

ORDINANCE NO. 2448
INTRODUCED BY: Pawlowski

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO,
AMENDING SECTIONS OF ARTICLE 3-8 OF THE BRIGHTON MUNICIPAL CODE
REGARDING CONTRACTS AND PURCHASES

WHEREAS, in accordance with Section 17.7 of the *Charter of the City of Brighton*, the City Council previously enacted Article 3-8 of the *Brighton Municipal Code* to address contracts and purchases; and

WHEREAS, the City staff recommends updates to Article 3-8 to clarify the procedures, increase the City Manager's authority to execute agreements, and create a procedure for the City to suspend or disbar certain individuals or entities from doing business with the City under certain circumstances; and

WHEREAS, the City Council finds it is in the best interests of the City of Brighton and its residents to make the following updates to the *Brighton Municipal Code* to meet the evolving demands of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Sections 3-8-30 (a)-(b) are hereby amended as followed:

- (a) All materials, services, and construction contracts, except as otherwise provided in this Article, with an estimated cost greater than fifty thousand dollars (\$50,000) but equal to or less than five hundred thousand dollars (\$500,000) shall be awarded through formal solicitation procedure by the City Manager. The City Manager will report regularly to City Council on all contracts awarded by the City Manager over \$100,000.
- (b) All materials, services, and construction contracts, except as otherwise provided in this Article, with an estimated cost greater than five hundred thousand dollars (\$500,000) shall be awarded through formal solicitation procedure by the City Council. After due notice inviting bids, purchase orders and contracts shall be awarded to the lowest responsive and responsible bidder.

Section 2. Section 3-8-80 is hereby repealed and replaced as follows:

Sec. 3-8-80. – Bid Bond and bid deposit; when required

A bid bond or bid deposit shall be required for all construction projects with an estimated cost of \$500,000 or higher. A bid bond or bid deposit may be required, if deemed necessary by the City, for projects other than construction with an estimated cost of \$500,000 or higher or for any project with an estimated costs under \$500,000. If a bid deposit was required and the bid was not accepted or a bidder is unsuccessful, the bid deposit shall be refunded. All notices of bid award shall be acknowledged by the bidder or his or her personal representative. When a bid is awarded but the successful bidder fails to enter into a contract within ten (10) business days after the date of receipt of notice of award, the deposit may be forfeited.

Section 3. Sections 3-8-110 (8)-(10) are hereby amended as follows:

(8) The ability of the bidder to provide future maintenance and service;

(9) The contents and quality of the response to the invitation for solicitation; or

(10) Whether any person or entity is currently suspended or debarred by the City.

Section 4. Section 3-8-170 is hereby repealed and replaced as follows:

Sec. 3-8-170. – Amendment or change order to contract.

All change orders or amendments shall be processed through the Finance Department. Department directors shall have authority to approve individual amendments or change orders up to the department director's aggregate signing authority for the total contract price. The City Manager shall have the authority to approve individual amendments or change orders, in the aggregate, up to the City Manager's signing authority or up to ten percent (10%) of the original contract amount, whichever is higher. All other amendments or change orders shall be approved by the City Council, as appropriate, based on the signing authority established in this Article.

Section 5. Section 3-8-180 is hereby repealed and replaced as follows:

Sec. 3-8-180. - Master price agreements; extension and amendment.

Master price agreements with an annual not to exceed price of five hundred thousand dollars (\$500,000.00) or less may be approved by the City Manager. Master price agreements with an annual not to exceed price greater

than five hundred thousand dollars (\$500,000.00) shall be approved by the City Council. After the City Council has approved a master price agreement, the City Manager may approve an annual extension and any amendment thereto, provided the contractor has performed the work satisfactorily, all terms and conditions of the contract have been fulfilled, the funds for said extension and amendment have been appropriated, and the annual not to exceed dollar amount of said extension or amendment has not increased from the original master price agreement.

Section 6. Section 3-8-200 is hereby repealed and replaced as follows:

Section. 3-8-200. – Suspension and debarment

(a) After reasonable notice to the person or entity involved and reasonable opportunity for that person or entity to be heard or to respond, the Director of Finance shall have the authority to suspend or debar a person or entity for cause from consideration for award of contracts. The Director of Finance shall issue a written decision to suspend or debar if that is the action warranted under this section. The decision shall state the reasons for the action taken. A copy of the decision shall be mailed, emailed, or otherwise furnished to the suspended or debarred person or entity. All suspensions and debarments shall be City-wide. The written decision shall provide information about how to appeal to the City Manager.

(b) Suspensions.

(1) Cause for suspension shall be determined within the Director of Finance's sole discretion, which include, without limitation, the following:

- a. Documented breach or default of any City contract.
- b. Delinquent accounts, including, but not limited to, utilities and sales tax accounts.
- c. Failure to adequately perform after opportunity to cure.
- d. Any other cause the Director of Finance determines to be so serious and compelling as to affect the person's or entity's responsibility as a potential city contractor, including, but not limited to, suspension or debarment by another governmental entity for cause.

(2) Suspension shall be for a period of not less than six months or more than three years.

(c) Debarment.

(1) Cause for debarment shall include, without limitation, the following:

- a. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor.
- c. Conviction under state or federal antitrust statutes arising out of the submission of a bid.
- d. More than one suspension by the City as set forth herein.
- e. Any other cause the Director of Finance determines to be so serious and compelling as to affect the person's or entity's responsibility as a potential city contractor, including, but not limited to, suspension or debarment by another governmental entity for cause.

(2) Debarments shall be for a period of not less than three years or more than ten years.

(d) Appeal Process: Any person or entity that has been suspended or debarred by a decision of the Director of Finance as provided in this Article may appeal the same in accordance with the following:

(1) The appellant may, by written notice, appeal the decision of the Director of Finance to the City Manager. The notice of appeal shall be filed within ten (10) business days of notice of the decision of action of the Director of Finance. The appeal should briefly state the basis of such appeal and include specific information about why the decision should be reconsidered. The City Manager may request further information from either or both the Director of Finance or the Appellant. After receiving any additional information, the City Manager may hold an informal meeting within fifteen (15) business days from the date of the City Manager's receipt of the appeal or the City Manager may issue a decision based upon the written appeal and any additional documentation received from either party.

(2) The City Manager shall make a decision within twenty (20) business days of the receipt of the notice of appeal. A copy of the decision shall be mailed or otherwise furnished immediately to the suspended or debarred person or entity.

(3) The decision of the City Manager shall be final as to the City.

Section 7. All sections, subsections, and definitions not expressly amended or modified herein remain in full force and effect.

Section 8. As provided in City Charter Section 5.9(A), this Ordinance, either as presented or as amended, shall be published in full as it was adopted prior to taking final action. This Ordinance shall be in full force and effect five days after its final publication, as provided in City Charter Section 5.8.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 16th DAY OF April 2024.

INTRODUCED, PASSED ON FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS 7th DAY OF May 2024.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

Published in the *Brighton Standard Blade*

First Publication: April 25, 2024

Final Publication: May 16, 2024

APPROVED AS TO FORM:

MICHAEL DAVIS, Assistant City Attorney