

ORDINANCE NO. 1103

**AN ORDINANCE REPLACING SECTION 2- 9, PUBLIC BIDS;
CONTRACTS LET BY MAYOR AND SECTION 2-10 CONTRACT LET
TO LOWEST BIDDER, OF THE *FORT MORGAN MUNICIPAL CODE***

WHEREAS, The City of Fort Morgan (“City”) currently uses a policy adopted by resolution which governs the procurement requirements for the purchase of goods and services required to operate the various departments in the City; and,

WHEREAS, the current procurement policy does not provide direction for the authorization, approval or tracking of contracts and agreements; and,

WHEREAS, it is important to establish a process and policy accessible by the public that establishes the authority and procedure that City employees are required to follow when procuring goods and services on behalf of the City.

WHEREAS, the Fort Morgan City Council has placed a priority on shifting current City Polices into Ordinances; and,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN, COLORADO that Sections 2-9 and 2-10 of the *Fort Morgan Municipal Code*, are hereby replaced in their entirety as follows:

Section 2-9. Procurement and Contract Program

(a) Policy Statement. It shall be the Policy of the City of Fort Morgan to maintain a Procurement Program for the purchase of all goods and services used by the City. All contracts shall be let to the lowest reliable and responsible bidder as determined by the City as set forth under this section.

The purpose of the Procurement and Contract Program is:

1. To ensure that the City’s best interest is served in the purchase of all goods and services;
2. To provide a uniform system of purchasing for use by all City Departments and Staff, and;
3. To establish guidelines for City relationships with Vendors and Contractors.
4. Intended to provide the most efficient process while ensuring fiscal responsibility when purchasing goods and services for the City.

(b) Authority and Responsibility. Authority for administering the Procurement and Contract Program is placed with the City Manager. The City Manager shall have the authority to delegate authority in writing to his subordinates to provide for the efficient procurement of goods and services necessary for City functions. The City Manager, and his authorized designees shall serve as Purchasing Agents for the City of Fort Morgan and shall have, on behalf of the City Council, the authority to represent the City in the purchase of goods and services within the limitations set forth in this policy. Each appointed official shall act as Purchasing Agents in their

respective departments, and their procurement activities are subject to the limitations set forth in this section. All City employees are responsible for compliance with all provisions of this section.

(c) Definitions.

1. "Purchasing Agent" is the City Manager, the Volunteer Fire Chief, the City Attorney, and the Municipal Judge, or their designee(s).
2. "City" is the City of Fort Morgan, Colorado.
3. "IFB" is a formal Invitation for Bid.
4. "RFQ" is a formal invitation for qualification from potential bidders.
5. "LPA" is Limited Purchase Allowance.
6. "P.O." is Purchase Order.
7. "RPO" is Request for Purchase Order.
8. "IQ" is Informal Quotation.
9. "Vendor" is any individual, business, or company who/which sells goods and or services to the City.
10. "Fast Tracking" refers to the practice which the City may use to bid out parts of a project without letting the bid for the entire project.
11. "Local" refers to the boundaries of Morgan County.
12. "Qualified Select Bid List" identifies vendors who meet or exceed qualifying standards established by the City for Certain services, products or purchases.
13. "Contract Manager" is the person who is responsible for the purchase of goods and services on behalf of the City. This person is anyone authorized by City Council or the City Manager to purchase goods and services for the City and generally refers to the employee responsible for bidding and finalizing the purchase of any goods and services on behalf of the City.

(d) Best Value. It shall be the Policy of the City to make every reasonable effort to procure services and goods which are of the highest quality at reasonable prices with consideration given to service, availability, Vendor reliability, location of Vendor, etc.

(e) Limits and Approvals.

1. Approval by City Council. It shall be the Policy of the City to review and act upon all expenditures by the City. Approval and authorization for expenditures shall generally occur as follows:
 - I. All expenditures shall be authorized in the annual budget review and appropriations process. Any contract value that exceeds the amount approved

in the budget and appropriation process shall be approved by the City Council before the expenditure and purchase is authorized.

- II. Operating and Maintenance purchases including those in excess of ten thousand dollars (\$10,000.00) will be authorized in the annual budget review and appropriations process and will be approved by a general resolution for the monthly appropriations by the Council. Prior authorization by City Council for these purchases is not necessary so long as the purchase does not exceed the amount approved in the budget and appropriation process.
 - III. Capital Expenditures will be approved in the annual Budget and appropriations process. All items over (\$10,000.00) in cost must be approved by City Council before the Bid is awarded and prior to any purchase.
 - IV. Unbudgeted Expenditure. All unbudgeted expenditures shall be presented to and acted upon by Council prior to purchase, except for expenditures for a purchase made pursuant to Paragraph 2 regulating Emergency Purchases.
2. Emergency Purchases. It shall be the Policy of the City to waive the prior approval and bid requirements of the this section when, in case(s) of actual emergencies, the life, health or safety of employees or the general public is at risk or when significant harm may occur to operating systems and in the judgment of the City Manager or the Purchasing Agents services and/or goods must be procured immediately to prevent loss. Emergency purchases in excess of (\$10,000.00) must be approved by the Mayor and presented at the next regular City Council meeting for ratification by the Council. If the purchase is related to O&M then the item will be approved by the monthly expenditure resolution.
 3. Purchases Estimated to Exceed (\$10,000.00) in Costs. It shall be the Policy of the City to require IFB's for all purchases in which the purchase price is estimated to exceed \$10,000 for any one purchase or liability, or where the aggregate purchases from a single Vendor exceed \$10,000.00. However, this does not apply to purchases associated with federal, state or private grant funded projects that required the use of a specific Vendor for the project.
 4. Purchases Estimated to Exceed \$1,000.00 but not Exceed \$10,000.00. It shall be the Policy of the City to require IQ's for all purchases which are estimated to exceed \$1,000.00, but not to exceed \$10,000.00 for any one purchase or liability.
 5. Purchases Estimated to be less than \$ 1,000 / Limited Allowance. It shall be the Policy of the City to allow the Purchasing Agent(s) to use their discretion in the purchase of services or goods which are estimated not to exceed \$ 1,000.00. Such purchases will be made using the Requisition Form.
 6. Use of Purchase Order. It shall be the Policy of the City to require the use of Purchase Orders for all procurements which are estimated to exceed \$1,000.00. Terms and conditions for Purchase Orders shall be developed by the Treasurer and approved by the City Attorney. The terms and conditions of the City shall supersede conflicting terms and conditions of an invoice.
 7. Multiple Department Purchase. Where multiple departments have contracted with a single Vendor for goods and services, and each department has a separate

contract, the approval of those purchases will be same as O&M purchases, unless it is for a capital purchase. All capital purchases must be approved by City Council where the Vendor provides goods or services to other departments and the aggregate purchases exceed \$10,000.00.

- (f) Generally Accepted Accounting Principles. It shall be the Policy of the City to require reasonable and sound accounting procedures in the documentation, accounting and record keeping of all procurement and purchasing activities.
- (g) Payment of Taxes. The City of Fort Morgan, a municipality, is exempt from payment of all city, county, state and federal sales and excise taxes. Employees who purchase goods from any source must use their best efforts to ensure the City's tax exempt status recognized and honored.
- (h) Bid Process, Invitation For Bid. It shall be the Policy of the City that IFBs and RFQs be advertised a minimum of seven calendar (7) days prior to the bid opening date. For IFBs and RFQs that require a pre-bid meeting, the meeting shall be at least be at a minimum three (3) calendar days prior to the bid opening date. Pre-bid meetings will be at the discretion of the Contract Manager. The means of making an IFB known to the public that may be used by the a Contract Manager include direct mail to known vendors, posting in public places, announcements at City Council meetings, the City's internet website, etc. The Contract Manager shall use the most effective advertising methods to provide notification to the greatest number of qualified bidders. The IFB will include a statement of what is being purchased, bid and performance bonding requirements, requirements for certifications such as Liability, Worker's Comp., business licenses, etc., the place and from whom the prospective bidder may receive the Bid Packet, the Bid opening date, place and time. The Bid Packet will contain blank Bid Forms and detailed specifications and other information which may be appropriate for the IFB. Firms bidding under this provision are allowed to bid only once. Contracts related to IFBs are subject to Section 2-10.
- (i) Bid Process, Request for Qualifications. When the City has budgeted for either O&M or capital projects the Contract Manager has the discretion to advertise for an RFQ. The purpose of an RFQ is to allow the Contract Manager to select from all potential bidders, the most qualified to provide goods or perform services on behalf of the City. It shall be the Policy of the City that RFQs be advertised a minimum of seven calendar (7) days prior to the RFQ opening date. The Contract Manager shall use the most effective advertising methods to provide notification to the greatest number of qualified bidders. For RFQs that require a pre-qualification meeting, the meeting shall be at least a minimum three (3) calendar days prior to the bid opening date. Pre-qualification meetings will be at the discretion of the Contract Manager. The RFQ will include a statement of what is being purchased, bid and performance bonding requirements, requirements for certifications such as Liability, Worker's Comp., business licenses, etc., the place and from whom the prospective bidder may receive the Bid Packet. The RFQ will also provide as much detail about the scope of work on the project and specific qualifications or skill requirements to be put on the short list. Once a firm has been chosen for the short list they then have the right to bid on the final project. No other firms will be considered eligible to participate in the bidding portion of the project. Firms responding to an RFQ are allowed to submit only one response.

- (j) Bid Process, Informal Quotation. Bids via IQ require at least three (3) written responses, or a written statement from the Contract Manager explaining why three (3) written bid responses could not be secured. IQs are subject to the same contract requirements as IFBs and as stated in Section 2-10.
- (k) Bid Opening. It shall be the Policy of the City that all sealed bids (all IFBs) be opened by the City Manager or his designee at City Hall in Fort Morgan Colorado, not earlier than 2:30 p.m. on the date the bid closes. The Contract Manager shall have discretion to open the bid any time between 2:30 and 4:30 p.m. on the date the bid closes. Any bid not received at City Hall prior to 2:30 p.m. (our clock) on the closing date shall not be considered. All bids must be delivered or mailed to City Hall. All bids will be opened at City Hall at between 2:30 and 4:00 p.m. on the date the bid closes. Vendors will be selected with the best interest of the City as the primary consideration.
- (l) IFB and RFQ addenda. All question, comments and/or clarification regarding the IFB/RFQ shall be submitted to the Contract Manager in writing, including e-mail or facsimile. The cut-off date for questions, comments and/or clarification shall be determined by the Contract Manager. It shall be the responsibility of the prospective bidders to contact the Contract Manager to verify receipt of questions. Based upon such inquires, the Contract Manager may choose to issue an Addendum(a) to all applicable prospective bidders no later than two (2) calendar days prior to bid opening. Each bidder will be allowed to amend its submitted bid to conform to the proposal to the addendum issued by the Contract Manager.
- (m) Bid Award. The City Council will award all IFBs based on its review and action on recommendations made by the Contract Manager as presented by the Purchasing Agent. Bids let by IQs will be awarded by the Purchasing Agent or designee(s). It shall be the Policy of the City to reserve the right to accept or reject any bid or portion of bid and all bid documents shall so state.
- (n) Bid Bond. It shall be the Policy of the City to allow the Purchasing Agent(s) to secure Bid Bonds or Cash Security Deposits from bidders and prospective Vendors whenever and in such amounts deemed necessary in the Procurement Process to protect the City's best interest in the letting and awarding of bids.
- (o) Performance and Payment Bonds. It shall be the Policy of the City to allow the Purchasing Agent(s) to secure Performance and Payment Bonds or Cash Security Deposits from Contractors or Vendors whenever and in such amounts deemed necessary to protect the City's best interest but in all cases where and in the amounts required by state law or Statute or Grant, Federal Grant or contract. Only Bonds from companies or agencies registered and approved by the State of Colorado may be accepted.
- (p) Insurance. It shall be the Policy of the City to require consultants, contractors or Vendors to furnish to the Purchasing Agent(s) Certificates or proof of insurance coverage for General Liability of \$1,000,000 and Workers Compensation, and any other insurance coverage as may be appropriate for the project being bid. No contractor shall perform services or work for the City without having proper insurance in effect. Only insurance certificates from companies or agencies registered and approved by the State of Colorado will be accepted. Insurance policy limit requirements may be modified by the

City Manager, upon review by the City Attorney for single contracts that are less than \$50,000.00.

- (q) Conflict of Interest, Ethical Conduct. It shall be the Policy of the City that no employee or appointed official of the City of Fort Morgan shall benefit personally from any procurement by the City or have a fiduciary relationship with a company which may do business with the City without full disclosure to the City, and, in such cases, the City reserves the right not to purchase from the person or business. Violation of this portion of the policy shall require disciplinary action by City Management.
- (r) Commitments. No representation made by any employee of the City regarding the intent to purchase shall be binding upon the City unless such representations are made in writing, in accordance with the guidelines of this section and authorized and signed by the Mayor or Purchasing Agent (except for Emergency Purchases and Limited Purchase transactions). No contract shall be valid unless it is signed by the Mayor as required by the City Charter. All contracts shall be done according to any policy that is or may be adopted by City Council.
- (s) Out-of-Pocket Expenses. Employees may be reimbursed for their out-of-pocket expenditures when such expenditures are made in the conduct of City business, when they are reasonable, upon presentation of receipts and other documentation as may be required and when approved by Management. Reasonable expenses shall be determined by Management or the Purchasing Agent and, when the expense is not approved by Management, it must be paid by the employee.

Section 2-10. Contract Requirements

- (a) Policy Statement. The purpose of this section is to establish the responsibilities of employees who are authorized by the City Manager or Section 2-9 to purchase goods and services for the City of Fort Morgan.
- (b) Authorized Signatures.
 - 1. Contract and Agreements. The City Charter requires all contracts to be signed by the Mayor. No contract is valid unless it is signed by the Mayor.
 - 2. Grant Applications. Grant applications must be signed by the City Manager. No grant application is valid without the City Manager's signature.
- (c) Contract Approval Procedure.
 - 1. All contracts or agreements for the purchase of goods and services must comply with Section 2-9. All purchases must have a contract or agreement that meets the requirements under this section.
 - 2. All contracts and agreements negotiated on behalf of the City shall not violate the law. Any language required comply with state law or the constitution must be included in all contracts to which the law applies. Terms and conditions that relate to the benefit of the bargain shall be at the discretion of the Contract Manager. Any term or condition that is required by law or to preserve rights required under the law cannot be waived.

3. A Contract Manager is the person who is responsible for the purchase of goods and services on behalf of the City. This person is anyone authorized by City Council or the City Manager to purchase goods and services for the City, and generally refers to the employee responsible for bidding and finalizing the purchase of any goods and services on behalf of the City.
 - I. The Contract Manager must follow section 2-9 when purchasing goods or services for the City.
 - II. The Contract Manager is responsible for all negotiations and ensuring that the final contract or agreement is the same form approved by the City Attorney's Office when presented to the Mayor for signature.
 - III. The Contract Manager is responsible for meeting all of the City's requirements found in any contract or agreement for which goods and services have been procured.
 - IV. The Contract Manager is responsible to follow up on the funding provisions of multi-year contracts.
 - V. The Contract Manager is responsible for the renewal of any contract.
 - VI. The Contract Manager is responsible for ensuring that the City Clerk receives the record copy of all contracts and agreements to which the City is a party, except for purchase orders. Purchase orders are to be maintained by the City Treasurer.
4. Prior to submission for signature by the Mayor, all contract or agreements must be reviewed by the Office of the City Attorney.
 - I. Each contract presented to the City Attorney for review, and the Mayor's signature must be provided in duplicate form. One final original contract will be retained by the City Clerk and the other will be forwarded to the other party according to the instructions provided to the City Clerk by the Contract Manager. The Contract Manager is responsible for requesting any copies that might be necessary to track performance of the contract.
5. Presentation of Capital Expenditure Contracts to City Council.
 - I. Agenda summaries are required for each contract that is required to be presented to City Council for approval. The summary shall include:
 - (a) A brief history of events leading to the specific contract approval recommendation.
 - (b) Information that the Office of the City Attorney has performed a review
 - (c) The specific line item approved in the budget for the purchase.

6. Multiple year contracts. Contract Managers are authorized negotiate multiple year contracts so long as they meet the following requirements.
 - I. The contract does not violate the Colorado Constitution.
 - II. The contract does not have built-in cost increases in successive years.
 - III. The contract is for the purchase of goods or services that will be required during the period of time the contract has been negotiated.
 - IV. No multiple year contracts may exceed a three (3) year period.
7. Public Access to Contract Information. The City reserves the sole and exclusive right to disclose contracts and supporting documentation for any purpose whatsoever. Any contract provision to the contrary shall be void. However, the City will not provide access to any person who is not authorized by the City Manager or pursuant to state law to have access to a contract or its supporting documentation. The City recognizes that some contracts and supporting documentation may contain proprietary information that a business does not wish to be provided to the public. The City, pursuant to the law, will make its best efforts to protect this information, so long as the information is specifically identified and the request is made in writing.
 - I. City Employees and Contract Managers involved in contract or agreement negotiations and the deliberative process associated with those negotiations shall not exchange proprietary information or other confidential information that is otherwise privileged with anyone outside of the City or outside the defined privileged group.
8. Personal Gain. No employee of the City may personally benefit from the contracting process. This section shall be subject to the regulations set forth in Section 2-20 of the Code concerning prohibited gifts to City officials.
9. Violations. Any violation of this chapter may result in disciplinary action. The City Council shall discipline any appointed official. Appointed officials shall discipline their employees for violations of this chapter. Violation may result in termination.
10. The Office of the City Attorney is authorized to take any action, legal or otherwise, to protect the City's interests related to any contract or agreement.

INTRODUCED, READ AND PASSED UPON FIRST READING this 18th day of May, 2010, for publication once in a newspaper of the City of Fort Morgan, Colorado, at least ten days before its final passage.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Terry L. McAlister
Mayor

ATTEST:

/s/ Cheryl Winberg
Deputy City Clerk

FINALLY PASSED, ADOPTED AND APPROVED this 15th day of June, 2010, for publication once in the newspaper of the City of Fort Morgan, Colorado, within five days of the final passage, to take effect five days after final publication.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]

BY: /s/ Terry L. McAlister
Mayor

ATTEST:

/s/ Andrea Strand
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

CERTIFICATE

I, Andrea Strand, the duly appointed, qualified and acting Clerk of the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing Ordinance No. 1103 was, as a proposed Ordinance duly and legally presented to the City Council of the City of Fort Morgan, Colorado, at a Regular Meeting on the 18th day of May, 2010. Said Ordinance, as proposed, was duly read at length at said regular meeting, and thereafter the same was, on the 24th day of May, 2010, published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed **Ordinance** was again taken up and read a second time, duly and legally passed, approved and adopted at a Regular Meeting of the City Council held on the 15th day of June, 2010. Within five (5) days after its final passage, said **Ordinance** was published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.

/s/ Andrea Strand
City Clerk