BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. Chapter 82, Purchasing and Contracts, is hereby repealed and reenacted to read as follows:

Chapter 82

PURCHASING AND CONTRACTS

ARTICLE I.

IN GENERAL

Sec. 82-1. Short title.

This chapter shall be known and may be cited as the “Arvada Purchasing and Contracts Ordinance.”

Sec. 82-2. Purposes.

This Chapter shall be construed and applied to promote the following purposes and policies:

(a) To simplify, clarify, and modernize the law governing procurement by the City of Arvada;

(b) To provide for increased transparency and public confidence in the procedures followed in public procurement;

(c) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the City of Arvada;
(d) To facilitate city procurement activities and to maximize the purchasing value of public funds of the City of Arvada;

(e) To promote effective broad-based competition; and

(f) To establish safeguards for the maintenance of a procurement system of quality and integrity.

Sec. 82-3. Application and procurement procedures.

(a) Application. Except as set forth in subsection (b), this chapter shall apply to the procurement of goods and services by the city and to every expenditure of public funds for purchasing irrespective of the source of funds, unless the procurement is listed as an exclusion.

(b) Exceptions.

(1) Real property transactions;
(2) Annexation agreements;
(3) Intergovernmental agreements;
(4) Contracts with outside legal counsel and/or investigators;
(5) Employment agreements;
(6) Any contract for housing rehabilitation;
(7) Continuing education programs;
(8) Legal research tools, including, but not limited to, books and software;
(9) Professional memberships, licenses, and subscriptions;
(10) Advertising services, whether the advertising services are in physical or digital form;
(11) Purchases of art;
(12) Art exhibit agreements;
(13) Food products purchased for resale at banquet facilities and golf course facilities, and merchandise purchased for resale at golf course facilities; and

(14) Emergency contracts.

(c) City Attorney review of contract exceptions. Notwithstanding the above, real property transactions, annexation agreements, intergovernmental agreements, and art exhibits must be approved as to form by the City Attorney’s Office. If an agreement listed under subsection (b) utilizes a written contract template, the template must be approved as to form by the City Attorney’s Office. To the extent that it applies, insurance shall be obtained on all excepted contracts. All excepted contracts shall be negotiated in the best interests of the city.

(d) Federal funds. When the procurement involves expenditure of federal funds, the procurement shall be conducted in accordance with any mandatory applicable federal laws or regulations.

(e) Grants, gifts bequests. Nothing in this chapter shall prevent compliance with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with section 13.6 of the Charter.

(f) No third party rights. This chapter does not create or confer any right or entitlement upon any person to bid on, or receive an award of any city contract.

(g) Effect of administrative rules directed to this chapter: All persons shall comply with the administrative rules or regulations (as amended from time to time) governing procedures for procurement of and contracting for goods and services under this chapter.

Sec. 82-4. Authorization.

(a) Authorized individuals and positions. The following individuals, and their duly appointed designees as provided for in this section, are authorized to procure goods and services and perform other duties described in this chapter as the appointing authority for their respective city department:

(1) city manager;

(2) city attorney;

(3) municipal judge;
(4) deputy city manager; 
(5) department heads; 
(6) purchasing division; and 
(7) any city employee designated in writing by the city manager to procure goods and services.

(b) Temporary delegation of authorization. The individuals identified above may temporarily delegate those responsibilities and duties to another employee in the chain of command.

(1) Delegation of authority must be in writing. A writing includes email or other electronic communication capable of being produced in a written format. A writing does not include instant messaging, text messaging or phone messages. Written notification by an authorized individual that another employee is or will be designated as acting in the authorized individual’s capacity during the authorized individual’s absence will suffice as the temporary delegation of authorization required under this subsection.

Sec. 82-5. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative rules, (formally, "Administrative Rules Governing City of Arvada Purchasing and Contracts") for purposes of this chapter, means administrative rules or regulations governing procedures for procurement of and contracting for goods and services under this chapter.

Best value procurement means the application of methods, including but not limited to, total cost of ownership and performance based contracting to determine best value by weighing and balancing multiple factors, and requires the comparison of the benefits offered against life cycles, including the resources necessary to conduct the procurement, purchase price, fiscal tracking and processing costs, reliability, vendor responsiveness, risk, product/service quality, storage, maintenance, operational costs, integration, training, and disposal.

Bid means an offer of a price for goods, services, or equipment.
Change order means a written order signed and issued by the city, directing the contractor or vendor to make modifications authorized by the contract or negotiated with the contractor or vendor.

Confidential information means any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.

Construction means the process of building, improving, replacing or demolishing any structure or building, or other improvements of any kind to any real property. It does not include the routine operation and repair, or preventative maintenance of existing structures, buildings, or real property.

Construction bid means a bid process for the solicitation of capital improvement projects using a template approved by the City Attorney’s Office.

Contract means all types of city agreements, regardless of what they may be called (e.g., agreements, addenda, amendments, purchase orders, etc.), for the procurement or disposal of goods, services, or construction. It does not include field orders.

Documented quote means the manner of fiscal control where three valid quotes are documented and attached to a purchase order for the purchasing program’s review and storage. Documents quotes must be obtained using the city’s highest ethical standards, barring collusion or other unlawful practices.

Electronic communication means interactive communications that are transmitted electronically and capable of being produced in a written format. Electronic communication does not include instant messaging, text messaging, or phone messages.

Electronic signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Emergency contract means a contract necessitated by virtue of a threat to public health, welfare safety, or other good cause as determined by the city manager or employee delegated the authority by the city manager.

Employee, for purposes of this chapter, means an individual drawing a salary, wages, or other monetary compensation from the city, whether elected or not; any uncompensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city; or any uncompensated individual serving as an elected
Financial interest means:

(1) Any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than $500.00 per year, or its equivalent;

(2) Ownership of five percent or more of any property or business; or

(3) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

Fiscal controls means maintaining fiscal management practices to ensure that expenditures are authorized by and in accordance with amounts specified in the adopted budget, to reassure city council and citizens of responsible procurement and spending strategies and ensure all transactions are documented in an appropriate manner and in accordance with Colorado law.

Formal bid means a bid which has been submitted in a sealed envelope to prevent dissemination of its contents before the scheduled opening.

Formal proposal means an offer in a sealed envelope from a prospective provider where the city specifies the goals to be met and requests that the vendor apply its expertise in reaching these stated goals in the most effective method.

Goods means anything that has economic and physical utility, excluding real property.

Gratuity means any payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Immediate family, for purposes of this chapter, means an employee's spouse, child, parent, sibling, grandparent, grandchild (including natural, step, adopted, foster, or in-law relationships); and also includes any other relative, or person who the employee identifies as his/her significant other or domestic partner whose primary residence or place of primary abode is the same as the employee.

Insurance means adequate insurance coverage that meets all city requirements, as promulgated by the risk manager.

No cost purchase means the acquisition of a good or service following an
unsolicited offer, or an offer that did not arise from a documented solicitation process, from a provider that proposes the particular acquisition of goods or services for “free” or at “no charge.” Such offers usually contain additional terms and conditions that can stipulate future obligations for the city, financial or otherwise, that may not comply with this chapter, or any associated administrative rules.

**Person** means any business, individual, union, committee, club, other organization, or group of individuals.

**Procurement** means the purchasing, renting, leasing, or otherwise acquiring of any goods, 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.

**Professional services** means the furnishing of labor, time, or effort by a contractor with specialized knowledge, which may include intensive preparation or education and the furnishing of a report or written or oral advice and information.

**Public cooperative agreement** means a valid and current purchasing agreement negotiated by another public entity for use by all public agencies participating therein.

**Public entity** means the United States federal government, any state in the United States and any county, city, city and county, town or district, including any political subdivision thereof, or any instrumentality of a political subdivision thereof, or any association, whether incorporated or not, of the state, cities, city and county, towns or districts.

**Purchase order** means a form of contractual document, preprinted with terms pre-written or written on the document, which is used as a tool for a city department or division, receiving area or vendor. It may include a standard set of terms used by the city or vendor.

**Real property** means land and whatever is growing upon, erected upon, or affixed to land including water, mineral, and subsurface rights and excluding personal property.

**Responsible bidder** or **offeror** means a person or entity who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, insurance and credit which will assure good faith performance.

**Responsive bidder** means a person or entity who has submitted a bid or offer which
conforms in all material respects to the requirements set forth in the solicitation.

*Services* means the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports or items which are merely incidental to the required performance.

*Solicitation or competitive solicitation* means city invitations or requests for bids, requests for proposals, requests for qualifications, requests for quotation, and other accepted methods to solicit information and costs for procurement of goods, services or construction for the city and includes all documents, whether attached or incorporated by reference, utilized for the solicitation.

*Specification* means any description of the physical or functional characteristics or of the nature of a good, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

*Successful solicitation* means the lowest responsive, responsible, and qualified bidder as determined by the city. Factors to be included may include the quality, availability, delivery of the product, qualifications of the contractor, vendor or consultant, and any special requirements relevant to the solicitation as determined by the city.

**Sec. 82-6. Public access to procurement information.**

Subject to any limitations provided for by federal or state law concerning open access and right to privacy, all procurement information is hereby declared to be a public record and open for inspection pursuant to C.R.S. § 24-72-201 et seq., as may be amended from time to time. The custodian of records may deny inspection of responses to solicitations until such time as the contract is awarded or the city determines that it will not be awarding a contract.

**Sec. 82-7. Authority and duties of the purchasing manager.**

(a) In accordance with this chapter, and subject to the supervision of the finance director, the purchasing manager shall:

1. Advise, assist, and collaborate with appointing authorities on the administrative procedures and rules for quality and fiscal control of the procurement process;

2. Upon consultation with the city attorney and with the approval of the city manager, debar or suspend firms or individuals from
consideration for awards of contracts;

(3) Assist in dispute resolution of bid protests and contract claims;

(4) Collaborate with appointing authorities to determine the most appropriate method of procurement given the needs and best interest of the city and the nature of the goods or services being solicited; and

(5) The city manager may delegate, in writing, to the purchasing manager or appointing authority any of the functions that the city manager is to perform under this chapter.

Sec. 82-8. Authority to award and terminate contracts and contract modifications.

(a) City council. Award, modification and termination of contracts for more than $150,000.00, are subject to the approval of the city council.

(b) City manager. The city manager is hereby authorized to approve, and terminate contracts that are $150,000.00 or less, and to approve a modification, or cumulative modifications, of no more than 15% of the original contract amount, but not to exceed a total modification, or cumulative modifications, of $150,000.00. The city manager is authorized to delegate the authority to approve contracts that are $150,000.00 or less to the appointing authority as provided below.

(1) City manager modification of contracts approved by city council. The city manager shall have the authority to modify contracts originally awarded by the city council of no more than 15% of the original contract amount but the total modification, or cumulative modifications, is not to exceed $150,000.00.

(2) Appointing authority approval and modification of contracts.

(i) Deputy city manager(s). The deputy city manager(s) is hereby authorized to approve contracts that are $125,000.00 or less, and to approve a modification, or cumulative modifications, of no more than 15% of the original contract amount, but not to exceed the total of $125,000.00.

(ii) Department heads. Department heads are hereby
authorized to approve contracts that are $100,000.00 or less, and to approve a modification, or cumulative modifications, of no more than 15% of the original contract amount, but not to exceed the total of $100,000.00.

(3) **Execution of insurance binders and renewals by city manager.** Notwithstanding the dollar limits for award or modification of a contract provided in this Article I, the city manager shall nonetheless be authorized to execute and deliver binders for property and liability insurance and excess worker's compensation, or renewals or extensions of employee health or benefit insurance policies on behalf of the city under the following circumstances:

(i) The option to bind, renew or extend the insurance policy or execute a binder shall be a term or provision of a contract or policy authorized by the city council; and

(ii) The original insurance policy, whether property and liability, excess worker's compensation or employee health and benefit, to be bound, renewed or extended, as the case may be, shall have been previously recommended to the city council as being in the best interest of the city as determined through the appropriate procurement process provided for in Article II of this chapter; and

(iii) Funds shall be available in the current or projected budget for payment of premiums during any term or term of renewal or extension of such insurance policy

(4) **Finance director development and modification of administrative rules.** The finance director shall have the authority to develop, modify, and amend administrative rules for procurement and contracts following the requirements set forth in the Code of the City of Arvada.

(c) **Calculation of contract amount for multiple year contracts.** Unless the terms of a multiple year contract allows the city to terminate the contract before or at the conclusion of a period of one year from commencement of the contract, the aggregate amount of multiple year contracts will be considered when calculating the total amount
of the contract for purposes of the limitations on the ability to award, modify or terminate contracts under this chapter and under the administrative rules.

(d) No contract divided. No contract shall be divided for the purpose of circumventing the requirements of this section. This includes modifying or amending contracts that would result in circumvention of the requirements of this section.

(e) No contract approved, terminated or modified. Except as otherwise stated herein, no contract, with the exception of purchase orders, shall be approved, terminated, or modified unless such contract has first been approved as to form by the city attorney or designee thereof.

(f) Fiscal controls. The purchasing division shall develop a process to report to city council, on a regular basis, the award of new contracts.

(g) Approval of purchase orders. The purchasing division shall administer an approval process of purchase orders to ensure fiscal control of documented quotes and reporting of awards over $50,000.01 to city council.

Sec. 82-9. Electronic signatures and administration.

(a) Subject to any limitations in the Colorado Uniform Electronic Transactions Act, by submitting a proposal to a city issued solicitation for goods or services the person or entity agrees to the use of electronic signatures. Notwithstanding the foregoing, the city may, in its discretion, require that any such proposal be executed with manual signatures.

(b) The purchasing division shall be responsible for and maintain central administration of all electronic solicitations with the exception of quick quotes for goods, and city departments will coordinate with the purchasing division in its role in this regard.

Secs. 82-10–82-30. Reserved.

ARTICLE II.

SOLICITATION THRESHOLDS AND METHODS

Sec. 82-31. Solicitation thresholds.

(a) $5,000.00 or less. At least one competitive, documented quote is required for purchases of goods and services in a total amount of $5,000.00 or less. Additional documented quotes are encouraged, but not required.

(b) $5,000.01 to $50,000.00. Purchases of goods or services from $5,000.01
through $50,000.00 require a competitive solicitation process called documented quotes, as defined in Sec. 82-5. The process and procedure for obtaining documented quotes is set forth in the administrative rules.

(c) $50,000.01 and greater: Purchases of goods or services of $50,000.01 and greater shall require a formal solicitation process. The formal solicitation process is set forth in the administrative rules.

Sec. 82-32. Non-competitive and exceptional methods.

(a) Sole source of $5,000.01 to $50,000.00. A sole source may be used when the proposed purchase of goods and services between the amounts of $5,000.01 and $50,000.00 can only be achieved with one product or service that will meet the city’s need and there is only one vendor capable of providing that product or service based on a written document, approved by the purchasing manager, that justifies a sole source with sufficient facts, circumstances, and reasoning to substantiate the sole source including an explanation as to why there are no other vendors suitable or acceptable to meet that need.

(b) Sole source of $50,000.01 and greater: A sole source may be used when the proposed purchase of goods and services in a total amount of $50,000.01 and greater can only be achieved with one product or service that will meet the city’s need and there is only one vendor capable of providing that product or service based on a written document, approved by the city manager after consultation with the purchasing manager, that justifies a sole source with sufficient facts, circumstances, and reasoning to substantiate the sole source including an explanation as to why there are no other vendors suitable or acceptable to meet that need.

(1) Approval of the sole source justification shall not preempt the authority of city council approval, except in the case of the emergency purchase of goods and services.

(2) The process and procedure for contracting for sole source procurement is set forth in the administrative rules.

(c) Emergency procurements and emergency contracts. Notwithstanding any provisions of this chapter, the city manager may authorize emergency procurements of goods and/or services when there exists a threat to public health, welfare, or safety, or other good cause exists, regardless of the dollar amount. Emergency purchases:

(i) Shall only be made when a situation creates an immediate and serious need for products and services that cannot be met through normal purchasing
methods and the lack of which would seriously jeopardize the operation of the city, the preservation or protection of property or the health or safety of any person.

(ii) Even in emergency situations, as much competition as is reasonable under the circumstances shall be obtained.

(iii) Shall be limited to only the products and services specifically needed for resolving the emergency.

(iv) The appointing authority shall promptly notify the purchasing manager if an emergency purchase is necessary so that any reasonable efforts toward emergency competition may be considered and documented.

(v) Upon resolution of the emergency, the appointing authority shall prepare a written document which describes the facts and circumstances of the emergency and the reasoning behind the selection of the vendor(s) chosen to meet the emergency need.

(d) Public cooperative agreements. Purchases of goods and services from valid public entity agreements are exempt from competitive solicitations.

(e) No cost purchases. Notwithstanding any other provision of this chapter no employee may accept a no cost purchase without approval by the City Attorney’s Office.

Sec. 82-33. Competitive methods.

(a) Acceptable methods. Acceptable methods for obtaining competitive solicitations for goods and services in the best interest of the city, and consistent with the provisions of this chapter, shall seek to maximize the value of the public funds in the most efficient and effective manner that meets the city’s requirements and the degree of complexity associated with the good or service being purchased.

(b) Best value procurement. The city, through the purchasing division, solicits requests for qualifications and requests for proposal based upon a best value procurement basis, which includes the evaluation of qualifications, experience, and performance measures to award and renew contracts based upon the best value to the city.
Administrative rules. The application of specific methods, including directions is set forth in the administrative rules and any standardized document templates.

Sec. 82-34. Other procurement methods.

The finance director may establish, through the administrative rules process, other competitive procurement methods that are deemed to be in the best interest of the city and that are consistent with the provisions of this chapter.

Secs. 82-35--82-70. Reserved.

ARTICLE III.

CONTRACT ADMINISTRATION

Sec. 82-71. Types of contracts.

Subject to the limitations of this section, any contract which is appropriate to the procurement and which will promote the best interest of the city may be used.

Sec. 82-72. Multi-term contracts.

(a) Unless otherwise provided by law, a contract for the purchase by the city of goods or services may be entered into for any period of time deemed to be in the best interest of the city; provided, however, the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds and such condition shall be included as a provision of the multi-term contract.

(b) Prior to the use of a multi-term contract, it shall be documented that estimated requirements cover the period of the contract and are reasonably firm and continuing; and that such a contract will serve the best interest of the city by encouraging effective competition or otherwise promoting economies in city procurement.

(c) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

Sec. 82-73. Right to audit records.
(a) The city may at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data to the extent such books, documents, papers and records are pertinent to cost or pricing data.

(b) The city may audit the books and records of any contractor or subcontractor when a negotiated contract is not a firm fixed price contract and books, documents, papers and records are pertinent to the performance of such contract.

Sec. 82-74. Construction contract performance and payment bonds.

(a) When a construction contract is awarded, the following bonds or security shall be delivered to the city and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, in an amount equal to 100% of the price specified in the contract; and

(2) A payment bond satisfactory to the city, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the city, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for the contract, which bond shall be in an amount equal to 100% of the price specified in the contract; and

(3) In lieu of providing a performance or payment bond, a contractor may provide cash or an unconditional letter of credit for 100% of the amount required. Such security must be in a form acceptable to the city attorney. The city shall hold any cash provided hereunder in an interest bearing account, and said interest shall be returned to the contractor at such time as said cash is returned; if all or part of the cash is converted to the city's ownership, the city shall also receive all or a pro-rata share of the interest.

(b) The appointing authority is authorized to reduce the amount of performance and payment bonds to 50% of the contract price for each bond when a written determination is made that is in the best interests of the city to do so.

(c) Nothing in this section shall be construed to limit the authority of the city to require a performance bond or other security in addition to those bonds.
ARTICLE IV.

DEBARMENT OR SUSPENSION

Sec. 82-101. Authority to debar or suspend.

(a) Upon reasonable investigation, and after consultation with the city attorney, the purchasing manager is authorized to debar a person from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the city attorney, the purchasing manager is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person, or if the person is not an individual, any principal thereof, has engaged in any activity which might lead to debarment. In addition, a suspension may be similarly imposed on a person whose past or present conduct or contract performance with the city or any other entity, or if the person is not an individual, any principal thereof, whose past or present conduct or contract performance is deemed to be unduly uncooperative, inadequate, incomplete, inefficient, or otherwise unprofessional. The suspension shall be for a period not to exceed six months. The causes for debarment or suspension shall include but not be limited to:

(1) Conviction for commission of a criminal offense as an incident to performance or to obtaining or attempting to obtain a public or private contract or subcontract;

(2) Conviction of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or honesty affects responsibility as a city contractor;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth in subsections (5) and (6) of this section, of a character which is regarded by the city manager to be so serious as to justify debarment action;

(5) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

(6) Recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to
perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(7) Any other cause the city manager determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter; or

(8) Violation of any provision in the administrative rules pertaining to ethics in public contracting.

Sec. 82-102. Decision to debar or suspend.

The city manager shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning administrative review.

Sec. 82-103. Notice of decision.

A copy of the decision required by section 82-102 shall be mailed or otherwise furnished to the debarred or suspended person.

Sec. 82-104. Finality of decision.

A decision under section 82-102 shall be final unless the debarred or suspended person, within ten days after receipt of the decision, submits in writing to the city manager a request for an administrative hearing before the city manager. The administrative hearing shall be held in compliance with section 2-121 et seq.

Secs. 82-105--82-120. Reserved.

ARTICLE V.

APPEALS AND REMEDIES

Sec. 82-121. Authority of the city manager to settle bid protests and contract claims.

The city manager is authorized to settle, with the city attorney's approval, any protest regarding the solicitation or award of a city contract, or any claim arising out the performance of a city contract. Before protesting in writing to the purchasing manager as outlined in section 82-122, any actual or prospective bidder or contractor who has a grievance in connection with the solicitation or award of a contract shall first seek
resolution of the matter with the appointing authority.

Sec. 82-122. Bid protests.

(a) After first seeking resolution of the matter with the appointing authority, any actual or prospective bidder or contractor who has a protest in connection with the solicitation or award of a contract may protest in writing to the purchasing manager. A protest with respect to an invitation for bids or request for proposals, must be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. In any case, a written protest must be submitted within the following time period if the protest relates to the solicitation, bid, or proposal process, no later than ten days after the bid opening; or if the protest relates to the award of the contract, no later than ten days after the contract is awarded.

(b) In the event of a timely protest under subsection (a) of this section, the solicitation or award of the contract shall not proceed further until the purchasing manager has issued a written decision on the protest or until the city manager makes a determination that the award of a contract without delay is necessary to protect substantial interests of the city. If the purchasing manager does not, within 14 days after receiving the protest, or within such longer period as may be agreed upon by the parties, issue a written decision on the protest or make a determination that the award of the contract is necessary, the protest shall be considered denied.

Sec. 82-123. Contract claims.

(a) Except as stated in this subsection (a) of this section, all claims by a contractor against the city relating to a contract which has already been awarded by the city, must be submitted in writing to the appointing authority. The contractor may request a conference with the appointing authority on the claim. Claims include, without limitation, disputes arising under a contract, those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, including purchase orders. This subsection shall not apply to the bid protest process described in section 82-122 or to any matter covered by the bid protest process.

(b) The decision of the appointing authority shall be issued in writing, and shall be mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under subsection (c) of this section. If the appointing authority does not issue a written decision regarding the claim within 14 days after receipt of the claim, or within such longer period as may be agreed upon between the parties, then the claim shall be considered denied and the aggrieved contractor may proceed as if an adverse decision has been received.
(c) The appointing authority's decision shall be final unless within 14 days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the city manager. If the city manager does not issue a written decision within 14 days after receipt of the written appeal, or within such longer period as may be agreed upon by the parties, the appeal shall be considered denied.

Sec. 82-124. Remedies for solicitations or awards in violation of law.

(a) If prior to the bid opening or the closing date for receipt of proposals, the appointing authority, after consultation with the city attorney, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.

(b) If after bid opening or the closing date for receipt of proposals, the appointing authority, after consultation with the city attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be canceled.

(c) If after an award the appointing authority, after consultation with the city attorney, determines that a solicitation or award of a contract was in violation of applicable law, and if the person awarded the contract has not acted fraudulently or in bad faith, the contract may be ratified and affirmed; provided it is determined by the appointing authority that doing so is in the best interests of the city, or the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, prior to the termination.

(d) If the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interest of the city.

Secs. 82-125--82-140. Reserved.

ARTICLE VI.

ETHICS IN PUBLIC CONTRACTING

Sec. 82-141. Employee conflict of interest.

(a) It shall be unethical for any city employee to participate directly or indirectly in the contracting process when the city employee knows that the employee or any member of the city employee's immediate family has a financial interest pertaining to the
contract, or any other person, business, or organization with whom the city employee or any member of the city employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the contract.

(b) A city employee or any member of a city employee’s immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

Sec. 82-142. Gratuities and kickbacks.

(a) It shall be unethical for any person to offer, give, or agree to give any city employee or former city employee, which means someone who was employed by the city within one year, or for any city employee or former city employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(b) It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

Sec. 82-143. Prohibition against contingent fees.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

Sec. 82-144. Contemporaneous employment prohibited.

It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while a city employee, the employee of any person contracting with the governmental body.

Sec. 82-145. Waivers from contemporaneous employment prohibition and other conflicts of interest.

The city council may grant a waiver from section 82-141 or section 82-144 upon
making a written determination that the contemporaneous employment or financial interest of the city employee has been publicly disclosed, and the city employee will be able to perform procurement functions without actual or apparent bias or favoritism, and the award will be in the best interests of the city.

Sec. 82-146. Use of confidential information.

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Secs. 82-147--82-160. Reserved.

Section 2. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. This ordinance shall be effective five days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED this 5th day of February, 2018.

PASSED, ADOPTED, AND APPROVED this 5th day of March, 2018.

Marc Williams, Mayor

ATTEST:

City Clerk

CITY OF ARVADA
COLORADO
APPROVED AS TO FORM:

Christopher K. Daly, City Attorney

By: [Signature]

Publication Dates:  February 8, 2018
                 March 8, 2018