

PROCUREMENT POLICY

00075 Version 24

Approval Date 7/29/2024

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I. PURPOSE, MISSION, SCOPE & CHANGES

A. Purpose

1. This policy is established to encourage effective competition by promoting a fair and open procurement process allowing any business, regardless of size or ownership, opportunity to compete to satisfy Colorado Springs Utilities (Utilities) need for goods and services. Additionally, these policies will ensure compliance with applicable federal, state, and local legislation, as described below.
2. The content set forth herein defines Utilities' Procurement Policies. This policy shall be construed and applied to promote the Procurement objectives.
3. This Procurement Policy shall apply to all Contracts funded and entered into by Utilities and Utilities Joint Ventures; except as otherwise specified and shall apply to every entity within Utilities.

B. Mission

1. To lead our Internal Stakeholders with integrity, advocating an ethical and robust competitive process to achieve sustained value in our Contractor relationships and the strategic sourcing and acquisition of products and services; to negotiate and manage the contracting process in compliance with organizational objectives and governmental regulations; to understand our Internal Stakeholder's business needs and leverage our subject matter expertise to mitigate risk and deliver outstanding value and continuous improvement.

C. Scope

1. This policy applies to all Internal Stakeholders and Contractors engaged in the procurement of goods and/or services for Utilities.

D. Changes to the Procurement Policy

1. The Procurement Manager has the authority and responsibility to promulgate rules, consistent with this policy, governing the procurement of all goods and services by Utilities. The Procurement Manager shall consider and decide all matters within the provisions of this policy.

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II. REGULATORY GOVERNANCE

A. Chief Executive Officer Responsibility

1. Pursuant to § 6.10 of the City Charter and § 12.1.109 of the Code of the City of Colorado Springs (hereinafter referred to as “City Code”), the Chief Executive Officer of Utilities is responsible for operation of Utilities and can establish administrative policies applicable to the operations and finances of Utilities. This includes establishing procedures for the procurement and approval of purchases. These policies are promulgated in accordance with the Utilities Board Governance Policy.

B. Best Interest of the Public

1. Utilities’ Internal Stakeholders have an over-arching obligation to act in the public interest. They must perform their official functions and duties, and exercise any discretionary powers, in ways that promote the public interest that is applicable to their official functions.

C. Contractual Documentation Required

1. All Utilities contracts shall be subject to these Procurement Policies herein, and shall meet the following requirements:
 - (a) Must be approved in accordance with the Appropriation of Funds section of this policy; and
 - (b) Must be executed by authorized personnel as defined per the Signature and Approval Authority Policy; and
 - (c) Must use only those contract / purchase order standard terms and forms as set forth within this policy, unless the Procurement Manager or designee determines that an alternative term or form should be used, and such contract is “approved as to form” by the City Attorney’s Office – Utilities Division.

D. Federal, State and Other Applicable Law

1. Utilities’ procurement activities shall comply with federal, state and all other applicable law, including but not limited to the specific laws described below. Any questions regarding the laws listed below or any others should be directed to Procurement. If Procurement requires guidance they will contact the City Attorney’s Office – Utilities Division.

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E. Appropriation of Funds: Colorado Springs City Charter § 7-60

1. Provides that no Internal Stakeholder of Utilities may enter into a contract involving the expenditure of public funds or imposing any liability to pay money unless and until a definite amount of money has been appropriated.

F. Ethics and CORA

City of Colorado Springs Ethics Code (codified as City Code 1.3.101 *et seq.*) and Utilities Business Code of Ethics Policy and Utilities Personnel Policy Manual (PPM) including, but not limited to, the following requirements:

1. Ethical conduct in all procurement and contracting transactions.
2. Adherence to Colorado Open Records Act, C.R.S. 24-72-201 *et seq.* (“CORA”) which declares that all public records shall be open for inspection, except as allowed by law.
3. Sound fiscal management in all procurement and contracting transactions.

G. Keep Jobs in Colorado Act, § 8-17-101, *et seq.*, C.R.S.

(Also referred to as the “Colorado Labor Preference Act”) applies to all public works projects except those with federal funding and requires:

1. Use of Colorado labor for performance of at least 80% of the work on any public works project paid for in whole or in part with funds of the state, counties, school districts, or municipalities of the State of Colorado.
 - (a) The 80% requirement may be waived if
 - (i) there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work and
 - (ii) compliance with this requirement would create an undue burden that would substantially prevent a project from proceeding to completion.
 - (b) Notice of waivers must be posted along with a justification for the waiver at the time of solicitation on Utilities’ website.

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H. Prohibition on Hiring Workers Without Authorization, § 8-17.5-102, C.R.S.

1. Utilities shall not enter into or renew a public contract for services with a Contractor who knowingly employs or contracts with a worker without authorization to perform work under the contract or who knowingly contracts with a Subcontractor who knowingly employs or contracts with a worker without authorization to perform work under the contract.

I. Anti-Indemnity Statutes, §§ 13-21-111.5 and 13-50.5-102, C.R.S.

1. Utilities cannot require its Contractors to indemnify Utilities for Utilities' negligence or faulty acts. Contract provisions that appear to do so are void as it is against public policy and unenforceable.
2. Contracts for architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, water, sewer, electric or gas distribution system, that contain a covenant to defend, indemnify, or hold harmless Utilities, are enforceable only to the extent of the Contractor's negligence or fault.
3. Public works projects must have a full and lawful appropriation, and contract must include a statement that the amount appropriated is equal to or in excess of the contract amount.

J. Construction Contracts With Public Entities, § 24-91-101, *et seq.*, C.R.S.

1. Provides that Utilities cannot require a Contractor to waive, release, or extinguish the right of the Contractor to recover costs or obtain an equitable adjustment for Utilities' delays, but does allow contract provisions that provide for reasonable liquidated damages.

K. Bonding Requirements / Verified Statements of Claim, § 38-26-105, *et seq.*, C.R.S.

1. § 38-26-105, C.R.S., requires Utilities to obtain payment bonds for construction / public works contracts valued over \$50,000. It allows Utilities to obtain payment bonds on contracts valued \$50,000 or less at its discretion. Utilities has waived this requirement and this policy requires Procurement to obtain payment bonds for construction / public works contracts valued over \$100,000 and at its discretion for those valued less than \$100,000.

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2. **§ 38-26-106, C.R.S.**, requires Contractors awarded a contract valued over \$50,000 with a municipality for the construction of any public works project to provide a bond for at least half the value of the contract for the “faithful performance” of the contract (a performance bond). Utilities requires performance bonds for the full value of the contract per this policy.

 3. **§ 38-26-107, C.R.S.**, allows Subcontractors and Contractors to file a verified statement of claim with the public entity instead of filing liens against a construction / public works project. Upon filing a verified statement of claim, Utilities must withhold from payment to a Contractor, amounts equal to the verified statement of claim.
- L. US Department of the Treasury-Office of Foreign Assets Control (OFAC) regulations
1. Defines economic and trade sanctions with certain foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

 2. Forbidden Countries
 - (a) Utilities is required to comply with the US Department of the Treasury-Office of Foreign Assets Control (OFAC) regulations regarding economic and trade sanctions with certain foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. Prior to contracting with any company located outside the United States, PCS shall review the OFAC sanctions list to verify no sanctions are in place. Link to OFAC website:<https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>
- M. Signature Authorization Limits and Delegation
1. City Code of Colorado Springs § 12.1.109 and § 12.1.110 grants the Chief Executive Officer (CEO) of Utilities the authority to execute all Utilities business contracts including the establishment of procedures for the procurement and approval of purchases.

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2. As delegated by the CEO, the Procurement Manager shall have the power and duty to:
 - (a) Purchase or contract for all supplies and services needed by any division, department or section of Utilities.
 - (b) Determine and adopt policies and procedures related to the procurement of goods and services.
1. As delegated according to limits determined by the Procurement Manager, contracts and purchase orders must be executed by Procurement Staff according to the Signature and Approval Authority Policy.
2. Authority to execute release purchase orders is delegated to appropriate personnel.

N. Equal Employment Opportunity

1. All Utilities contracts shall ensure that no person will be discriminated against because of race, color, national origin or ancestry, sex, age, religious convictions, veteran status, disability or political beliefs.
 - (a) Contractors shall comply with all federal and state nondiscrimination laws and have an Equal Employment Opportunity policy.
 - (b) Contractors shall also comply with Utilities Equal Employment Opportunity/Affirmative Action policies regarding nondiscrimination and harassment, which includes sexual harassment, in the conduct of their business while on Utilities' property and/or interacting with Utilities' Internal Stakeholders.

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III. TERMS AND ABBREVIATIONS

Agreement – A negotiated and usually legally enforceable understanding between two or more legally competent parties.

Amendment – A legal document that adds, alters, or omits a certain part or term of an existing legal document (i.e. a contract or task order)

Authority - Power that is delegated formally to commit resources and approve actions.

Award - The acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a Contractor.

Best Interest of Utilities – A term granting a Procurement Staff member the authority to use defensible discretion to take action that is determined to be the most advantageous to Utilities, including award of a contract to the best bid/proposal.

Bid – An offer, as a price, whether for payment or acceptance, given to Utilities by a bidder in response to a solicitation for entering into a Utilities' contract.

Bid Bond – A document that guarantees, on acceptance of a Bid by UTILITIES, the contractor shall proceed with contract execution.

Bidder – Contractor that has responded to a Utilities sourcing event.

Blanket Contract – an established contract to provide predetermined goods or services as defined in the Scope of Work or Specifications. The agreement enables the use and creation of a blanket release/task order or the ability to use a P-Card under the pre-established terms and conditions of the agreement.

Change Order – A written order which is signed by a Contractor and Utilities after execution of a Contract, which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract price, or the contract times, issued on or after the effective date of the contract.

Colorado Labor - any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

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Conflict of Interest - A situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self-interest and professional interest or public interest.

CONNECT Tool - GEP SMART, also referred to as the CONNECT Tool, is a unified approach as it relates to the intake, sourcing and contracting of our goods and/or services. The CONNECT Tool is NOT a Procure to Pay system (P2P).

Contract – A legally binding document that is a result of (1) an offer, (2) acceptance of the offer, and a (3) valid (legal and valuable) consideration between Utilities and a Contractor.

Contractor – The person or business unit performing services, or manufacturing, producing, or shipping goods required by the contract or purchase order.

Cure Notice – Communication informing a Contractor under a contract with Utilities that a failure to fulfill contract terms is risking termination of the contract. The cure notice specifies a time period for the Contractor to correct the issues.

Direct Pay Request – The form used when requesting a direct pay (A payment issued by Accounts Payable without a Purchase Order or Contract issued by Procurement) when no invoice is issued by the Contractor.

Emergency Procurement – A purchase made without following the normal Procurement procedures due to a sudden, unexpected, or impending situation that may cause injury, loss of life, damage to the property, and/or interference of essential business operations which, therefore, requires immediate attention and remedial action.

Evaluation – The process of opening, examining, and evaluating responses to determine the bidder/respondents' responsibility, responsiveness, and other factors associated with selection for contract award.

Evergreen Contract - A contract that automatically renews after the expiration date until one gives the notice to terminate.

Formal Sourcing Event – A sealed competitive offer conveyed via the CONNECT Tool. Contractor must comply per the instructions in the sourcing event documents. All contractors that have registered with the CONNECT Tool and are aligned to the respective category will be invited.

Informal Sourcing Event – An unsealed competitive offer conveyed via email or the CONNECT Tool. Sourcing Owner must acquire a minimum of 3 quotes

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Informal Sourcing Event (Small Purchase) – An unsealed competitive offer conveyed via email or the CONNECT Tool. Internal Stakeholder may acquire a minimum of 3 quotes.

Intergovernmental Agreement – A legal document that establishes a relationship between Utilities and a government agency.

Invitation for Bid (IFB) – A method of contracting for goods or services whereby a solicitation is issued to prospective Contractors requesting price quotations that contain, or incorporate by reference, the specifications or scope of work for all contractual terms and conditions. IFB's are non-negotiable. Award is based on the lowest responsive and responsible bid based on the requirements of the IFB.

Local Business – A business headquartered in El Paso County, Colorado.

Minority Owned - A business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.

Notice of Award – A notice to sourcing event Respondents indicating Utilities' final decision to award to one or more specific Contractors.

Notice of Default of Non-Performance – Communication informing Contractor of contract fulfillment deficiencies with an established time frame in which to rectify the identified issues. This notice precedes the cure notice.

Notice of Final Settlement – The public advertisement that announces Utilities intent to release retainage on a public works contract.

Notice of Intent to Award – A notice to sourcing event respondents indicating Utilities intent to award to one or more specific Contractors, pending further actions (compliance review, responsibility, responsiveness, negotiations, etc.) to finalize such decision.

Notice to Proceed (NTP) – A written directive from Utilities to a contractor stating the date the contractor can begin work subject to the conditions of the contract.

Payment Bond – A security instrument, issued by a surety that guarantees that subcontractors will be paid for labor and materials expended on the contract.

Performance Bond – A security instrument, issued by a surety that guarantees performance of the contract.

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Procurement Card (PCard) - A procurement method that allows authorized individuals (cardholders) to efficiently purchase goods and services for a valid business purpose without having to go through the purchase order process.

Professional Services – Services rendered by entities of a recognized profession that requires formal certification or license, must maintain a professional standard of care, or has specialized access to Utilities network and/or confidential information.

Project Request CONNECT (PRC) – A request that is submitted via the CONNECT Tool for the procurement of goods and/or services.

Proposal – An offer to provide goods or services in response to a Sourcing Event.

Protest – A written statement by a primary bidder/offeror, concerning an unresolved disagreement or controversy arising out of the solicitation or award of a contract, with the intention of receiving a remedial result.

Public Works Project – Any construction, alteration, repair, demolition, or improvement of any land, building, structure, facility, 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.

Purchase Requisition - Maximo (PRM) – A Utilities' document which requests that a contract or contract change be created for a specific need and may include the description of a request item, delivery schedule, transportation data and suggested source of supply.

Purchase Order (PO) – A Utilities' document which formalizes a purchase transaction with a Contractor. A purchase order contains statements as to quantity, description, price, terms, discounts, date of performance, transportation, and other factors pertinent to the purchase and its execution by the Contractor. Acceptance of a Purchase Order by the Contractor constitutes a contract.

Recommendation of Award – A document that summarizes the evaluation process and the basis on which the award of a formal sourcing event will be made.

Release PO – A Utilities' document which formalizes an order to a Contractor indicating types, quantities and prices for products or services from an existing Blanket Contract.

RFx – RFx which is one of the most common acronyms in the strategic Procurement and procurement landscape, is a catch-all term that captures all

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references to Request for Information (RFI), Request for Proposal (RFP), Request for Quote (RFQ), and Invitation for Bid (IFB).

Request for Information (RFI) - A standard business process that's purpose is to collect written information about the capabilities of various Contractors. Normally it follows a format that can be used for comparative purposes.

Request for Proposal (RFP) – A method of contracting for goods or services whereby competitive proposals are solicited. Award is based on the offer deemed to be most advantageous, including negotiations, in terms of criteria designated, combining both technical and cost considerations.

Request for Quotation (RFQ) – A sourcing event where written quotes are obtained from Contractors for soliciting price and delivery that meet minimum quality requirements/specifications. Award is based on lowest Responsive Responsible Bidder /Respondent.

Respondent – A person or entity that submits a response to a sourcing event.

Responsible Bid - A bid which adequately addresses the requirements of the Statement of Work or Specifications, complies with legal and regulatory requirements, and indicates the reasonable assets to complete contract, such as qualified personnel, equipment, and knowledge base.

Responsible Bidder/Respondent – A business entity or individual who has the financial and technical capacity to perform the requirements of the solicitation and subsequent contract. And who submits a bid or proposal that fully conforms in all material respects to the solicitation and all of its requirements, including all form and substance.

Retainage – A specified amount or percentage of the progress payment due usually under a construction contract. Upon completion of all contract requirements, retained amounts must be paid according to Contract terms.

Sealed Bid – A formal offer from a bidder submitted in response to an IFB.

Small/Disadvantaged Business – A small business that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged.

Single Source Procurement - A procurement method where there are compelling and justifiable reasons for otherwise waiving competition and making an award to a single source.

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Sole/Single Source Justification - A requirement where the procurement of Goods and/or Services over a certain monetary threshold requires a multi factorial explanation on why said items can only come from a sole or single source. Sole/Single Source Justifications require leadership and Procurement approval, per the Signature & Approval Authority Policy. The Sole Source/Single Source/Unauthorized Purchase Justification Form is used to document the business case for this procurement method.

Sole Source Procurement – A procurement method where only one Contractor possesses the unique ability to meet the particular requirements.

Specifications – A document that states to the Contractor in prescriptive terms what the Contractor must provide to Utilities. Such as a description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. A Specification includes, as appropriate, requirement for inspecting, testing, or preparing a supply, service or construction item for delivery.

Statement of Work (SOW) - A written statement that specifically describes the phases of work or services, major tasks, or areas of responsibility the Contractor is to perform at a particular site, or within a particular locale during a stated period. Describes Utilities needs and desired outcomes for the procurement and becomes the basis for any resulting sourcing event or Contract.

Sourcing Event – An event that follows a defined strategic sourcing methodology.

Task Order – A Utilities' document which bi-laterally formalizes an order to a Contractor indicating types, quantities and prices for products or services from an existing task order enables Blanket Contract.

Termination - The exclusion of a person or company from participating in a procurement activity for an extended period, as specified by law, because of previous illegal or irresponsible action.

Unauthorized Purchase – An agreement, commitment or order for goods or services by an individual that does not have express written authority or delegation to bind Utilities contractually.

Utilities – Utilities, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, including all Utilities departments, divisions, group or units.

Veteran Owned - A company level diversity registration. The Department of Defense issued DD214 should be used as proof of an individual's service in the

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military. Generally, this certification is non-industry specific but requires that the company is at least 51% owned, operated and controlled by a veteran.

Women Owned - A business that is fifty-one percent or more owned, operated, and actively managed by one or more women.

Work Change Directive – A written statement to Contractor issued on or after the effective date of the Contract and signed by Utilities ordering an addition, deletion, or revision in the work, or responding to differing or unforeseen subsurface or physical conditions under which the work is to be performed, or to emergencies.

IV. POLICY

A. Utilization of the Procurement Department

1. Procurement actions outside of those listed in the exemptions section of this policy must be coordinated, managed and executed through Procurement.

B. Procurement Manager Authority

1. The Procurement Manager has discretion to award a contract following any type of procurement strategy in such manner as serves the best interest of Utilities. Further, the Procurement Manager has discretion, in the event of substantially equal bids or proposals, to award a contract to the Respondent/Bidder whose accepted bid or proposal appears to offer the greatest positive local spend and/or small/disadvantaged business spend impacts. Any such decision shall not form the subject matter or basis of a bid protest.

C. Exemptions

1. The following purchases may be exempt from provisions of this Policy. Exemptions are set forth herein.
 - (a) These policies shall not be applicable to the leasing, rental, licensing or disposition of real property.
 - (b) Purchases involving mutual aid agreements, and intergovernmental agreements approved by the City Attorney's Office – Utilities Division.
 - (c) The purchases of insurance policies to protect the assets of Utilities from accidental damages, liability, and potential losses.

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- (d) The purchases and/or sale of energy commodities, including but not limited to, gas, power, coal, oil and propane, purchased power, financial options on commodities, and transmission capacity for those commodities are exempt from the policies herein.
- (e) Financial instruments and options for the issuance of debt obligations, swaps, hedges, and investments of Utilities is exempt from these procurement policies.
- (f) The purchases of client-based medical services which are intended to serve the public, communities, or a specific group in need of the medical services. Medical services include, but are not limited to, emergency care, outpatient services, psychiatric treatment, and primary care.
- (g) Legal retention services as approved and executed by the City Attorney's Office – Utilities Division.

D. External Review Requirements

1. All requests for the purchase of goods and/or services may go through one or more of the following external review processes. While these external reviews are mandated by departments outside of Procurement, Procurement will adhere to external departmental reviews wherever required in published Utility policies. The requestor making the request for a purchase is responsible to accurately respond to the questions/instructions as defined within the CONNECT Tool to ensure that the correct external reviews are performed. External department requirements are identified below but not limited to this list.

- (a) Legal Review – Review as to legal form by the City Attorney's Office – Utilities Division is required, except as follows:
 - (i) If appropriately using established unaltered forms and templates approved by the City Attorney's Office – Utilities Division;
 - (ii) if associated with alterations to insurance provisions, in which case review and approval shall be directed to the Utilities Enterprise Risk Management Office;

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- (iii) if otherwise modified using a City Attorney's Office – Utilities Division approved alternate contract language; or
 - (iv) as may be otherwise provided in these policies or by written agreement between the City Attorney's Office – Utilities Division and the Procurement Manager.
 - (v) Legal reviews will be initiated by Procurement – Purchases under the exemption section do not have to be initiated by Procurement.
- (a) Enterprise Risk Management / Insurance Requirements Review – Review is required for all purchases, except goods, requiring insurance provisions.
 - (b) Information Technology / Cyber / PIP – Review is required for all technology related purchases as outlined in the respective department policies.
 - (c) Safety and Health – Review is required for all purchases except for off-site activities, services performed in an office environment or goods.
 - (d) National Electric Regulatory Commission (NERC) – Only for work at a designated NERC facility.
 - (e) Gas, Colorado Department of Transportation requirements (CDOT)

E. Commitment of Funds

1. Contracts and Purchase Orders and changes to such documents must not be executed unless and until approvals are committed for the Contract or Purchase Order as defined per the Signature and Approval Authority Policy for the authorized amount of the document to be executed. Procurement shall not begin the execution process without the appropriate approvals.
2. All Contracts must include provisions for termination in the event of non-appropriation of funds unless the period for full performance on all aspects of the Contract will obviously and certainly be completed prior to the next fiscal year.

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F. Procurement Request Initiation

1. The requestor shall submit their Procurement request via the CONNECT Tool. Procurement will not respond to any procurement request that has not been submitted via the CONNECT Tool. Once submitted and approved, it will be the responsibility of the Sourcing Owner assigned, to effectively manage, provide direction and complete the procurement request. Internal Stakeholders shall submit their requests as soon as they become aware of the request for planning purposes. Below is a list of Procurement events required to be submitted via the CONNECT Tool.
 - (a) Request for Proposal
 - (b) Request for Quote
 - (c) Request for Information
 - (d) Invitation for Bid
 - (e) Amendment, change order, task order to an existing contract
 - (f) Sole/Single Source
 - (g) Emergency purchase
 - (h) Release of Retainage
 - (i) Add Funds
 - (j) Assignment of Agreement
 - (k) Small Purchase
 - (l) Leveraging of a Co-Op

G. Direct Pay Request (QBD 10874)

1. Reference QBD 10874 for a list of goods and services that can be paid via Direct Pay.

H. Purchase Requisitions - Maximo (PRM)

1. When a procurement request is initiated within the CONNECT Tool, a Purchase Requisition (PRM) within Maximo will NOT be required

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until the contractual document has been executed. The PRM must be submitted to initiate the Procure to Pay (P2P) process.

2. PRs within Maximo will immediately be needed for:
 - (a) Releases against a blanket contract
 - (b) Replenishing stock warehouse items as determined and requested by Procurement Operations. This is tied to items that are on contract. The PRM is required to create a contract release
 - (c) Add funds
 - (d) Goods purchases without services and technology requirements under small purchase limits

I. RFx Event (RFQ, RFP, IFB, SOQ, RFI)

1. The following minimum competition requirements apply to the procurement of goods and/or services, unless otherwise exempted by the Procurement Manager:
 - (a) Formal sourcing Events are required for all goods and/or services where the total spend for a unique / one-time purchase (project) is greater than \$250,000 or the annual spend for a category is greater than \$250,000. Such events will be owned and led by the Sourcing Owner.
 - (i) The minimum time for sourcing event will be mutually agreed upon by the Sourcing Owner and Internal Stakeholders. As it relates to the Contractor's response time the following minimum timelines apply: RFP (28 Business Days); RFQ/IFB (21 Business Days). Deviations from these timelines must be approved by the Procurement Manager.
 - (b) Formal Sourcing Events are required for a unique / one-time purchase (project) when the total spend is between \$100,000 and \$250,000 or the annual spend for a category is between \$100,000 and \$250,000 and it is agreed upon between the Sourcing Owner and Internal Stakeholders that overall financial and operational risk is high **and** overall cost savings impact is high. If neither party can come to an agreement, the

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Procurement Manager or as delegated will define the path forward.

(c) An Informal sourcing approach for a unique / one-time purchase (project) when the total spend is between \$100,000 and \$250,000 or the annual spend for a category is between \$100,000 and \$250,000 will be required if it is agreed upon between the Sourcing Owner and Internal Stakeholders that overall financial and operational risk is high **or** overall cost savings impact is high. An Informal Procurement approach may be conducted by informal methods without public notice. The method to pursue will be mutually agreed upon by the Sourcing Owner and Internal Stakeholders. If neither party can come to an agreement, the Procurement Manager or as delegated will define the path forward.

(d) **Small Purchases** - Shall be used for the purchase of Goods and/or Services where the total spend for a unique / one-time purchase (project) is less than \$100,000 or the annual spend for a category is less than \$100,000 and it is agreed upon between the Sourcing Owner and Internal Stakeholders that overall financial and operational risk is low **and** overall cost savings impact is low. In this case a formal Sourcing event would not be required and the Internal Stakeholder will be responsible to work with the Sourcing Owner in obtaining a minimum of three (3) quotes. If three quotes can't be obtained the Sourcing Supervisor will be required to approve an exception. If it is agreed upon between the Sourcing Owner and Internal Stakeholders that overall financial and operational risk is high and overall cost savings impact is high. In this case a formal Sourcing event would be required and will be led by the Sourcing Owner. If it is agreed upon between the Sourcing Owner and Internal Stakeholders that overall financial and operational risk is high **or** overall cost savings impact is high. In this case an informal Sourcing event would be required and will be led by the Sourcing Owner.

2. **Request for Information** – Shall be requested via the CONNECT Tool when there is a need to obtain information/data on Goods and/or Services.

3. **Statement of Qualifications** – Shall be requested via the CONNECT tool when a two-step, pre-qualification of Contractors

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based on pass/fail criteria is needed to short list Contractors for Goods and/or Services.

4. Procurement Selection Table (Guideline)

| Spend Level | Level of Operational & Financial Risk | Level of Cost Savings Opportunity | Type of Procurement Event |
|---------------------|---------------------------------------|-----------------------------------|---------------------------|
| >\$250K | | | Formal |
| >\$100K and <\$250K | High | High | Formal |
| >\$100K and <\$250K | Low | High | Informal |
| >\$100K and <\$250K | High | Low | Informal |
| >\$100K and <\$250K | Low | Low | Informal |
| < \$100K | Low | Low | Informal |
| < \$100K | High | Low | Informal |
| <\$100K | Low | High | Informal |
| <\$100K | High | High | Formal |

5. Exemptions to Minimum Competition Requirements – Minimum competition requirements shall apply to all contracts except those meeting the conditions specified below.

- (a) **Sole/Single Source Purchase** – Must be used when the total spend for a unique / one-time purchase (project) is greater than \$100,000 or the annual spend for a category is greater than \$100,000 and there is only one Contractor who can

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provide a product or service, or there are compelling and justifiable reasons for otherwise waiving competition and making an award to a single source. All waivers of competition must be documented and approved in the CONNECT tool by using the Sole Source/Single Source/Unauthorized Procurement Justification form. Justification of Sole Source/Single Source Purchase shall be based on reasons why the requestor needs to procure the goods or services from a specific qualified source, and reasons why there is no alternate source who can provide the desired goods or services to meet the requestor's need.

- i. Requestor to complete the required form including all compelling and justifiable reasons as to why a waiver of competition for the purchase of goods or services is neither practical nor in the best interest of Utilities to competitively solicit bids. The form includes detailed requirements and supporting documentation to include with each request.
- ii. A Sole Source/Single Source Purchase must be approved per the Signature & Approval Authority Policy based on the justification documentation and business case submitted. Forms submitted without a strong business case and/or without the required documentation will be rejected by Procurement.
 1. When the Sole Source/Single Source Purchase justification is rejected, the Requestor can provide the missing documentation, or a Sourcing Owner shall be assigned to determine the type of Sourcing Event to be performed.
 2. When a Sole Source/Single Source Purchase justification is approved the Requestor will not obtain the quote; this will be the responsibility of the Sourcing Owner.

(b)

Emergency Procurements - Emergency procurements may be made when an emergency condition arises, and the need cannot be met through normal Procurement processes. Emergency condition requirements are:

- (i) Procurements shall be limited to providing only goods or services that are anticipated to be required to address a specific emergency.

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- (ii) Where practicable during the business day, the requestor shall immediately notify and collaborate with the Sourcing Supervisor to leverage existing acquisition options.
- (iii) For emergency procurements after the business day, the requestor shall submit on the next business day the emergency request via the CONNECT Tool.
- (iv) If it is determined that the purchase was not deemed a true emergency, the purchase will be identified as an unauthorized purchase as determined by the Sourcing Supervisor.
- (c) The Procurement Manager may authorize a waiver of conducting a Formal Sourcing event upon a written request from the Requestor and Sourcing Owner. The Procurement Manager's written approval shall be documented within the CONNECT Tool.

1. Recommendation of Award

- (a) The review and approval of the Recommendation of Award shall be obtained within the CONNECT Tool. Approval will be per the Signature and Approval Authority policy. ROA's will be required for all Formal Sourcing events.

2. Intent to Award

- (a) A written Notice of Intent to Award is required to be sent to all bidders via the CONNECT Tool after the Recommendation of Award (ROA) is approved.

1. Protest Waiting Period Prior to Contract Execution

- (a) The execution of a contract or a purchase order under Formal Solicitations shall be delayed at least three (3) business days from date of formal unsuccessful bidder/offeror written notice in Connect. This action is required in order to avoid the risk associated with entering into a contract that could be protested under section 4.0 (Protest).
- (b) Should circumstances (supplier feedback, etc.) involving a small purchase cause any concern to procurement personnel regarding a possible protest, a written notice of intent to

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award shall be issued, and the execution of the associated contract or a purchase order shall be delayed at least three (3) business days from date of such written notice of our intent to award to allow for a potential protest to be executed by a bidder/offeror.

3. Protest

- (a) Any offeror to a sourcing event whose direct economic interest would be directly affected by the award of a contract or by the award to another offeror may protest in writing to the Procurement Manager. A protest can either be filed based on the sourcing event process or for the award process. For a protest based on alleged improprieties during the sourcing event process, the protest shall be received by the Procurement Manager before the bid opening or the closing date for receipt of proposals. For a protest based on alleged improprieties during the award process, the protest shall be received by the Procurement Manager no later than three (3) business days after issuance of the notice of intent to award. Exceptions to the protest filing and procedure time limits may apply only when additional information is requested within the prescribed time limits shown below prior to filing a protest.

Bidders/offerors have three (3) Business Days for which to request non-confidential public information regarding the award.

The bidders/offerors requesting the information have one (1) Business Day from the receipt of the requested information to submit a Notice of Intent to Protest. Such notice must be in writing and clearly detail the underlying basis for the protest.

- (b) Subject of Protest

- (i) Protestors may file a protest during any phase of a solicitation or award (subject to the timelines indicated in the Protest section), including but not limited to, procedure, specification, award, or disclosure of information marked confidential in the bid or offer. However, prior to submission of a protest, all parties shall use their best efforts to resolve concerns through

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open and frank discussions. Under no circumstances may a determination by the PCS Manager of positive local spend impacts form a subject matter or basis for a bid protest.

(c) Form and Content of Protest

(i) The written protest shall be concise, logically presented, and specifically detail the underlying basis of the protest to facilitate review by Utilities. Failure to substantially comply with any of the requirements of this section may be grounds for dismissal of the protest.

(ii) Protests shall include, as a minimum, the following:

- Name, address and telephone number of the protestor.
- Appropriate identification of the sourcing event (i.e. IFB #, RFP#, Title of sourcing event)
- Detailed statement of the alleged issues for the protest.
- Copies of relevant documents substantiating the protest.
- Statement as to the form of relief requested.
- All information establishing that the protestor is the actual or prospective primary offeror for the purpose of filing a protest.
- All information establishing the timeliness of the protest.

(d) Decision

(iii) The Procurement Manager or designated representative shall provide a written determination to the protestor within five (5) Business Days after receiving all relevant requested information.

(e) Appeal of Decision

(iv) In the event that such written response from the Procurement Manager, or his designee, sustains the prior position of Utilities, the protestor may file an appeal to the General Manager, Supply Chain, within three (3) business days after receipt of the written ruling by the Procurement Manager or designee. Both

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response and appeal procedure time limits may be extended upon mutual agreement. The General Manager, Supply Chain, may elect to:

- i. Render an immediate decision in the matter, especially matters that are specifically addressed in these policies; or
- ii. Request additional documentation or meetings with parties involved prior to rendering a decision; or
- iii. Select a panel of two (2) or more professional procurement officials not associated with Utilities who are not involved with the protested requirement to jointly conduct a hearing with individuals on either side of the issue; or
- iv. Utilize any other method deemed appropriate to bring the matter to timely resolution.

The decision of the General Manager, Financial Services, shall be final and shall complete the administrative process. The General Manager, Supply Chain, shall issue the final decision within fifteen (15) business days after receiving such an appeal unless extended by mutual agreement by both parties involved. The final decision does not preclude the protestor from pursuing further legal action allowed by the laws of Colorado.

(f) Stay of Procurement During Protest

Upon receipt of a protest in accordance with the foregoing sections, Utilities will not proceed further with solicitation or award of a contract until administrative remedies have been exhausted, or until a written determination is made that contract award without delay is necessary to protect substantial interests of Utilities. Such determination shall be approved by the General Manager, Supply Chain.

J. Contract Negotiation

1. Negotiation – Procurement shall conduct negotiations in the Best Interest of Utilities. Negotiations to determine sourcing event awards, contract terms and conditions, and changes to a new or existing Contract shall be facilitated by a Sourcing Owner and with Internal Stakeholder and legal participation, as necessary.

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Negotiation and execution of the contractual documents shall be managed via the CONNECT Tool.

K. Small / Disadvantaged / Local / Women / Veteran Business

1. Utilities supports the growth and development of small, disadvantaged, local, minority, veteran and women owned businesses and actively encourage their participation in our Procurement process.
2. General Services Administration Reporting Requirements
 - (a) Utilities has certain reporting obligations concerning Small/Disadvantaged Business "spend". "Therefore, contracts exceeding a face amount of \$250,000 must either be (1) identified as having been awarded to a Small/Disadvantaged or (2) must contain the supplemental condition requiring annual reporting of Small/Disadvantaged Businesses subcontracts awarded to Contractors.
 - (i) Utilities reserves the right to use enterprise classification(s) in evaluation criteria for solicitations and contract award.
 - (ii) No provision is made in these policies for preferences or set-asides for disadvantaged businesses. However, it is the policy of Procurement to solicit and encourage participation from Small Disadvantaged and Local Contractors whenever and wherever such competitive local sources exist, and where no sacrifice or loss in price or quality would result.
 - (iii) In the event of two or more substantially equal bids, award will be made to the Contractor demonstrating the greatest Positive Local Spend Impact if all other factors, including price, quality, terms, service and delivery are determined to be substantially equal and the award to such respondent/bidder is in the best interest of Utilities. Local is defined as physical location(s) within greater El Paso County but not necessarily within the City of Colorado Springs.

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L. General Contract Requirements

1. Terms and Conditions: Contracts must use only standard contract / purchase order terms and forms approved by the City Attorney's Office – Utilities Division, except as noted below.
 - (a) For situations that justify use of alternative terms or forms, documents must be "approved as to form" by the City Attorney's Office - Utilities Division, unless alterations are to insurance provisions. Approved to Form is required to be obtained in CONNECT Tool.
 - (i) Alterations to insurance provisions shall be reviewed and approved by Enterprise Risk Management
 - (ii) For Federal or State of Colorado grants, governmental terms and conditions are mandatory
 - (b) Terms and conditions that the City Attorney's Office – Utilities Division has delegated approval authority to Procurement do not require approved form.
2. Contract Duration
 - (a) The length or duration of a contract for goods and/or services will be mutually agreed upon by the Sourcing Owner and Internal Stakeholders. Initial length or duration of time will be dependent on assessing the overall operational and financial risk; along with the opportunity of reviewing overall financial impact. Termination for convenience language must be reflected within Evergreen contracts. Contract duration for categories shall be approved by the Sourcing Supervisor.
3. Funding
 - (a) Contracts must not be approved or executed until sufficient funds have been approved per the Signature and Approval Authority Policy.
 - (b) Contracts must include provisions for termination in the event of non-appropriation of funds unless the period for full performance on all aspects of the contract will obviously and certainly be completed prior to the next fiscal year.
 - (c) Should funding changes occur, affected Contractors shall be notified as soon as practicable.

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(d) Procurement shall include a pricing and rates section or exhibit to each contract that defines the pricing structure, terms, milestone payments, and/or the specific rates to be paid. Procurement shall negotiate contract pricing structures to accommodate funding approvals, limit risks, and control costs to Utilities by aligning payment structures to when services are rendered, or the benefit is realized by Utilities.

4. Conflict of Interest

(a) For any RFX, Utilities will make a reasonable effort to ensure that no conflict of interest exists via the Evaluator and Observer certificate. Reference PPM for further clarification as it relates to any purchase of goods and/or services.

5. Non-Colorado Corporations

(a) Before or at the time that any resultant contract is awarded to a corporation domiciled outside the State of Colorado, such corporation shall be responsible for meeting all local, state or federal statutes associated with performing the Work hereunder.

(b) When required to perform the contract in Colorado, such corporation must obtain (and make available upon request) a certificate from the Secretary of the State of Colorado to the effect that a certificate of authority to do business in the State of Colorado has been issued by that office and is still valid.

M. Public Works Sourcing Events and Contracts

1. Public Works Contracts requirements applicable to Public Works Contracts.

(c) Application for Payment and Schedule of Values

(i) Contractors shall submit Application for Payments and Schedule of Values per the Contract terms in the amount of Work that has been completed up to the point the Application for Payment was submitted. Utilities shall not approve Applications for Payment for Work not completed (see Unauthorized Purchases).

2. Retainage

(a) Retainage of five percent (5%) of the Contract value shall be withheld for all Public Works Contracts, and Task Orders, for

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verifiable work accomplished by the Contractor. Retainage is withheld when the Contract is \$100,000 or greater in cost. If the duration of the Contract is two months or less in duration and there are no subcontractors, Procurement has the authority to waive retainage.

(b) When a Public Works Contract, Task Order, or Release is less than \$100,000 retainage is optional or a lump sum of no more than \$5,000 may be withheld.

(c) Escrow Agreement. Retainage can be held in an escrow account upon mutual agreement by both parties. The Escrow Agreement shall be incorporated into the Contract as an Exhibit or Attachment.

(a) Partial Release of Retainage

(i) A Partial Release of Retainage shall be approved by a Procurement Supervisor and shall be documented in Connect. A Partial Release of Retainage shall not be advertised unless the majority of the retainage is being released. The advertisement shall occur when the remaining retainage is released.

(a) Final Release of Retainage

(i) A Final Release of Retainage Application for Payment shall not be approved without the following:

(a) Certificate of Substantial Completion

(b) Schedule of Values

(c) Full Lien Waivers when subcontractors were used on the Project

(d) Consent of Surety when bonds were requested

(e) In the event of a Contract exceeds five million dollars in value, a City of Colorado Springs Tax Refund application.

(a) Notice of Final Settlement

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- (i) The Notice of Final Settlement shall be publicly advertised for 30 days to place Contractors on notice as to Utilities intent to make final payment by a prescribed date and requiring that any and all claims under the referenced contract must be filed before the prescribed deadline. Retainage shall not be released to Contractor if a claim is received during the 30-day advertisement period.

3. Bonds

(a) Bid Security

- (i) IFB's for Public Works projects in excess of \$100,000 shall require the submission of bid security, using the prescribed Utilities Bid Bond in the amount of five percent (5%) of the bid amount, inclusive of addendums. Bid Security is optional for Public Works projects less than \$100,000. If a bidder fails to accompany the bid with the required bid security, and in an acceptable form and amount as defined above, the bid shall be rejected as non-responsive.
- (ii) Acceptable Bid Security must meet one of the following acceptable forms:
 - (a) A one-time bid bond underwritten by a company licensed to issue bonds in the State of Colorado.
 - (b) A bank cashier's check made payable to "Utilities".
 - (c) A bank certified check made payable to "Utilities".
 - (d) An irrevocable letter of credit, in a form acceptable to Utilities.
- (iii) RFPs for Public Works Contracts in excess of \$100,000 shall require the submission of a letter from the Respondents bonding agent indicating the Respondent's bonding capacity is adequate to undertake the work.

4. Payment / Performance Bonds

- (a) Performance and Payment Bonds will be required for all Public Works Contracts expected to exceed \$100,000 in the amount of 100% of the Contract price.

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- (b) Bonding for Utilities multi-year Blanket Contracts that exceed \$100,000 where releases may exceed \$50,000 will be bonded in an amount determined by Procurement. Bonding shall be established at two times the maximum expected task order release amount; however, Procurement shall use its discretion in determining the bond amount.
 - (c) Bond(s) must be submitted on Bond form(s) prepared and approved by the City Attorney's Office - Utilities Division, and executed by a surety company authorized to do business in the State of Colorado, per the Department of the Treasury's Listing of Approved Sureties to verify surety's status, <http://www.fms.treas.gov/c570/c570.html>.
 - (d) Public Works Contracts shall not be executed until acceptable Performance and Payment Bonds are received, reviewed, and acceptable to Utilities.
 - (e) In the event Payment and Performance Bonds were not obtained at Contract execution, but changes to the Contract increase the Contract value over \$100,000, Payment and Performance Bonds will be obtained prior to executing the Change Order or Amendment.
5. Bond Riders
- (a) Riders to Bonds shall be obtained from the Contractor as required by the Performance and Payment Bond forms. Riders to such Bonds shall be obtained from the contractor when the aggregate amount of the amended value is more than \$10,000 or 10%, whichever is greater, over the amount of the bonds received to date, including riders.
 - (b) Additional Bonding
 - (i) If at any time during the performance of a Contract, Release, or Task Order, if a surety on the Contractor's Bond becomes irresponsible, Utilities shall require additional and sufficient sureties to provide bonds.
6. Notice to Proceed
- (a) A Notice to Proceed or Limited Notice to Proceed shall be issued for all Public Works Contracts and Task Orders.
7. The Keep Jobs in Colorado Act (&8-17-101,ET.SEQ.,CRS)

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- (a) All Contracts awarded for Public Works financed in whole or in part by funds of the state, counties, school districts, or municipalities of the state of Colorado shall contain provisions for the preference in employment of Colorado labor. Utilities may waive this requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance would create an undue burden that would substantially prevent a project from proceeding to completion. Such waiver shall be approved by the Procurement Supervisor. All waivers shall be in documented in Connect.
- 8. Compliance with Labor Requirements
 - (a) Utilities shall comply with all Colorado State and Federal and all other applicable Law including Colorado labor preference requirements. Utilities contracts shall include appropriate contract language to demonstrate compliance with relevant statutory requirements as may be recommended from time to time by the City Attorney's Office – Utilities Division.
- 9. Davis-Bacon Act
 - (a) All contracts and subcontracts awarded under a prime contract between a state or federal agency and Utilities which exceeds \$2,000 requires Davis Bacon Act compliance. The \$2,000 threshold for compliance pertains to the amount of the prime contract, not the contract value of individual subcontracts. If the prime contract exceeds \$2,000, all work on the project is covered by the Davis Bacon Act. Procurement is required to verify that the contractor(s) selected are not on the federal debarment/suspension list on www.sam.gov.

N. Contract Administration Services

- 1. Contract Oversight
 - (a) If a Contractor was paid or directly involved in design or specification preparation of a Utilities project and is hired to provide contract administration services, these services shall not include contractual authority, or responsibility for oversight, including change order and payment approval, unless the Procurement Manager has provided written approval.

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- (b) A Contractor or any affiliated firm of that Contractor, is not allowed to bid or propose on sourcing events in which they are being paid or volunteered their service for either contract oversight or design, without written approval of the Procurement Manager or delegate.
- (c) A Contractor shall not be granted contractual or financial authority for conducting the RFx process, approving change documents, or obligating Utilities financially on the contract for which they are providing oversight or design services, unless the Procurement Manager has approved that such role will not be unduly discriminatory.

2. Change Orders or Amendments

- (a) Changes to scope of work, specifications and performance period of a contract are allowed if the change is determined to be within the original scope of the contract. Any Contract change shall be justified in writing with a written amendment or change order. Substantial changes to the original scope and intent of the contract shall not be issued to the Contractor but will be submitted as a new project request via the CONNECT Tool. Unless there is a work change directive, the performance of the service or the purchase of the good will not be allowed until the change order or amendment is executed. See Bond Riders for Public Works Contracts.

3. Contractor Performance Remedies – Legal Notices

- (a) When a Contractor exhibits difficulty in performing, Utilities shall express its concerns formally, including the establishment of a corrective action plan for the Contractor to correct the stated concerns, using the applicable notification from the list below. Internal Stakeholder shall notify Procurement of performance issues as soon as they are known to initiate the legal notice process. Procurement shall notify the Contractor with a written notice. If there is a bond in place, the Bonding Agency shall be notified of any performance issues.
- (b) Preliminary Notice of Non-Performance will be issued, by Procurement, to advise Contractor of observed contract

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deficiencies and set expectations regarding the timeframe in which improvements are expected.

- (c) Notice of Default of Non-Performance will be issued if the Contractor fails to make satisfactory progress to “cure” the deficiencies identified in the Preliminary Notice. Notice of Default shall be reviewed by City Attorney’s Office – Utilities Division. Remedies identified may include:
 - (i) an extension to allow additional time to correct deficiencies
 - (ii) contract termination for cause
- (d) Contract Termination Notices will be issued by Procurement to terminate a contract when notices to resolve performance issues prove unsuccessful and all contract requirements related to the process to resolve disputes and performance issues have been met. All contract termination notices require review and approval of City Attorney’s Office – Utilities Division. Types of contract termination notices:

1. Termination for Cause

When notices to resolve performance issues prove unsuccessful and all contract requirements related to the process to resolve disputes and performance issues have not been met, the contract may be terminated for cause.

2. Termination for Convenience

Termination for convenience is permitted:

- (i) when enabled by the Springs Utilities contract terms, or
- (ii) upon mutual agreement of the parties to the contract.

3. Stop Work Notice

- (i) Stop Work Notices may be issued to stop work temporarily per the reasons stated in the Contract. When an informal Stop Work is issued by an internal

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stakeholder, formal notification shall be issued by Procurement.

4. Suspension and Debarment

The Procurement Manager shall have the authority to suspend or debar a Contractor from consideration for award of contracts with Utilities as herein provided.

1. Suspension. A suspension may be issued if there are reasonable grounds to believe that such Contractor has engaged in activities that may lead to debarment. Suspensions shall be for a temporary period pending completion of an investigation and, if applicable, such legal proceedings as may ensue or are commenced.

(a) After consultation with Internal Stakeholder and the City Attorney's Office – Utilities Division, the Procurement Manager may suspend a Contractor from consideration for award of contracts. A notice of suspension shall be sent to the suspended Contractor or prospective Contractor. Such notice shall:

- (i) provide a description of the grounds upon which it is believed the Contractor has engaged in activities that may lead to debarment.
- (ii) state that the suspension shall be for a temporary period pending completion of an investigation and, if applicable, such legal proceedings as may ensue or are commenced;
- (iii) inform the suspended Contractor or prospective Contractor that bids or proposals will not be solicited from the Contractor or prospective Contractor and, if received, will not be considered during the period of suspension; and
- (iv) inform the Contractor or prospective Contractor of the right to appeal as provided in the Utilities Procurement Policies.

(b) A Contractor or prospective Contractor shall be suspended upon issuance of the notice of suspension. In no event may a suspension extend beyond 18

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months unless and, if applicable, legal proceedings have been initiated within that period.

- (c) For purposes of this policy, the conduct of an individual may impact the suspension of a Contractor or prospective Contractor based on factors such as the individual's position with the Contractor or prospective Contractor to include but not limited to an officer, director, partner, manager, key employee, or other principal of the Contractor or prospective Contractor.
- (d) Within ten (10) business days after the date of the notice of suspension, the Contractor may submit to the Procurement Manager in writing any relevant opposition to the notice of suspension. Such opposition shall be in writing and shall attach relevant documents upon which the opposition is based. The Procurement Manager will review timely submitted opposition and notify the Contractor either (i) the notice of suspension has been withdrawn, based on the opposition submitted, (ii) an informal meeting will be held within thirty (30) calendar days of the receipt of the timely submitted opposition, and at such meeting, the Contractor may present relevant information orally and in writing supporting opposition to notice of suspension, or (iii) the suspension shall remain in effect pending completion of an investigation and, if applicable, such legal proceedings as may ensue or are commenced. If the Contractor fails to submit such written opposition within the specified period of ten (10) business days or fails to attend any meeting scheduled under the above subsection (ii), then no further review shall be available.
- (e) During the suspension period, the Contractor shall make available, in the City of Colorado Springs, all relevant documents, records, and information to the Procurement Manager as may be requested. Failure to comply fully with this requirement shall be sufficient grounds for initiating Debarment proceedings.

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2. Debarment. After consultation with Internal Stakeholder, the City Attorney's Office – Utilities Division, the Procurement Manager may proceed with debarment for any of the reasons set forth herein. A debarment shall not be for a period of more than five (5) years; except that, if a Contractor is convicted of a crime specified as a basis for debarment, the length of the debarment period must equal the length of the confinement sentence including the period of mandatory parole if imposed or the length of the probation sentence. During any period of debarment, bids or proposals will not be solicited from the Contractor or prospective Contractor and, if received, will not be considered.
 - (a) A Contractor may be debarred for any of the following reasons:
 - (i) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (ii) Conviction under local, state or federal laws of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Utilities' Contractor;
 - (iii) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 - (iv) Conviction of fraud or criminal acts while performing as a prime Contractor, subcontractor or supplier on any Utilities or City of Colorado Springs contract, including those not associated or written by Utilities or the City of Colorado Springs.
 - (v) Violation of contract provisions, as set forth below, of a character which is regarded by the

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Procurement Manager to be so serious as to justify debarment action:

- (1) Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
 - (2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) 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; or
 - (3) Without limitation in any manner of the foregoing subsections (1) and (2), (A) observed doing work pursuant to the contract in a manner that is blatantly unsafe and potentially risking serious injury or death; or (B) observed and provided notice of repeated minor or major safety issues on the contract and fails to immediately resolve the safety concerns or has numerous safety concerns arise throughout the course of any contracts with Utilities or the City of Colorado Springs.
- (vi) Defaulted on the payment of any taxes, license fees, or other moneys due Utilities or the City of Colorado Springs;
 - (vii) Violation of the City's Code of Ethics by offering gifts or gratuities to a direct official; or
 - (viii) Any other cause the Procurement Manager determines to be so serious and compelling as to affect responsibility as a Utilities

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Contractor, including but not limited to (A) debarment by another governmental entity, (B) failure to provide documents, records, and information requested by the Procurement Manager during the course of an investigation or (C) repeatedly performing unsatisfactory work for the City of Colorado Springs or Utilities.

- (b) A written notice of debarment shall be sent to the debarred Contractor by certified mail, return receipt requested. The notice shall inform the debarred Contractor of the right to appeal the decision as herein provided.
- (c) A debarment decision will take effect twenty (20) business days after the date the written notice of debarment is sent by certified mail unless an appeal of the debarment is filed during that time. After the debarment decision takes effect, the Contractor shall remain debarred for the debarment period specified in the decision, unless a court, the General Manager (or assignee), or the Procurement Manager who issued the debarment decision orders otherwise.
- (d) If an appeal is filed by the debarred Contractor prior to the effective date of the debarment, the suspension shall remain in effect until the appeal has been resolved. In the event the appeal is denied, the debarment shall be effective on the completion of the initial twenty (20) business day period or upon resolution of the appeal, whichever is later.
- (e) For purposes of this policy, the conduct of an individual may impact the debarment of a Contractor or prospective Contractor based on factors such as the individual's position with the Contractor or prospective Contractor to include but not limited to an officer, director, partner, manager, key employee, or other principal of the Contractor or prospective Contractor.
- (f) Notice of Appeal. An appeal of the notice of debarment must be filed and received by the

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Procurement Manager within twenty (20) business days of the date of the notice of debarment. Appeals received after the prescribed time period shall not be considered. The appeal must be in writing and, at a minimum:

- (i) shall identify notice of debarment being appealed and be authorized and signed by the debarred Contractor (“Appellant”);
- (ii) shall set forth in detail the factual and legal basis upon which the appellant maintains that the notice of debarment was in error; and
- (iii) shall attach copies of all documents and summary description of other evidence supporting such basis.

Failure of Appellant to file a notice of appeal in conformance with the requirements herein stated shall result in the notice of appeal being rejected and returned to the appellant.

(g) Debarment Hearing. If a Notice of Appeal is timely filed with the Procurement Manager and meets all requirements of the Notice of Appeal provisions in the above section 2(f), the Procurement Manager shall forward same with a copy of the notice of debarment to the General Manager – Supply Chain (“General Manager”) and the City Attorney’s Office – Utilities Division. The General Manager or designee, which may be a hearing officer appointed pursuant to Section 1.2.409 of City Code, shall send a written notice of the time and place of the hearing to all parties and shall establish a procedure for conduct of the hearing, which shall allow for an orderly presentation by all parties.

- (i) Hearings shall be as informal as possible under the circumstances and shall be recorded electronically or otherwise. The General Manager or designee shall not be bound by the formal rules of evidence and may make any procedural or evidentiary

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ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious, or unduly prejudicial matter may be excluded.

- (ii) General Manager or designee shall make a ruling in writing based upon the record of appeal. The ruling, once issued, is final and will exhaust the administrative remedies available to the Appellant. The Appellant may apply to have said ruling reviewed by a court of competent jurisdiction, in accordance with the provisions of Rule 106(a)(4), Colorado Rules of Civil Procedure (“CRCP 106(a)(4) Action”). Provided the CRCP 106(a)(4) Action is timely and properly commenced, the debarment ruling shall be stayed during the pendency of the CRCP 106(a)(4) Action, but the suspension shall remain in effect until the CRCP 106(a)(4) Action has been resolved unless otherwise ordered by the Court. In the event the appeal is denied, the debarment shall be effective on the resolution of the CRCP 106(a)(4) Action.

O. Unauthorized Purchases

1. Utilities Internal Stakeholders or representatives who do not comply with this Policy may be subject to disciplinary action and/or may be held personally responsible for the cost of any unauthorized purchase. Consequences for violations to the Procurement Policies may result, but not limited to, revocation of authorized purchasing limits, corrective action, criminal charges, and/or personal liability for payment.
2. Utilities may not make payments to Contractors as a result of an unauthorized purchase.
3. Certain purchases also require a fully executed contract before the purchase can be initiated. Internal Stakeholders who do not have the authority to sign Contracts cannot legally bind Utilities to a Contract. To avoid the risk of an unauthorized purchase, Internal Stakeholders should always contact Procurement for guidance

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before making any purchase, unless specifically allowed by an existing Contract.

4. Unauthorized Purchases as defined below, but not limited to, which requires after-the-fact justification and approval as stated herein:
 - (a) Signing a contract without proper authority
 - (b) Ratification of invoices, including PO Release or standard PO issuance after the invoices or deliverables are received
 - (c) Obtaining or accepting goods or services without a Contract executed by Procurement, unless other approved processes were allowed (such as P-Card, Direct Pay, Work Change Directive)
 - (d) Obtaining goods or services outside the scope of a Contract
 - (e) Obtaining goods or services made against expired Contracts
 - (f) Obtaining goods or services which exceed maximum release amounts or the contracted not to exceed amount, if applicable
 - (g) Splitting purchases to circumvent Procurement Policy and processes
 - (h) Not following the change management, emergency procurement or sole/single source procurement process
 - (i) Any action directly contrary to what Procurement directs.

5. Action Due to Unauthorized Purchases

- (a) Individuals who violate the Procurement Policy shall submit documentation required by Procurement to explain why the purchase of a good or service was made outside the Procurement Policy for review by individuals management and Procurement. In addition, Internal Stakeholders will be required to submit the unauthorized purchase as a Project Request within the CONNECT Tool and comply with all standard Procurement processes.

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- (b) Contractor's payment may be forfeited or delayed until Procurement completes the investigation into the unauthorized procurement.

P. Purchase Order Compliance

1. All procurable goods and/or services will require that a purchase order, including releases, shall be issued prior to the purchase of the good or the rendering of the service. Purchase orders shall not be created after goods or services are received, based on the receipt of an invoice.
2. Blanket purchase orders, release or standard, will be allowed for orders which will require multiple payments over a period – no longer than 1 year. Examples include standing orders, maintenance/service contracts, and open orders. The goods or services are reoccurring purchases.

Q. Pre-payment

1. Pre-payment or Payment to a Contractor for a good and/or service before the good or service has been delivered or rendered to Utilities shall not be allowed, unless expressly provided for in the Contract (i.e., milestones) or approved by the Procurement Manager.

R. Records Retention

1. All Procurement electronic and hardcopy documents will be maintained as defined by the Records Retention policy.

S. Grant or Other Agency Funding Requirements

1. Any requirements of a grant, including but not limited to Colorado Labor preferences shall be incorporated into the Contract, such as prevailing wage requirements and other flow down provisions.