MEMORANDUM No. SC

TO: **All Agencies Under the Mayor**

FROM: **Kristin Bronson**
City Attorney

DATE: **October 21, 2022** 'vfb

SUBJECT: **Unsolicited Proposal Policy**

This Memorandum No. SC shall be attached to and become part of Executive Order 8, dated February 3, 2020 subject "Contracts and Other Written Instruments of and for the City."

GENERAL:

This Unsolicited Proposal Policy is intended to encourage outside organizations to propose innovative approaches and methods addressing City needs and functions to the City and County of Denver to assist the City in achieving its goals while also providing a mechanism for the City to consider and act upon unsolicited proposals.

Denver's Charter and Code require that many contracts be competitively bid or selected; i.e. construction contracts and purchases of supplies, equipment, personal property and connected services. Agencies must continue to follow applicable federal and state competitive selection requirements as well as competitive selection requirements found in the City's Charter, Code, and Executive Order 8 when selecting contractors and vendors.

PURPOSE:

This document provides guidelines for the submission and consideration of Unsolicited Proposals.

Definition of an Unsolicited Proposal: A written proposal that is submitted on the initiative of the submitter for the purpose of obtaining a contract with the City and not in response to a current or former formal or informal request for proposal.

Unsolicited Pr22osal Criteria:

When evaluating an Unsolicited Proposal, the City should consider whether the proposal:

- Presents unique or innovative goods, services, projects strategies, or methods;
- Clearly defines and describes the good, service, project, strategy, or method and identify the benefits to the City;
- Supports the goals or objectives of the City;
- Is independently originated and developed by the submitter without governmental involvement or guidance;
- Clearly identifies any proprietary and/or confidential information;
- Is not in response to a published solicitation; and

- Is not an advance proposal for a good, service, project or other City need for which the City is readying a solicitation.

The <u>Unsolicited Proposal Requirement</u>:

Unsolicited Proposals must contain the following information:

- Proposer information:
  - The proposer's name, address and type of organization.
  - The names and telephone numbers of personnel to be contacted for evaluation or negotiation purposes.
  - A list of proprietary or confidential documents that are marked proprietary or confidential.
  - The names of other federal, state, local agencies, or other parties in receipt of the proposal or that are funding the proposed effort.
  - The date of submission.
  - The signature of a person authorized to represent and contractually obligate the submitter.
  - The Proposer's relevant experience, including past projects, prior work with the City, and available references.
- Proposal objective and goal alignment: Describe the specific City goals, policies and/or objectives the Proposal seeks to address and how the Proposal will address them.
- Scope: Describe briefly the scope of the good, service, project, strategy, or method.
- Financial information: If applicable, state the proposed price, estimated cost, budget, and/or projected revenue of the good, service, project, strategy, or method.
- City's role: Describe the role and resources that will be needed from the City for the proposed good, service, project, strategy, or method to be successful.
- Timeframe: If applicable, state the proposed duration of service or strategy.

Unsolicited Proposals must clearly identify any proprietary and/or confidential information contained therein. All materials provided to the City are subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq. ("CORA"). If the proposer believes that any information, data, process or other material in its proposal is confidential or proprietary in accordance with CORA, the proposer should mark each page as either "trade secrets," "privileged information," or "confidential commercial, geological, or geophysical data," as applicable to the particular page or document and provide a list of such confidential and proprietary documents identifying the basis for the claim. The City is not bound by the proposer's determination as to whether materials are subject to disclosure under CORA and reserves the right to independently determine the materials must be produced under CORA.

If the City receives a request for these materials it will attempt to advise the proposer of the request. If the City agrees with the proposer's determination that materials marked as confidential or proprietary may properly be withheld, the City will withhold materials from inspection or disclosure under CORA. If the City disagrees with the proposer's determination, it will notify the proposer of its intent to make the materials available under CORA. Proposer may then timely object by seeking a court order to prevent disclosure, and failure to do so results in waiver of claims and privilege.

In the event of the filing of a lawsuit to prevent or compel disclosure, the City will tender all responsive materials to the court. The proposer agrees 1) to intervene in any lawsuit arising out of a request for its materials to protect and assert its claims of privilege against disclosure of such material; 2} that its failure to object or intervene and assert claims of privilege against disclosure in relation to its proprietary or confidential information results in waiver of the same; 3) to release and defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs, including reasonable attorneys' fees, arising out of or in any way relating to requests for disclosure of material provided or produced.

Documenting Receipt of an Unsolicited Proposal:

If an Unsolicited Proposal is received and it meets the Unsolicited Proposal Criteria and Unsolicited Proposal Requirements, the Agency receiving the proposal will take the following steps:

- The proposal will be logged and assigned an Unsolicited Proposal number.
- The proposer will be notified of receipt of the proposal.
- An Unsolicited Proposal Committee will be assembled to evaluate the proposal except that if the recipient Agency head determines that (1} the proposal is for a good, service, project, strategy, or method applicable to no other City agency and (2) the proposal is not one that the recipient Agency wants to pursue, the Agency head may elect to reject the Unsolicited Proposal without further evaluation by the Unsolicited Proposal Committee. In such case, the Agency will document the reason for rejection in the proposal log.

Unsolicited Proposal Review Committee:

The Mayor shall designate a committee comprised of appointed officials and/or City employees to serve on the Unsolicited Proposal Review Committee. The executive director or head of the Agency that would administer the contract if a proposal is accepted (the "Lead Agency"), or his or her designee, will present the proposal to the Unsolicited Proposal Review Committee to review the proposal and determine if the good, service, project, strategy, or method should be further pursued, evaluating the proposal pursuant to the Unsolicited Proposal Criteria above.

The Unsolicited Proposal Review Committee will make a recommendation to the executive director or head of the Lead Agency that the Unsolicited Proposal be (1) pursued as proposed; (2} further developed or refined by the proposer before a final determination; or (3) rejected. The executive director or head of the Lead Agency will make the final decision regarding whether to pursue the Unsolicited Proposal.

The Lead Agency will notify the Proposer in writing of the City's decision to pursue or not to pursue the Unsolicited Proposal. If an Unsolicited Proposal will not be pursued, the Unsolicited Proposal materials will be returned to the Proposer. A record will be kept by the Lead Agency documenting the outcome of the Unsolicited Proposal process.

Pursuit of Unsolicited Proposals:

If the City, in its sole discretion, determines that it wants to pursue an Unsolicited Proposal the Lead Agency will:

- Consult with its procurement or contracting team.
- If the Unsolicited Proposal is for supplies, equipment or personal property and services in connection therewith under General Service's jurisdiction set forth in the City's Charter at §2.9.3(A), General Services shall retain its existing authority to procure those goods and related services.
- Request applicable insurance requirements from the City's Risk Management Department.
- Consult with the City Attorney's Office to determine applicable contracting requirements including, but not limited to: Prevailing Wage, MWBE, ACDBE, the Purchasing Ordinance, Prequalification, and bonding.
- If required, the Lead Agency will comply with the requirements of the MWBE ordinance or ACDBE program to establish a goal.
- Request a sample contract from the City Attorney's Office.

The Lead Agency will then follow applicable federal, state, Charter, Municipal Code, and Executive Order 8 policies related to procurement. Within these requirements, the Lead Agency may design a procurement that best meets its needs, including initiating a request for information, request for qualifications, and/or a request for proposals; holding informational and discussion sessions for proposers; and pursuing additional dialogue about the proposed project. The initial Proposer may submit a revised/updated proposal by the deadline set for other interested parties to respond to account for City requirements. Proposals will be evaluated in accordance with the Lead Agency's policy for evaluating similar proposals as that policy may be adjusted by the executive director or head of the Lead Agency, or executive leadership of the relevant program or initiative, depending on the Proposal. Nothing herein obligates the City to accept any proposal submitted, including the initial Proposer's proposal.