



PURCHASING POLICY

May 2011

Table of Contents

	<u>Page</u>
Mission Statement	1
Selecting the Appropriate Method of Purchasing	2
Purchasing Forms	3
 <u>Section 1 – General Provisions</u>	
Part A – Purpose and Application	
1.1.0 Purpose.....	4
1.2.0 Application	
1.2.1 General.....	4
1.2.2 Confidentiality	4
1.2.3 Compliance	4
1.2.4 Remedies.....	4
1.2.5 Grants, Gifts or Bequests	4
Part B – Definitions	
1.3.0 Definitions.....	5
Part C – Public Access to Purchasing Information	
1.4.0 Public Access to Purchasing Information.....	13
1.5.0 City Purchasing Records	
1.5.1 Project File.....	13
1.5.2 Original Purchase Orders/Direct Pay Requisitions/Mini PO...13	
1.5.3 Retention of Purchasing Records.....	13
Part D – Environmental Purchasing Policy	
1.6.0 Purpose.....	14
1.7.0 Environmental Policies	15
1.8.0 Best Practices	15
1.9.0 Exemption	19
 <u>Section 2 – Purchasing Agent and Purchasing Division</u>	
2.1.0 Position of Purchasing Agent.....	20
2.2.0 Principal Public Purchasing Official.....	20
2.3.0 Exemptions	20
 <u>Section 3 – Vendor Responsibilities</u>	
3.1.0 General.....	21
3.1.1 Direct Contact	21
3.1.2 Anti-Competitive Practices	21
3.2.0 Standards of Responsibility	21
3.3.0 Determination of Non-responsibility	21
3.4.0 Pre Qualification	22

Section 4 – Source Selection

Part A – Requisitioning and Specifications

4.1.0 Requisition Procedures23
 4.1.1 Purchase Requisition.....23
 4.1.2 Direct Pay Requisition23
4.2.0 Specifications for Scope of Work – General24
 4.2.1 Minimum Acceptability24
 4.2.2 Increase Competition24
 4.2.3 Tests and Inspections24
 4.2.4 Equitable Award25
4.3.0 Brand Name of Equal Specification25

Part B – Formal Purchasing Procedures

4.4.0 Competitive Sealed Bidding
 4.4.1 Conditions for Use25
 4.4.2 Public Notice.....26
 4.4.3 Invitation for Bids26
 4.4.4 Qualified Bidders List.....28
 4.4.5 Receipt of Bids.....28
 4.4.6 Bid Opening29
 4.4.7 Disqualification of Bids29
 4.4.8 Correction or Withdrawal of Bids.....30
 4.4.9 Bid Evaluation30
 4.4.10 Tie Bid32
 4.4.11 Award Recommendation32
 4.4.12 Notice of Award.....32
 4.4.13 Only One Bid Received33
 4.4.14 Award to Other Than Low Bidder33
4.5.0 Competitive Sealed Proposals
 4.5.1 Conditions for Use33
 4.5.2 Public Notice.....33
 4.5.3 Discussion with Responsible Offerors and Revisions
 to Proposals34
 4.5.4 Only One Proposal Received34
4.6.0 Professional Services
 4.6.1 Conditions for Use34
 4.6.2 Public Notice.....34
 4.6.3 Request for Professional Services.....34
 4.6.4 Receipt and Opening of Professional Service Proposals34
 4.6.5 Proposal Evaluations and Discussions.....34
 4.6.6 Award Recommendation and Award.....35
 4.6.7 Illegal Alien Certification35
4.7.0 Cancellation of IFBs or RFPs35

Part C – Informal Purchasing Procedures

4.8.0 Informal Bids, \$10,001 - \$50,000
 4.8.1 Conditions for Use36

4.8.2	Solicitations.....	36
4.8.3	Award.....	36
4.9.0	Informal Quotes, \$1,001 – \$10,000	36
4.9.1	Conditions for Use	36
4.9.2	Solicitations.....	36
4.9.3	Award.....	36
4.10.0	Informal Purchases, \$1 - \$1,000	36
4.10.1	Purchasing Card.....	36
4.10.2	Mini Purchase Orders	36
4.10.3	Petty Cash	37
4.10.4	Preparing and Routing MPOs and Petty Cash Slips	37
Part D – Sole Source and Emergency Purchasing		
4.11.0	Sole Source Purchasing.....	38
4.12.0	Emergency Purchasing.....	38

Section 5 – Bid Security, Performance and Payment Bonds

5.1.0	Bid Security/Bid Bond	
5.1.1	Requirement for Bid Security/Bid Bond.....	39
5.1.2	Amount of Bid Security	39
5.1.3	Rejection of Bids for Noncompliance with Bid Security Requirements	39
5.1.4	Withdrawal of Bids.....	39
5.2.0	Contract Performance and Payment Bonds	
5.2.1	When Required – Amounts.....	39
5.2.2	Security for Other Projects.....	40
5.2.3	Right to Withhold Retainage	40
5.2.4	Timely Payments of Sub-Contractors by Contractors	40
5.2.5	Suits on Payments Bonds – Right to Institute.....	40

Section 6 – Contracts and Contract Administration

6.1.0	Types of Contracts	41
6.2.0	The Purchase Order.....	41
6.3.0	Receipt of Goods.....	41
6.4.0	Service Contracts	41
6.5.0	Execution of the Contract	42
6.6.0	Notice to Proceed.....	42
6.7.0	Change Orders and Contract Modifications	42
6.8.0	Causes for Issuing a Stop Work Order, Filing a Surety Claim, and Canceling the Contract.....	43
6.9.0	Stopping the Work and Canceling the Contract	43
6.10.0	Right to Audit Records	
6.10.1	Audit of Cost or Pricing Data	44
6.10.2	Audit of Contractor.....	44
6.10.3	Contractor Records	45
6.11.0	Final Settlement	45

6.11.1	Final/Partial Acceptance Report	45
6.11.2	Final Settlement	45
<u>Section 7 – Debarment or Suspension</u>		
7.1.0	Authority to Debar or Suspend	46
7.2.0	Decision to Debar or Suspend.....	47
7.3.0	Finality of Decision.....	47
<u>Section 8 – Appeals and Remedies</u>		
8.1.0	Bid Protests	
8.1.1	Right to Protest	48
8.1.2	Stay of Purchasing During Protests	48
8.1.3	Exhaustion of the Administrative Remedies.....	48
8.2.0	Contract Protests	
8.2.1	Right to Protest	48
8.2.2	Notice to the Contractor of the Decision	49
8.2.3	Finality of Decision; Contractor’s Right to Appeal	49
8.2.4	Failure to Render Timely Decision.....	49
<u>Section 9 – Travel</u>		
9.1.0	Most Economical Transportation.....	50
9.2.0	Ground Transportation.....	50
9.3.0	Air Transportation.....	50
9.4.0	Hotel or Motel Overnight Accommodations	50
9.5.0	Meal Expense.....	51
9.6.0	Liquor/Entertainment Charges.....	51
9.7.0	Registration Fees.....	51
9.8.0	Expense Verification.....	51
9.9.0	Training/Travel Authorization and Expense Form	51
9.10.0	Reasons for Travel	52
<u>Section 10 – Capital Equipment Management (Fixed Assets)</u>		
10.1.0	General.....	53
10.2.0	Transferring Equipment	53
10.3.0	Theft, Loss or Damage of Equipment.....	53
10.4.0	Inventory of Capital Equipment.....	53
<u>Section 11 – Disposal of City Personal Property</u>		
11.1.0	Disposal of City Personal Property.....	54
<u>Section 12 – Cooperative Purchasing</u>		
12.1.0	Cooperative Purchasing	54

Section 13 – Ethics in Public Contracting

13.1.0 Criminal Penalties55

13.2.0 Nondiscrimination

 13.2.1 Affirmative Action.....55

 13.2.2 Discrimination.....55

13.3.0 Gratuities and Kickbacks

 13.3.1 Gratuities.....55

 13.3.2 Kickbacks.....55

13.4.0 Prohibition Against Contingent Fees56

13.5.0 Contemporaneous Employment Prohibited56

13.6.0 Waivers from Conflicts of Interest56

13.7.0 Use of Confidential Information.....56

13.8.0 Sanctions

 13.8.1 Employees.....56

 13.8.2 Non-employees56

13.9.0 Recovery in Breach of Ethical Standards

 13.9.1 Recovery from Employees.....57

 13.9.2 Recovery from Vendors57

**MISSION STATEMENT
CITY OF DURANGO**

We the City, as representatives of the people, shall be accountable and effective guardians of the public trust and resources.

We are committed to the provision of effective and efficient public services designed to enhance the quality of life of the citizens of our community.

We shall conduct the affairs of our City openly and ethically and manage our growth and development in a manner that respects our environment and preserves the unique character and identity of our community.

We view our citizens as our most important resource.

Adopted by the City Council, August 3, 1993

SELECTING THE APPROPRIATE METHOD OF PURCHASING

The following table identifies when each competitive purchasing method applies to procuring goods and services:

Estimated Cost of Single Item	Purchasing Method to Use	Position with Oversight Authority
\$1,000 or Less	<p>Informal Purchases <i>Quotes may be obtained over the phone, via email, or online</i></p>	Department Director
\$1,001 - \$10,000	<p>Informal Quotes for Small Purchases and Professional Services <i>Two to three written Quotes are required, but specifications may be communicated over the phone or via email</i></p>	Department Director/ Purchasing Agent
Goods, Services, Public Works Projects or Construction Projects \$10,001 - \$50,000	<p>Informal Bids Request for Quotation <i>Written specifications and a minimum of 3 written quotes required</i></p>	Department Director/ Purchasing Agent
Goods, Services, Public Works Projects or Construction Projects over \$50,000	<p>Formal Bids/Proposals <u>Invitation for Bids</u> (for purchases in which the cost is the sole evaluation criterion) <u>Request for Proposals</u> (for purchases of professional services where more than one evaluation criterion exists) <i>Formal contract required</i></p>	Department Director/ Purchasing Agent

PURCHASING FORMS

Purchasing Form	Dollar Limit*	Proper Use
Petty Cash	Less than \$50	<u>Local</u> Vendors where receipt of product is immediate
Mini Purchase Order	Less than \$1,000	Vendors where receipt of product is <u>immediate</u> Renewal of Dues and Subscriptions Freight bills invoiced separately from products; Refunds (i.e. parking, business license, permits)
Purchasing Card	As authorized by the individual's Purchasing Card Transaction Limit	This is the PREFERRED method of purchase for goods or services less than \$1,000*; however the Appropriate Method of Purchase must be followed. Local, Telephone, or Internet purchases Renewal of Dues and Subscriptions Travel expenses Conference/Training Registration
Requisition (electronic)	None	Known quantity or number of items to be ordered (may or may not require bid) Stock Inventory items When specific items are to be shipped or delivered to a central location, (Warehouse), or other City building
Direct Pay Requisition (DPR)	None	Professional services where a separate written agreement exists; Construction contracts where a formal written contract is issued and progress billings are expected; Refunds; Utility bills, including cellular telephone service; Insurance payments; Lease payments; Contractual service or product where multiple payments are to be made (blanket); Car allowances Purchases for <u>goods</u> less than \$1,000, where product has already been received (use only when necessary)

*All of the above dollar limits are subject to the City's required bidding procedures as noted on the preceding page (Page 2).

SECTION 1 – GENERAL PROVISIONS

PART A – PURPOSE AND APPLICATION

1.1.0 PURPOSE

The purpose of this Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the City, to maximize the purchasing value of public funds in purchasing, and to provide safeguards for maintaining a purchasing system of quality and integrity.

1.2.0 APPLICATION

1.2.1 **General.** This Policy applies to the purchase of supplies, services, and construction by the City after the effective date of this Policy, except as otherwise specifically exempted by resolution or ordinance. City departments are responsible for complying with the terms herein. When the purchase involves the expenditure of federal assistance or contract funds, the purchase shall be conducted in accordance with any mandatory, applicable federal law, and regulations.

1.2.2 **Confidentiality.** All business and technical information contained within a submitted Bid or Proposal and specifically marked “**confidential,**” will only be provided to the persons participating in the acceptance of the IFB, RFP or contracting process. All remaining Bid or Proposal materials will be available for public inspection after the final award process.

Notwithstanding the foregoing, Bids and Proposals may be considered public records after opening pursuant to the Colorado Open Records Act. Any confidential, proprietary, or otherwise sensitive information contained in or with any response is subject to potential disclosure. By submitting such information the Vendor waives any recourse in respect to disclosure by the City of Durango under the Colorado Open Records Act.

1.2.3 **Compliance.** Compliance with this policy shall be enforced by the City Manager.

1.2.4 **Remedies.** After the exhaustion of all administrative remedies, an action in the District Court shall be the exclusive remedy for alleged violation of any provision of this Policy. Notwithstanding any contractual language that may be to the contrary, exclusive venue for any such proceeding shall be in the District Court in La Plata County, Colorado and such proceeding shall be governed by Colorado law.

1.2.5 **Grants, Gifts or Bequests.** Nothing in the Policy shall prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

PART B – DEFINITIONS

1.3.0 DEFINITIONS

- 1.3.1 **As is.** A term indicating that goods offered for sale are without warranty or guarantee, and that the purchaser takes the goods at his/her own risk without recourse against the seller for the condition or performance of the goods.
- 1.3.2 **Award.** The acceptance of a bid or proposal.
- 1.3.3 **Bid Bond.** An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if its bid is accepted, fails to accept the contract as bid.
- 1.3.4 **Bid Deposit.** A sum of money or check, deposited with and as instructed by the prospective purchaser to guarantee the bidder (depositor) will, if selected, accept the contract in accordance with the bid. If the bidder does not accept the contract, it forfeits the amount of the bid deposit.
- 1.3.5 **Bid (noun).** The response submitted by a bidder to an invitation for bids (IFB) or to a multi-step bid. The term is used to refer to the complete bid document.
- 1.3.6 **Bid (verb).** To submit a bid response. By submitting a bid response, the bidder gives the City the legal power to create a contract with the bidder in accordance with the bid response.
- 1.3.7 **Bid Opening.** The process through which the contents of bids are revealed for the first time to the City, other bidders, and the public.
- 1.3.8 **Bid Security.** A guarantee, in the form of a bond or deposit, that the bidder, if awarded a contract, will accept the contract as bid, otherwise the bidder (in the case of a deposit) or the bidder's guarantor (in the case of a bond) will be liable for the amount of the bond or deposit.
- 1.3.9 **Blanket Purchase Order.** (see Direct Pay)
- 1.3.10 **Brand Name or Equal Specification.** A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics, and which provides for the submission of equivalent products.
- 1.3.11 **Brand Name Specification.** A specification limited to one or more items by manufacturers' names or catalogue numbers.

- 1.3.12 **Change Order.** A written order signed and issued by the City directing the contractor to make changes to the original contract.
- 1.3.13 **Client Department.** The department within the City initiating the solicitation for goods or services.
- 1.3.14 **Competitive Bidding.** The submission of prices by vendors competing for a contract, privilege, or right to supply merchandise or services. Competitive sealed bidding is the preferred method of source selection in public purchasing.
- 1.3.15 **Competitive Negotiation.** A method for contracting for goods and services, whereby proposals are solicited from qualified suppliers, following submission of which changes in proposals and prices be allowed, and the offer deemed by the awarding authority to be most advantageous in terms of criteria as designated in the Request for Proposals is accepted; a negotiated purchase.
- 1.3.16 **Construction Projects.** The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- 1.3.17 **Contract.** An obligation such as an accepted offer between competent parties upon a legal consideration to do or abstain from doing some act. The essential elements of a contract are: an offer and acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; legality of purpose; and sufficient certainty of terms.
- 1.3.18 **Contract Administration.** The management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled.
- 1.3.19 **Contractor.** In accordance with CRS §38-26-101, the word "contractor", as used in this Purchasing Policy, means any person, co-partnership, association of persons, company, or corporation to whom is awarded any contract for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel excavation or other public work of this state or for any county, city and county, municipality, school district, or other political subdivision of the state.
- 1.3.20 **Cooperative Purchasing.** The combining of requirements of two or more political entities to obtain the advantages of volume purchases, reduction in administrative expenses, or other public benefits.

- 1.3.21 **Cost Analysis.** The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- 1.3.22 **Debarment.** To prohibit a vendor/contractor from bidding on future solicitations for cause for a certain period of time. A sanction brought against a vendor/contractor whereby they may not engage in future procurement actions.
- 1.3.23 **Department.** Any division, department, commission, or board, requiring supplies, services, or construction procured pursuant to this Policy.
- 1.3.24 **Direct Pay Requisition.** An internal form used by a department to encumber funds and/or request payment of a contract or invoice. The Direct Pay Requisition should be used for professional services, construction contracts, refunds, utility bills, insurance payments, lease payments, any contractual service (or product) where multiple payments are to be made, car allowances, or when ordering unknown quantities.
- 1.3.25 **Durango Service Area.** The area which includes services provided by the City of Durango (i.e. water and trash services). This area includes, but is not necessarily limited to, the incorporated town limits of the City of Durango.
- 1.3.26 **Emergency Purchase.** A purchase made without following the normal purchasing procedures in order to obtain goods or services quickly to meet an urgent and unexpected requirement.
- 1.3.27 **Environmentally Preferable Products.** Products that have a lesser impact on human health and the environment when compared with competing products. This comparison may consider raw materials, acquisition, production, manufacturing, packaging, distribution, reuse, operation and/or disposal of the product.
- 1.3.28 **Mini Purchase Order.** A purchasing document issued to a local vendor for products or services that are to be received immediately.
- 1.3.29 **Financial Interest.** Ownership of any interest in or involvement in any relationship which, or as a result of which, a person has recently received, or will receive, a sum of money (or something of value).
- 1.3.30 **Grant.** A transfer of funds to support or stimulate programs authorized by federal or state laws, to accomplish objectives that are locally defined and managed.

- 1.3.31 **Gratuity.** A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, except as excluded by §24-18-104(3), unless consideration of substantially equal or greater value is received.
- 1.3.32 **Immediate Family.** A spouse, children, step-children, parents, step-parents, brothers, sisters, step-siblings, grandparents, step-grandparents, grandchildren, step-grandchildren, members of the immediate household to include significant others and domestic partners, and in-laws of the above.
- 1.3.33 **Ineligible Bidder.** A vendor who, by reason of financial instability, unsatisfactory reputation, poor history of performance, or other deficiency, does not meet the qualifications for placement on the bidders list or for award; also non-responsible bidder. Justification for ineligibility must be documented in writing and retained by the Purchasing Division.
- 1.3.34 **Informal Bid.** An unsealed competitive offer conveyed by letter, telephone, facsimile, electronic submission, or other means, and under conditions different from those required for formal bidding.
- 1.3.35 **Invitation for Bids (IFB).** All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
- 1.3.36 **Local Bidder.** A local bidder is defined as a person, partnership, corporation, limited liability company or joint venture which is authorized to transact business in Colorado, and which maintains a business office within La Plata County.
- 1.3.37 **Local Preference.** An advantage in consideration for award of a project or bid granted to a bidder by reason of the bidder's business location. Local bidders shall receive a 5% preference over all bidders or \$100,000, whichever is less. In no event shall the local bidder preference exceed the amount of \$100,000.
- 1.3.38 **Multi-Year Contract.** A procurement contract that extends for longer than one year. All multi-year contracts are subject to annual appropriations by the City Council.
- 1.3.39 **No Bid.** A response to an IFB stating that the respondent does not wish to submit a bid.
- 1.3.40 **Non-Resident Bidder.** A non-resident bidder is defined as a person, partnership, corporation, limited liability company or joint venture which is authorized to transact business in Colorado, and which maintains its principal place of business outside La Plata County or the Region 9 of Colorado

- 1.3.41 **Non-responsive Bid.** A bid that does not conform to the essential requirements of the IFB; nonconforming bid; unresponsive bid.
- 1.3.42 **Offer or Proposal (noun).** The response submitted by an offeror/proposer to a request for proposals (RFP), and at the City’s option, to be used as a basis for negotiations for a contract. The term is used to refer to the complete proposal document.
- 1.3.43 **Offer or Propose (verb).** To submit a proposal/offer to a request for proposals. By submitting a response, the offeror/proposer gives the City the legal power to create a contract with the offeror/proposer in accordance with the response.
- 1.3.44 **Payment Bond.** A contract of guaranty executed subsequent to award by a successful bidder for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.
- 1.3.45 **Performance Bond.** A contract of guaranty executed subsequent to award by a successful bidder to protect the City from loss due to contractor inability to complete the contract as agreed.
- 1.3.46 **Piggyback (Piggyback Cooperatives).** A form of intergovernmental cooperative purchasing in which an entity will be extended the pricing and terms of a contract entered into by another entity to achieve economies of scale not normally received on its own.
- 1.3.47 **Prequalification of Bidders.** The screening of vendors in which a purchaser considers such factors as financial capability, reputation, management, previous work product and other factors in order to develop a list of prospective qualified bidders.
- 1.3.48 **Price Analysis.** The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
- 1.3.49 **Pricing Data.** Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and sub-contract prices.
- 1.3.50 **Procurement.** The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, storekeeping, salvage and disposal operations.

- 1.3.51 **Procurement Card (P-Card).** A payment method whereby Client Departments are empowered to deal directly with vendors or contractors using a City-issued credit card.
- 1.3.52 **Project File.** The file containing documents pertaining to a specific project which is maintained in the office of the Purchasing Agent.
- 1.3.53 **Project Manager.** An individual who shall be responsible for a specific City project.
- 1.3.54 **Proposal.** An offer made by a vendor as a basis for negotiations for entering into a contract.
- 1.3.55 **Proposal Evaluation Criteria.** Factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.
- 1.3.56 **Proposer.** A person submitting a proposal in response to a Request for Proposals (RFP).
- 1.3.57 **Public Notice.** The advertisement of a notice in a newspaper or other public place according to City policy to inform the public that the City is requesting bids on a specific purchase it intends to make.
- 1.3.58 **Public Works Projects.** Any construction, alteration, repair, demolition, or improvement of any land, road, highway, bridge, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, or safety and any maintenance programs for the upkeep of such projects.
- 1.3.59 **Purchase Order.** A City contract to formalize a purchase transaction with a vendor. The purchase order should contain statements as to the quantity, description, and price of the goods or services ordered; applicable terms as to payment, discounts, date of performance, and transportation; and other factors or suitable references pertinent to the purchase and its execution by the vendor.
- 1.3.60 **Purchase Requisition.** A document created by a Client Department authorizing the commencement of a purchasing transaction.
- 1.3.61 **Purchasing.** Purchasing Division of the City of Durango or its staff.
- 1.3.62 **Qualified Bidder.** A bidder determined by the city to meet standards of business competence, reputation, financial ability, and product quality for placement on a list of prospective bidders.

- 1.3.63 **Quotation.** A statement of price, terms of sale, and description of goods or services offered by a vendor to the City, usually for informal purchases; the stating of the current price of a commodity, or the price so stated.
- 1.3.64 **Regional Bidder.** A person, partnership, corporation or joint venture which is authorized to transact business in Colorado, which maintains a business office within Region 9 of Colorado
- 1.3.65 **Regional Preference.** Regional Bidders will receive a 3% preference over Non Resident Bidders or \$40,000, whichever is less. In no event shall the regional bidder preference exceed the amount of \$40,000.
- 1.3.66 **Request for Proposals (RFP).** All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- 1.3.67 **Responsible Bidder or Offeror.** A person who has the capability in all respects to perform fully the contract requirements, including but not limited to experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.
- 1.3.68 **Responsive Bidder or Offeror.** A person who has submitted a bid or proposal, which conforms in all material respects to the invitation for bids or request for proposals.
- 1.3.69 **Salvage.** Property that is no longer useful as a unit in its present condition but has some value in addition to its value as scrap, usually because parts from it may be recovered and reused.
- 1.3.70 **Scrap.** Property that has no value except for its basic material content.
- 1.3.71 **Scope of Work.** A description of services to be purchased (as opposed to specification, a description of goods).
- 1.3.72 **Sealed Bid or Proposal.** A bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission of all bids; usually required by law or rule on major purchases, to enhance fair competition.
- 1.3.73 **Service Contract.** A contract that calls for a contractor's time and effort rather than for a concrete end product. The term as defined here does not include employment agreements or collective bargaining agreements.
- 1.3.74 **Services.** The furnishing of labor, time, or effort by a contractor on an independent contract basis.

- 1.3.75 **Sole Source Purchasing.** Selection of one particular supplier to the exclusion of all others. This decision may be based on lack of competition, proprietary technology, copyright or a supplier's unique capability.
- 1.3.76 **Solicitation.** The process of notifying vendors that the City wishes to receive bids for furnishing goods or services. The process may consist of public advertising, mailing notices, electronic notification, posting notices, telephone or faxing messages to prospective bidders, or all of these.
- 1.3.77 **Specification.** A description of what the City seeks to buy and, consequently, what a bidder must be responsive to, in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics, or the nature of a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery. .
- 1.3.78 **Standard.** A level of quality accepted as norm.
- 1.3.79 **Standardization.** The adoption of a single product or group of products to be used by different organizations or all parts of one organization.
- 1.3.80 **Stock. (Warehouse Inventory).** A supply of goods maintained on hand in a supply system to meet anticipated demands.
- 1.3.81 **Subcontractor.** One who agrees to perform part of a contract for the principal [general] contractor.
- 1.3.82 **Unit Price.** The price for a given unit of goods or service.
- 1.3.83 **Vendor.** A supplier of goods, general services, or professional services.
- 1.3.84 **Waiver of Mistake or Informality.** The act of disregarding errors or technical nonconformities in the bid which do not go to the substance of the bid and will not adversely affect the competition between bidders.

PART C – PUBLIC ACCESS TO PURCHASING INFORMATION

1.4.0 PUBLIC ACCESS TO PURCHASING INFORMATION.

Purchasing information shall be a public record to the extent provided in C.R.S. §24-72-201 *et seq.* and shall be available to the public as provided in said statute.

1.5.0 CITY PURCHASING RECORDS

- 1.5.1 **Project File.** All determinations and other required written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in the Project file, by the Purchasing Agent.
- 1.5.2 **Original Purchase Orders/Direct Pay Requisitions/Mini Purchase Order.** After a purchase is complete, original purchase orders and original invoices are retained in the Finance Department.
- 1.5.3 **Retention of Purchasing Records.** All purchasing records shall be retained and disposed of by the City in accordance with retention guidelines and schedules as required by law.

PART D – ENVIRONMENTAL PURCHASING POLICY

1.6.0 PURPOSE

In recognizing the link between the health and wellbeing of citizens and employees and the wellbeing of the environment, the City is committed to minimizing the environmental impacts associated with its operations to the greatest extent possible. The City seeks to achieve continual improvement in the management of its environmental effects. It is the City's intention to integrate the concept of sustainable development into all of its business operations and to pursue a vision of sustainability to achieve a fairer, safer, and healthier world.

The City of Durango's goal is to encourage and increase the use and procurement by City departments of recycled and environmentally preferable products. By including environmental considerations in purchasing decisions, the City of Durango can promote practices that improve public and worker health, conserve natural resources, and reward environmentally conscious manufacturers, while remaining fiscally responsible.

The policy objectives are to:

- a. expand the purchase of environmentally preferable products;
- b. identify environmentally preferable alternatives;
- c. recommend as goals for City of Durango operations, the adoption of alternative processes, where practicable, that will reduce the use/disposal of hazardous substances and will promote resource conservation; and
- d. collect and maintain up-to-date information regarding manufacturers, vendors, and other sources for locating/ordering environmentally preferable products.

Local and state government combined purchase more than \$1 trillion in goods and services each year. Many of these products contribute to problems in the overall environment, including contamination of the air and water, and depletion of environmental resources. In some instances, products require special waste disposal and reporting procedures, which can be cumbersome and expensive. Furthermore, local government employees using these products may be exposed to compounds that are potentially harmful to their health.

The City of Durango has the opportunity to serve as a community model for environmental leadership by incorporating a plan of action that will conserve precious resources such as water, raw materials, and energy, reduce the use of hazardous substances, and potentially improve the environmental quality of the region. By incorporating environmental consideration in public procurement, The City of Durango can reduce its burden on the local and global environment, remove unnecessary hazards from its operations, protect public health, reduce costs and liabilities, and help develop markets for environmentally responsible products.

1.7.0 ENVIRONMENTAL POLICIES

1.7.1 The City of Durango Purchasing Agent will strive to focus its environmental efforts on research, evaluation, and implementation in the following areas:

- Recycled Content Products (e.g. paper, motor oil, carpets, plastic lumber)
- Less Harmful and Non-toxic Materials and Processes (e.g. cleaning products, pest management chemicals, paint)
- Energy and Water Efficient Products and Processes (e.g. office equipment consolidation, energy efficient lighting, appliances, vehicles, and equipment)
- Natural Resource and Landscaping Management (e.g. integrated pest and vegetation management, drought tolerant plants)
- Renewable Products (e.g. certified forests, renewable energy resources)
- Disposal and Pollution Reduction (e.g. integrated waste management, double-sided copies, reusable holiday decorations, office equipment consolidation)
- Packaging (e.g. bulk packaging, reusable boxes, shipping pallets)
- Green Building Program (e.g. use of recycled products in construction and renovation, disposal of building materials in an environmentally sensitive manner, designing and renovating for energy and resource conservation)
- Reuse (e.g. rechargeable batteries, consider reuse of surplus items/material before discarding, purchase used products when feasible, repair existing products when possible)

The Purchasing Agent is aware that the evaluation and implementation phases of the project will require changes in awareness, behaviors, practices, and procedures. It is the Purchasing Agent's intention to engage a participative process in research, evaluation, and implementation of policy recommendations.

1.8.0 BEST PRACTICES

In cooperation with City departments/divisions, the City Purchasing Division shall follow procedures to maximize purchase of products with post-consumer recycled content and environmentally preferable products:

1.8.1 As practicable, all bid documents shall include information on the City's program to buy environmentally preferable and recycled products. Vendors shall be encouraged to provide bids on products with recycled content or which meet criteria for environmentally preferable products wherever such products meet the performance criteria specified in bid documents.

- 1.8.2 To support the purchase of recycled products, the Purchasing Department has the following options:
- (i) specify recycled content or criteria for environmentally preferable products or services as a necessary criterion in any bid document;
 - (ii) accept a bid which is not the lowest bid if (1) the lowest bid is for a non-recycled product and (2) a recycled content product meets the performance criteria specified, or (3) a bid other than the lowest bid meets the criteria for environmentally preferable products or services, or (4) a cost analysis conducted over the life and disposal of the product reveals lower total costs than are reflected in short-term analysis, or
 - (iii) award a portion of the contract to bidders offering recycled content or environmentally preferable products.
- 1.8.3 Whenever possible, the City shall use recycled letterhead and public information pamphlets. Double-sided printing and copying shall be utilized when practical.
- 1.8.4 City of Durango staff shall be encouraged to reduce the consumption of resources by incorporating the following practices into their daily activities.
- 1.8.4.1 Consider durability and repair ability of products prior to purchase.
 - 1.8.4.2 Conduct routine maintenance on products/equipment to increase the useful life.
 - 1.8.4.3 Use duplex features on laser printers and copiers. Specify duplex on print jobs.
 - 1.8.4.4 Send and store information electronically when possible. Do not print e-mail, website, or electronic fax transmissions unless absolutely necessary.
 - 1.8.4.5 Review record retention policies and implement document imaging systems, as supported by the City Clerk's office.
 - 1.8.4.6 Other waste prevention practices that further the goals of this policy.
- 1.8.5 **Departmental Responsibility.** Each Department/Division shall be responsible for the implementation of this policy and shall:
- a. Practice waste prevention whenever possible.
 - b. Continue to utilize recycling programs and expand them where possible.

- c. Procure recycled products whenever practical.
- d. Develop, evaluate, and maintain information about environmentally preferable and/or recycled products containing the maximum practical amount of recycled materials. Cross-feed information to other Department/Divisions when potential use of a product exists.
- e. Develop specifications used in public bidding aimed at eliminating barriers to recycled-content product, such as outdated or overly-stringent product specifications and specifications not related to product performance.
- f. Ensure the procurement documents issued by the Departments/Divisions require environmental preferred alternatives whenever practical.
- g. Educate and promote this policy through appropriate staff. This will include documentation of successes, pitfalls, changes, etc.

1.8.6 Purchasing Division Responsibility. The Purchasing Division shall:

- a. Maintain and use information, furnished by its Client Departments, about environmentally preferable and recycled products containing the maximum practical amount of recycled materials and encourage the Client Departments to purchase such products whenever possible.
- b. Provide Client Departments with information to facilitate their evaluation and purchase of designated products and information them of their responsibilities under this policy. Forward, to Client Departments, vendor-furnished information about recycled products, sustainable manufacturing processes, and environmental procurement opportunities.
- c. Inform vendors of the City's Environmental Purchasing Policy.
- d. Structure applicable contracts to offer and/or feature recycled-content products whenever possible (e.g. office supplies, lubricating oils, and janitorial supplies)
- e. Ensure that contracting procedures do not discriminate against recycled products without justification. Revise contracting procedures to maximize the specification of designated products whenever practicable.
- e. Revise minimum content standards as necessary to ensure that designated products contain the maximum practicable amount of recovered material. Ensure that environmentally preferable products are designated whenever practicable. All requests for proposals shall encourage vendors to offer recycled products whenever practical.

- f. Ensure that wherever possible, the department purchases or leases copiers, printers and offset equipment capable of using both recycled paper of the appropriate grade and reusable toner cartridges where applicable and of making two-sided copies; and
 - g. Reuse and recycle, to the greatest extent possible, the waste produced at all City facilities as a result of any City sponsored construction or renovation project.
 - h. The Purchasing Division shall establish a price-preference of five percent (5%) for environmentally preferable products.
- 1.8.7 The following environmentally preferable product categories shall be evaluated and purchased whenever practical.
- 1.8.7.1 Printing and writing papers, including all imprinted letterhead paper, envelopes, copy paper, forms and business cards. When practical, these shall contain a minimum of 30% post-consumer recycled content.
 - 1.8.7.2 Paper products, including janitorial supplies, shop towels, hand towels, facial tissue, toilet paper, corrugated boxes, file boxes, hanging file folders and other products comprised largely of paper.
 - 1.8.7.3 Remanufactured laser printer toner cartridges and remanufactured or refillable inkjet cartridges.
 - 1.8.7.4 Re-refined antifreeze, including on-site antifreeze recycling, plastic, rubber, aluminum, steel, glass, construction materials, building insulation, and solvents.
 - 1.8.7.5 Recycled plastic outdoor-wood substitutes, including plastic lumber, benches, fencing, signs and posts and other plastic products.
 - 1.8.7.6 Cement and asphalt concrete containing tire rubber, glass cullet, recycled fiber, plastic fly ash or other alternative products.
 - 1.8.7.7 Re-crushed cement concrete aggregate and asphalt.
 - 1.8.7.8 Compost, mulch, and other organic including recycled biosolid products.
 - 1.8.7.9 Recycled content construction, building, and maintenance products, including plastic lumber, carpet, tiles, and insulation.
 - 1.8.7.10 Other products that may be designated.

1.9.0 EXEMPTION

Nothing contained in this policy shall be construed as requiring a department or contractor to procure products that do not perform adequately for their intended use, exclude adequate competition, or are not available at a reasonable price in a reasonable period of time. The City is aware that there may be an increased cost to purchase environmentally preferable products.

SECTION 2 – PURCHASING AGENT AND PURCHASING DIVISION

2.1.0 POSITION OF PURCHASING AGENT

The Purchasing office is a division of the Finance Department. The Purchasing Division is responsible for the purchasing functions for the City of Durango. The public contact for the Purchasing Division is the Purchasing Agent. The Purchasing office is located at 105 Sawyer, Durango, Colorado (mailing address 949 E 2nd Avenue, Durango CO 81301), and the phone number is (970)375-4994; fax number (970) 375-4988.

2.2.0 PRINCIPAL PUBLIC PURCHASING OFFICIAL

The Purchasing Agent shall be responsible for the purchasing of supplies, services, and construction in accordance with this Policy, as well as the management and disposal of supplies, for all City departments.

The basic principles of Purchasing are to centralize the purchasing authority; establish standardized specifications for commonly used items; consolidate purchases of like or similar items to take advantage of volume purchase discounts; eliminate emergency purchases for non-emergency situations; implement procedures to require requisitions and authorizations of all goods and services.

With the exception of the exemptions listed below and as defined by the purchasing limits outlined on page 2 of this document, departments must utilize Purchasing in acquiring goods and services for the City.

2.3.0 EXEMPTIONS

The following purchases may be exempt from centralized purchasing procedures (this exemption does not include an exemption for City Policies and Procedures for Contracts, and other applicable topics).

- a) Travel expenses
- b) Subscriptions and dues
- c) Utilities (including telephone)
- d) Training and seminars
- e) Postage and post office box rent
- f) Building rent or lease payments
- g) Insurance payments
- h) Intergovernmental payments and agreements
- i) Debt Service payments
- j) Purchasing Cards, Petty Cash and Mini Purchase Orders
- k) Office supplies
- l) Catering services
- m) Software (must be approved by the IS Department)

SECTION 3 – VENDOR RESPONSIBILITIES

3.1.0 GENERAL

All vendors are responsible for complying with the terms within this Policy. City staff may refer vendors and unsolicited proposals to the Purchasing Agent. The Purchasing Agent shall contact Client Departments to determine interest or need in these products or services.

- 3.1.1 Direct contact with city elected officials or city staff, other than the Purchasing Agent, during the bid/proposal process may render the bid/proposal as non-compliant. At the Purchasing Agent's discretion no further consideration may be given the bid/proposal.
- 3.1.2 When, for any reason, collusion or other anti-competitive practices are suspect among vendors, notice of the relevant facts shall be transmitted to the City Attorney, District Attorney and Colorado State Attorney.

3.2.0 STANDARDS OF RESPONSIBILITY

In order to do business with the City, a vendor must be able to demonstrate that it has:

- a) the appropriate financial, material, equipment, facility, and personnel resources experience, and expertise, or the ability to obtain them, necessary to indicate the capability to meet all contractual requirements;
- b) a satisfactory record of performance and integrity;
- c) the legal capacity to contract with the City; and
- d) supplied all necessary information in connection with any inquiry concerning responsibility including but not limited to the prequalification procedures as set forth in this Policy, when applicable.

The City reserves the right to inspect the plant, place of business, or worksite of a vendor.

The unreasonable failure of a vendor to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility.

3.3.0 DETERMINATION OF NON-RESPONSIBILITY

If a vendor who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the City and a copy thereof shall be forwarded to the vendor. Once the determination of non-responsibility has been made, the City shall conduct no further business with such vendor unless and until the vendor has submitted supplemental information which indicates compliance with the Standards of Responsibility set forth in Section 3.2.0 of this Policy.

- 3.4.0** At the sole discretion of the City, projects may require that the prospective contractor be pre-qualified. On such projects, prospective contractors may be asked to submit relevant information as required for the specific project. All prospective contractors shall fill out and return a pre-qualification questionnaire. Pre-qualification shall be determined on an individual basis by the Purchasing Agent and Client Department. All contractors determined not to be qualified shall be notified in writing as to why they did not meet the qualifications.

SECTION 4 – SOURCE SELECTION

PART A – REQUISITIONING AND SPECIFICATIONS

4.1.0 REQUISITION PROCEDURES

4.1.1 **Purchase Requisition.** The Client Department will initiate a Requisition, either by utilizing the automated system or via paper Requisition. The Department is responsible for following the appropriate method of Purchasing based on the dollar amount of the purchase. The requisition is initially approved by the Department Director, then forwarded to the Purchasing Agent who verifies that Purchasing Policy has been followed and converts the Requisition to a Purchase Order. After conversion, the Purchase Order is routed to the Finance Director for final approval. Purchasing prints the Purchase Order, faxes or mails it to the vendor, distributes the original to the warehouse to be held until the order is received and sends a copy to the Department.

Conditions for use. The Purchase Requisition shall be used in the following instances:

- a) When there is a known quantity or number of items to be ordered (may or may not require quotes or bids)
- b) For all stock inventory items
- c) When specific items are to be received at a central location, such as the Warehouse, and are logged in as received at that time.

Not to be used for. The Requisition should NOT be used in the following instances. (Use a Direct Pay Requisition for these purchases, see below):

- a) Professional agreements - where an agreement is signed
- b) Construction contracts where a formal contract is issued and multiple payments will be made over the course of the work schedule
- c) Utility payments, including gas, electric, and telephone
- d) Refunds of revenues previously collected
- e) Annual orders where quantity is unknown at the time the order is to be issued
- f) Annual orders for services where there is no signed agreement.

4.1.2 **Direct Pay Requisition.** The Client Department will initiate a Direct Pay Requisition (DPR) if appropriate, following the guidelines on pages 2 and 3 of this policy. Upon approval by the Department Director, the DPR shall be forwarded to Purchasing, for verification of Illegal Alien Certification and to ensure the appropriate method of purchasing has been followed. The Finance Department will issue a DPR number and encumber funds,

Conditions for use. The Direct Pay Requisition shall be used in the following instances:

- a) Professional services where a separate written agreement exists.
- b) Construction contracts where a formal written contract is issued and progress billings are expected
- c) Refunds
- d) Utility bills (including cellular telephone service)
- e) Insurance payments
- f) Lease payments
- g) Any contractual service (or product) where multiple payments are to be made for services where a written agreement does not exist
- h) Car allowances
- i) Purchases where quantity to be used is unknown at time of bid (i.e. sand or gravel)

Not to be used for. Direct Pay Requisitions should NOT be used in the following instances. Use a Requisition for these purchases:

- a) Inventory purchases
- b) Products ordered from a vendor, where the quantity orders and the unit price will be known.**

4.2.0 SPECIFICATIONS OR SCOPE OF WORK – GENERAL

Departments must write a specification or scope of work to provide Purchasing with clear guidelines and to provide vendors with specific measurable limits of minimum product or service acceptability. In order to ensure that the solicitation documents meet all Purchasing Policy requirements, a minimum of two weeks shall be required for Purchasing review and comment. Failure to provide adequate time for Purchasing review shall result in the delay of distribution, and subsequent timeline, of a project.

A specification has the following four characteristics:

- 4.2.1 It sets the minimum acceptability of the goods or service. Too low a standard, and the goods or service will not meet the needs of the department.
- 4.2.2 It promotes competitive bidding. The maximum number of responsible vendors should be able to bid the specification. Restrictive specifications decrease competition.
- 4.2.3 It contains provisions for reasonable tests and inspections for acceptability of the goods or service. The methods and timing of testing and inspections must be indicated in the specification. Tests should refer to nationally recognized practices and standards, whenever possible.

- 4.2.4 It provides for an equitable award to the lowest responsive and responsible bidder. The department obtains the goods or services that will perform to expectations, and the vendor is able to provide the goods or services at an equitable agreed price.

4.3.0 BRAND NAME OR EQUAL SPECIFICATION

Since use of a brand name specification is restrictive of product competition, it may be used only when the Purchasing Agent determines that the identified brand name item(s) is/are the only product(s) will satisfy the City's needs.

When a brand name *or equal* specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, function, performance, and characteristic desired and is not intended to limit or restrict competition.

PART B – FORMAL PURCHASING PROCEDURES

4.4.0 COMPETITIVE SEALED BIDDING

- 4.4.1 **Conditions for Use.** Competitive bidding is intended to enable the City to acquire goods and services it requires to conduct public business at the lowest possible cost. It also gives qualified and responsible vendors desiring to do business with the City a fair and equitable opportunity to do so. The City may opt to use a *multi-step sealed bid process* wherein an invitation for bids is issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

A department contacts Purchasing to initiate the competitive sealed bidding process. Purchasing (with assistance from the department) assigns a project name, determines the time, date and location of bid opening, and begins a Project File for the project.

A timeline shall be used for all projects or purchases over \$50,000. Pre-bid meetings (if required) must be held at least 14 days prior to bid opening date and at least four (4) days following final publication date. Vendor/Contractor questions shall be due a minimum of nine (9) days prior to bid opening date. Any questions arising from an addendum shall be accepted up to 48 hours from addendum release date. If questions arising from addendum require response from the City in the form of additional addendums, the final addendum must be released a minimum of six (6) days prior to bid opening date, or the opening date must be rescheduled.

Competitive Sealed Bidding shall be used for any products or services: which cost \$50,000 or more, including public works and construction projects.

- 4.4.2 **Public Notice.** A project subject to formal bidding must be given public notice. Said notice shall be published in a local newspaper of general circulation, and may be advertised in other publications or websites. The advertisement shall be published at least twice, the last date of publication must be at least 14 calendar days prior to the bid opening date. However, if a bidder must be prequalified, the first advertisement must run 21 calendar days before the date of the bid opening.

The notice must contain:

- a) The project name;
- b) A brief description of the goods or services desired;
- c) The closing date and time for receiving bids or proposals;
- d) The place where bid packets may be obtained;
- e) Date, time and location of any pre-bid conferences;
- f) Any special instructions to bidders (whether prequalification is required, the cost of bid packet, etc.) or where same may be obtained;
- g) Statement regarding the City's right to waive informalities, reject all bids, and accept the bid/proposal deemed most advantageous to the City of Durango;
- h) Incorporation by reference of the City of Durango Purchasing Policy and City Standardized Contracts, unless otherwise stated; and
- i) Late bids will not be accepted

- 4.4.3 **Invitation for Bids.** Purchasing shall compile an Invitation for Bid (IFB) for Formal Bidding to inform interested vendors of the requirements of the project. The client department shall provide the specifications or scope of work to Purchasing.

Depending upon the scope of the project, the IFB may contain the following:

- a) *Cover Form.* The information provided in the Public Notice. Departments may use a copy of the Public Notice for the Cover Form.
- b) *Vendor Information.* Business name; address; telephone number; name and signature of person preparing the bid/proposal.
- c) *Pre-bid Conference.* Mandatory pre-bid conferences are required for all projects over \$250,000. At the sole discretion of the Purchasing Agent, the mandatory pre-bid conference may be waived if the Client Department provides sufficient justification.

Pre-bid conferences are optional for projects under \$250,000. Optional pre-bid conferences may be conducted for the purpose of explaining the procurement requirements and details of the project. For any project, the City may deem the pre-bid conference mandatory if determined necessary to insure familiarity of

the project prior to bidding. The Invitation for Bid shall specify the starting time and estimated length of each pre-bid conference. The pre-bid meeting shall utilize the Purchasing Agent's clock, and anyone arriving after the meeting begins shall be disqualified. An official sign-in sheet shall document those in attendance, their time of arrival and the time the meeting is concluded. In the event only one bidder is in attendance, the project may be placed on hold and re-advertised.

Nothing stated at such conference shall change the Invitation for Bids unless the change is made by written amendment.

- d) *Specifications.* The description of the purchase requirements.
- e) *Evaluation Criteria.* The criteria upon which the bids will be evaluated and awarded, which may include items such as inspection, sample testing, quality, service, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, warranties, transportation costs, local preference, total or life cycle costs and any other special requirements. The IFB shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.
- f) *Sub-Contractors.* A list of sub-contractors shall be attached to each proposal and/or bid. The vendor shall submit a list showing each specialty sub-contractor to whom he proposes to sub-contract any portion of the work and or warranty service. All sub-contractors must be approved by the City prior to start of work.
- g) *Standard Statement Regarding Bid Process.* Bids may contain a statement similar to the following:
Bids are awarded to the lowest responsible bidder who submits the responsive bid that is most advantageous to the City of Durango. Such bidder understands the scope of the project, has the experience and expertise to complete said project, and has met all criteria stated in the Scope of Work. The City of Durango reserves the right to reject any and all bids, to waive any informalities and minor irregularities in bids, and to accept the bid deemed, in the opinion of staff, to be in the best interest of the City of Durango.
- h) *Bid, performance, and payments bonds or other security.* Security may be requested for projects. Any such bonding requirements shall be set forth in the IFB. Bid or performance bonds shall not be used as a substitute for a determination of a vendor responsibility.

- i) *Retainage.* Retainage may be withheld for public works and construction projects. If a department desires retainage withheld on any other type of project, it should be delineated in the IFB.
- j) *Multi-year Contract.* If the department wishes to award the project on a multi-year basis, it shall be stated in the IFB. It shall also be stated that all multi-year contracts are subject to annual appropriations by the City Council.
- k) *All or None Award.* If an all or none award is anticipated prior to issuing a solicitation, it shall be stated in the IFB.
- l) *Insurance and Tax Reporting Requirements.* Insurance and Tax Reporting Requirements must be stated in the IFB. Selected vendors must provide the City with a completed W9 form, proof of workers' compensation insurance and a Certificate of Insurance.
- m) *Special Provisions.* Any other terms or conditions which are required for the project, including, but not limited to, any prequalification or special licenses.
- n) *Bid Schedule Form.* Form for the vendor to quote prices in accordance with the specification requirements. Prices are usually provided by unit and total cost.
- o) *Document Exhibits.* Copies of documents that will be used throughout the project; i.e., Notice of Award, Sample Contract, Notice to Proceed, Contract Modification. Document exhibits may be incorporated by reference.

Purchasing shall place a copy of the IFB in the Project File and notify vendors/contractors via local newspaper advertising and electronic posting of bids online.

4.4.4 **Qualified Bidders List.** If the department requires prequalification of vendors for a Formal Bid, the department shall coordinate with Purchasing to issue a Request for Qualifications. The prequalification process may add up to six weeks to any solicitation process. Purchasing shall place the Qualified Bidders List in the Project File.

4.4.5 **Receipt of Bids.** Receiving the sealed bids must be conducted properly to ensure that no possibility of favoritism or even the appearance of favoritism exists. Receipt shall be as follows:

- a) Vendors shall submit to the Purchasing Agent as instructed in the IFB) all bids in a sealed envelope, with the project name clearly marked on the outside of the envelope.

- b) The bid envelope shall be held *unopened* in a secure location until time of bid opening.
- c) *If an unmarked envelope containing a bid is received, it will be opened only to establish that it contains a bid. This will not automatically eliminate the bid.* If a city employee opens the bid, the employee must reseal the envelope and write on the outside of the envelope: (i) the reason for opening, i.e. “opened in error” or “opened to establish that it contained a bid”; (ii) the employee’s name; (iii) the date; and (iv) the employee’s signature. If a staff member of the Purchasing Division opens an envelope to establish content, such action should be witnessed and documented and the envelope resealed.

4.4.6 **Bid Opening.** Vendors and the public are invited and encouraged to attend bid openings. The Purchasing Agent or designee shall open bids publicly at the time and place designated in the IFB, and shall read the names of the bidders and the amount of each bid, and any other information deemed appropriate by the Purchasing Agent or designee.

If it is necessary, to reduce controversy or the perception of a conflict of interest, the Purchasing Agent may request that an independent City officer publicly open the bids. Upon bid opening, all bids become part of the public record, and therefore are available to the public. No statement shall be made as to any “winning bid” at the bid opening or any time until the bid is awarded.

Immediately following the Bid Opening, the Purchasing Agent shall verify all calculations for accuracy, and put all original bids in the Project File. A copy of the bid tabulation shall be forwarded to each bidder, as well as the Client Department. The Client Department shall return a recommendation of award to the Purchasing Agent.

4.4.7 **Disqualification of Bids.** The following may be grounds for disqualification of bids:

- a) Vendor/contractor not attending a mandatory pre-bid conference;
- b) Unsigned bids;
- c) Bids received after the date and time for opening;
- d) Bids where prices are conditional on award of another bid, or when prices are subject to unlimited escalation;
- e) Irregularities in bid bonds;
- f) Alternative bids (those not conforming to the specifications) may be deemed nonresponsive, and may not be considered for award; and
- g) Bids submitted by debarred vendor/contractors or vendor/contractors not meeting the qualifications as described in the bid documents.

Any disqualified bids shall be destroyed and any bid security that may have been furnished by the bidder shall be returned to the bidder.

4.4.8 **Correction or Withdrawal of Bids.** 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 permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written, electronic, or facsimile notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted in the City's sole discretion, only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and that the bid price actually intended is evident from the bid document previously submitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted or required by the City to withdraw its bid if:

- a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- b) the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent and approved by the City Manager or his designee.

4.4.9 **Bid Evaluation.** Departments shall evaluate bids based on the requirements set forth in the IFB. This evaluation should include whether each bid or proposal meets criteria of the IFB (responsive bid); and whether vendor has a record of being a responsible bidder.

- a) *Life Cycle or Total Cost.* A concept designed to assure that the emphasis is placed on total cost of ownership, not just purchase price. This method of purchasing attempts to arrive at a more realistic cost over the *actual useful life* of a product. The rationale is that a quality product may initially cost more than a lower quality one, but may last longer and/or require less repair and maintenance. This kind of evaluation includes: (i) initial cost; (ii) operating cost over the item's life at *present value*; (iii) maintenance cost over the item's life at *present value*; (iv) trade-in or salvage value at *present value*.
- b) *Energy Efficiency/Economy Performance.* This evaluation method uses energy efficiency factors, if available, to evaluate the operating cost of items being considered for purchase.

- c) *Warranties.* Many product or project warranties are not the same, and coverage may be substantially different. The coverage on each product should be carefully evaluated for its potential to save money on repair or down time. All warranty statements shall provide a detailed recap of conditions and provisions. In addition, the vendor shall specify the process for warranty repairs as well as where and by whom the warranty repair shall take place. If the warranty is to be provided by a sub-contractor, that information shall be stated on the bid form. Bidder shall provide time frame for warranty repairs.
- d) *Price Versus Performance.* Price versus performance is a concept designed to assure that a product is not chosen simply on the basis of price when the lower priced product does not contain performance factors necessary to complete the task. The performance factors of each product should be carefully evaluated to ensure that an inferior product in terms of performance (which will cost more money in the long run) is not chosen.
- e) *Discounts.* The City may potentially save taxpayers money by taking discounts when they are offered.
- f) *Fleet and Equipment Standardization.* Due to training, immediate availability of operating or replacement supplies or parts, less down time, maintenance costs, and/or ease of operations, it may be in the best interest of the City to standardize fleet vehicles and operations equipment.
- g) *Other Factors.* Consideration also may be given to:
 - (i) local vendors, including local preferences; no provision is made in these regulations for routine local preference, however it is the policy of the Purchasing Division to solicit bids from local suppliers whenever and wherever such competitive local sources exist, and where no sacrifice or loss in price or quality would result.
 - (ii) mechanical factors such as quietness of operation or cleanliness of operation (freedom from emissions of pollutants, either exhausted or manufactured as a by-product, etc.);
 - (iii) availability of supplies or parts;
 - (iv) shipping date;
 - (v) if applicable, the percent of recycled materials included in the product pursuant to Resolution R1990-5;
 - (vi) other environmental factors, including health and welfare of employees and/or citizens, social factors, and/or socio-economic factors.
 - (vii) other factors relevant to a particular using department need or requirement.

In the event the low responsive and responsible bid exceeds available funds, as certified by the Finance Director, the Purchasing Agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. The City reserves the right to reject any and all bids when the lowest qualified bid exceeds the budget limit.

Bids shall be awarded to the lowest responsible bidder who submits the responsive bid that is most advantageous to the City of Durango.

- 4.4.10 **Tie Bid.** In the event of a tie bid, the following steps shall be taken to determine award:
- 1.) Local preference shall be invoked. Local bidders shall receive a 5% preference over all bidders. Regional Bidders will receive a 3% preference over Non-Resident Bidders.
 - 2.) If local preference is not a factor, award shall be determined by a flip of the coin. Purchasing Agent shall notify bidders of action to be taken prior to coin toss so that bidders may be present to witness determination.
- 4.4.11 **Award Recommendation.** After evaluating the bids, the Purchasing Agent will prepare a bid tabulation, which will be submitted to the department. The Department Director shall provide an award recommendation and advise the Purchasing Agent, in writing. A Department Director may recommend a non-award if the department documents a specific reason for such recommendation such as lack of adequate funding.
- A multiple source award may be made when award to two or more vendors is necessary for adequate delivery, service, or product compatibility. Multiple source awards shall not be made when a single award will meet the City's needs without sacrifice of economy or service.
- 4.4.12 **Notice of Award.** For projects which the Department Director has recommended the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB and this Policy, and is priced within the budgeted amount, awards shall be made by the Purchasing Agent, and in the case of construction projects, with the approval of the City Engineer. If the project so requires, the Client Department shall issue a purchase requisition or direct pay requisition.

4.4.13 **Only One Bid Received.** If only one responsive bid is received, an award may be made to the single bidder if the Purchasing Agent and Client Department find that the price submitted is fair and reasonable and that all other prospective bidders had time to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and (a) new bids may be solicited, (if new bids are solicited, the bid amount originally submitted shall not be released to the public in order to maintain the integrity of the procurement) (b) the proposed procurement may be canceled, or (c) if the Purchasing Agent and Client Department determine that the price of the one bid is not fair and reasonable, and that re-solicitation would likely be futile, negotiations may be entered into with the lone bidder.

4.4.14 **Award To Other Than Low Bidder.** When a department finds just cause to award a bid to other than the lowest bidder, a full and complete statement of reasons must be prepared. This statement, along with all documentation relating to the bid's disqualification, shall be submitted to the Purchasing Agent. The Purchasing Agent shall be responsible for verifying the justification.

4.5.0 COMPETITIVE SEALED PROPOSALS

4.5.1 **Conditions for Use.** Use for products or services where several evaluation criteria will be considered. Cost may not be the determining factor.

4.5.2 **Public Notice.** Public notice shall be accomplished in the same manner as for Formal Bids except in the following regards:

The proposal specification is written using performance standards rather than the description of the good or service.

- a) Vendors submit their own design, ideas, or plans for a product or service to satisfy the requirements set forth in the proposal. Proposals may incorporate entirely different products or services to accomplish the same performance.
- b) During the opening of the proposal, the only information which will be released are the names of the offerors and any other information deemed appropriate by the Purchasing Agent or designee; prices shall not be released.
- c) After proposals are received, the City may enter into negotiations, in order to arrive at the best possible proposal for the City.
- d) A cost analysis or a price analysis, when required, may be conducted prior to award of the project. A written record of such cost analysis or price analysis shall be made a part of the contract file.

4.5.3 **Discussion with Responsible Offerors and Revisions to Proposals.** Discussions may be conducted with responsible offerors for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall ordinarily be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

4.5.4 **Only One Proposal Received**

If only one proposal is received in response to a RFP, the Purchasing Agent and Client Department have the following options:

- a) Proceed with the evaluation of the proposal from the single offeror; if the offer meets the requirements of the City as stated in the RFP, and the cost is determined to be fair and reasonable, an award may be made.
- b) If the evaluation determines that the only offeror does not meet the City's needs, or negotiations of the cost do not result in a fair and reasonable price, then the solicitation may be canceled and re-solicited at a later date. Note: If the solicitation is canceled, no disclosure of proposal details shall be made.

4.6.0 PROFESSIONAL SERVICES

4.6.1 **Conditions for Use.** The services of accountants, architects, auditors, consultants, engineers, land surveyors, lawyers, and physicians, etc. shall be procured in accordance with this Section, except that the Purchasing Agent reserves the right to waive or modify the procedures set forth herein whenever deemed to be in the best interests of the City.

4.6.2 **Public Notice.** Public Notice shall be accomplished in the same manner as for Formal Bids.

4.6.3 **Request for Professional Services.** Departments must compile a scope of work for Professional Services and submit it to Purchasing for distribution to interested professionals. Purchasing will use the scope of work to develop a Request for Professional Services.

4.6.4 **Receipt and Opening of Professional Service Proposals.** These acts shall be accomplished in the same manner as the Receipt and Opening of Bids and Proposals.

4.6.5 **Proposal Evaluations and Discussions.** The selection committee shall be chaired by the Purchasing Agent or designee, and shall consist of at least two other individuals decided upon by the Client Department. The selection committee shall review the proposals and select the candidates who appear to possess the qualifications necessary to fulfill the scope of services as set forth in the Request

for Professional Services. The committee may conduct discussions with the selected professionals to clarify or obtain additional information in order to make a selection for award recommendation.

4.6.6 **Award Recommendation and Award.** These acts shall be accomplished in the same manner as Formal Bids.

4.6.7 **Illegal Alien Certification.** Per State Statute, all City of Durango contracts for services are required to include certification that the contractor does not knowingly contract with illegal aliens.

HB 1343 requires certification from the contractor that the contractor has registered with, or certified that they are in compliance with, the E-Verify Program. E-Verify is a program run by the Federal Government within the Department of Homeland Security. The program requires an employer to apply for entry into the program and make certain agreements with the Department of Homeland Security and Social Security programs.

The Successful Contractor must apply to participate in the E-Verify Program over the internet and to sign the Illegal Alien Certification statement issued by the City of Durango.

The City will not make payments on any contract until the Certification Statement Regarding Illegal Aliens form is on file in the office of the Purchasing Agent.

4.7.0 CANCELLATION OF IFBs OR RFPs

An invitation for bids, a request for proposals, or other solicitation may be canceled, or bids or proposals may be rejected in whole or in part. Notice of cancellation shall be posted online, at the source of the original bid solicitation. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future purchase of similar items. In the event of rejection of all bids or solicitations, no additional information shall be released to the public in order to maintain the integrity of the procurement.

PART C – INFORMAL PURCHASING PROCEDURES

4.8.0 INFORMAL BIDS - \$10,001 - \$50,000

- 4.8.1 **Conditions for Use.** Informal bids are utilized for goods, services, or construction projects which cost \$10,001 - \$50,000. Project requirements shall not be artificially divided so as to constitute a small purchase under this Section. Written specifications are required and a minimum of three written quotes are required.
- 4.8.2 **Solicitations.** The department with the assistance of Purchasing shall solicit bids from as many businesses as is practical..
- 4.8.3 **Award.** The Client Department shall document the informal bid procedure as necessary, and issue a Purchase Requisition or Direct Pay Requisition as applicable.

4.9.0 INFORMAL QUOTES - \$ 1,001 - \$10,000.

- 4.9.1 **Conditions for Use.** Informal quotes are utilized for goods, services, or construction projects which cost \$1,001 - \$10,000. Project requirements shall not be artificially divided so as to constitute a small purchase under this Section. Two written quotes are required and three written quotes are recommended, but specifications may be communicated verbally.
- 4.9.2 **Solicitations.** The department with the assistance of Purchasing, if necessary, shall solicit written quotes from as many vendors as is practical.
- 4.9.3 **Award.** The Client Department shall document the informal quote procedure and issue a Purchase Requisition or Direct Pay Requisition as applicable.

4.10.0 INFORMAL PURCHASES - \$0 - \$1,000

Informal Purchases may be made independently of the Purchasing Division at the discretion of the Department. Informal Purchases provide more efficient operations at the department level, streamline paperwork and allow Purchasing to focus on saving more tax dollars by concentrating on large dollar procurements.

Departments are expected to use their discretion to obtain the best value for the City.
The following are the methods of purchasing/payment for informal purchases.

- 4.10.1 **Purchasing Card.** Departments may purchase items up to their individual spending limits utilizing their Purchasing Card. No requisition form or formal purchase order is needed. UNDER NO CIRCUMSTANCES ARE LARGE PURCHASES TO BE ARTIFICIALLY DIVIDED TO FALL WITHIN THIS

LIMITATION.

THE PURCHASING CARD SHALL BE USED WHENEVER POSSIBLE to minimize paperwork and to expedite procurement. Cardholders should refer to the Purchasing Card policy for procedures regarding authorization of purchases and cost-coding of same. The City's tax exempt number is printed on all Purchasing Cards. Vendor questions regarding tax exempt status should be directed to the Purchasing Agent.

- 4.10.2 **Mini Purchase Orders.** Departments may purchase items priced under \$1,000, which are NOT available from the Warehouse inventory, by utilizing Mini Purchase Orders; no Requisition form or formal purchase order is needed. UNDER NO CIRCUMSTANCES ARE LARGE PURCHASES TO BE ARTIFICIALLY DIVIDED TO FALL WITHIN THIS LIMITATION.

The Mini Purchase Order shall be used whenever the Purchasing card is not accepted.

- 4.10.3 **Petty Cash.** Departments may make purchases for small, rarely used items costing less than \$50 which are NOT available from the Warehouse inventory . The \$50 limit must be strictly observed and receipts for all purchases must be submitted to the Finance Department for reimbursement. Staff should make every effort to utilize Purchasing Card or Mini PO wherever possible in lieu of petty cash. Exception to the \$50 limit may be made only by the Director of Finance. Departments may only utilize petty cash with suppliers located within the local area.

- 4.10.4 **Preparing and Routing the Mini Purchase Order and Petty Cash Slips.** Books of Mini Purchase Orders and Petty Cash Slips may be ordered from the Warehouse inventory. All Mini Purchase Orders and Petty Cash Slips shall be completely filled out including the account number found in the department's annual budget. All signatures shall be legible or employee shall print his/her name below signature.

After making the purchase, the white copy of the Mini Purchase Order is given to the vendor; the pink copy with invoice to the Finance Department; the yellow copy is filed in department for reference.

After making a cash purchase, the Petty Cash Slip is attached to the receipt and submitted to the Finance Department for reimbursement.

PART D – SOLE SOURCE AND EMERGENCY PURCHASING

4.11.0 SOLE SOURCE PURCHASING

A project may be awarded, without competition, when the Purchasing Agent determines, after conducting a good faith review of available vendors, that there is only one source for the required supply, service, or item. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery, and terms.

A Sole Source Justification Form shall be filled out by the Client Department, signed by the Department Director and approved by the Purchasing Agent prior to any sole source purchase. Client Department is responsible for providing satisfactory justification for the sole source procurement, including detailed description of products or services, why the requested vendor is the only practical source for the products or services, and why alternates are unacceptable. The approved sole source justification form shall be affixed to the method of payment record for auditing purposes.

4.12.0 EMERGENCY PURCHASING

The City Manager, or any Department Director, may make or authorize others to make emergency purchases of supplies or services at times when there exists a threat to the public health, welfare, or safety, provided that such emergency purchases shall be made with such competition as is practicable under the circumstances. The basis for the emergency and for the selection of the particular contractor shall be maintained as a public record.

SECTION 5 – BID SECURITY/BID BOND, PERFORMANCE AND PAYMENT BONDS

5.1.0 BID SECURITY/BID BOND

- 5.1.1 **Requirement for Bid Security/Bid Bond.** Bid security shall be required for all competitive sealed bidding for Public Works or construction contracts when the price is estimated to exceed \$50,000. Bid security shall be a bond provided by a surety company authorized to do business in the State of Colorado, or the equivalent in cash, or otherwise supplied in a form satisfactory to the City. Nothing herein shall prevent the requirement of such bonds on contracts under \$50,000 when the circumstances warrant.
- 5.1.2 **Amount of Bid Security/Bond.** Bid security shall be in an amount equal to at least 10% of the amount of the bid, or as determined by the Purchasing Agent.
- 5.1.3 **Rejection of Bids for Noncompliance with Bid Security Requirements.** When the IFB requires security and the vendor fails to provide such security, the bid will be rejected, unless it is determined that the failure to fully comply was a minor irregularity and such irregularity is promptly corrected.
- 5.1.4 **Withdrawal of Bids.** If a bidder is permitted to withdraw its bid before award as provided in Section 4.4.8, no action shall be taken against the bidder or the bid security.

5.2.0 CONTRACT PERFORMANCE AND PAYMENT BONDS.

- 5.2.1 **When Required – Amounts.** The following bonds or security are required on Public Works or construction projects in excess of \$50,000;
- a) a performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of Colorado or otherwise secured in a manner satisfactory to the City, in an amount equal to 100% of the price specified in the contract; and
 - b) a payment bond satisfactory to the City, executed by a surety company authorized to do business in the State or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

5.2.2 **Security for Other Projects.** The City may require bonds or security on projects other than construction and Public Works projects if determined to be in the best interest of the City.

5.2.3 **Right to Withhold Retainage.** In any construction or public works contract in excess of \$50,000, the City shall deduct retainage from the partial payments in amounts specified to protect the interests of the City and will retain this money until after completion of the entire contract.

The amount to be retained from payments shall be ten (10) percent of the value of the completed work, exclusive of payments for materials on hand, but not greater than five (5) percent of the amount of the contract. When the retainage has reached five (5) percent of the amount of the contract, no further retainage will be made and this amount will be retained until such time as final payment is made with the following proviso. When 97 ½ percent of the work has been completed on any contract for less than \$50,000, the Engineer may, at his discretion and with the consent of the Surety, reduce the retained amount to twice the value of the work remaining to be completed.

Any contract exceeding \$50,000 shall be subject to the provision of Title 24, Colorado Revised Statutes, Article 91. This includes the amount of retention, the form and method of securing and disbursing the retention.

Upon publication of notice of final settlement, it shall be the responsibility of the contractor to prepare a written request for retainage withheld.

5.2.4 **Timely Payments of Sub-Contractors by Contractors.** Public Works or Improvement Project contracts that exceed \$50,000 shall require contractors to pay sub-contractors within 7 days of monies received from the public entity, per C.R.S. §24-91-103. Should an issue come to the attention of the City, staff may require proof from the contractor that sub-contractors are paid in a timely manner.

5.2.5 **Suits on Payment Bonds – Right to Institute.** Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this Policy, and who has not been paid in full within 90 days from the date of final settlement may prosecute an action as provided in C.R.S. §38-26-107.

SECTION 6 – CONTRACTS AND CONTRACT ADMINISTRATION

6.1.0 TYPES OF CONTRACTS

Purchase Orders, correspondence, standard City forms, or contractor provided documents, may be used as contracts. The form of contract most appropriate for the project and that which will promote the best interests of the City, shall be used. The City Attorney shall approve all formal contracts. The Department Director shall be responsible for ensuring that all specifications are clearly stated in the contract documents, whether formal or informal. For construction-related projects, contracts shall be finalized prior to start of work.

6.2.0 THE PURCHASE ORDER

The Purchase Order (P.O.) is a contract for the acquisition of goods or services. Authority to sign the purchase order form is limited to the Purchasing Agent.

6.3.0 RECEIPT OF GOODS

All items, unless otherwise noted on the Purchase Order, shall be delivered to the Central Warehouse, where staff insures that correct, undamaged merchandise has been received. Receiving staff member shall verify quality and quantity of items received. Purchasing Agent shall follow up with the vendor regarding any discrepancies. For items received at the Warehouse, General Services personnel shall deliver the items to the department, and the department must sign for the items. The department should call Purchasing if it discovers any hidden problems with its purchase.

6.4.0 SERVICE CONTRACTS

If a contract is necessary, the Purchasing Division is responsible for issuance of the contract.

Multi-year contracts may be entered into for a maximum of three years, renewable yearly, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contract. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and lawful appropriation of funds by the City Council. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The bid price and conditions shall remain firm for multi-year contracts.

Service contracts for maintenance of equipment previously purchased by the City shall be administered by the using department and copies of such contracts shall be maintained by the department.

6.5.0 EXECUTION OF THE CONTRACT

Upon receipt of the executed contracts, requested bonds, proof of insurance, W-9 and other required documents from the vendor, the Purchasing Agent shall forward the contract to the City Manager or Department Head for signature, as appropriate to the value of the contract.

\$25,000 or less.....	Department Director
over \$25,000.....	City Manager

Provided that the contract subject matter is funded in the budget, the City Manager may execute all contracts. This shall include contracts related to the sale and purchase of real property, provided that the subject matter of the sale or purchase was approved by the Durango City Council; purchasing contracts; licensing agreements related to the purchase or sale of computer software and/or data; right-of-way acquisition memoranda of agreement; vending contracts; leases; and, pursuant to the terms in Section 6.7.0, contract modifications, change orders and renewals of contracts.

Following execution of a contract by the City Manager, the City Clerk shall attest to the City Manager’s signature, file the original document, scan and post a copy to the appropriate electronic folder and return additional originals and/or copies to the Purchasing Agent for distribution to the vendor/contractor.

6.6.0 NOTICE TO PROCEED

For Public Works or construction projects, the Client Department may issue the Notice to Proceed to the contractor, and shall forward a copy of the Notice to Proceed to the Purchasing Agent

6.7.0 CHANGE ORDERS AND CONTRACT MODIFICATIONS

Change orders or contract modifications shall be initiated by the City Engineer or Client Department using standard forms. Execution of contract modifications, change orders, or contract price adjustments with the City not in excess of the budget may be executed by the following positions at the indicated price limits:

\$10,000 or less	Department Director
over \$10,000	City Manager

6.8.0 CAUSES FOR ISSUING A STOP WORK ORDER, FILING A SURETY CLAIM AND CANCELING THE CONTRACT

The Project Manager may stop the project work if the Contractor commits any of the following acts/omissions which shall constitute a substantial breach of the contract:

- (1) fails to begin the work within the time specified in the Contract;
- (2) fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
- (3) fails to perform the work in accordance with contract requirements or refuses to remove and replace rejected materials or unacceptable work;
- (4) discontinues the work;
- (5) fails to resume work which has been discontinued within a reasonable time after notice to do so;
- (6) becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency;
- (7) allows any final judgement to remain unsatisfied for a period of 10 days;
- (8) fails to comply with contract requirements regarding minimum wage payments;
- (9) is a party to fraud; or
- (10) for any other cause whatsoever, fails to carry on the work in an acceptable manner.

In addition to stopping the work, if the Contractor commits any one of the above-described acts/omissions, the City may file a claim with the surety company and may immediately terminate the contract upon written notice to the Contractor.

6.9.0 STOPPING THE WORK AND CANCELING THE CONTRACT

If the Project Manager discovers that the Contractor has committed any of the above-described acts/omissions, the department shall order the work stopped as follows:

- (1) verbally inform the job-site supervisor and company project supervisor (if different than job-site supervisor) that the work must be stopped immediately;
- (2) prepare a written stop work order explaining the deficiencies;

- (3) deliver the written stop work order (and copies thereof) to the company, the City Manager, the Purchasing Agent (for the Project File).

Work shall not progress until the deficiencies have been corrected to the satisfaction of the City.

If the Contractor fails to cure the deficiencies, or the deficiencies are of such a nature that it is in the City's best interest to cancel the contract, the City may file a claim with the surety company, and upon written notice, immediately cancel the contract. In order to file a claim and cancel the contract, the Project Manager shall confer with the City Manager, the City Attorney, the Finance Director, and the Purchasing Agent.

In the event a contractor has been notified of any of the items stated in 6.9.0, and has failed to correct the documented problem, the contractor shall be considered disqualified. The disqualified contractor shall be debarred from bidding on City projects for a period of one year. After that time, the contractor shall be required to demonstrate to the City that the reason for disqualification has been rectified.

6.10.0 RIGHT TO AUDIT RECORDS

- 6.10.1 **Audit of Cost or Pricing Data.** The City may at reasonable times and places, audit the books and records of any contractor who has submitted all cost or pricing data pursuant to the Policy to the extent that such books, documents, papers, and records are relevant to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three (3) years from the date of final payment under the contract.
- 6.10.2 **Audit of Contractor.** The City shall be entitled to audit the books and records of any contractor or subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are relevant to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

- 6.10.3 **Contractor Records.** If a contract is being funded in whole or in part by assistance from a federal agency, then the contractor and subcontractors at any tier are required to maintain for three (3) years from the date of final payment, or as required by the grantor, all books, documents, papers, and records pertinent to the contract; and to provide to the City, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

6.11.0 FINAL SETTLEMENT

- 6.11.1 **Final/Partial Acceptance Report.** The department may complete a Final/Partial Acceptance Report to document the completion or partial completion of a project; the department's level of satisfaction with the contractor; and any recommendations to disqualify the contractor. Upon completion, the department may forward a copy of the Final/Partial Acceptance Report to the Purchasing Agent, and for construction projects, the City Engineer.
- 6.11.2 **Final Settlement.** Pursuant to CRS §38-26-107(1), for any Public Improvement contract of \$50,000 or greater, the Purchasing Agent shall initiate a Notice of Final Settlement upon receipt of the Final Inspection Report. A legal notice shall be advertised in a public newspaper, at least twice in a period not less than ten (10) days prior to the date of final settlement. It is unlawful for any person to divide a Public Works contract into two or more separate contracts for the sole purpose of evading or attempting to evade the requirements of this subsection.

SECTION 7 – DEBARMENT OR SUSPENSION

7.1.0 AUTHORITY TO DEBAR OR SUSPEND

After notice by hand-delivery or by certified mail, return receipt requested, to the vendor/contractor and reasonable opportunity for that person to be heard, the Purchasing Agent with the concurrence of the City Manager, after consulting with the City Attorney is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period one year from January 1 of the year after issuance of the notice of debarment. The causes for debarment of a contractor include the following acts by the contractor or its subcontractors:

- (1) conviction for commission of a criminal offense as in incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, unlawful price fixing between competitors or any other violation of federal or state anti-trust laws, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor;
- (3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) violation of contract provisions, as set forth below, of a character, which is regarded by the Purchasing Agent to be so serious as to justify debarment action:
 - a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment. “Recent” for purposes of this subsection, shall mean within the prior three years or the last contract with the City, whichever is greater in time.
- (5) any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this code or as set forth in the State of Colorado Division of Transportation Rules for Prequalification, Debarment, Bidding and Work on Colorado Department of Transportation Road, Highway and Bridge Public Projects;
- (6) for violation of the ethical standards set forth in Section 13;

- (7) a willful and material violation of a statutory or regulatory provision or requirement applicable to a contract on a public project.

7.2.0 DECISION TO DEBAR OR SUSPEND

The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning review. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

7.3.0 FINALITY OF DECISION

A decision under Section 7.2.0 shall be final and conclusive, unless fraudulent, or the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the City Manager. A timely appeal to the City Manager shall be a required administrative remedy prior to the commencement of a required Colorado Rules of Civil Procedure Rule 106 action.

SECTION 8 – APPEALS AND REMEDIES

8.1.0 BID PROTESTS

8.1.1 **Right to Protest.** All claims by a vendor against the City relating to a bid protest shall be submitted in writing to the Purchasing Agent. Protestors shall have the burden of determining the date and time of the consideration and award of the bid. A protest with respect to an IFB or RFP shall be submitted in writing prior to the opening of bids/proposals, unless the aggrieved vendor did not know and should not have known of the facts giving rise to each such protest prior to bid/proposal opening.

Protests shall be in writing and shall specify each allegation relevant to the claims.

The Purchasing Agent shall consult with appropriate City officials such as the using department, the City Attorney, and the City Manager. Based on the gravity of the complaint, the Purchasing Agent may determine that a hearing is necessary. If appropriate, one shall be scheduled at the earliest possible date.

The Purchasing Agent shall issue and deliver to the vendor a written decision regarding the protest.

8.1.2 **Stay of Purchasing During Protests.** In the event of a protest under Subsection 8.1.1 of this Section, the City shall not proceed further with the solicitation or award of the project until appeal remedies have been exhausted or until the City Manager makes a determination that the award of the project without delay is necessary to protect the best interests of the City.

8.1.3 **Exhaustion of the Administrative Remedies.** Exhaustion of the administrative remedies as provided in this Section shall be mandatory condition precedent to the filing of a timely Colorado Rules of Civil Procedure Rule 106 action.

8.2.0 CONTRACT PROTESTS

8.2.1 **Right to Protest.** All claims by a vendor against the City relating to a contract, except bid protests, shall be submitted in writing to the Purchasing Agent for a decision. The Purchasing Agent shall consult with appropriate City officials such as the Client Department, the City Attorney, and the City Manager. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

- 8.2.2 **Notice to the Contractor of the Decision.** The decision of the Purchasing Agent shall be promptly issued in writing, and shall be immediately furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights.
- 8.2.3 **Finality of Decision; Contractor’s Right to Appeal.** The Purchasing Agent’s decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor delivers a written appeal to the City Manager. The City Manager shall issue a written decision regarding the appeal, which shall state the reasons for the decision. The City Manager’s decision shall be final and conclusive administrative action.
- 8.2.4 **Failure to Render Timely Decision.** If the Purchasing Agent does not issue a written decision regarding any contract controversy within ten (10) days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

SECTION 9 – TRAVEL

When it is necessary for an employee to travel on behalf of the City, the following policies and procedures shall be followed:

9.1.0 MOST ECONOMICAL TRANSPORTATION

The City will pay for the most economical transportation on any approved trip.

9.2.0 GROUND TRANSPORTATION.

- a. When a City employee uses their personal vehicle for City use, that employee receives a mileage reimbursement (at the current IRS rate) to cover all expenses associated with the use of the vehicle.

If the employee is involved in an accident while acting in the course and scope of their employment, the employee's insurance will provide primary coverage for the use of a personal vehicle. If the employee's personal insurance declines coverage under these circumstances, then the City of Durango, through its insurance carrier, will provide the insurance coverage subject to the terms and conditions of the policy.

- b. A City employee may utilize a City vehicle, when available, with department head approval.
- c. An employee may rent a vehicle. The City's insurance coverage will apply to all rental vehicles (liability/collision) subject to the terms and conditions of the policy. In addition, vehicles rented with a City P-card are also covered by Master Card's insurance policy. Fuel for rental vehicles should be purchased with a Fleet card so that the fuel will be tax-exempt. Fleet cards are checked out from the Finance Department in advance of travel.

9.3.0 AIR TRANSPORTATION

The City will pay the most economical daylight round trip flight charge available. The "most economical airfare" will have different terminology on different airlines; however, in any event, it will be the "economy" or equivalent fare. Reimbursement for airfare shall include reasonable additional charges including, but not limited to, charges for a single checked bag and change fees.

The City will also pay the most economical transportation cost available between the airport and the hotel facility.

9.4.0 HOTEL OR MOTEL OVERNIGHT ACCOMMODATIONS

The City will pay the charges for a single room at the designated conference hotels as outlined on the registration form and such forms shall so indicate. Where there is no designated

conference hotel, the City will pay for a single room in an acceptable mid-priced hotel. Additional hotel charges such as in-room videos and games shall not be charged to the City under any circumstances..

9.5.0 MEAL EXPENSE

The per diem for meal expenses will be paid at the rate posted by the Finance Department. The per diem rate for meals does include tips for same.

Note: The employee may choose to use the conference meal ticket **or** receive the per diem rate for a meal.

Meal expenses should NOT be charged on the City of Durango Purchasing Card if the employee will be receiving “per diem” for that day’s meals. Meals and/or beverages may not be charged to the hotel room under any circumstances. For more information please see the Purchasing Card Program Policies and Procedures.

9.6.0 LIQUOR/ENTERTAINMENT CHARGES

The City will not pay for any liquor or any entertainment charges not directly necessary for the transaction of business for the City. This includes, but is not limited to sporting events, cultural events and fund-raisers.

9.7.0 REGISTRATION FEES

The City will pay registration fees for employees and other authorized City representatives only.

9.8.0 EXPENSE VERIFICATION

The City will require verification of all airline and hotel expenses. The employee shall also provide the pre-registration listing of room accommodations. The City will accept charges for other miscellaneous expenses that are reasonable. Examples of miscellaneous expenses would be parking or taxi fees.

9.9.0 TRAINING/TRAVEL AUTHORIZATION AND EXPENSE FORM

The Training/Travel Authorization and Expense Form will be used for processing all travel requests. Advance payments are allowed based on the estimated costs. Upon completion of the trip, all expenses must be substantiated.

The employee requesting travel authorization shall complete the top portion of the Training/Travel Form in full, including estimated total expense of registration charges, lodging, transportation, meals and miscellaneous expenses. The Section for advance registration, advance lodging deposit, advance travel and airfare reimbursement shall be

completed as required prior to obtaining approval signatures from the Department Director, Finance Director and Assistant City Manager. Travel/Training shall not commence unless fully approved by Department Director, Finance Director and Assistant City Manager. Authorization Forms must be submitted for approval a minimum of **fifteen (15) working days prior to departure or commencement of training.**

If approved, the employee is then to forward copies of any required advance payments (registration, lodging deposit, or advance travel) to the Finance Department, **eight (8) working days prior to the date checks are required.** Original form is to be retained by the employee until the travel is completed.

Within five (5) working days after completion of the trip, the employee must complete and sign the bottom portion (Actual Daily Expenses) in full. The form is signed by the Department Director and forwarded to Finance, with all receipts attached. It will then be verified and any extra monies spent by the employee will be reimbursed by check during the next scheduled check run. If the employee owes the City money, a check should be included with the form. If air travel was required, attach copies of boarding passes or e-ticket receipt.

9.10.0 REASONS FOR TRAVEL

Approved reasons for travel may include:

- a. Travel for conferences, seminars, conventions and meetings of state, regional, or national organizations.
- b. Travel for the purpose of obtaining information from other cities and organizations that would be useful to the City of Durango.
- c. Travel necessary to obtain Federal and State grants and travel necessary to meet the terms of Federal and State programs or contracts.
- d. Travel for any other reason as deemed necessary by the Department Director and approved by the City Manager.

SECTION 10 – CAPITAL EQUIPMENT MANAGEMENT (FIXED ASSETS)

10.1.0 GENERAL

The fixed assets of the City consist of long-lived resources. Capital equipment is one of the subclasses of the fixed asset category, and includes industrial and office machinery, tools, transportation equipment, vehicles, computers, furniture and fixtures, and other like items. Fixed Asset Capital equipment items are items costing in excess of \$5,000, with a life expectancy in excess of five years. Operating Equipment Capital items are items typically costing less than \$5,000. It is the responsibility of the department directors to maintain an inventory of capital equipment assigned to their department. Property tags will be assigned by the Purchasing Agent upon receipt of capital equipment.

10.2.0 TRANSFERRING EQUIPMENT

Equipment may be transferred from one department to another. An “Equipment Transfer/Delete” form must be filled out by the transferring Department Director. The form must be sent to the Purchasing Agent where the equipment inventory shall be updated.

10.3.0 THEFT, LOSS OR DAMAGE OF EQUIPMENT

The Department Director or Supervisor shall be notified immediately upon discovery of the theft, loss or damage of City property. It is the Department Director’s responsibility to report, when appropriate, the damage or loss on an Accident Report form.

The “Equipment Transfer/Delete” form must be completed stating:

- (1) How the item was broken or destroyed;
- (2) When the item was reported missing;
- (3) Whether an insurance report was filed with the Risk Manager;
- (4) Whether the item will be replaced.

This form is sent to the Finance Director.

10.4.0 INVENTORY OF CAPITAL EQUIPMENT

An annual inventory of fixed assets shall be completed every two years. An equipment inventory printout is sent to each department by the Finance Department, to use as a worksheet. The Department Director or appointee shall visually check each piece of equipment against the list, noting any exceptions, i.e., items that cannot be found or have been transferred to another department. The worksheet is then returned to the Finance Department.

SECTION 11 – DISPOSAL OF CITY PERSONAL PROPERTY (SURPLUS)

11.1.0 DISPOSAL OF CITY PERSONAL PROPERTY (SURPLUS)

Any equipment or goods, which are no longer being used by a department, should be transferred to the General Services Department. The Purchasing Agent will attempt to reassign the items to other departments. If the items cannot be used by other City departments, or other government agencies, they will be:

- (1) Sold at public auction.
- (2) Sold via government surplus internet auction sites.
- (3) Sold as salvage or scrap for the highest return available (i.e. scrap metal).
- (4) Sold by sealed bid.
- (5) If value of item(s) is determined to be less than \$50, items may be donated to local charities or thrift stores.

Notification of items sold or transferred will be sent to the Finance Department by the Purchasing Agent.

SECTION 12 – COOPERATIVE PURCHASING

12.1.0 COOPERATIVE PURCHASING

When it is in the best interests of the City of Durango, the Purchasing Department may elect to coordinate the City's purchasing needs with other public purchasing agencies, as authorized by C.R.S. §24-110-201 *et seq.* and §24-110-301, and this Policy. Bid documents issued by the City may contain cooperative language to allow other public agencies to utilize the City's price agreements.

SECTION 13 – ETHICS IN PUBLIC CONTRACTING

13.1.0 CRIMINAL PENALTIES

To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State of Colorado Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to any civil sanctions set forth in this Policy. Criminal, civil, and administrative sanctions against employees or non-employees, which are in existence on the effective date of this Policy shall not be impaired.

13.2.0 NONDISCRIMINATION

13.2.1 **Affirmative Action.** Any Contractor involved in a City project shall, in all hiring or employment made possible or resulting from this agreement, take affirmative action to ensure that there shall be no unlawful discrimination against any employee or applicant for employment because of sex, race, age, color, creed, national origin, sexual orientation, marital status or the presence of any sensory, mental or physical handicap, unless based upon a bonafide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

13.2.2 **Discrimination.** No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from a City Contract on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, sexual orientation, marital status, or the presence of any sensory, mental or physical handicap.

13.3.0 GRATUITIES AND KICKBACKS

13.3.1 **Gratuities.** In compliance with Amendment 41, Article XXIX of the Colorado State Constitution, entitled “Ethics in Government”, City Employees, Public Officials and members of their families shall not accept or solicit gifts or gratuities offered because of the employee’s duties, functions or responsibilities as an employee of the City. This does not pertain to gifts of a general commercial advertising nature having an aggregate value of less than \$50.00 in any one calendar year, scholarships, awards (plaques or trophies), or to food or drink consumed by the employee at the time of receipt at an appropriate social or City business occasion.

13.3.2 **Kickbacks.** It is unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for

the award of a subcontract or order.

13.4.0 PROHIBITION AGAINST CONTINGENT FEES

It is unethical for a person to be retained, or to retain a person, to solicit or secure a City contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business providing that full disclosure of all cost and pricing data as well as such commission percentage, brokerage, or contingent fee is made when requested.

13.5.0 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

It is unethical for any City employee or public official who is participating directly or indirectly in the purchasing process to become or to be, while such a City employee or officer, the employee of any person contracting with the City.

13.6.0 WAIVERS FROM CONFLICTS OF INTEREST

The City Manager may grant a waiver from the conflict of interest provision or the contemporaneous employment provision upon making a determination on the record that:

- a) the contemporaneous employment or financial interest of the City employee or officer has been publicly disclosed;
- b) the City employee or officer will be able to perform the purchasing functions without actual or apparent bias or favoritism; and
- c) the award will be in the best interests of the City.

13.7.0 USE OF CONFIDENTIAL INFORMATION

It is unethical for any public employee or official to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

13.8.0 SANCTIONS

13.8.1 **Employees.** The City Manager may impose any one or more of the following sanctions on a City employee for violations of the ethical standards in this Policy:

- a) oral or written warnings or reprimands;
- b) suspension with or without pay for specified periods of time; or
- c) termination of employment.

13.8.2 **Non-employees.** The City Manager may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:

- a) written warnings or reprimands;
- b) termination of contracts

- c) suspend or revoke prequalification as provided in this Policy.

13.9.0 RECOVERY IN BREACH OF ETHICAL STANDARDS

- 13.9.1 **Recovery from Employees.** The value of anything transferred or received in breach of the ethical standards of this Policy by a City employee, public official or a non-employee may be recovered from the City employee, public official and non-employee.

- 13.9.2 **Recovery from Vendors.** Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.