

# PROCUREMENT POLICIES

00075 Version 15

Approval Date 08/27/2013

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## 1.0 GENERAL PROVISIONS

### 1.1. BASIS & PURPOSE

Pursuant to section 6.10 of the City Charter and section 12.1.109 of the *Code of the City of Colorado Springs* (hereinafter referred to as "*City Code*"), the Chief Executive Officer of Colorado Springs Utilities is responsible for operation of the 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 Colorado Springs Utilities Board Governance Policy.

Pursuant to section 12.1.108B of the City Code, the Chief Executive Officer has the power and duty to approve and execute, by signature, all Utilities Business Contracts and to delegate the Executive Officer's signatory authority. (See RMS Approval of Purchase Orders process #[10041](#) for more information.)

The policies set forth herein are meant to encourage effective competition and to insure that expenditures are carried out in a prudent manner. The policies are also designed to assure a procurement system of quality and integrity. When the procurement involves the expenditure of federal assistance or funds, Utilities shall additionally follow any mandatory requirement of applicable federal law and implementing policies. Nothing in these policies shall prevent Utilities from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement providing that competitive procedures as described in these policies shall be followed to the maximum practical extent.

- a) Utilities procurement activities shall comply with "Colorado Springs Utilities Business Code of Ethics Policy" (See QBD Document #12319) and the City of Colorado Springs Ethics codified as City Code 1.3.101 et seq, including but not limited to the following: sound fiscal management in all procurement and contracting transactions,
- b) avoidance of conflict of interest regarding all procurement and contracting transactions,
- c) ethical conduct in all procurement and contracting transactions, and
- d) Utilities is subject to the 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. Reference CORA for additional information.

Generally, confidential information is any information which is available to a Utilities employee only because of the employee's status as a public employee and is not a matter of public knowledge, such as trade secrets, test data, and confidential cost and pricing details, which may be provided to Utilities on a confidential basis during the contracting process.

### 1.2. LIST OF EXEMPTIONS TO PROCUREMENT POLICIES

Certain select contracting may be exempt for provisions of this Policy. Exceptions are set forth herein.

These policies shall apply to every division, department, section, or other unit of Utilities, except as set forth herein. The roles for Procurement and Contract Services (PCS) and internal clients may be found in the C02 PCS - Client Roles matrix as an attachment to this document.

- a) These policies shall not be applicable to the leasing, rental acquisition, licensing or disposition of real property.
- b) The selection of business contractors or sub-contractors for products and service offerings for resale to customers are exempt from competitive bid requirements to the extent price reasonableness has been determined and a sole source justification has been approved (the Sole Source Justification and Approval form is located in the PCS Contracts Database or link to it using QBD [09921](#)).
- c) Activities involving cooperative agreements, mutual aid agreements, and intergovernmental agreements approved by the City Attorney's Office and subsequently executed by the appropriate

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Utilities or City employee, are exempt from these procurement policies but shall be processed under a "track only" purchase order in RMS to permit centralized filing of the underlying agreements and payment of associated invoices.

- d) The purchases of insurance policies purchased to protect the assets of Utilities from accidental damages, liability, and potential losses are exempt from following these procurement guidelines. The purchase of these insurance policies are the responsibility of the Utilities Risk Management Office and shall follow procedures that are common in the industry and required by law to procure these policies.
- e) 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.
- f) Certain financial instruments and options including the issuance of debt obligations, swaps, hedges and investments of Utilities is exempt from these procurement policies.

## 1.3. TERMS AND ABBREVIATIONS

This section contains an alphabetized list of acronyms or infrequently used terms that may confuse the user or distort the meaning of the document. Standard definitions of frequently used terms can be found in the Glossary, QBD Process Documents Databases. See examples below:

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

**Best interest of UTILITIES** – A term granting a purchasing official the authority to use defensible discretion to take action 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** – An insurance agreement in which a third party surety agrees to be liable to pay a certain amount of money to Utilities in the event that the bidder's bid is accepted by Utilities and the bidder fails to accept the contract as awarded and approved as to form by the Utilities Division of the City Attorney's Office. (See Utilities Standard Bonding & Insurance Requirements process [#09339](#) for further requirements.)

**Brand Name or Equal Specification** – A specification that cites brand names, model numbers, or other identifications as representing quality or performance called for, when inviting bids on comparable items or products of any qualified manufacturer. The final determination of meeting the intent of this designation remains with Utilities.

**Brand Name Specification** – A specification that cites brand names, model numbers or some other designation that identifies a specific product to be acquired exclusive of others.

**Business Day** – A business day for the purpose of these policies is a normal work day that excludes Federal and City of Colorado Springs observed holidays.

**Competitive bidding** – The submission of prices by individuals or firms for the opportunity to furnish supplies, services or related information to Utilities.

**Competitive range** – That group of proposals, as determined during the evaluation process for competitive negotiation, which includes only those offerors considered to have a reasonable chance of being selected for award. Proposals rendered not in the Competitive Range are given no further consideration.

**Contract** – A mutually binding legal relationship obligating the supplier to furnish the supplies or services and Utilities to pay for them. See also Procurement Contract Standards Policy [#00076](#).

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**Cooperative Agreement** – An agreement between agencies or other business partners that defines the terms and objectives regarding a project, including such matters as allocation of costs, technical and schedule expectations, and management responsibilities.

**Cooperative Purchasing** – A procurement conducted on behalf of two or more public procurement units; or the combining of requirements of two or more public procurement units in order to obtain the benefits of volume purchases and/or reduction in administrative expenses; or a variety of arrangements whereby two or more public procurement units purchase from the same supplier using a single solicitation. These arrangements include applicable General Services Administration agreements or State of Colorado contracts that have been enabled for use by other public agencies, Western States Contracting Alliance (WSCA) contracts, and US Communities contracts.

**Emergency Procurement** – A purchase made without following the normal purchasing procedures in order to obtain goods or services to meet an urgent and unexpected requirement. See also Unauthorized Purchase Approval Request process #[11298](#).

**Evaluation of Bid** – The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the bid, including price, that relate to determination of the best bid.

**Formal Bid / Solicitation** – A bid / solicitation that must be submitted per the instructions in the bid or solicitation document and received at a specific time and place, in conformance with the prescribed format and required content. Formal bids / solicitations are posted on the approved Utilities web site.

**Informal Bid / Solicitation** – An unsealed competitive offer conveyed by letter, telephone, email, facsimile, or other means and under conditions different from those required for formal bids / solicitations.

**Informality** – A minor or immaterial defect in a bid that is a matter of form rather than substance; a variation of a bid or proposal from the exact requirements of the IFB or RFP, which can be corrected or waived without being prejudicial to other bidders / respondents, and has no material change to the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

**Internal Client** – A division, department, section, or other unit of Utilities, for which the purchase of goods or services has been requested, also known as an internal customer.

**Invitation for Bid (IFB)** – A solicitation issued to prospective bidders that involves submission of sealed Formal Bids that are opened during a public bid opening. An IFB describes what is required and how the bidders will be evaluated to determine if responsive and responsible. Award is based on the lowest responsive and responsible bid. Responses to IFBs are offers called "bids" or "sealed bids." See also IFB process #[10902](#).

**Local Business Spend** - The amount of dollars spent by Utilities with Local Business directly or dollars subcontracted by prime suppliers to Local Business.

**Local Business** – For the purpose of defining a local purchase, a Local Business Spend is a business or supplier physically located in El Paso County.

**Materials Management** – Organization comprised of personnel assigned to manage inventory and assigned purchases located at logistics work centers and various operating plants. Procurement authority is delegated to Materials Management by the PCS Manager.

**Mistake in Bid** – An error in the preparation of a bid which results in an incorrect price or other condition and which might affect the eligibility for the award of a contract.

**Multi-Step Bidding** – Source selection involving two competitive steps; the first constituting a technical proposal for furnishing the product or service described in the solicitation, and the second a submission of prices.

**No Bid** – A response to an Invitation for Bid stating that the bidder does not wish to submit a bid.

**Nonresponsive Bid** – A bid that does not conform to the requirements of the Invitation for Bid.

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**Normal Work Hours** -- For the purpose of this policy, "Normal Work Hours" is defined as the Normal Work Hours for Procurement and Contract Services, which is currently defined as 8:00 AM to 5:00 PM, Mountain Time, Monday through Friday (not including recognized Utilities holidays).

**Notice of Award** – A notice to solicitation respondents indicating Utilities' final decision to award to one or more specific suppliers.

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

**Payment Bond** - A bond furnished by a contractor which assures payments, as required by law, to all persons supplying labor or material for completion of work under the contract. See also Utilities Standard Bonding & Insurance Requirements process #[09339](#).

**Performance Bond** - A bond furnished by a contractor which protects Utilities from loss due to the supplier's inability to complete the contract as agreed; secures the fulfillment of all contract requirements. See also Utilities Standard Bonding & Insurance Requirements process #[09339](#).

**Performance Specification** – A specification describing the performance characteristics sought in a product or service; a purchase description accenting performance over design; a functional rather than a generic or physical specification. See also Specifications & Statements of Work process #[10653](#).

**PO** – see Purchase Order

**Positive Local Spend Impact** – The beneficial effect on local community produced by the awarding of contracts and subcontracts to Local Businesses.

**Pre-Qualification of bidders/offerors** – The screening of potential suppliers or contractors in which Utilities considers such factors as financial capability, reputation, past performance, management, etc., in order to develop a list of prospective bidders/offerors qualified to be sent an Invitation for Bid (IFB) or Request for Proposal (RFP).

**Primary Bidder/Offeror** – An actual or prospective primary bidder/offeror to a solicitation. A primary bidder/offeror is ultimately responsible for its bid or proposal documents in response to a solicitation and the one who will execute the contract if selected for award.

**Procurement and Contract Services Manager or PCS Manager** – The Manager of the Procurement and Contract Services Section. The PCS Manager's authority may be delegated in writing by the PCS Manager to those within PCS and Materials Management.

**Professional Services** – Those services that are essentially intellectual in character and which include analysis, evaluation, prediction, planning or recommendation. Professional services involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Professional services include, but are not limited to, services performed by accountants, auditors, analysts, consultants, lawyers, physicians, planners, artists, engineers and architects.

**Proposal** – An offer made by one party to another as a result of request for proposal which serves as a basis for negotiations for entering into a contract.

**Proprietary Information** – Subject to the Colorado Open Records Act (Refer to Open Records Act Compliance document #[00070](#)), information or data describing technical processes, mechanisms, or operational factors that a business wishes to keep confidential and restricted from public access.

**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.

**Purchase Order (PO)** – A Utilities' document which formalizes a purchase transaction with a supplier. A purchase order contains statements as to quantity, description, price, terms, discounts, date of



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performance, transportation, and other factors pertinent to the purchase and its execution by the supplier. Acceptance of a Purchase Order by the supplier constitutes a contract.

**Purchase Requisition (PR)** – A Utilities' document which requests that a contract be entered into for a specific need and may include the description of a request item, delivery schedule, transportation data, criteria evaluation, suggested source of supply, and information supplied for the making of a written determination. See also PR Creation and Approval process #[10063](#).

**Qualified Products Lists** – An approved list of supplies, services or construction items described by model or catalog numbers which, prior to competitive solicitation, Utilities has determined will meet the applicable specification and performance requirements.

**Request for Proposal (RFP)** – All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals; the RFP process #[09327](#) permits negotiation of proposals and prices as distinguished from competitive bidding and an Invitation for Bids.

**Request for Quotation (RFQ)** – A Solicitation where oral or written quotes are obtained from suppliers, without formal advertising or receipt of sealed bids. This process is for the primary purpose of soliciting quotations from suppliers qualified to provide goods and services to Utilities which will contain specific terms and conditions. See also RFQ process #[10090](#).

**Responsible Bidder/Offeror** – A bidder or offeror, who, in Utilities' sole judgment, has the capability in all respects to perform fully the contract requirements, and has the experience, integrity, perseverance, reliability, capacity, facilities, equipment, credit and other relevant attributes which will assure good faith performance.

**Responsive Bidder** – A bidder who has submitted a bid which conforms in all material respects to the requirements and qualifications stated in the solicitation.

**Resource Management System (RMS)** – A system used to electronically manage Purchase Requisitions, Purchase Orders, Request for Quotations and approval authorities. The system is also known as Maximo.

**Rocky Mountain E-Purchasing System (RMEPS)** - The web based system in which Utilities currently publishes/posts solicitations, notices of award and addenda.

**Sealed Bid** – A bid which has been submitted under an IFB in a sealed envelope or other acceptable electronically protected means which prevents its contents from being revealed or known before the deadline for the submission of all bids.

**Small/Disadvantaged Business** – a business meeting the small business size standard and owned or controlled by a majority of persons who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages; not limited to members of minority groups per latest Small Business Administration definition.

**Sole Source Procurement** – Only one supplier possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public agency.

**Solicitation** – A request for potential bidders/offerors to respond to a Utilities' need for goods or services.

**Specifications** – Any 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. See also Specifications & Statements of Work process #[10653](#).

**Supplier** – The person or business unit actually performing services, or manufacturing, producing, or shipping supplies required by the contract.

**Trade Secret** – Any aspect of a business or its operation not made available to competitors.

**Utilities** – Colorado Springs 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.

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**Value analysis** – An organized effort to analyze the function(s) of products, systems, specifications, standards and practices, intended to satisfy the required function(s) in the most economical manner.

**Waiver of Bids** – A process authorized by the PCS Manager to procure items without a competitive process because of unique circumstances related to a particular need or procurement, including emergency provisions. See also Sole Source Procurement process #[09921](#).

**Waiver of Mistake or Informality** – the act of disregarding minor informalities, errors, or technical nonconformities in the bid which will not adversely affect the competition or prejudice one bidder in favor of another.

## 2.0 ADMINISTRATIVE MATTERS

### 2.1. ESTABLISHMENT OF THE PROCUREMENT AND CONTRACT SERVICES SECTION

#### 2.1.0. Procurement and Contract Services Manager

The Procurement and Contract Services Section shall be managed by and under the general supervision of the PCS Manager.

##### 2.1.1. Authority

The PCS Manager shall have the power and duty to purchase or contract for all supplies and contractual services needed by any using division, department or section of Utilities, in accordance with such rules and policies as the PCS Manager shall adopt for the internal management and operation of the Procurement and Contract Services Section.

The PCS Manager has discretion to award a contract following any type of solicitation in such manner as serves the best interest of Utilities. Further, the PCS Manager has discretion, in the event of substantially equal bids, to award a contract to the respondent/bidder whose proposal appears, at the time the PCS Manager is making the decision and based solely upon information Respondents/bidders have submitted with the particular bids in a timely manner, to offer the greatest Positive Local Spend and/or Small/Disadvantaged Business “spend” Impacts (see section 2.2.4), and any such decision shall not form the subject matter or basis of a bid protest.

For internal purposes, failure to comply with this policy could result in disciplinary action up to and including termination.

##### 2.1.2. Execution of Contracts

All Utilities contracts shall be subject to these Procurement Policies herein, and shall meet the following requirements:

- a) Must be approved in accordance with Approval of Acquisitions process [#10041](#); and
- b) Must be executed by authorized Procurement and Contract Services or Materials Management personnel in accordance with Contract Review & Execution process as outlined in [#00076](#); and
- c) Must use only those contract / purchase order standard terms and forms as set forth in Contract Standards Policy [#00076](#), unless the PCS 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; and
- d) Must not be approved or executed unless and until sufficient funds have been appropriated by the City Council and are available for the contract; and
- e) 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. Should funding changes occur, affected suppliers shall be notified as soon as practicable.

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- f) In contracting for professional services or any contract where an agency relationship is created, the agent shall certify to Utilities that no conflict of interest exists.
- g) Final notice of settlement for construction contracts must follow the procedures outlined in QBD 11045.
- h) Electronic signatures may be accepted at the discretion of Utilities for all contracts under \$500,000. Contracts and related contract documents that total more than \$500,000 will require original signatures for the contract file.

## 2.1.3. Legal & Risk Management Review of Contracts

Review as to legal form by the Utilities Division of the City Attorney's Office is required, except as follows:

- a) If appropriately using established unaltered forms and templates approved by the Utilities Division of the City Attorney's Office;
- b) if associated with alterations to insurance provisions, in which case review and approval shall be directed to the Utilities Risk Management Office;
- c) if otherwise modified using a Utilities Division of the City Attorney's Office approved alternate contract language as instructed therein; or
- d) as may be otherwise provided in these policies or by written agreement between the Utilities Division of the City Attorney's Office and the PCS Manager.

CRM shall review and approve Customer Information security documentation and requirements.

## 2.2. PROCUREMENT AND CONTRACT SERVICES GENERAL REQUIREMENTS

### 2.2.1. Unauthorized Contractual Actions

Unauthorized commitments or contractual actions by individuals without express authority or approval by the PCS Manager may be subject to appropriate disciplinary action under the Utilities Policies and Procedures Manual (PPM). A few examples of unauthorized contractual acts are as follows:

- a) Ordering, receiving, and acceptance of goods or services in excess of \$10,000 without an approved contract or purchase order.
- b) Claiming receipt of goods or services that have not been delivered in order to meet budgetary requirements.
- c) Directing a contractor to proceed with work without a fully executed contract. A fully executed contract is defined as an agreement that has been signed by both the contractor and the proper contract authority of Utilities clearly describing the goods or services being contracted for and to what extent financially Utilities is obligated.
- d) Directing a change order to an existing contract without ascertaining the availability of funds or obtaining approval that change is within the scope of contract if applicable. See [QBD 10916](#) Procurement Change Management process.
- e) Any contractual obligation that is made by an individual, division or department that obligates Utilities to another party without the current availability of sufficient funds to cover the obligation.
- f) Splitting purchases which exceed \$10,000 into distinctly different purchase orders as an effort to circumvent Utilities competition requirements or to avoid obtaining proper contract approval.
- g) Failure to obtain approval for purchasing goods and services where the supplier has access or is required to use Utilities customer data. ([QBD #11999](#)).

### 2.2.2. Minimum Competition Requirements

These minimum competition requirements apply to the purchase of goods and services that are not exempted from competition pursuant to section 3.2.2 When Competition Is Not Required and section 3.0.20 Waiver of Competition.

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- a) Purchases up to \$10,000 do not require competitive bids; however, at least three (3) documented quotes are highly encouraged for every purchase. The exception to this policy is when a supplier has access or is required to use Utilities customer data. In this situation the internal client of the purchase must inform PCS and follow [QBD #11999](#) for the appropriate approvals.
- b) Purchases over \$10,000 and up to \$99,999 must be coordinated with PCS prior to pursuing procurement action in order to determine the most appropriate method to procure the requirements. As a minimum, after coordination purchases made within this dollar range will require a minimum of three (3) actual bids that are written. The bids may be informally solicited telephonically or written and may be received via fax, e-mail, or hand-delivered. If three (3) bids are not received, the file must be documented showing the efforts made to obtain at least three (3) bids. Procurement and Contract Services shall approve the purchase order and documentation prior to issuance. If the award is not made to the lowest bidder, then the file must be documented to include the rationale for awarding to other than the lowest bid received. (section 3.2 Small Purchases and Informal Quotations.)
- c) PCS will solicit all purchases over \$100,000 using formal methods and procedures. PCS shall follow the formal procedures unless otherwise waived as permitted under section 3.0.20 Waiver of Competition, section 2.2.2. Minimum Competition Requirements, and section 3.0.7 Emergency Procurement, of these Procurement Policies.
- d) Purchases executed pursuant to valid Cooperative Purchasing from Federal, State, County or other local government units are exempt from this section. This includes purchases made off of contracts awarded through a joint purchasing alliance such as the Innovations Group National Purchasing Alliance, Airport Purchasing Group Alliance, WSCA, US Communities, or MAPO, etc. of which Utilities is a member and the contract was formally competed by the alliance or group.

## 2.2.3. Contractor Equal Employment Opportunity Requirements

Utilities is committed to equal employment opportunity for all and maintains and implements equal opportunity and affirmative action where necessary in all of its daily operations. Utilities' policy is that no person shall be discriminated against because of race, color, national origin or ancestry, sex, age, religious convictions, veteran status, disability or political beliefs. Contractors shall comply with all federal and state nondiscrimination laws and have an equal employment opportunity policy. 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' employees. In accordance with section 2.2.4, Contractors will cooperate with Utilities in using contractor's best efforts to ensure that Small/Disadvantaged Businesses are afforded the full opportunity to compete for subcontracts or work under any Utilities contracts.

## 2.2.4. Reporting Small/Disadvantaged Business and Local Business Spend

Utilities has certain reporting obligations concerning Small/Disadvantaged Business "spend" (See [QBD #10935](#)). In addition, it is in Utilities' best interest to promote Local Business Spend. "Therefore, contracts exceeding a face amount of \$500,000 must either be (1) identified as having been awarded to a Small/Disadvantaged or Local Business or (2) must contain the following provision requiring annual reporting of Local and Small/Disadvantaged Businesses subcontracts awarded:

Utilities' administrative policies and regulations require businesses entering into contracts with Utilities that exceed \$500,000 in value to submit a report to the PCS Manager, periodically during the term of the contract and upon substantial completion of the contract, which includes the subcontracting dollars paid to businesses in each of the categories listed below:

- Small Business
- Veteran-Owned Small Business
- Service-Disabled Veteran-Owned Small Business
- HUBZone Small Business

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Small/Disadvantaged Business  
Woman-Owned Small Business  
Local Business

Prior to the award of a contract, a respondent/bidder to any type of solicitation from Utilities whose proposal or bid would (if accepted) result in a contract with a face amount greater than or equal to \$500,000, must report the respondent/bidder's best good-faith estimate of the amount of Small/Disadvantaged Business and/or Local Business spend.

Any respondent/bidder to any type of solicitation from Utilities whose proposal or bid would (if accepted) result in a contract with a face amount of less than \$500,000 may report the respondent/bidder's best good-faith estimate of the amount of Small/Disadvantaged Business and/or Local Business spend. Such information, to the extent and in the form in which it has been provided, may be considered by the PCS Manager in making an award of a contract to a respondent/bidder, on the basis set out herein below. Under no circumstances may such information constitute the subject matter or basis of a bid protest.

If a contract is expected to have a value of \$500,000 or more and if contractor will be using subcontractors, contractor shall be required to submit a Subcontracting Plan to Utilities that identifies expected Positive Local Spend Impact. Additionally, contractor shall be required to submit a periodic report (usually quarterly) to Utilities that includes the level of actual Positive Local Spend Impact, including impacts anticipated in and amended into the Subcontracting Plan. To determine Positive Local Spend Impact, the contractor may report purchases of goods from suppliers, subcontracted services, and the cost of local new direct, agency, contract, or "union-hall" labor utilized in performing the contracted work. Failure of contractor to demonstrate substantial compliance with its Subcontracting Plan as related to the Positive Local Spend Impact may result in such non-compliance being considered in future solicitations. For specific information refer to [QBD #10935](#) as it pertains to enforceability.

## **2.2.4.1. Small/Disadvantaged Business Enterprises**

No provision is made in these policies for preferences or set-asides for small, minority or women-owned businesses, or any of the business categories listed in section 2.2.4. However, it is the policy of PCS to make every effort to solicit and encourage participation by the types of businesses listed above in solicitations for Utilities acquisitions in accordance with the Socioeconomic Plans and Reporting process [QBD #10935](#). PCS has established a Supplier Diversity Program to recognize such businesses, to track participation and to provide assistance to such businesses (such as defining how to do business with Utilities, explaining job specific qualification requirements, educating with regard to contractor safety and environmental programs, and debriefing suppliers regarding unsuccessful bids and proposals, and referrals to agencies otherwise available to provide specific assistance) to facilitate greater participation in Utilities' procurement and contracting process.

Utilities reserves the right to use enterprise classification(s) in evaluation criteria for solicitations and contract award.

## **2.2.4.2. Local Business Enterprises**

No provision is made in these policies for preferential considerations for Local Businesses or suppliers. However, it is the policy of PCS to solicit and encourage participation from local suppliers whenever and wherever such competitive local sources exist, and where no sacrifice or loss in price or quality would result.

In the event of two or more substantially equal bids, award will be made to the respondent/bidder 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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For solicitations related to the Southern Delivery System Program, PCS will evaluate the responses and responders for physical location in, and positive Local Spend impact on Pueblo County and Fremont County, in the same manner and for the same purpose as above stated with regard to El Paso County.

Utilities reserves the right to use enterprise classification(s) in evaluation criteria for solicitations and contract award.

## 2.2.5. Change Orders and Changes in Scope of the Contract

Utilities may make written changes to the plans, specifications, scheduling, and performance period of a contract as long as the change is determined to be within the original scope of the contract. Any change order shall be justified in writing in accordance with Procurement Change Management process #[10916](#) and approved by the administrating department and PCS in accordance with RMS Approval of Purchase Orders process #[10041](#). Changes not within the original scope and intent of the contract shall not be issued to the contractor, but will be submitted as a new procurement request.

## 2.2.6. Contract Administration Services and Oversight

If a consultant, engineer, architect or other professional was either paid or otherwise directly involved in design or specification preparation of the subject project by Utilities and such is hired to provide contract administration services, then contract administrative services shall not include contractual authority, or responsibility for oversight, including change order and payment approval, unless the PCS Manager has provided written approval.

Furthermore a contractor or any affiliated firm of that contractor, is not allowed to bid or propose on contracts in which they are being paid or volunteered their service for either contract oversight or design, without a written consent or approval by the PCS Manager.

In no event shall the consultant or contractor be granted contractual or financial authority for conducting the bidding process, approving change orders, or obligating Utilities financially on the contract for which they are providing oversight or design services, unless the PCS Manager has reviewed the situation and determined, in his reasonable discretion, that such role will not be unduly discriminatory.

## 2.2.7. Contract Duration

The length or duration of contracts for goods or services may be written for a period up to but not to exceed five (5) years unless circumstances or conditions exist that are documented to be in the best interest of Utilities to enter into contracts for longer periods of time. Each requirement will be closely reviewed by the PCS Manager to determine the duration of the requirement to ensure Utilities will benefit from contracts.

Under certain circumstances and for identified critical or strategic product, equipment or service needs, Utilities may develop and implement value-based supplier relationships known as "Strategic Supplier Alliances" through negotiated agreements.

## 2.2.8. Equipment Leasing

An equipment lease is a contract under which title to the equipment will not pass to the lessee. An equipment lease with an option to purchase, however, allows title to pass if the purchase option is exercised. Such an agreement amounts to a conditional sales agreement. Leases and purchase options should never be used to circumvent the requirements for competition. The soundest and safest approach is that any leases of equipment be subject to the requirements for competition that apply to outright purchases, either as outlined in section 3.3 (Invitation for Bid) or section 3.5 (Request for Proposal).

The General Manager, Financial Services Department of the Planning and Finance Division, shall approve all equipment leases prior to execution by PCS.

## 3.0 METHODS OF SOURCE SELECTION

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There are various formal and informal methods to solicit competitive responses for a procurement requirement. The main methods of solicitation are **Invitation for Bid, Request for Quote, Request for Proposal, Request for Information** and **Statement of Qualification**. (Refer to C02-[09327](#) Solicitation Selection Matrix for selection criteria / guidance.)

## 3.0.1. Addenda to Invitations for Bid and RFP

Addenda to Invitations for Bid and RFP shall be identified as such and may require that the respondent/bidder acknowledge receipt of all addenda issued. The addendum shall reference the portions of the Invitation for Bid or RFP it amends. Addenda shall be sent to all prospective respondents/bidders known to have received an Invitation for Bid or RFP. Addenda shall be distributed within a reasonable time to allow prospective respondents/bidders to consider them in preparing their bids or proposals. If the time set for bid opening or due date will not permit such preparation, to the extent possible the bid or proposal preparation time shall be increased in the addendum.

## 3.0.2. Non-Disclosure Agreements

Prior to contract execution, a Non-disclosure agreement may be required when an existing or prospective supplier or Utilities identifies the need to protect proprietary, confidential or trade secret information. Early identification of any need for the execution of a non-disclosure agreement is encouraged. In most circumstances, Utilities standard at Non-Disclosure Agreement shall be used to protect Utilities confidential information. If the supplier wishes to protect its confidential information, then the execution of Utilities standard Mutual Non-Disclosure Agreement should be used. Supplier agreements generally must be modified to address specific provisions that Utilities, as a public entity, is subject to; therefore, use of Utilities standard forms is strongly encouraged.

## 3.0.3. Bonds, Insurance and Contracts

The policy for Bonding and Insurance is contained in QBD [#09339](#).

## 3.0.4. Cancellation or Rejection of Bids or Proposals

### 3.0.4.1. Scope

This section governs the cancellation of any solicitation issued by the Procurement and Contract Services or Materials Management sections under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

### 3.0.4.2. Policy

Solicitations should only be issued when there is a valid procurement need. A solicitation is to be canceled only when there are valid and compelling reasons to believe that the cancellation is in Utilities' best interest.

### 3.0.4.3. Cancellation or Rejection of All Bids or Proposals Prior to Opening

Prior to opening of bids, a solicitation may be canceled in whole or in part when such action is in Utilities' best interest for reasons including;

- a) Utilities no longer requires the supplies, equipment, materials, or services.
- b) Utilities can no longer reasonably expect to fund the procurement.
- c) Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- d) When directed to do so by the Utilities Board

### 3.0.4.4. Notice

When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall identify the solicitation, explain the reason for the cancellation, and where appropriate, explain that an opportunity will be given to compete on any re-solicitation.

### 3.0.4.5. After Opening

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After opening, but prior to award, any or all bids or proposals may be rejected in whole or in part when the PCS Manager or his designee determines that such action is in Utilities' best interest for reasons including but not limited to:

- a) The supplies, equipment, materials, or services being procured are no longer needed.
- b) Ambiguous or otherwise inadequate specifications were part of the solicitation.
- c) The solicitation did not provide for consideration of all factors of significance to Utilities.
- d) All otherwise acceptable bids or proposals received are at clearly unacceptable prices or terms.
- e) There is reason to believe that the bid or proposal may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- f) All acceptable bids or proposals received exceed budgetary constraints.

### 3.0.4.6. Documentation

Written justification for cancellation or rejection shall be made a part of the procurement files and shall be available for public inspection.

### 3.0.4.7. Disposition of Documents

When bids or proposals are rejected, or a solicitation canceled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement files, or if unopened, returned to the bidders/offerors upon request, or otherwise disposed of if unopened and return is not requested.

### 3.0.5. Confidential Information

Bids and proposals shall identify what portions of the bid, if any, are confidential information and such determinations shall be in accordance with C.R.S. 24-72-201 et seq. ("CORA"). The PCS Representative may examine bids or proposals to determine the validity of any requests for nondisclosure of confidential information, such as trade secrets or other proprietary data identified in writing. Pursuant to a CORA request and if the parties do not agree as to the disclosure of data, the PCS Representative shall inform the respondent/bidder what portions of the bid will be disclosed and that, unless the respondent/bidder protests in accordance with Section 4.0 (Protest) of these policies, the bids will be so disclosed. The Respondent/bidder may also elect to seek a protective order to prohibit the disclosure of the data.

### 3.0.6. Determinations

Before a solicitation is issued for competitive sealed proposals, the PCS Representative is authorized to determine which competitive process is to be used in accordance with this policy and the attached matrix (section 3.0 Methods of Source Selection) The PCS Representative may make determinations by category of supply, service, or construction item(s) that it is either not practicable or not advantageous to Utilities to procure specified types of supplies, services, or construction by competitive sealed bidding. Procurements of the specified types may then be made by competitive sealed proposals based on this determination.

### 3.0.7. Emergency Procurement

#### 3.0.7.1. Scope of Emergency Procurements

An emergency procurement shall be limited to providing a quantity of those supplies, equipment, materials, or services that are anticipated to be required to address the specific emergency situation.

#### 3.0.7.2. Emergency & Unauthorized Procurement Approvals

Subject to emergency procurement declarations, any internal client may make emergency procurements when an emergency condition arises, and the need cannot be met through normal procurement methods. Where practicable during Normal Work Hours, the internal client shall collaborate with the PCS Manager or PCS Representative who will immediately leverage existing acquisition options or provide Purchase Order number(s) as needed to support all emergency procurements. In the event an emergency arises after Normal Work Hours, the internal client shall notify the PCS Manager or PCS Representative on the



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next business day and comply with the requirements of Unauthorized Purchase Approval Request process #[11298](#), including the requisite file documentation.

## **3.0.8. Modification or Withdrawal of Bids or RFPs**

Bids or proposals may be modified in writing by respondent/bidder and submitted to PCS prior to bid/proposal due date and time

Bids may be withdrawn as indicated in the following sections 3.0.8.1 – 3.0.8.3.

### **3.0.8.1. Withdrawal of Bid or RFP Prior to Bid/Proposal Opening**

Any bid/proposal may be withdrawn by the respondent/bidder prior to the specified bid/proposal opening time and date if the respondent/bidder/s written withdrawal notice, email or facsimile (“electronic”) transmission is received by the assigned PCS representative.

### **3.0.8.2. Withdrawal of Bid or RFP After Opening but Prior to Award**

After bid opening but prior to award, no bid/proposal may be withdrawn unless the respondent/bidder can establish that the bid/proposal contains mistakes despite the exercise of reasonable care by the respondent/bidder. The test of reasonable care shall be that -

- a) the mistake relates to a material feature of the contract; and
- b) the mistake occurred despite the exercise of reasonable care; and
- c) negation or withdrawal returns the public authority to the status quo; and
- d) withdrawal is deemed by the PCS Manager to be in the best interest of Utilities.

### **3.0.8.3. Records Relating to Bid or RFP Modification or Withdrawal**

All documents relating to the modification or withdrawal of bids/proposals shall be made part of the appropriate procurement file.

## **3.0.9. Negotiations**

PCS reserves the right to negotiate when it is deemed in the best interest of Utilities to do so. Negotiations may be performed on:

- IFBs ([10902](#))
- Amendments/Change Orders
- RFPs ([09327](#))
- RFQs ([10090](#))
- Sole Source Procurements ([09921](#))

Negotiations regarding a new or existing procurement are facilitated by an authorized PCS Representative and with client participation.

## **3.0.10. Notice Required Under Solicitations**

Upon determination that any bid or offer is unacceptable, formal notice shall be provided (via Facsimile, Email or automated RMEPS notification) to the affected supplier within a reasonable amount of time as deemed appropriate and in the best interest of Utilities.

For Formal Solicitations, written notice of intent to award is required to be sent (via Facsimile, Email or automated RMEPS notification) to all unsuccessful bidders.

For Informal Solicitations, Utilities shall provide notice to unsuccessful bidders via verbal, email, automated RMEPS notification, or other means when customary to do so.

## **3.0.11. Pre-Bid Conferences**

Pre-bid conferences may be conducted to explain the procurement or contractual requirements. Pre-bid conferences shall be announced to all prospective respondents/bidders via RMEPS or other acceptable method. Nothing stated at such conference shall change the solicitation unless the change is made by

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written addendum. Mandatory or optional attendance at pre-bid meetings shall be clearly noted in the solicitation and in any public notice issued therewith. Mandatory attendance is normally limited to those instances in which it would be unusually difficult for a prospective respondent/bidder to provide a fully responsive bid without attending the conference. This also applies to other solicitations where this is referred to as a pre-proposal conference.

### **3.0.12. Protest Waiting Period Prior to Contract Execution**

The execution of a contract or release of a purchase order under Formal Solicitations (i.e., not being performed under section 3.2 Small Purchase and Informal Quotations provisions) shall be delayed at least three (3) business days from date of formal unsuccessful bidder/offeror notice (provided via facsimile, email or automated web site notification). 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).

Should circumstances (supplier feedback, etc.) involving a small purchase under section 3.2 cause any concern to procurement personnel regarding a possible protest, a written notice of intent to award shall be issued, and the execution of the associated contract or release of 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.

### **3.0.13. Public Notice – Advertising**

Formal Solicitations shall be posted on Rocky Mountain E-Purchasing System to secure adequate competition and to provide public notice of those solicitations. The PCS Manager may authorize the waiver of public notice for requirements in excess of \$100,000 upon written determination that circumstances call for quick procurement action. Supplies or equipment may be needed promptly for backup to ensure against downtime; a significant price increase on a needed item may be imminent; the scope of an ongoing task may be unexpectedly expanded. In these types of situations, the PCS Manager will make special effort to obtain written competition or sealed bids, but may waive the public notice.

### **3.0.14. Sole Source Procurement**

Sole source procurement is justified when there is only one good or service that can reasonably meet the need and there is only one supplier who can provide the good or service. A requirement for a particular proprietary item (i.e., a brand name specification) does not justify Sole Source Procurement if there is more than one potential bidder or offeror for that item.

Sole source purchase requirements may arise from a number of circumstances as outlined in the detailed Sole Source Procurement Process #[09921](#). For the purposes of this process, Sole Source Procurement requests for sole source purchases exceeding \$10,000 requires the use of a Sole Source Request and Approval Form, which includes a price analysis to document rationale supporting price reasonableness.

### **3.0.15. Specifications**

#### **3.0.15.1. General Purposes and Policy**

The purpose of specifications is to serve as a basis for obtaining a supply item or service adequate and suitable for Utilities' needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the Procurement and Contract Services Section that specifications permit maximum practicable competition consistent with this purpose.

##### **3.0.15.1.1. Use of Functional or Performance Descriptions**

Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the need of the internal client.

##### **3.0.15.1.2. Preference for Commercially Available Products**

To the extent practicable, preference shall be given to the procurement of standard commercial products. In developing specifications, accepted commercial standards should be used and unique requirements should be avoided when practicable.

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## **3.0.15.1.3. Brand Name or Equal Specifications – Conditions for Use**

Brand name or equal specifications may be prepared to be used when it is in the best interest of Utilities and when the item to be procured is best described by the use of such a specification. Brand name or equal specifications shall seek to designate as many different brands as are practicable as “or equal” references, and shall further state those substantially equivalent products which will be considered for award. However, the acceptability of such “or equal” product offerings beyond those currently qualified and acceptable will be solely determined by Utilities.

## **3.0.15.1.4. Brand Name Specifications – Conditions for Use**

Since use of a brand name specification is restrictive, it may be used only when the brand name or items will satisfy the internal client’s needs or if the specific item is to be used for resale purposes. The PCS Representative shall seek to identify sources from which the designated brand name or item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under provisions of 3.0.14 (Sole Source Procurement).

## **3.0.15.1.5. Qualified Products List – Conditions for Use**

A qualified products list may be developed when testing or examination of the materials or equipment is required prior to the issuance of the solicitation.

## **3.0.15.1.6. Specifications Prepared by other than Utilities Staff**

All specifications prepared by other than Utilities staff, including consultants, architects, engineers, and designers, shall not be restrictive but shall, to the extent practicable, allow for maximum competition. Bids or proposals that use these specifications prepared by suppliers outside of Utilities are not allowed to bid or respond to the solicitation without the written approval of the PCS Manager.

Specifications and statements of work shall follow the format and minimum content requirements as set forth in Specifications & Statements of Work document [#10653](#) to the extent created by Utilities staff, or otherwise validated using document [#10653](#) to determine the adequacy of the specifications and statements of work created by organizations external to Utilities.

## **3.0.16. Statements of Work**

QBD [#10653](#) provides policy guidelines for the preparation of Statements of Work.

## **3.0.17. Timeliness of Bids**

All sealed competitive bids shall be opened as soon as possible after the time designated by the Invitation for Bid. Bids received after the bid opening time shall not be opened, but shall be rejected as a late bid and at the discretion of the bidder, either returned or destroyed. The responsibility to ensure that bid solicitations are obtained and that bids are received prior to the opening date and time rests with the supplier. The PCS Manager may permit the following exceptions:

- a) In the event of a public labor unrest (strike, work slowdown, etc) which may affect mail delivery,
- b) There is conclusive evidence that the bid submitted to the office designated in the IFB or RFP on time and was mishandled by Utilities contracting personnel responsible for handling/receiving bids (i.e. lost or misplaced). Mishandling by other departments or offices does not constitute Utilities contracting personnel.
- c) It was the only bid received.

The PCS Manager may, in his discretion, permit an exception in any other situation that is beyond the control of both Utilities and the supplier as to the acceptability of the bid.

## **3.0.18. Trials, Demos and Product Testing**

All products and services that Utilities would like to procure under the purpose of a trial, demo or product testing must follow the same procurement process as a normal purchase of a product or service. PCS should be contacted early in the process to provide guidance to the project manager that is considering a

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trial, demo or product test. PCS will use the Bailment agreement form for any loaner equipment during this process (see [QBD 00076](#)).

## 3.0.19. Electronic Solicitations

Procurement and Contract Services Section shall offer suppliers the opportunity to register via the Rocky Mountain E-Purchasing (RMEPS) website through [www.rockymountainbidsystem.com](http://www.rockymountainbidsystem.com) who may be interested in competing for various types of Utilities competitive offerings. This registration allows suppliers that pay the registration fee to be automatically notified when a Formal Solicitation is advertised for the service or commodity they registered to provide.

## 3.0.20. Waiver of Competition

The PCS Manager or his designee may elect to waive the competitive bidding/proposal process under certain conditions as detailed in Sole Source Procurement Process #[09921](#).

PCS requires competition wherever practicable, and except for small purchases under section 3.2, Small Purchase and Informal Quotations provisions, the basis and reasons for each waiver shall be documented as public record by using a Sole Source Request and Approval Form in accordance with Sole Source Procurement Process #[09921](#).

## 3.1. REQUEST FOR INFORMATION (RFI)

A Request for Information may be used to solicit information as set forth in Request for Information process #[10903](#). The RFI is only used to gather information and shall not be used to enter into a binding agreement.

All firms submitting a response to the RFI acceptable to Utilities may be invited to participate in any future solicitation which results from information gathered from the RFI.

## 3.2. SMALL PURCHASES AND INFORMAL QUOTATIONS

### 3.2.1. Definition

Expenditures for the procurement of supplies, equipment, materials, construction or services having an estimated value of \$100,000 or less, may be made on the open market by informal methods without public notice and without following the steps outlined in section 3.3 (Invitation for Bid) or section 3.5 (Request for Proposal). Competition is always desirable to the maximum practical extent..

### 3.2.2. When Competition Is Not Required

Procurement and Contract Services and authorized Materials Management (warehouse operations) personnel may acquire supplies, materials, equipment, construction or services costing ten thousand dollars (\$10,000) or less without benefit of documented telephone quotations or written competitive bids. However, at least two verbal bids are highly encouraged for every purchase when price reasonableness is not apparent. The Procurement and Contract Services and authorized Materials Management personnel acquiring goods or services in this manner shall be expected to use professional judgment to ensure that pricing is reasonable. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this rule. Use of procurement cards for this purpose is covered by P-Card Policy and Procedure Manual #[13071](#). A request for direct payment via check is controlled by Direct Pay process #[10874](#).

### 3.2.3. Documented Telephone/Written Quotations

The Procurement and Contract Services Section and the authorized procurement personnel in Materials Management may procure supplies, equipment, materials, and services not anticipated to exceed \$100,000 by securing documented telephone quotations which provide:

- a) the name of the company or firm,
- b) the person providing the quotation,
- c) the delivery date,

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- d) FOB information (Quoted as FOB Destination, freight included in price preferred),
- e) payment terms (including acceptable prompt payment discounts),
- f) price(s) of item(s).

Written quotations may be used in lieu of telephone quotations if it is in the best interest of Utilities to capture additional documented information such as delivery commitments and terms. A minimum of three (3) quotations are normally requested from suppliers. A "no bid" may be applied toward the three (3) quote minimum requirement. Award shall be made to the supplier offering the most responsive and responsible bid. PCS and the authorized procurement personnel in Materials Management shall use reasonable effort to maximize the opportunity for local, small, and/or disadvantaged businesses to participate in informal bids.

When use of the RMS automated RFQ module is advantageous, follow Request for Quotation process #[10090](#). A PCS approved E-Procurement third party web site may be used to obtain documented quotes in conjunction with or in lieu of the RMS RFQ module.

### 3.3. INVITATION FOR BID (IFB)

The purpose of the Invitation for Bid (IFB) is for formal and informal requests to prospective suppliers soliciting price quotations or bids that contain, or incorporate by reference, the specifications or scope of work and all contractual terms and conditions. The design of the Invitation for Bid is critical to the solicitation outcome (Refer to Invitation for Bid process #[10902](#) -which also includes available templates). The solicitation should seek full competition for all purchases wherever practicable and provide fair and equal opportunity for all qualified suppliers to compete.

The Invitation for Bid considerations shall include the following:

- a) Bid submission requirements;
- b) Closing time and due date;
- c) Directions as to how and where bids are to be delivered;
- d) Pre-bid conferences or walk throughs;
- e) Contractual terms and conditions (Contract Standards Policy #[00076](#));
- f) Openness of specifications (i.e., specifications do not unreasonably restrict alternatives unless limiting attributes are based on compelling business reasons);
- g) Requirements for transportation and delivery (special packaging, handling, method, etc.).
- h) The project description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements (See Specifications & Statements of Work process #[10653](#);
- i) Bonding or security requirements, as applicable in accordance with Utilities Standard Bonding & Insurance Requirements process #[09339](#).

#### 3.3.1. Applicability

All acquisitions for supplies, equipment, materials, services, and construction which are estimated to exceed \$100,000 shall be processed formally using Competitive Bid/Solicitation procedures, or has been determined by written justification to be exempt from formal competition for reasons allowed by this policy. Sealed competitive bids may be used to acquire any goods, services or construction regardless of dollar amount if the PCS Representative determines it to be the most appropriate method of procurement. Sealed competitive bids shall be awarded to the lowest responsive and responsible bidder.

#### 3.3.2. Responsive Bid

To be considered for an award using IFB, a bid must comply in all material respects with the instructions to bidders, bid schedule, specifications, drawings, and terms and conditions. Such compliance enables bidders to stand on an equal footing and maintains the integrity of the sealed bidding system.

#### 3.3.3. Responsible Bidder

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To be considered eligible for an award of a contract using IFB, a bidder must be determined to be Responsible Bidder by the Procurement Services Manager or his/her designee. A determination of non-responsibility by the PCS Manager is grounds for rejection of a bid.

## 3.3.4. Incorporation by Reference

The IFB may incorporate documents by reference provided that the IFB specifies where such documents may be obtained.

## 3.3.5. Bidder Submissions – Bid Form

The IFB shall provide a form (hard copy or electronic, as instructed) which shall include space(s) in which the bid price(s) shall be inserted and which the bidder shall sign (hard copy or electronically as instructed) and submit along with all other necessary submissions. A bid received on any other form may cause the bid to be deemed unresponsive.

## 3.3.6. Multiple or Alternate Bids

The solicitation shall prohibit multiple or alternate bids unless such bids are specifically provided for in the IFB. When prohibited, the multiple or alternate bids shall be rejected, and a clearly indicated base bid will be considered for award as though it were the only bid or offer submitted by the bidder.

## 3.3.7. Adequate Competition

It is the responsibility of PCS to insure that an adequate selection of bidders is solicited for every requirement for achieving optimum competition. This responsibility may include, but is not limited to:

- a) Considering Utilities suppliers with relevant past experience;
- b) Leveraging data available via the Small Business Administration's designated website(s);
- c) Searching internet search engines and on-line business directories for possible sources of supply;
- d) Leveraging certain registers, such as the Thomas Register and/or utility trade magazines and associated web sites;
- e) Making inquiries through other purchasing organizations;
- f) Leveraging contacts in various professional purchasing associations;
- g) Selecting other advertising methods or vehicles when sources may be limited; and
- h) Utilizing internet-based electronic commerce marketplaces to leverage the supplier participants of such marketplaces.

## 3.3.8. Bid Preparation Time

Bid Preparation time is the period of time between the date of the first posting or advertisement for bids and the deadline for submitting bids. In each case, time will be set to provide bidders a reasonable time to prepare their bids in accordance with the following:

- a) Except as provided for under Section 3.2 (Small Purchases and Informal Quotations) and declared emergencies, the minimum time for solicitation of bids shall be fifteen (15) business days for Formal Bids requiring public notice.
- b) When special requirements exist, the PCS Manager or PCS Manager authorized personnel may lengthen or shorten the bid time, but absent exigent circumstances shall the time cycle be shortened if it will substantially reduce competition.
- c) Complicated procurements may require a time period that is longer than the standard fifteen (15) business days.
- d) Solicitation times of less than fifteen (15) business days shall be documented by the appropriate procurement specialist as to why a reduced bid period was required.

## 3.3.9. Telephone Bids

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Telephone bids will not be accepted, except as provided for in Section 3.2 (Small Purchases and Informal Quotations), or unless the PCS Manager makes written determination that market conditions are of such a nature that it is in the best interest of Utilities to solicit telephone bids, such as the purchase of petroleum fuels on a daily basis, under changing market conditions, or under solicitations during a declared emergency (See 3.0.7, Emergency Procurement).

## 3.3.10. Electronic Bids

Electronic bids submitted by email to PCS may be accepted prior to the bid opening for informal purchases as defined in Section 3.2 (Small Purchases and Informal Quotations) or for expedited solicitations that do not require a sealed bid or bid surety. Electronic bids must meet the following conditions:

- a) the electronic bid must refer specifically to, and comply with, the applicable bid documents; and
- b) it must clearly set forth all requested information, including but not limited to the items, quantities, prices, and deliveries offered; and
- c) it shall state that the bid complies with the terms and conditions of the bid documents.

## 3.3.11. Receipt of Bids

Upon receipt, each bid and any modification thereto shall be time stamped by machine or by hand and shall be stored by PCS administrative staff until bid opening time. Bids and modifications thereto (if any) shall not be opened upon receipt, except that unidentified bids may be opened for identification purposes and resealed in the presence of witness(es). Late bids will be handled in accordance with section 3.0.17 (Timeliness of Bids).

### 3.3.11.1. Opening and Recording of Bids

A member of the PCS, in the presence of one or more witnesses, shall open bids publicly, at the time and place designated in the Invitation for Bid. All bid openings shall be open (physically or electronically as stated in the IFB) to the public and interested parties. The price, delivery, discounts, and product identification shall be a part of the bid tab sheet, along with the name of each bidder. Except for designated confidential information, the bid tab sheet shall be made available for public inspection. Except for those items identified as proprietary information, trade secrets or other information protected under the CORA, all data regarding any particular bid becomes public information immediately after a decision to award relating to that bid has been made. Confidential information so designated shall accompany the bid and shall be readily separable from the rest of the bid documents.

### 3.3.11.2. One Bid Received

If only one responsive bid is received in response to IFB, an award may be made to the single supplier if PCS Representative finds that the price(s) submitted is fair and reasonable and other prospective bidders had reasonable 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, b) the proposed procurement may be canceled, or c) if the PCS Manager or designee and internal client determine that the price of the one bid is not fair and reasonable, and that re-solicitation would likely be futile, the bid may be negotiated with the single acceptable bidder.

## 3.3.12. Extension of Time for Bid or Proposal Acceptance

After opening of bids, the PCS Manager or the PCS Manager's designee may request low bidder(s) to extend the time during which Utilities may accept their bids (the submitted bid validity time frame is typically defined in the solicitation), provided that no other change is permitted. The reasons for requesting such extensions shall be documented.

## 3.3.13. Mistakes in Bids – Confirmation of Bids

When it appears from a review of the bid that a mistake has been made, the assigned PCS representative will request the bidder to confirm the bid. Situations in which the confirmation should be requested include obvious, apparent errors on the face of the bid or a bid significantly lower than the

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other bids submitted. If a mistake is confirmed, the bid may be withdrawn only if the provisions of section 3.0.8.2 (Withdrawal of Bid After Opening but Prior to Award) are followed. Any decision to permit or deny correction or withdrawal of a bid under this section shall be documented by a written determination by the PCS Manager or his designee.

### 3.3.13.1. Minor Informalities

Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders: i.e., the effect on price, quantity, quality, delivery, or contractual conditions is negligible. PCS may waive such informalities or allow the bidder to correct them depending upon which is in the best interest of Utilities. Examples include the failure of the bidder to (a) return the number of signed bids required by the Invitation, (b) sign the bid, but only if the bid is accompanied by other material indicating the bidder's intent to be bound, (c) acknowledge receipt of an addendum to the Invitation if it is clear from the bid that bidder received the addendum and intended to be bound by its terms, or that the addendum had a negligible effect on price, quantity, quality, or delivery.

### 3.3.13.2. Mistakes Where Intended Correct Bid is Evident

If the mistake and the intended correct bid are clearly evident to the PCS Manager or his designee on the face of the bid document, the bid shall be corrected by the bidder to the intended correct bid and may not be withdrawn. Examples include typographical errors, errors in extending unit prices, transposition errors, and mathematical errors.

### 3.3.13.3. Mistakes Discovered Before Opening

A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as outlined in section 3.0.8.1 (Withdrawal of Bid or RFP Prior to Bid/Proposal Opening).

### 3.3.13.4. Mistakes Discovered After Award of Contract

Mistakes shall not be corrected after award of a contract unless approved by the PCS Manager.

### 3.3.14. Bid Evaluation and Award

All products or services shall be evaluated against the specifications in the Utilities solicitation. In addition to price, the following factors may be considered in evaluating any bid response to the extent so indicated in the IFB in the form of objective, measurable criteria:

- adaptability to environment
- aesthetics
- availability of training courses
- cash discounts
- commercial terms and conditions
- cost of maintenance agreements
- cost of operation or disposal
- delivery date after receipt of order
- financial security
- financial terms
- future availability
- future trade-in value/ availability of re-purchase agreement
- insurance availability
- local service
- results of product testing
- safety and health features relating to regulatory codes or requirements.
- space limitations
- warranties (type/length)

The purchase order/contract shall be awarded to the lowest responsive and responsible bidder constituting the best bid, whose bid meets the requirements and criteria set forth in the IFB and is determined to be in the best interest of Utilities. The PCS Manager may determine to make whole or partial awards, reject any and all bids, terminate the solicitation, or re-solicit bids as may be determined to be in the best interest of Utilities. The IFB shall set forth the requirements and criteria that will be used to



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determine the lowest responsive and responsible bidder. (No bid shall be evaluated for any requirements or criteria not disclosed in the IFB.)

### 3.3.15. Rejection of Bids

The PCS Manager or his designee has the authority to reject any bid based on, but not limited to, the following:

- a) Any bid that fails to conform to the essential requirements of the IFB shall be rejected.
- b) Any bid that does not conform to the applicable specifications shall be rejected unless the IFB specifically authorizes the submission of alternate bids or deviations.
- c) Any bid that fails to conform to the specified delivery schedule.
- d) Any bid that imposes conditions that would modify the requirements of the invitation. For example, bids may be rejected in which the bidder:
  1. Protects against future changes in conditions, such as increased costs, if total cost to Utilities cannot be determined by bid. This would include failure to completely fill out required bid schedule.
  2. Fails to state price and indicates that price shall be "price in effect at time of delivery or award."
  3. States a price but qualifies it as being subject to change.
  4. When the invitation does not authorize it, the bidder conditions or qualifies a bid by stipulating their own terms and conditions, includes additional prices not required by the solicitation, or stipulates a product that has not been approved by the solicitation.
- e) At the request of the Project Manager, any and all bids in which the price is considered to be unreasonable or is over budget.
- f) Any and all bids if the prices are determined to be unbalanced.
- g) Bids received from any person or contractor that is suspended or debarred for any reason, proposed for debarment, or under investigation for fraud, including failure to pay either Federal, State or City taxes.
- h) When a bid guarantee is required and the bidder fails to furnish the guarantee in accordance with the requirements of the invitation.
- i) Low bids received from bidders whom are determined to be non-responsible in accordance with section 3.3.17 (Determination of Lowest Bidder) of these regulations.
- j) Any bid that was prepared and submitted by a supplier whom has been determined by the PCS Manager to have an unfair advantage over the other bidders. Examples of an unfair advantage include, but are not limited to, the following:
  1. A previous or prior employee who in the last six (6) months was directly involved in the design or specification preparation of the competed procurement.
  2. A supplier who was directly involved in design or specification preparation of the competed project either for pay or voluntarily.

### 3.3.16. Product Acceptability

The IFB may require the submission of bid samples, descriptive literature, technical data, or other material necessary to determine product acceptability. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine whether a bidder's offering will meet the needs of Utilities as set forth in the Invitation for Bid. Any bidder's offering that does not meet Utilities' acceptability requirements will be rejected as non-responsive.

### 3.3.17. Determination of Lowest Bidder

Following determination of responsiveness, responsibility (including any required qualifications) and product acceptability, if any is required, bids may be evaluated to determine which bidder offers the best bid at the lowest cost to Utilities in accordance with criteria set forth in the Invitation for Bid, including all specifications thereto. Bids may be evaluated in accordance with value analysis or life cycle cost

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formulas, but only objectively measurable criteria set forth in the Invitation for Bid shall be applied in determining the lowest bidder.

### 3.3.18. Low Tie Bids

Tie bids are low responsive bids from responsible bidders that are essentially identical in delivered price and meet all the requirements and criteria set forth in the Invitation for Bid. At the discretion of the PCS Manager or PCS Manager designee, award may be made by methods including, but not limited to, split orders, rotations or best and final offers. If a Local Business is involved in a tie bid, award shall be made in accordance with policy 2.2.4.2 (Local Business Enterprises).

### 3.4. MULTI-STEP IFB

#### 3.4.1. Definition

Multi-step IFB is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit un-priced technical offers to be evaluated by Utilities, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefit of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to determine the acceptability of technical offers (QBD# [10902](#)). Refer to Request for Proposal process #[09327](#) for information regarding a two-step request for proposal process.

The multi-step IFB method may be used when it is not practical to prepare initially a definitive purchase or contract description that will be suitable to permit an award based on price.

#### 3.4.2. Procedure for Phase One of Multi-Step IFB

Multi-step IFB shall be initiated by the issuance of an Invitation for Bid. In addition to requirements set forth in section 3.3 (Invitation For Bid), the multi-step Invitation shall state:

- a) that un-priced technical offers are requested.
- b) that it is a multi-step IFB procurement, and priced bids will be considered only in the second phase and only from those bidders whose un-priced technical offers are found to be acceptable in phase one.
- c) the criteria to be used in evaluating the un-priced technical offers.
- d) that Utilities, to the extent the PCS Representative or internal client finds necessary, may conduct oral or written discussions of the un-priced technical offers with the bidders.
- e) that bidders may designate those portions of the un-priced technical offer containing trade secrets or other proprietary data that are to remain confidential.

#### 3.4.3. Addenda to the Multi-Step IFB

After receipt of un-priced technical offers, addenda to the Invitation shall be distributed only to active (i.e., still under consideration) bidders who submitted qualified un-priced technical offers or to amend those submitted. If, at the discretion of the PCS Representative, a contemplated addendum will significantly change the nature of the procurement, the IFB shall be canceled and a new IFB issued.

#### 3.4.4. Receipt of Un-priced Technical Offers

Un-priced technical offers shall not be opened publicly but shall be opened in the presence of two or more members of the PCS staff. Such offers shall not be disclosed to unauthorized persons. Bidders may request nondisclosure of trade secrets and other proprietary data identified in writing.

#### 3.4.5. Evaluation of Un-priced Technical Offers

The un-priced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bid. The un-priced technical offers shall be categorized as (a) acceptable or (b) unacceptable. The PCS Representative shall record in writing the basis for finding an offer unacceptable and make it a part of the procurement file. The PCS Representative may initiate phase two if it is determined that there are sufficient acceptable un-priced technical offers to assure effective price

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competition in the second phase without technical discussions. If the PCS Representative and internal client find that such is not the case, the PCS Representative shall issue an amendment to the Invitation for Bid or engage in technical discussions. Refer to Request for Proposal process #[09327](#) for further information regarding technical evaluations.

## 3.4.6. Discussion of Un-priced Technical Offers

Discussion of un-priced technical offer(s) may be conducted by the PCS Representative and internal client with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of such discussions, the PCS Representative and internal client shall not disclose any information derived from one un-priced technical offer to any other bidder. Once discussions have commenced, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established. Such submission may be made at the request of the PCS Representative or internal client or upon the bidder's own initiative.

## 3.4.7. Notice of Unacceptable Un-priced Technical Offer

When the PCS Representative and internal client determines a bidder's un-priced technical offer to be unacceptable and such bidder has been informed of the decision, the bidder shall not be afforded additional opportunities to supplement technical offers.

## 3.4.8. Mistakes During Multi-Step IFB

Bidders' mistakes of the un-priced technical offers may only be corrected or bids withdrawn during phase one;

- a) before un-priced technical offers are opened,
- b) after any discussions have commenced, if any, or
- c) when responding to any addendum to the Invitation for Bid.

## 3.4.9. Procedure for Phase Two of Multi-Step IFB - Initiation

Upon completion of phase one, the PCS Representative shall: after technical discussions have been held, or amendments to the Invitation have been issued, invite each acceptable bidder to submit a price bid.

## 3.4.10. Conduct

Phase Two shall be conducted as any other competitive sealed bid procurement except:

- a) as specifically set forth in this Multi-Step IFB section.
- b) no public notice of the invitation to submit price bids needs to be given because such notice was previously given.
- c) award will be to the lowest pre-qualified bidder.

## 3.5. REQUEST FOR PROPOSAL (RFP)

### 3.5.1. General

A Request for Proposal (RFP) is a method of contracting for goods or services whereby proposals are solicited, and Utilities selects the offer deemed to be most advantageous in terms of criteria as designated in the RFP. For internal purposes, follow the Request for Proposal process #[09327](#). Certain Utilities projects in excess of \$100,000 may require that prospective contractors be pre-qualified. On such projects, prospective contractors may be asked to submit a financial statement and other information in accordance with the general provisions of the solicitation documents.

Pre-qualification may be required for other Utilities solicitations and shall be determined on an individual basis by the PCS Manager or the PCS Manager's authorized personnel, and internal client. A two-step procurement may be utilized to pre-qualify contractors as part of the published opportunity to submit a

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proposal. In any event, the specific qualifications desired shall be disclosed by Utilities in sufficient detail to permit the prospective offerors to reasonably determine whether they are qualified to submit a proposal.

## 3.5.2. Content of the Request for Proposal

The Request for Proposal shall be prepared in accordance with provisions in QBD-#09327:

- a) A statement that discussions may be conducted with offerors who submit proposals determined to have a reasonable possibility of being selected for award, or that proposals may be accepted without discussion. Discussions may include negotiations with one or more acceptable offerors at the sole discretion of Procurement and Contract Services.
- b) A statement of when and how price(s) shall be submitted.

## 3.5.3. Proposal Preparation Time

Proposal preparation time is the period of time between the date of the first posting or advertisement for proposals and the date set for receipt of proposals. In each case, time will be set to provide offerors a reasonable time to prepare their proposals except that the minimum time for solicitation of proposals shall be twenty (20) Business Days for formal proposals requiring public notice. Notwithstanding the above, normally the PCS Manager or designee may authorize a shorter proposal preparation time. Informal proposal preparation times will be determined at the discretion of Utilities.

## 3.5.4. Form of Proposal

The manner in which proposals are to be submitted, including any forms for that purpose, shall be included as a part of the Request for Proposal.

## 3.5.5. Receipt of Proposals

Proposals are not opened publicly. A register of proposals shall be prepared which shall include the name of each offeror and a description sufficient to identify the supply, service, or construction item(s) offered. After award, all proposals shall be open to public inspection except to the extent the offeror designates trade secrets or other proprietary data to be confidential per CORA criteria.

## 3.5.6. Evaluation of Proposals

The Request for Proposal shall outline evaluation factors including price in accordance with Request for Proposal process #09327 (For internal purposes). Numerical rating systems may be used for evaluation, but the specific weighting criteria shall not be divulged to the offerors before the proposals are received. It is also important to identify in the Request for Proposal if formal interviews are contemplated, and how it may affect the evaluation process. Once any offeror is determined to no longer be in the Competitive Range, formal notice shall be provided in accordance with section 3.0.10 (Notice Required Under Solicitations).

## 3.5.7. Proposal Discussions (or interviews) with Individual Offerors

Discussions (or interviews) are held to promote understanding of Utilities' requirements and the offeror's proposal. Offerors deemed to be in the Competitive Range shall be accorded fair and equal treatment with respect to any opportunity for discussion (or interviews) and revisions of proposals and prior to award and for the purpose of obtaining best and final offers. Auction techniques or disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be captured in writing by the offeror.

## 3.5.8. Mistakes in Proposals

Since proposals are considered to be competitive negotiations there is more leeway allowed for correction of mistakes by an offeror. When it appears from a review of the proposal during evaluation and before award that a mistake has been made, the offeror may be asked to clarify their proposal in lieu of withdrawal.

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## 3.5.9. Award of Contract

Award shall be made to the responsible offeror whose proposal is determined to be most advantageous to Utilities, and in the best interest of Utilities, based on the documented evaluation of the RFP. The contract file shall contain the Recommendation of Award (ROA) that describes the evaluation process and the basis on which the award will be made. After the ROA has been approved by the internal client's management (based on signature authority in [10041](#)) and PCS management, the award may be offered. Once a decision has been made to proceed with an award (with or without negotiations) to one or more suppliers, notices shall be issued in accordance with section 3.0.10 (Notice Required Under Solicitations). Timing of contract execution shall adhere to section 3.0.12 (Protest Waiting Period Prior to Contract Execution).

## 3.5.10. Debriefing Unsuccessful Offerors

Debriefings are primarily held for the purpose of providing lessons learned and as a type of feedback tool to improve competition and provide an objective process. If requested, within thirty (30) days after execution of the contract an unsuccessful offeror may, upon request, be debriefed and furnished the basis for the selection and award of the contract. Debriefings can include the following information:

- a) Copies of the ranking matrix showing the strengths and weaknesses of their proposal as evaluated by the committee.
- b) Overall review of the winning contractor response.
- c) The overall ranking of all offerors.
- d) A verbal summary of the rationale for award.
- e) Answer relevant questions about the process the offeror may have.
- f) PCS can ask the unsuccessful offeror if they have any suggestions for our processes (i.e. RMEPS, solicitation process, evaluation).

Debriefings should NOT provide point by point comparisons of the debriefed offeror's proposal with those of other offerors, and shall not reveal any items listed in other offerors proposals that may be marked confidential or proprietary.

Requests for additional information beyond the above (a through f) may require Manager approval or formal CORA request.

## 4.0 PROTEST

Any bidder/offeror to a solicitation whose direct economic interest would be directly affected by the award of a contract or by the award to another bidder/offeror may protest in writing to the PCS Manager. A protest can either be filed based on the solicitation process or for the award process. For a protest based on alleged improprieties during the solicitation process, the protest shall be received by the PCS 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 PCS 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.

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

## 4.1. Subject of Protest

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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 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.

## 4.1.1. Form and Content of Protest

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.

Protests shall include, as a minimum, the following:

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

## 4.1.2. Decision

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

## 4.1.3. Appeal of Decision

In the event that such written response from the PCS Manager, or his designee, sustains the prior position of Utilities, the protestor may file an appeal to the General Manager, Financial Services, within three (3) Business Days after receipt of the written ruling by the PCS Manager or designee. Both response and appeal procedure time limits may be extended upon mutual agreement.

The General Manager, Financial Services, may elect to:

- a) Render an immediate decision in the matter, especially matters that are specifically addressed in these policies; or
- b) Request additional documentation or meetings with parties involved prior to rendering a decision; or
- c) 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
- d) 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, Financial Services 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.

## 4.1.4. 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

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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, Financial Services Department.

## 5.0 SUSPENSION OR DEBARMENT

### 5.0.1. Authority of PCS Manager

The PCS Manager shall have the authority to suspend or debar any suppliers for reasons including but not limited to the following:

- a) Defaulted on awarded contract. (Debarment)
- b) Failed to enter into a contract resulting in a demand or collection of a Bid Bond by Utilities. (Suspension)
- c) Repeatedly performed unsatisfactory work for the City of Colorado Springs or Utilities. (Suspension or Debarment)
- d) Violated contract terms and conditions without cure or remedy. (Suspension or Debarment depending on severity)
- e) Have pending litigation against the Utilities or the City of Colorado Springs. (May only be suspended pending results of litigation)
- f) Defaulted on the payment of any taxes, license fees, or other moneys due Utilities or the City of Colorado Springs. (Suspension)
- g) Convicted of fraud or criminal acts while performing as a supplier on any Utilities or the City of Colorado Springs contracts, including those not associated or written by Utilities, the City of Colorado Springs or any other governmental entity. (Debarment)
- h) If documentation substantiates a consistent past performance record of habitual or continual unsatisfactory performance, safety or environmental violations, repeated violations of contract provisions, or delinquent performance by a contractor. (Suspension)
- i) Contractors that have found to have violated the City's Code of Ethics by offering gifts or gratuities to a direct official will be subject to debarment. (Debarment)
- j) On capital improvements projects (construction), contractor has been found to fail to complete all punch list items within a timely manner including final closeout requirements of the contract. (Suspension.)
- k) If observed doing work pursuant to the contract in a manner that is blatantly unsafe and potentially risking serious injury or death. (Suspension or Debarment depending on severity)
- l) If 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 CSU or the City. (Suspension)
- m) Debarment by another Governmental entity

### 5.0.2. Debarment Period

The PCS Manager may debar suppliers from bidding on, or performing as a subcontractor on any Utilities contracts for a minimum period of one (1) year up to a maximum of three (3) years. It is the supplier's sole responsibility to request reinstatement.

### 5.0.3. Suspension Period

Suppliers may be suspended from doing any business with Utilities, for a minimum period of 3 months, up to a maximum period of 12 months. However, if a supplier under suspension fails to correct or cure the deficiency in which they have been suspended during the suspension period, the PCS Manager may convert the suspension into a debarment.

### 5.0.4. Determination & Decision

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Prior to formally suspending or debaring any supplier, the PCS Manager shall review and investigate all reasons and preponderance of evidence supporting such a decision and shall inform the suspended or debarred supplier in writing of such decision.

## 6.0 REFERENCE DOCUMENTS

| Source/Standard | Document #            | Title/Description  | QBD Status |
|-----------------|-----------------------|--|------------|
| QBD             | <a href="#">00070</a> | Open Records Act Compliance                                      | A          |
| QBD             | <a href="#">00076</a> | Contract Standards Policy (will replace UAR 1.20 Attachment "B") | A          |
| QBD             | <a href="#">00242</a> | Personnel Policies Manual  | A          |
| QBD             | <a href="#">09327</a> | Request for Proposal   | A          |
| QBD             | <a href="#">09339</a> | Utilities Standard Bonding & Insurance Requirements              | A          |
| QBD             | <a href="#">09921</a> | Sole Source Procurement  | A          |
| QBD             | <a href="#">09922</a> | Strategic Sourcing   | A          |
| QBD             | <a href="#">09994</a> | PO Creation  | A          |
| QBD             | <a href="#">10041</a> | Approval of Acquisitions   | A          |
| QBD             | <a href="#">10063</a> | Purchase Requisition Creation and Approval                       | A          |
| QBD             | <a href="#">10090</a> | Request for Quotation  | A          |
| QBD             | <a href="#">10653</a> | Specifications & Statements of Work                              | A          |
| QBD             | <a href="#">10697</a> | Blanket P.O. Creation & Maintenance                              | A          |
| QBD             | <a href="#">10874</a> | Direct Pay   | A          |
| QBD             | <a href="#">10902</a> | Invitation for Bid   | A          |
| QBD             | <a href="#">10916</a> | Procurement Change Management                                    | A          |
| QBD             | <a href="#">10935</a> | Socioeconomic Plans & Reporting                                  | A          |
| QBD             | <a href="#">11298</a> | Unauthorized Purchase Approval Request                           | A          |
| QBD             | <a href="#">12319</a> | Colorado Springs Utilities Business Code of Ethics Policy        | A          |
| QBD             | <a href="#">13071</a> | P-Card Policy and Procedure Manual                               | A          |

## 7.0 ATTACHMENTS

| Attachment Number | Title                         |
|-------------------|-------------------------------|
| C01-00075         | Procurement Process Flowchart |



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| Attachment Number | Title              |
|-------------------|--------------------|
| C02-00075         | PCS – Client Roles |

APPROVED