

ORDINANCE No.25

(Series of 2023)

AN ORDINANCE OF THE ASPEN CITY COUNCIL ADOPTING CODE AMENDMENTS TO THE PROCUREMENT CODE, TITLE 4, SECTIONS 4.04.050 THROUGH 4.04.120.

WHEREAS, Title 4 of the Aspen Municipal Code sets forth authority, rules and regulations that govern the procurement, management, control and disposal of any and all supplies, services and construction to be procured by the City; and,

WHEREAS, the City's current thresholds and approval for purchases were established in 2018; and

WHEREAS, the Aspen City Council met in work session on November 6 2023; and provided general direction to make changes to the current thresholds to recognize the effect of inflation on the price of goods and services; and

WHEREAS, the City Council agreed that the threshold amounts shall be reviewed every five years relative to the change in Consumer Price Index during the same timeframe and presented to City Council for possible revision; and,

WHEREAS, the City Procurement Code ensures:

- To maximize the purchasing value of public funds, to codify and standardize the City's purchasing rules and regulations; and,
- To provide safeguards for maintaining a procurement system of quality and integrity; and,
- To increase public confidence in the procedures followed in public procurement; and,
- To foster effective, broad-based competition within the free enterprise system.

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for streamlining the procurement process for greater efficiency and savings; and

WHEREAS, City Council has determined that the health, safety, and general welfare of the citizens, residents, and visitors of the City of Aspen will be served by this ordinance.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN COLORADO THAT:

Section 1:

Sections 4.04.050 Definitions. Definitions of Change order, Procurement, and Procurement officer shall be deleted and replaced with the following:

Change order means a written order signed by a procurement officer and other organization staff based on dollar value thresholds described further in this document, modifying an existing contract to authorize changes within the scope of work, additions or deletions to the work, or an adjustment to any other provision of the contract. A change order to an existing contract shall not be deemed a separate procurement.

Procurement means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. Procurement shall not include the buying, purchasing, renting or leasing of real property or change orders to existing contract.

Procurement officer is an individual appointed by the Director of Finance and whose duties include the duties set forth herein, including approving source selection and contract formation for the procurement of any supply, service, or construction on behalf of the City.

Section 2:

Sec. 4.04.070 Specifications. Subsection (b) Preparation, shall be deleted and replaced with the following:

- (b) *Preparation.* Before appropriate approvals are obtained in accordance with Section 4.08.040 above, for a procurement in excess of thirty-five thousand dollars (\$35,000), the Procurement Officer shall cause to be prepared written specifications detailing the City's requirements for the supplies, services or construction.

Section 3:

Sec. 4.08.020. Duties of department heads and procurement officers. Subparagraphs (b) (2) and (9) shall be deleted and replaced with the following:

- (2) Endeavor to obtain as full and open competition as possible on all purchases and sales;
- (9) Make a special effort to solicit and encourage sustainable, local, minority and women-owned businesses and suppliers to participate in the City's procurement process.

Section 4:

Sec. 4.08.040. Approvals. shall be deleted in its entirety and replaced with the following:

No procurement shall be made without the prior written approvals required to be made in accordance with this Section. The following shall be the approval limits in effect in 2018 through 2023. After 2023, these limits will be adjusted annually, corresponding with changes in the CPI:

- (a) *City Council.* All procurements subject to the terms of this Chapter in excess of one hundred thousand dollars (\$100,000) shall be approved by City Council by motion or resolution.
- (b) *City Manager.* All procurements subject to the terms of this Chapter in excess of thirty-five thousand dollars (\$35,000) shall be approved by the City Manager.
- (c) *Department heads.* Department heads shall have the authority to approve procurements in an amount which does not exceed thirty-five thousand dollars (\$35,000), without the prior approval of the City Manager or City Council; provided, however that sufficient funds are available in the department head's department budget for the item(s) purchased. Material purchasing will require minimum 2 quotes and Service purchasing will require 3 quotes.

All dollar approval amounts listed above shall be reviewed every five years and assessed relative to the percentage change in the CPI, as measured by the national CPI for all Urban consumers (CPI-U) and presented to Council for consideration of revision.

No procurement shall be divided so as to avoid the approvals that would otherwise be required by the above.

Section 5:

Sec. 4.08.050. Formal contract procedure shall be deleted in its entirety and replaced with the following:

Except as otherwise provided herein, all procurement in excess of ten thousand dollars (\$10,000), or whenever a department head or City Manager requests the same, shall be purchased by a formal written contract approved as to the form by the City Attorney.

Section 6:

Sec. 4.12.010. Methods of source selection; affirmative action goals., Subsection (b) shall be deleted and replaced with the following:

- (b) The following preferences shall be considered in source selection for all City contracts as part of the City's affirmative action goals relating to sustainable, local, women- and minority-owned businesses:
 - (1) Preference shall be given in the procurement of supplies and services produced, manufactured, sold, distributed, offered or grown in the City, if such preference is not

for supplies or services of inferior quality to those offered by competitors outside of the City; and, in the procurement of services and construction contracts to bidders with offices or a place of business located within the City if all other evaluation criteria set forth herein or in the invitation for bids or request for proposals are equal to bidders with offices located outside of the City. Secondary preference may be given by the City in procurement of supplies and services produced, manufactured, sold, distributed or grown in the Roaring Fork River valley if such preference is not for supplies or services of inferior quality to those offered by competitors outside of said valley; and, in the procurement of services and construction contracts to bidders located in the Roaring Fork River valley if all other evaluation criteria set forth herein, or in the invitation for bids or requests for proposals, are equal to bidders located outside of said valley.

Any procurement where preference given pursuant to this Subsection 4.12.010 (b) may be in an amount not to exceed five percent (5%) of the total price.

- (2) Preference shall be given in the procurement of supplies, services and construction to minority- and women-owned businesses provided all other evaluation criteria set forth herein, or in the Invitation for bids or Request for Proposals, are equal to other bids or proposals received.
- (3) Preference may be given in the procurement of supplies, services and construction to sustainable and environmentally sensitive businesses provided all other evaluation criteria set forth herein, or in the Invitation for bids or Request for Proposals, are equal to other bids or proposals received.

Section 7:

Sec. 4.12.020. Competitive sealed biddings. Subsection (d), shall be deleted and replaced with the following:

- (d) *Bid opening.* Bids are visible solely on previously indicated time and date of closing on bid platform. The amount of each bid and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

In addition, the following Subparagraph (f) (10). shall be added:

- (10) Diversity and Inclusion, The City shall acquire its goods and services in a manner that weighs fiscal responsibility, social equity, women and minority business opportunity, and environmental stewardship.

Section 8:

Sec. 4.12.030 Competitive sealed proposals., Subsection (a) shall be deleted and replaced with the following:

- (a) *Conditions for use.* Procurement for the following are eligible for award by competitive sealed proposals:

When the Procurement Officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by competitive sealed proposals. The Finance Department may provide by regulation that it is either not practicable or not advantageous to the City to procure specified types of supplies, services or construction by competitive sealed bidding.

Section 9:

Sec. 4.12.040. Small purchases., shall be deleted and replaced with the following:

- (a) *Small purchases.* Any procurement not exceeding thirty -five thousand dollars (\$35,000.00) may be made by the Department Heads by negotiation without formal competition for the purchase of supplies, services or construction; subject, however, to the approval process required by Section 4.08.040.
- (b) *Negotiated procurement.* Negotiated procurement shall be made on the open market, but whenever practical or advantageous, the Department Head shall obtain minimum (2) quotes for materials and (3) for services. Negotiated procurement shall be awarded to the person supplying the lowest responsible bid or offer.
- (c) *Division of procurement.* No contract shall be divided so as to constitute a small purchase under this Section.

Section 10:

Sec. 4.12.050 Miscellaneous exemptions. Subparagraph (a)(9), shall be deleted and replaced with the following:

- (9) In any case where the City has, within the preceding two (2) years, pursuant to an invitation to bid, awarded a contract for the procurement of any supply, service or construction on a unit price basis, the Procurement Officer may negotiate with the successful bidder for the purchase of additional quantities of the supply, units of service or construction. No such procurement shall be made at a price higher than the previous award.

In addition, the following new subparagraph (a)(10) shall be added:

- (10) Artist contracts (specifically related to performances at city venues) can be omitted from the Council approval process up to \$150,000 per contract.

Subsection (b) shall be deleted and replaced with the following:

- (b) The Procurement Officer shall submit each determination made under this Section to the City Manager and the City Attorney for prior approval.

Section 11:

Sec. 4.12.060. Emergency procurement. Subsection (c), shall be deleted and replaced with the following:

- (c) A full written report of the circumstances of all emergency purchases over one hundred thousand dollars (\$100,000) shall be made by the City Manager to the City Council. The report shall be received by the City Council at a regular meeting and such report shall be open to public inspection.

Section 12:

Sec. 4.12.090 Responsibility of bidders and offerors. Subsection (b) shall be deleted and replaced with the following:

- (b) Pursuant to the Colorado Open Records Act, C.R.S. Section 24-72-200.1 (CORA), any and all of the documents that are submitted to the City of Aspen may be deemed public records subject to examination and inspection by third parties. The City of Aspen reserves the right, at its sole discretion, to release for inspection or copying any document, plan, specification, proposal or other writing submitted pursuant to this request.

Section 13:

Sec. 4.12.120 Contract performance and payment bonds. Subparagraph (b)(1) and Subparagraph (b)(5) shall be deleted and replaced with the following:

- (1) The Colorado State Legislature has determined that for construction contracts in excess of fifty thousand dollars (\$50,000.00) and all contracts in excess of one hundred fifty thousand dollars (\$150,000.00), it is prudent to obtain performance and payment bonds in amounts equal to fifty percent (50%) of the price specified in the contract. (See C.R.S. §§ 24-105-202 and 38-26-106)
- (5) Certain construction projects may be required by state or federal law to be bonded in a particular manner or in a certain amount. (See C.R.S. § 31-25-516)

Section 14:

Sec. 4.12.170 Contract modifications and change orders; fiscal responsibility., shall be deleted in its entirety and replaced with the following:

Every contract modification, change order or contract price adjustment under a contract with the City shall be subject to prior written certification by the Finance Department Procurement Officer as to the effect of the contract modification, change order or adjustment in contract price on the total project budget or the total contract budget. In the event that the

certification discloses a resulting increase in the total project budget and/or the total contract budget, the Procurement Officer shall not execute or make such contract modification, change order or adjustment in contract price unless sufficient funds are available therefor or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order or adjustment in contract price under consideration.

The aggregate sum of original contract and (each) change order follow the same approval as indicated in Section 4.08.040.

For change orders on previously approved contracts that have not exceeded a threshold of \$100,000, requiring a resolution before City Council, City Manager has the authority to approve such change orders provided that the aggregate value does not exceed \$100,000.

SECTION 15 :

Any Scrivener's errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

Section 16: Effect Upon Existing Litigation

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 17: Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 18: Effective Date.

In accordance with Section 4.9 of the City of Aspen Home Rule Charter, this ordinance shall become effective thirty (30) days following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 14th day of November 2023.

Attest:

Nicole Henning, City Clerk:



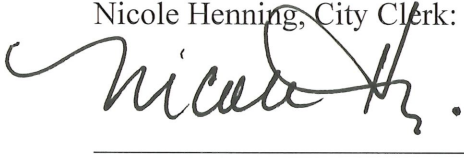
Torre, Mayor:



FINALLY, adopted, passed and approved this 28th day of November 2023

Attest:

Nicole Henning, City Clerk:



Torre, Mayor:



Approved as to form:



City Attorney's Office