

ORDINANCE NO. 2391
INTRODUCED BY: Padilla

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, RESCINDING AND REPLACING SECTION 3-8 CONTRACTS AND PURCHASES OF THE BRIGHTON MUNICIPAL CODE

WHEREAS, Section 17.7 of the *Charter of the City of Brighton* provides that the Council “shall establish by ordinance procedures requiring competitive bidding for contracts for the procurement of services, equipment, and supplies;” and

WHEREAS, in accordance with Section 17.7, the City Council previously enacted Article 3-8 of the *Brighton Municipal Code* to address contracts and purchases; and

WHEREAS, since Article 3-8 was enacted, both the population of the City of Brighton and the cost of living have grown exponentially; and

WHEREAS, the City Council finds it necessary to review the procedures of Article 3-8 to meet the evolving demands of the City and the pressures of the economy.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Article 3-8 of the Brighton Municipal Code is hereby rescinded and replaced as follows:

ARTICLE 3-8 - Contracts and Purchases

Sec. 3-8-10. - Definitions.

As used in this Article, the following terms shall have the meanings ascribed to them in this Section.

Amendment means a written alteration to a contract or purchase order.

Bid means an offer submitted by a prospective vendor or contractor in response to an invitation to bid issued by the City, which becomes a contract upon acceptance.

Bid bond means an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid, the bidder will furnish bonds as required and, if the contract is awarded to the bonded (insured) bidder, the bidder will accept the contract as bid or else the surety will pay a specific amount.

Bid security means the cash deposit with the City equivalent to the bid bond required for all competitive bidding for construction contracts as provided in this Article.

Change order means a written alteration to a construction contract.

Competitive bid* or *competitive bidding means a bidding process by which the City awards a contract to the lowest responsive and responsible bidder.

Contract administration means those actions undertaken by the procurement manager as necessary after the award of contract and issuance of the notice to proceed, to assure that all of the administrative requirements of the contract have been satisfied and that all bonding, insurance and other performance guarantees have been properly executed and remain current, and to provide assistance to project managers regarding implementation and enforcement of the contract. Contract administration by the procurement manager does not include supervision or monitoring of the contract project, except upon the direction of the City Manager.

Cooperative purchasing means: a) procurement conducted on behalf of two (2) or more public procurement units; b) the combining of requirements of two (2) or more public procurement units in order to obtain the benefits of volume procurements and/or reduction in administrative expenses; c) a variety of arrangements whereby two (2) or more units purchased from the same supplier using a single invitation to Bid (ITB) or Request for Proposal (RFP); or d) leveraging the competitively procured agreements of other public entities or governmental agencies.

Electronic media means the internet, the City website or any other widely available resource on the World Wide Web, or other networking medium approved by the City Manager.

Emergency conditions includes those circumstances which require the immediate procurement of materials, supplies, equipment or services, made to protect the public health, welfare or safety under emergency conditions, an emergency situation, or in the event of a disaster declaration, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances.

Formal solicitation means a competitive solicitation for sealed responses in conformance with a prescribed format, to be opened in public at a specified time.

Informal solicitation means a competitive solicitation or price quotation for the procurement of material, supplies, equipment and/or services that is conveyed by letter, telephone, facsimile, email transmission or other acceptable means and does not require a sealed bid, public opening, or public reading of bids.

Invitation to bid (ITB) means all documents utilized for soliciting bids.

Materials means all supplies and equipment procured by the City or any of its departments or agencies.

Micro purchase means a purchase of material, supplies, equipment and services for less than fifteen thousand dollars (\$15,000.00), from any available and qualified source.

Procurement means purchasing, renting, leasing or otherwise acquiring any material, supplies, equipment, services or construction; includes all functions that pertain to the acquisition, including a description of requirements, selection and solicitation of sources and the preparation of the award of contract and contract administration; and includes the combined functions of purchasing, contract administration, inventory control, salvage and disposal operations.

Proposal means the document submitted by the offeror in response to the request for proposal (RFP) to be used as the basis for negotiation for a contract. A proposal is usually requested in cases where the selection of a contractor or firm is to be made on the basis of the performance that is offered rather than on that of price alone and may require an outline of details such as the vendor's or firm's qualifications and experience and the identification of problems and proposed solutions in addition to details of pricing.

Request for proposal (RFP) means all documents, whether attached or incorporated by reference, utilized for soliciting a proposal.

Responsible bidder or offeror means a bidder or offeror who has the capability in all respects to perform fully the contract requirements, the experience, integrity, perseverance, reliability, capacity, facilities, equipment and credit which will assure good faith performance, as well as a competitive price.

Responsive bidder means a vendor or purchaser who has submitted a bid that conforms in all material respects to the requirements stated in the invitation to bid.

Simplified Acquisition Procedures (SAP) means a purchasing process utilized for micro purchases wherein the purchaser does not need to conduct an informal solicitation, provided that the purchase is in the best interests of the City and the purchase is competitively priced.

Sole-source procurement or single-source procurement means only one (1) vendor or one (1) source possesses the unique and singularly available capability to meet the requirements of the solicitation, and may include technical qualifications or services from a public utility.

Solicitation means the request for a particular material or service from the public.

Specification means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item; the requirements to be satisfied by a product, material or process indicating, if appropriate, the procedures to determine that the requirements are satisfied.

Sec. 3-8-20. – Services exempt from procurement.

The following professional services shall be exempt from procurement: attorneys, financial advisors, lobbyists, regulated utilities, medical services, memberships and training through a professional organization, public speakers, performers, and travel services. Professional services does not include consulting or marketing. Notwithstanding the foregoing, such exempt services are subject to the award authority set forth in this Article.

Sec. 3-8-30. – Authority for award.

(a) All materials, services, and construction contracts, except as otherwise provided in this Article, with an estimated cost greater than fifty thousand dollars (\$50,000.00) but less than one hundred thousand dollars (\$100,000.00), shall be awarded through formal solicitation procedures or the formal RFP process by the City Manager.

(b) All materials, services, and construction contracts, except as otherwise provided in this Article, with an estimated cost greater than one hundred thousand dollars (\$100,000.00), shall be awarded through the formal solicitation procedure or the formal RFP process by the City Council. After due notice inviting bids, purchase orders and contracts shall be awarded to the lowest responsive and responsible bidder.

(c) All operational expenses, capital equipment items, and all software, maintenance, and software-as-a-service (SaaS) renewals which are included in the annual budget and which have been approved by the City Council through the formal budget process may proceed through the requisite procurement process without additional approval by the City Council and may be signed

by the City Manager, so long as all of the requirements and processes for City contracting and procurement as set forth in Chapter 3 of the Brighton Municipal Code have been satisfied and so long as the cost of the item does not exceed the approved budgeted amount. City Council approval is required if the item exceeds the approved budgeted amount, if the item is not as originally budgeted, or if special circumstances exist which necessitate City Council approval.

(d) For purchases under fifteen thousand dollars (\$15,000.00), City staff should consider obtaining more than one quote, responsible vendors, and the best interests of the City.

Sec. 3-8-40. –Competitive bidding required.

All procurement of materials, supplies, equipment and services; contracting for construction contracts or professional services; and, all sales of personal property or supplies shall be accomplished by competitive bids or requests for proposals, except as provided herein, after due notice is given to prospective bidders or professional service providers. In circumstances necessitating sole-source procurement or procurement under emergency conditions, or when only one (1) vendor or contractor is available in the area, procurement and contracts shall be effected with maximum economy to the City, without the necessity of requiring bids thereon; however, a full and complete justification therefor shall be prepared by the requesting department and filed with the procurement documents relating to the transaction.

Sec. 3-8-50. – Formal solicitation; when required.

A formal solicitation is required for all procurement of fifty thousand dollars (\$50,000.00) or greater, with the exception of single-source or sole-source procurement, as provided herein. A formal solicitation shall be awarded to the lowest responsive and responsible bidder. Notwithstanding the foregoing, the Finance Department may require formal solicitation for procurement under fifty thousand dollars (\$50,000.00) at their discretion.

Sec. 3-8-60. - Waiver permitted for solicitation procedure.

The City Manager, or designee, may waive the solicitation procedure provided for herein for contracts greater than fifteen thousand dollars (\$15,000.00) and up to one hundred thousand dollars (\$100,000.00). The City Council may waive the formal solicitation procedure for contracts greater than one hundred thousand dollars (\$100,000.00). However, any such waiver shall be implemented only if there is first a determination by the City Manager or the City Council, as applicable, that such waiver will be in the best interest of the City.

Sec. 3-8-70. - Publication of notice inviting bids.

Except for notices inviting bids for construction contracts, notices inviting bids shall be published at least once in electronic media selected for maximum impact on prospective bidders at least five (5) days preceding the last day set for receipt of bids. Notices inviting bids for construction contracts shall be published at least once in an area newspaper selected for maximum impact of prospective bidders at least twenty (20) days preceding the last day set for receipt of bids, unless the City Council determines that the required construction is an emergency, in which event the notice required hereunder shall be given at least five (5) days preceding the last day set for receipt of bids. The notice shall include a general description of the materials, or general services to be purchased or sold or the public buildings or facilities to be constructed, where bid specifications and forms may be secured, the deadline for submission of bids and the time and place for opening bids.

Sec. 3-8-80. - Bid bond and bid deposits; when required.

When deemed necessary by the City Manager, bid bonds or deposits may be required. If the bid is not accepted or a bidder is unsuccessful, bid deposits shall be refunded. All notices of bid award shall be acknowledged by the bidder or his or her personal representative. When a bid is awarded but the successful bidder fails to enter into a contract within ten (10) days after the date of receipt of notice of award, the deposit may be forfeited.

Sec. 3-8-90. - Submittal, opening and availability of solicitation responses.

- (a) Bids shall be submitted sealed and shall be identified as bids on the envelope.
- (b) Bids shall be opened in public at the time and place stated in the public notice unless all bidders are notified of a change by written addendum.
- (c) A tabulation of all bids received shall be available for public inspection.

Sec. 3-8-100. - Rejection of bids.

The City may reject all bids or parts of bids when it is determined to be in the best interests of the City to do so.

Sec. 3-8-110. - Award of contract; criteria for consideration.

Contracts shall be awarded to the most responsible and responsive bidder. In determining most responsible and responsive bidder, in addition to price, the City may consider:

- (1) The ability, capacity, and skill of the bidder to perform the contract or furnish the supplies required;
- (2) Whether the bidder can perform the contract or furnish the supplies 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 on previous contracts;
- (5) Previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (6) Sufficiency of financial resources and ability of the bidder to perform the contract or furnish the supplies;
- (7) The quality, availability, and adaptability of the supplies or contractual services to the particular use required;
- (8) The ability of the bidder to provide future maintenance and service; and
- (9) The contents and quality of the response to the invitation for solicitation.

Sec. 3-8-120. - Special consideration for award to resident business.

In those circumstances where a bid from a business located within the corporate limits of the City is as acceptable to the City as a bid of other vendors, special consideration may be given to awarding the contract to the Brighton business; the consideration shall be in the form of a ten-percent reduction in the total bid amount when compared with other bids submitted, or a maximum of ten thousand dollars (\$10,000.00) per total bid, whichever is less. A *business located within the corporate limits of the City* must operate a business inside the City limits that is on the City property tax rolls or must lease or rent a property for its business which is on the property tax rolls of the City, and which has a current City business license and is collecting and remitting sales tax for the City, if applicable.

Sec. 3-8-130. – Bonds.

- (a) The City may require bonds for any contract it deems necessary.
- (b) For contracts that do not exceed one hundred thousand dollars (\$100,000.00), the City Manager may, for good cause shown, waive labor material payment bonds, performance bonds, or maintenance bonds unless such bond is required by statute.

Sec. 3-8-140. –Solicitation protests.

- (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract or solicitation must protest in writing to the City Manager as a prerequisite to seeking judicial relief. A written protest shall be submitted within five business days of the opening of solicitations. The Procurement Manager shall submit a response to the protest within five business days.
- (b) A protest by any actual or prospective bidder, offeror, or contractor shall be limited to the following bases: (a) failure to follow the City's procedure, (b) failure to follow the terms of the solicitation, or (c) bias or discrimination.
- (c) In the event of a timely protest under subsection (a), above, the City shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the City Manager makes a determination that the award of a contract without delay is necessary to protect substantial interests of the City.
- (d) The City Manager shall review the protest and response, conduct any investigation he or she deems necessary, and issue a written decision within ten business days of the submission of the Procurement Manager's response. The City Manager's decision shall be final.

Sec. 3-8-150. - Informal solicitation.

- (a) Contracts for materials and services with an estimated cost between fifteen thousand dollars (\$15,000.00) and fifty thousand dollars (\$50,000.00) will be accomplished through informal solicitation. A certificate of insurance may be required.
- (b) When procuring through the informal solicitation process, all departments shall make a good faith effort to obtain at least three (3) written competitive quotes or responses and the procurement shall be awarded in accordance with the applicable criteria set forth in this Article. When informal solicitation awards for the procurement of goods or services exceeding fifteen thousand dollars (\$15,000.00) are made to a vendor that is other than the lowest and/or most responsive and responsible bidder, a full and complete justification therefor shall be prepared by the requesting City department and submitted for approval to the Procurement Manager.

Sec. 3-8-160. - Micro purchases.

Contracts for micro purchases shall utilize Simplified Acquisition Procedures.

Sec. 3-8-170. – Amendment or change order to contract.

All change orders or amendments shall be processed through the office of the Procurement Manager. Department directors shall have authority to approve individual amendments or change orders up to the department director's aggregate signing authority for the total contract price. The City Manager shall be authorized to execute amendments or changes orders, in the aggregate, up to 10% of the original contract amount. All other amendments or changes orders shall be approved by the City Council, as appropriate, based on the signing authority established in this Article.

Sec. 3-8-180. – Master price agreements; extension and amendment.

After the City Council has approved a master price agreement with an annual not to exceed price, the City Manager may approve an annual extension and any amendment thereto, provided that the contractor has performed the work satisfactorily, all terms and conditions of the contract have been fulfilled, the funds for said extension and amendment have been appropriated, and so long as the dollar amount of said contract extension and amendment is within the authority of the City Manager to approve. The City Manager, at his or her discretion, may take a master price agreement and amendment thereto to the City Council for approval. All extensions and amendments to master price agreements in excess of the authority of the City Manager to approve shall be approved by the City Council.

Sec. 3-8-190. - Emergency purchase or contract procedure; City Manager authority.

In case of an emergency, the City Manager will develop a policy that may suspend or amend the requirements of this Article, but which complies with current federal regulations. In the event the City Manager exercises his or her authority under this Section 3-8-190, he or she shall notify the City Council within 24 hours of authorizing such emergency purchase or contract procedure.

Sec. 3-8-200. - Mandatory requirements in City contracts.

- (1) Every contract executed by the City for construction shall contain a provision requiring the contractor performing the work for the City to comply with all applicable safety rules and regulations adopted by the Colorado Department of Labor and Employment or adopted by the City, whichever is more restrictive;
- (2) All City contracts shall contain a provision requiring the contractor to provide evidence of workman's compensation coverage and liability insurance naming the City as a named insured in the liability insurance policy, unless such requirement is waived by the City.

Sec. 3-8-210. - City procurement records.

The Procurement Manager shall keep all determinations and other written records of the solicitation, award or performance of a contract or agreement in a contract file, and all other procurement records, and dispose of them in accordance with records retention guidelines and schedules as adopted by the City Council.

Sec. 3-8-220. - Rules.

The City Manager shall administratively adopt policies implementing the provisions of this Article.

Sec. 3-8-230. - Division of purchase prohibited.

No contract or purchase shall be divided to avoid the requirements of this Article.

Sec. 3-8-240. - Officers and employees misrepresenting facts or influencing solicitations prohibited.

Every officer and employee of the City is expressly prohibited from knowingly:

- (1) Underestimating or exaggerating requirements to certain prospective bidders for the purpose of influencing solicitations; and/or
- (2) Misrepresenting competitor's prices, quality or service to obtain concessions.

Sec. 3-8-250. - Officers and employees seeking or accepting gifts or rebates prohibited.

Every officer and employee of the City is expressly prohibited from seeking or accepting, directly or indirectly, from any person to which any purchase order or contract is or might be awarded, any gift or money rebate.

Section 2. As provided by City Charter Section 5.9(A), this Ordinance, either as presented or as amended, shall be published in full as it was adopted prior to taking final action. This Ordinance shall be in full force and effect five days after its final publication, as provided in City Charter Section 5.8, except as set forth herein.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 2nd DAY OF AUGUST, 2022.

INTRODUCED, PASSED ON FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY 16th DAY OF AUGUST, 2022.

CITY OF BRIGHTON, COLORADO



GREGORY MILLS, Mayor

ATTEST:



NATALIE HOEL, City Clerk

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APPROVED AS TO FORM:



YASMINA SHAUISH, Assistant City Attorney

