

BY AUTHORITY

ORDINANCE NO. **3945**

COUNCILLOR'S BILL NO. **32**

SERIES OF 2018

INTRODUCED BY COUNCILLORS
DeMott, Bird

**A BILL
FOR AN ORDINANCE AMENDING CHAPTERS 1 AND 2 OF TITLE XV OF THE
WESTMINSTER MUNICIPAL CODE CONCERNING PURCHASING PROCEDURES**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 15-1-1, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~striketrough~~:

- (A) This Chapter shall apply to every purchase agreement to which the City is a party.
- (B) The following words, terms, and phrases, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Authorized expenditure shall mean the amount of spending approved by City Council action for a specific purchase agreement, including any authorized contingency amount, which may differ from the budgeted amount and from the purchase agreement amount. For amounts that do not exceed ~~\$75,000.00~~ \$250,000.00, "authorized expenditure" means the amount of spending approved by the City Manager, including any authorized contingency amount, which may differ from the budgeted amount and from the purchase agreement amount.

Bids shall mean either bids or proposals submitted in response to a written invitation for bids or a written request for proposals.

City Manager shall mean the City Manager and the City Manager's designee.

Employee services shall mean all compensation and benefits, including insurance, provided by the City as an employer to its employees.

Professional services shall mean architectural, engineering, legal, consulting or other services that involve primarily the furnishing of skilled labor, time, or expertise.

Purchase agreement shall mean purchase orders and contracts for the purchase of construction, professional services, or other services, or for the purchase of real estate.

Purchase order shall mean the City's standard computerized form used to purchase services, materials, equipment, supplies, goods, or commodities, and includes the City's standard purchase order terms and conditions, as well as transactions made using a City-issued purchase card.

Section 2. Section 15-1-2, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~striketrough~~:

- (A) Every purchase agreement shall be evidenced by a written contract or by a purchase order.
- (B) A purchase agreement for materials, equipment, supplies, or professional services to be provided on an ongoing basis shall contain a maximum amount payable under the agreement or a termination date for the agreement.
- (C) A purchase agreement in an amount that does not exceed the City Manager's purchasing authority, hereby set at ~~\$75,000.00~~ \$250,000.00 or less per fiscal year, may be approved by the City Manager without separate council action.
- (D) Before any purchase agreement in an amount that exceeds ~~\$75,000.00~~ \$250,000.00 is executed, the City Manager shall certify that an appropriation has been made or that other sufficient funds, such as bond proceeds, special assessments, or matching funds, will be available to pay the amounts required in the purchase agreement. This subsection shall not apply to an individual agreement of employment with an employee or officer of the City.
- (E) No purchase agreement may be entered into with any person, firm, ~~or corporation,~~ or other entity in default to the City.
- (F) *City Council Review:* Every purchase agreement in an amount that exceeds ~~\$75,000.00~~ \$250,000.00 in one fiscal year, regardless of form, shall be presented to City Council so that council may approve the authorized expenditure. However, the purchase of utilities, postage, vehicles, heavy equipment, trailers, or employee services need not be approved by express action, but shall be considered an authorized expenditure if the budget appropriation has been approved. The purchase of water rights is subject to the requirements in Section 15-1-12, W.M.C.
- (G) *City Attorney Review:* Every purchase agreement shall be approved as to legal form by the City Attorney before it is executed. This subsection shall not apply to an individual agreement of employment with an employee or officer of the City.

Section 3. Section 15-1-4, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~strike through~~:

- (A) Formal ~~bidding procedures~~ bids shall be ~~followed~~ required when the amount of a purchase agreement exceeds \$50,000.00, unless:

(1) City Council determines by unanimous resolution of those present at the meeting that the public interest will be best served by joint purchase with or from another unit of government; or

(2) City Council determines, upon recommendation of the City Manager that the public interest will be best served by negotiated contract with a single vendor or contractor.

(3) The expenditure is the purchase of utilities, postage, or employee services; the expenditure is part of an intergovernmental agreement; or the expenditure is dues for membership in a professional organization for which there is no competitive alternative.

(B) When the amount of the purchase agreement does not exceed \$50,000.00, formal bidding is not required and the procedures in Section 15-1-6, W.M.C., for comparative price quotes apply.

(C) Formal bids must be obtained every three years, except with permission from the City Manager.

(D) In case of emergency affecting the public peace, health, or safety, City Council may waive all requirements for formal bidding. In such cases, the City Manager may direct the appropriate department head to procure emergency needs by informal, open-market procedures, at no more than commercial prices, as expeditiously as possible. The City Manager shall present a full report of the circumstances necessitating the emergency action at the next City Council meeting.

Section 4. Section 15-1-5, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~strikethrough~~:

(A) When formal bidding is required pursuant to Section 15-1-4, W.M.C., except as defined in subsections (B) and (C) of this section, the formal bidding process shall be as follows:

~~(1) (A) When formal bidding is required pursuant to Section 15-1-4, W.M.C., unless~~ Unless prequalification of bidders applies pursuant to Section 15-1-10, W.M.C., at least five days prior to the deadline for receipt of bids, a request or invitation for sealed bids shall be published at least once in an area newspaper selected for maximum impact on prospective bidders, or shall be sent to three or more potential bidders, or shall be posted via electronic solicitation.

~~(2) (B)~~ A bid bond or deposit shall be required when deemed necessary by the City Manager. If a bid is not accepted or a bidder is unsuccessful, the bid bond or deposit shall be refunded. When a bid is awarded, but the successful bidder fails to enter into a purchase agreement within ten days of the award, the bid bond or deposit ~~shall~~ may be forfeited, at the sole discretion of the City Manager.

~~(3) (C)~~ Sealed bids shall be opened in public at the time and place stated in the public notice, unless all bidders have been notified of a change in such time or place by written addendum. A tabulation of all bids received shall be available for public inspection. Responses received in response to a Request for Interest, Request for Qualifications, or Request for Proposals are exempt from the requirements of this paragraph. ~~Bids for professional services are exempt from this requirement.~~

~~(4) (D)~~ After the bids have been reviewed, if the purchase will exceed the City Manager's purchasing authority, the City Manager shall submit a report to City Council that contains an analysis of the bids, a recommendation for an award, and the reasons for the recommendation. The purchase agreement shall be awarded to the lowest responsible bidder meeting the bid specifications, unless City Council determines that, after reviewing the City Manager's report, the public interest would be better served by accepting another bid. If the purchase will not exceed the City Manager's purchasing authority, the City Manager shall make the required analysis and decision.

~~(5) (E)~~ In determining whether the public interest would be better served by accepting a bid other than the lowest bid, the following factors shall be considered:

- (a) ~~(1)~~ The bidder's skill, ability, and capacity to perform the services or to furnish the materials, equipment, or supplies required;
- (b) ~~(2)~~ Whether the bidder can perform the services or furnish the materials, equipment, or supplies promptly, or within the time period specified, without delay or interference;
- (c) ~~(3)~~ The bidder's character, integrity, reputation, judgment, experience, and efficiency;

- (d) ~~(4)~~ The quality of the bidder's performance of previous purchase agreements;
- (e) ~~(5)~~ The bidder's previous and current compliance with statutes, ordinances, and rules relating to the purchase;
- (f) ~~(6)~~ The sufficiency of the bidder's financial resources necessary for the performance of the purchase agreement;
- (g) ~~(7)~~ The bidder's ability to provide future maintenance or service; and
- (h) ~~(8)~~ The number and nature of any conditions attached to the bid.

~~(6)~~ ~~(F)~~ If the purchase will exceed the City Manager's purchasing authority, upon recommendation of the City Manager, the City Council may reject all bids when it determines that such action is in the public interest. If the purchase will not exceed the City Manager's purchasing authority, the City Manager may reject all bids upon making the same determination.

(B) The City Manager shall have authority to determine whether other federal, state, and local government jurisdictions' bidding processes may satisfy the requirement for formal bids under this Title. The City Manager shall keep a list of all approved federal, state, and local government jurisdictions' bidding processes.

(C) The City Manager shall have authority to determine whether cooperative purchasing agreement organizations' bidding processes satisfy the requirement for formal bids under this Title. The City Manager shall keep a list of all approved cooperative purchasing agreement organizations' bidding processes.

Section 5. Section 15-1-6, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~strike through~~:

(A) When the amount of a purchase agreement exceeds a threshold set by the City Manager but does not exceed \$50,000.00, comparative price quotes ~~given by telephone, in person, or in writing~~ from at least three vendors or contractors will be required, unless:

- (1) The City Manager determines that the public interest would be best served by negotiated contract with a single vendor or contractor or by joint purchase with or from another unit of government; or
- (2) The City Manager determines that the public interest would be best served by obtaining the goods or services through the formal bidding process.

(B) Comparative price quotes must be obtained every three years, except with permission from the City Manager.

Section 6. Section 15-1-7, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~strike through~~:

(A) The City Manager shall have authority to approve an amendment to a purchase agreement when the original purchase agreement combined with the amendment does not exceed ~~\$75,000.00~~ \$250,000.00 per fiscal year or when the amendment does not cause the purchase agreement to exceed City Council's

authorized expenditure for the purchase agreement. Even when no council approval is required, change orders to construction purchase agreements must be reported to City Council.

(B) All other amendments to a purchase agreement previously approved by City Council shall be approved or ratified by City Council.

Section 7. Section 15-1-8, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~striketrough~~:

~~No single purchase transaction shall be subdivided for the purpose of circumventing the dollar value limitations of this Chapter.~~

City Charter prohibits the subdivision of contracts and purchase orders for the purpose of circumventing the dollar value limitations established by City Council. Given the City's decentralized purchasing system, there shall be a presumption that there is no intention to circumvent the dollar value limitations except when the contracts or purchase orders involve the same department, the same fund(s), the same capital project, the same vendor, and the same, or substantially similar, services or products; or as otherwise determined by the Finance Director based on the totality of the circumstances.

Section 8. Section 15-1-12, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~striketrough~~:

Notwithstanding any other requirements of this Chapter, the City Manager is authorized to acquire water rights, through direct purchase or otherwise, without specific council pre-authorization prior to such purchase, provided that the ~~e~~City ~~m~~Manager:

- (A) Ascertains the value and benefit of such water rights by means of an appropriate engineering study, if necessary; and
- (B) Determines that an expedited acquisition of such rights is necessary to preserve the health, safety and welfare of the citizens of Westminster; and
- (C) Finds that adequate funds have previously been appropriated for such acquisition; and
- (D) Provides a written report to the City Council advising the council of any such purchase within 20 days of the acquisition.

Section 9. Section 15-2-1, W.M.C., is hereby AMENDED as follows with new language appearing in underline and deleted language appearing in ~~striketrough~~:

(A) Personalty: Obsolete, surplus, or other City personal property may be traded as part of the purchase of new property, sold to the public through formal bidding procedures or public auction, donated or discarded as follows:

(1) The trade, sale, donation, or discarding of City personal property with an estimated value of \$15,000.00 or more per item shall be approved by City Council.

(2) The trade or sale of City personal property with an estimated value less than \$15,000.00 per item shall be approved by the City Manager.

(3) The City Manager may authorize the donation or discarding of City personal property with an estimated value less than \$15,000.00 per item if such property cannot be disposed of through trade or sale, or if such property is deemed to be of such nominal value that trade or sale is impractical.

(4) When City personal property is to be sold through formal bidding procedures or public auction, a notice inviting bids or a notice of public auction shall be published at least once in an area newspaper selected for maximum impact on prospective bidders or shall be sent to three or more potential bidders at least five days prior to the public auction or the deadline for receipt of bids. The notice shall include a general description of the property to be sold.

(B) Realty: Surplus City real property may be traded as part of the purchase of new real property, donated to another public or quasi-public entity or non-profit corporation, or sold in any open market transaction, or disposed of in any other manner approved by City Council as follows:

(1) The trade, sale, or donation of City real property with an estimated value of \$15,000.00 or more per parcel shall be approved by City Council.

(2) The trade, sale, or donation of City real property with an estimated value less than \$15,000.00 per parcel may be approved by the City Manager.

(3) When City real property is to be sold in an open market transaction, a notice inviting bids shall be published at least once in an area newspaper selected for maximum impact on prospective bidders. The notice shall include a general description of the property to be sold. Alternatively, the City may list the property with a licensed real estate broker selected by the City Manager.

(4) The term "estimated value," as used in this subsection, shall mean a good faith determination by any individual knowledgeable in the value of realty comparable to the City realty being evaluated. The City Manager is authorized to determine if a formal "member appraisal institute" (MAI) appraisal is required to establish the estimated value.

(5) Nothing in this subsection is intended to apply to the vacation of city roadways or easements, as that process is set forth in Section 11-6-9, W.M.C.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 13th day of August, 2018.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 27th day of August, 2018.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office