I - SUMMARY		
Aggregate Expenditure Amount*	Solicitation Required	Selection Authorization Required**
Up to \$9,999.99	Quotes Recommended	Division Manager or above
\$10,000 - \$74,999.99	A Minimum of Three (3) Quotes (if available)	Department Director or above
\$75,000- \$250,000	Formal Solicitation Required	City Manager
Over \$250,000	Formal Solicitation Required	City Council

*The Aggregate Expenditure Amount includes all years of any contract resulting from the procurement, including all costs of the goods or services obtained from the procurement. The term aggregate does not include amounts attributable to other procurements even if from the same vendor.

** Separate contract approval requirements are established by the Code.

A. Delegation/Designation of Authorization Authority

Department Directors may delegate authorization authority only for procurements under \$15,000, and Division Managers may delegate authorization authority only for procurements under \$5,000. Any such delegation shall be submitted to the Finance Department in writing. Except as otherwise set forth herein, unless authorization authority has been formally delegated, no employee shall approve a procurement.

B. Solicitation of Quotes (Informal Solicitation)

All procurements for goods or services involving for which quotes are required under Table 1 shall be supported by quotes obtained from at least three (3) vendors whenever reasonably possible. All vendors shall be provided the same information (including scope of work and contract requirements) to obtain comparable quotes.

C. Formal Solicitations (Invitations to Bid and Requests for Proposals)

All procurements of goods or services for which formal solicitations are required under Table 1 shall be subject to a formal solicitation process, which shall include reasonable notice to potential respondents, a detailed scope of work, submission requirements, and evaluation and selection criteria.

D. Frequency of Solicitation

Procurements conducted either by solicitation of quotes or through the formal solicitation process should be re-solicited at least once every three (3) years if possible; but if not possible, all such procurements must nevertheless be re-solicited at least once every five (5) years.

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E. Sole Source & Waivers

The City Manager may approve waivers from the requirements of this Policy, if determined to be in the City's best interest, and may approve sole source procurements when the proposed procurement of goods or services cannot be achieved through competitive solicitation. The nature of the relevant circumstances that prohibit competition or justify a waiver shall be submitted in writing to the City Manager for approval. The City Manager shall provide a summary of sole source procurements and waivers to City Council quarterly.

F. Contractual Terms Review and Approval

Formal solicitations shall include all proposed contract terms (including scope of work, bond, insurance, and indemnity requirements), subject to negotiation where appropriate. The City's template request for bids includes a bid bond, performance and payment bonds, and an option for a warranty bond. All procurements and contracts supported by Federal funding must comply with the Federal Single Audit Act and OMB A-133, 2 CFR Part 200, funding-specific laws, and funding agency-specific regulations and guidance and should comply with and include all required Federal practices and language, notwithstanding any inconsistent provisions of this policy. All proposed contract terms included in any procurement must be approved by the City Attorney's Office before issuance.

G. Exceptions

1. **Insurance and Benefits.** The procurement of all insurance and benefits, including renewals or extensions and related recordkeeping services, are exempt from this Policy. Insurance and benefits will be procured in a generally competitive manner as determined by the City Manager.
2. **Legal Services.** Outside legal services, including related services, obtained by the City Attorney's Office are exempt from this Policy.
3. **Cooperative Purchasing.** Products or services for which other public agencies have engaged in a competitive solicitation process and are able to have their bid prices extended to the City, such as State Bid, GSA, etc., shall be deemed as meeting the intent of this policy. The City may also participate in joint procurements with other agencies in the City's best interests. City Manager approval is not required when cooperative purchases are made.
4. **Items for Resale.** Items procured by the City for resale to the general public, including, but not limited to, merchandise sold by the Buffalo Run Golf Course, technical manuals and codes adopted by reference, statute books, and food items such as prepackaged snacks and prepared meals, are exempt from this Policy.
5. **Utilities.** Utilities and utility bills, such as electricity, natural gas, water and sewer, television services and other utilities, are exempt from this Policy.
6. **Intergovernmental Agreements.** Goods or services obtained from other governmental or quasi-governmental entities pursuant to intergovernmental agreements are exempt from this Policy.
7. **Pass Through Funding.** The procurement of goods or services to be funded solely by user fees paid directly for those goods or services are exempt from this Policy.
8. **Superseding Standards.** Procurements subject to inconsistent State or Federal procurement standards, or those in which the City is not the primary contracting party, are exempt from this Policy to the extent of any inconsistency.

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H. Master Services Agreements (Work Order Contracts)

Procurements for services to be provided under a master services agreement (MSA) are authorized. Formal solicitation is required for any MSA where the aggregate expenditures (including all years) are reasonably estimated to exceed \$75,000. If an MSA is obtained through a formal solicitation, individual work orders and invoices shall not be subject to additional solicitation but selection authorization and Code contract approval requirements shall apply for each work order or invoice. If an MSA is obtained by any method less than formal solicitation, each work order or invoice shall be subject to all solicitation, selection authorization, and Code contract approval requirements. MSAs shall not exceed an aggregate expenditure of \$75,000 unless approved by the City Manager or \$250,000 unless approved by the City Council.

I. Emergencies

The City Manager may authorize emergency procurements of goods or services when there exists a threat to public health, welfare or safety, or when other good cause exists. Such procurements shall be made as expeditiously as possible considering cost and other factors. Contracting requirements of the Code and City Charter still apply. The City Manager shall establish the process and procedures for emergency procurements.

J. Procurement Rationale

All procurements anticipated to exceed \$3,000 should be supported by a documented rationale for relevant procurement considerations, including method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

ARTICLE III – ETHICAL RESPONSIBILITIES

A. Other Ethics Laws & Policies

Laws and policies regarding ethics established by the City Charter, Code, Council Policies, Employee Policies, and state law shall apply to this Policy. In addition, for any contract supported by a Federal award, no employee, officer, or agent of the City may: (1) participate in the selection, award, or administration of the contract if they have a real or apparent conflict of interest (e.g., when the employee, officer, or agent, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the foregoing, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract); or (2) solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The Charter, Code, and policies referenced above may be relied upon to determine that a financial interest is not substantial or that a gift is an unsolicited item of nominal value. Violations of these standards shall be grounds for an official reprimand or disciplinary action, for any employee, or such disciplinary action as the city council deems appropriate, for any elected or appointed official.

B. Vendor Avoidance

No City employee shall knowingly over- or under-estimate the requirements of this Policy and/or solicitations or fail to disclose existing requirements in order to avoid conducting business with a particular vendor.

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C. Misrepresentation

No City employee shall misrepresent competitors' prices, quality or services in order to obtain concessions from vendors.

D. Division of Procurements Prohibited

No procurement shall be artificially divided in an attempt to avoid compliance with this Policy.

ARTICLE IV – SUSTAINABLE PROCUREMENT RECOMMENDATIONS

A. General Policy Statement

City employees should endeavor to procure materials, products and services in a manner that integrates fiscal responsibility, social equity and community and environmental stewardship.

B. Use of Best Practices

City employees will make a *good faith effort* to make use of best practices in sustainable procurement. As applicable to this Policy, best practices are those that utilize leading-edge sustainability factors, standards and procedures in an efficient and effective way that is successful and replicable, including new environmentally-preferable products, reusable products, recycled content and recycled products.

C. Disadvantaged Businesses

All procurements should take necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps for non-Federal procurements may include and for procurements supported by Federal funding must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) requiring any prime contractor to take such affirmative steps.

ARTICLE V – LOCAL PREFERENCES

A. Local Business Preference

1. When a procurement of goods or services involving an aggregate expenditure of \$10,000 or less is available from a local business, the procurement policy recommends local preference be given to the local business as long as pricing, specifications, quantity and quality are comparable and in the best interests of the City.
2. When a response from a local business to a solicitation for a procurement of goods or services involving an aggregate expenditure exceeding \$10,000 would, *if not for the cost*, provide the best value to the City, and such cost does not exceed, by more than 5% or \$5,000 (whichever is less)

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the aggregate cost quoted by the vendor whose response would otherwise provide the best value, the award shall be made to the local business, to the extent allowed by law.

3. This article shall not apply to any procurement supported by Federal funding unless permitted by applicable law.

A. Definition

A “local business” is a business: (a) with a location within the corporate limits of Commerce City; (b) currently licensed with the City; and (c) in compliance with the requirements of the City’s sales and use tax code.

ARTICLE VI – GENERAL PROVISIONS

A. No Vendor Rights Established

This Policy is strictly reserved for the use of the City. This Policy does not create any rights or benefits upon any prospective vendor, and nothing contained herein shall give or allow any claim or right of action by any prospective vendor. No solicitation or procurement process shall commit the City to select any vendor, award any contract, or pay any costs. The decisions of the City are final and without recourse to any vendor. All rights of the City, including without limitation to negotiate with any vendor, modify any solicitation, cancel any solicitation, or waive any informalities or irregularities in any proposal, bid, or quote or in the solicitation or selection process, are reserved.

B. Retention Schedule

All solicitations and responses, and resulting contract documents, shall be retained in accordance with the City’s retention schedule and must be available for the City’s annual audit. All contracts, regardless of size, should be retained with the City Clerk with a contract cover sheet (except for change orders retained by the contracting department until the conclusion of the contract and then filed with the City Clerk).

Policy History

- Originally adopted by Resolution 2014-38 for January 1, 2015 effective date
- Amended by Resolution 2018-92 November 5, 2018
- Amended by Resolution 2020-94 November 16, 2020