



CIBOLA COUNTY

BOARD OF COUNTY COMMISSIONERS

RESOLUTION № 2023-45

A RESOLUTION ADOPTING THE CIBOLA COUNTY PURCHASING POLICY

WHEREAS, the Board of County Commissioners of Cibola County, met at its regular commission meeting on September 28, 2023, at 5:00 P.M. in the Cibola County Administration Office, 700 East Roosevelt, Grants, NM 87020; and,

WHEREAS, NMSA 1978, Section 4-37-1 (1995) provides that Counties have the power to, “provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of any county or its inhabitants”; and,

WHEREAS, the Cibola County Board of County Commissioners finds that it is necessary to adopt rules and regulations to provide for the fair and equitable treatment of all persons involved in public procurement in Cibola County; and,

WHEREAS, the Cibola County Board of County Commissioners seeks to maximize the purchasing value of public funds; and,

WHEREAS, the Cibola County Board of County Commissioners wishes to provide safeguards for maintaining a procurement system of quality and integrity to protect the health, welfare and safety of the citizens of Cibola County pursuant to NMSA 1978, Section 4-37-1 (1975); and,

NOW, THEREFORE, BE IT RESOLVED by the Cibola County Board of Commissioners that is adopts the following Purchasing Policy.



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PROCUREMENT POLICY

1. **SCOPE.** This policy pertains to all procurement initiated by or on behalf of Cibola County (County), including those initiated by its volunteer fire districts or grantees, when there is a use of public monies involved. All entities involved in procuring items of tangible personal property, services or construction shall adhere to attendant federal and state laws and regulations including applicable OMB circulars; and County policies.
 - 1.1 Administration. The responsibility for administration of the provisions of this policy shall be under the County Manager. The Purchasing Agent is the individual and office designated by the County Manager to fulfill the responsibility and functions of a central purchasing office. The Purchasing Agent shall have the responsibility and authority to insure that all provisions of law and this policy are adhered to through the procurement process established by the County.
2. **AUTHORITY AND REFERENCES.** The state Procurement Code (Code), sections 13-1-28 through 13-1-199 NMSA 1978, and applicable OMB circulars, federal, state and laws, regulations, and guidelines and County policy.
3. **OBJECTIVE.**
 - 3.1 The purpose of the Code and this policy are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public monies and to provide safeguards for maintaining a procurement system of quality and integrity.
 - 3.2 The County must comply with any requirement imposed by federal and state law and regulations, County policy, and the terms of the federally funded grants. Compliance with the standards promulgated in the OMB circulars and the Code and this policy that governs procurement will ensure that procurement practices are acceptable.
 - 3.3 The objective of this policy is to have the force and effect of law to implement, interpret or make policy specific as it applies to federal procurement law and the Code, and the purposes stated therein.
4. **DEFINITIONS.**
 - 4.1 Most of the terms that appear in this policy are defined in the Code.
 - 4.2 In this policy the following definitions also apply:
 - 4.2.1 "Procurement manager" means the person or designee authorized by the County Manager to manage procurement requiring the evaluation of competitive sealed proposals.
 - 4.2.2 "Determination" means the written documentation of a decision of a Purchasing Agent including findings of fact to support a decision. A determination becomes part of the procurement file to which it pertains.
 - 4.2.3 "User agency" means any of the County departments or entities providing services on behalf of the County in fulfillment of their designated program.



4.2.4 “Area” means Cibola County, New Mexico

4.2.5 “Policy” as used in this document also infers “local regulation” or “regulation” as used in the Code (Section 13-1-80 NMSA 1978).

5. **APPLICATION OF PROCUREMENT LAW.** When procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal and state laws and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the state Procurement Code or this policy, compliance with federal law or regulations shall be compliance with the state Procurement Code (Section 13-1-30 NMSA 1978).

5.1 Funds provided under federal or state grants may not be used to duplicate facilities or services available with or without reimbursement from federal, state, or local sources.

6. **CENTRALIZATION OF PROCUREMENT ACTIVITY.**

6.1 *Purchasing Office.* The Purchasing Office for the County is the Business Manager’s office of the County. The Purchasing Agent of the County shall oversee and coordinate all procurement for the County.

6.2 *Procurement Manager.* The individual designated by County Manager to oversee a specific procurement. Typically the individual would be a designee of the user agency most familiar with the specific procurement.

6.3 *Purchasing officer* also means the office or officer of the user agency responsible for procurement under this policy.

6.4 *Cooperative procurement.* Nothing in this section should be interpreted as limiting the ability of the County to make procurements under existing contracts or enter into cooperative procurement agreements.

7. **INSPECTION OF PUBLIC RECORDS.** The inspection of public records is governed by the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. To the extent that any provision of this policy conflicts with the Inspection of Public Records Act, as interpreted by the courts of this state, that act shall control. Furthermore, no obligation to keep data confidential that is contained in this policy is intended to create any liability that would not otherwise exist under federal or state law.

8. **DOLLAR AMOUNTS.** Whenever a dollar amount appears in this policy, such amount is exclusive of applicable gross receipts and local option taxes as the term is defined in Section 7-9-3 (Q) NMSA 1978.

9. **INDEMNIFICATION AND INSURANCE.**

9.1 *Tort liability.* Except as provided for in the Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978, no contract governed by this policy shall contain any provision whereby the County agrees to indemnify or provide tort liability insurance for any contractor. The indemnification and insurance provisions of contracts provided for in the Tort Claims Act shall be approved in writing by the County legal counsel or risk manager before they become effective.

9.2 *Other risks.* No contract governed by this policy shall contain any provision whereby the County agrees to indemnify or provide a contractor with insurance for non-tort risks unless the provision



has been approved in writing by the County legal counsel or risk manager.

- 9.3 *Contract provisions void.* Any indemnification or insurance provision in any contract executed in violation of this section shall be void and of no effect.

10. **SEVERABILITY.** If any provision of this policy, or any application thereof, to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this policy which can be given effect without the invalid provision or application.

11. **EXEMPTIONS FROM PROCUREMENT THROUGH THE CODE** (Section 13-1-98 NMSA 1978) The provisions of this policy and the Code shall not apply to:

- 11.1 Procurement of items of tangible personal property or services by the County from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;
- 11.2 Printing or duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;
- 11.3 Purchases of publicly provided or publicly regulated gas, electricity, water, sewer, and refuse collection systems;
- 11.4 Purchases of books and periodicals from the publishers or copyright holders thereof;
- 11.5 Travel or shipping by common carrier or by private conveyance or to meals and lodging;
- 11.6 Minor purchases not exceeding \$5,000 consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;
- 11.7 The issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;
- 11.8 Contracts entered into by the County with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;
- 11.9 Contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the U.S. department of justice drug enforcement administration;
- 11.10 Contracts with professional entertainers;
- 11.11 Contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
- 11.12 Contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Section 3-33-14.1L NMSA 1978 and in county improvement districts pursuant to Section 4-55A-12.1L NMSA 1978;
- 11.13 Works of art for museums or for display in public buildings or places; and
- 11.14 Purchases of advertising in all media, including radio, television, print and electronic.

12. **APPLICATION -- COMPETITIVE SEALED BIDS.** The following provisions of this section



apply to any procurement made by competitive sealed bids.

- 12.1 *Competitive Sealed Bids Required.* All procurement shall be achieved by competitive sealed bids except procurement achieved pursuant to the following methods:
 - 12.1.1 Competitive sealed proposals, see section 15 of this policy;
 - 12.1.2 Small purchases, see section 16 of this policy;
 - 12.1.3 Sole source procurement, see section 17 of this policy;
 - 12.1.4 Emergency procurement, see section 18 of this policy;
 - 12.1.5 Procurement under existing contracts, see section 19 of this policy; and
 - 12.1.6 Purchases from anti-poverty program businesses.
- 12.2 Invitation for Bids (IFB).
 - 12.2.1 General. The invitation for bids (IFB) is used to initiate competitive sealed bid procurement. The IFB shall include the following: a) the specifications for the services, construction or items of tangible personal property to be procured; b) all contractual terms and conditions applicable to the procurement; c) the term of the contract and conditions of renewal or extension, if any; d) instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening; e) a notice that the IFB may be canceled and that any and all bids may be rejected in whole or in part when it is in the best interest of the County; f) a notice that reads substantially as follows: "*The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs*"; and g) required federal certifications – see section 27 of this policy, if applicable.
- 12.3 Incorporation by reference. The IFB may incorporate documents by reference, provided that the IFB specifies where such documents can be obtained.
- 12.4 Evaluation criteria. The IFB shall set forth the evaluation criteria that will be used to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or life cycle costs that will affect the bid price shall be objectively measurable. No criteria may be used in bid evaluation that is not set forth in the IFB.
- 12.5 Bid form. The IFB shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions. A bidder may submit a reasonable facsimile of the bid form. Oral, telephonic and telegraphic bids except as provided in this subsection are invalid and shall not be considered. E-mailed or bids sent via FAX to a third party and delivered in a sealed envelope to the location where bids are to be received by the date and time shown in the bid, will be accepted for consideration.
- 12.6 Bid samples and descriptive literature.
 - 12.6.1 "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item.
 - 12.6.2 "Bid sample" means a sample furnished by a bidder that shows the characteristics of an item



offered in the bid.

- 12.6.3 Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the item bid.
- 12.6.4 Bid samples, when required, shall be furnished free of expense to the County and prior to the time set for the opening of bids. Samples not destroyed or mutilated in testing will be returned upon request by mail, express or freight, collect. Each sample must be labeled to clearly show the bid number and the bidder's name.
- 12.7 Bidding time. Bidding time is the period of time between the date of distribution of the IFB and the time and date set for receipt of bids. In each case bidding time shall be set to provide bidders a reasonable time to prepare their bids. In no case shall the bidding time be shorter than the time required for publication under the following section.
- 12.8 Public Notice, Publication. The IFB or notice thereof shall be published not less than **10 calendar days** prior to the date set for the opening of bids. The IFB or notice must be published once in at least one newspaper of general circulation in the Area.
- 12.8.1 These requirements of publication are in addition to any other procedures that may be adopted by the County to notify prospective bidders that bids will be received, including but not limited to publication in trade journals, if available.
- 12.8.2 Bidder lists. The Purchasing Agent shall send copies of the notice or IFB involving the expenditure of more than \$60,000 to those businesses which have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and which have paid any required fees (Section 13-1-104 NMSA 1978).
- 12.8.3 Public availability. A copy of the IFB shall be made available for public inspection at the office of the Purchasing Agent and the consultant, if applicable.
- 12.9 *Pre-Bid Conferences.* Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received the IFB. The conference should be held long enough after the IFB has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the IFB unless a change is made by written amendment as provided in this policy.
- 12.10 *Amendments to the Invitation for Bids.*
- 12.10.1 Form. An amendment to the IFB shall be identified as such and shall require that bidders acknowledge its receipt. The amendment shall refer to the portions of the IFB it amends.
- 12.10.2 Distribution. Amendments shall be sent to all prospective bidders known to have received the IFB.
- 12.10.3 Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone or by other electronic means and confirmed in the amendment.
- 12.10.4 Use of amendments. Amendments should be used to: a) make any changes in the IFB such as



changes in quantity, purchase descriptions, delivery schedules, and opening dates; b) correct defects or ambiguities; or c) furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

12.11 *Pre-opening Modification or Withdrawal of Bids.*

- 12.11.1 Procedure. A bid may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the IFB as the place where bids are to be received.
- 12.11.2 Disposition of bid security. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.
- 12.11.3 Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

12.12 *Late Bids, Late Withdrawals and Late Modifications.*

- 12.12.1 Definition. Any bid or any withdrawal or modification of a bid received after the time and date for opening of bids at the place designated for opening is late.
- 12.12.2 General policy. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of the purchasing office personnel directly serving the procurement activity. Exception, a late bid may be considered for award if it is the only bid received.
- 12.12.3 Records. All documents relating to late bids, late modifications, or late withdrawals shall be made a part of the appropriate procurement file.

12.13 *Bid Opening.*

- 12.13.1 Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening.
- 12.13.2 No bids received. If no bids are received or if all bids received are rejected in accordance with the provisions of sections 20 and 21 of this policy, a new IFB shall be issued. If upon re-bidding with no change in specifications from the first IFB, the bids received are unacceptable, or if no bids are secured, the Purchasing Agent may purchase (i.e., as opposed to procure) the items of tangible personal property, construction or services in the open market at the best obtainable price.
- 12.13.3 Opening and recording. Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The name of each bidder, the amount of each bid and each bid item, if appropriate, the names and addresses of the required witnesses, and such other relevant information as may be specified by the Purchasing Agent shall be recorded. The record shall be open for public inspection. Each bid, except those portions for which a bidder has made a written request for confidentiality, shall also be open to public inspection. Any data, which a bidder believes should be kept confidential shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless



of any designation to the contrary.

12.14 *Mistakes in Bids.*

- 12.14.1 Consideration for award. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in sections 12 through 14 of this policy and the Procurement Code. In addition to the requirement for the prime contractor and subcontractors to be registered as provided as provided in Section 13-4-13.1 A bid submitted by a prime contractor that was not registered as required by Section 13-4-13.1 NMSA 1978 **shall not be** considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with that section may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978 (Section 13-1-105 NMSA 1978).
- 12.14.2 General principles. Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent authorized in sections 12 through 14 of this policy.
- 12.14.3 Mistakes discovered before opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in subsection 12.11 of this policy.
- 12.14.4 Confirmation of bid. When the Purchasing Agent knows or has reason to conclude that a mistake has been made in the low bid, the Purchasing Agent should request the low bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the low bid or a bid unreasonably lower than the other bids submitted. If the low bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in subsection 12.14.5 are met.
- 12.14.5 Mistakes discovered after opening. This subsection sets forth procedures to be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening:
- a) Technical irregularities. Technical irregularities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, when there is no effect on price, quality or quantity. The Purchasing Agent may waive such irregularities or allow the low bidder to correct them if either is in the best interest of the County. Examples include the failure of the low bidder to: 1) return the number of signed bids required by the IFB; 2) sign the bid, but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound; or 3) acknowledge receipt of an amendment to the IFB, but only if: it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.
 - b) Mistakes where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident on the face of a bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of a bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. It is emphasized that mistakes in unit prices cannot be corrected.
 - c) Mistakes where intended correct bid is not evident. A low bidder alleging a material mistake of fact which makes the bid non-responsive may be permitted to withdraw the bid if: 1) a

mistake is clearly evident on the face of the bid document but the intended correct bid is not; or 2) the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

- d) Written determination. When a bid is corrected or withdrawn, or a correction or withdrawal is denied, the Purchasing Agent shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

12.15 *Bid Evaluation and Award.*

12.15.1 General. A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bid. No bid shall be evaluated for any requirement or criterion that is not disclosed in the IFB. Contracts solicited by competitive sealed bids shall require that the bid amount *exclude* the applicable state gross receipts tax or local option tax but that the County shall be required to pay the tax including any increase in the tax becoming effective after the contract is entered into. The tax shall be shown as a separate amount on each billing or request for payment made under the contract.

12.15.2 Product acceptability. The IFB shall set forth all evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any or all of the following prior to award: a) inspection or testing of a product for such characteristics as quality or workmanship; b) examination of such elements as appearance, finish, taste or feel; or c) other examinations to determine whether it conforms with other purchase description requirements.

12.15.3 Purpose of acceptability evaluation. An acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another's but only to determine that a bidder's offering is acceptable as set forth in the IFB. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive.

12.15.4 Brand-name or equal specification. Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. When bidding an "*or equal*" the burden of persuasion is on the supplier or manufacturer who has not been specified to convince the Purchasing Agent that their product is, in fact, equal to the one specified. The Purchasing Agent or purchasing officer is given the responsibility and judgment for making a final determination on whether a proposed substitution is an "or equal".

12.15.5 Determination of lowest bidder. Following determination of product acceptability as set forth in this section, if any is required; bids will be evaluated to determine which bidder offers the lowest cost to the County in accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, discount, transportation costs and ownership or life-cycle formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the County has available concerning future use.

- a) Prompt payment discounts. Prompt payment discounts shall not be considered in computing the low bid. Such discounts may be considered after award of the contract.
- b) Trade discounts. Trade discounts shall be considered in computing the low bid. Such



discounts may be shown separately, but must be deducted by the bidder in calculating the unit price quoted.

- c) Quantity discounts. Quantity discounts shall be included in the price of an item. Such discounts may not be considered where set out separately unless the IFB so specifies.
- d) Transportation costs. Transportation costs shall be considered in computing the low bid. Such costs may be computed into the bid price or be listed as a separate item.
- e) Total or life cycle costs. Award may be determined by total or life cycle costing if so indicated in the IFB. Lifecycle cost evaluation may take into account operative, maintenance, and money costs, other costs of ownership and usage and resale or residual value, in addition to acquisition price, in determining the lowest bid cost over the period the item will be used.
- f) Energy efficiency. Award may be determined by an evaluation consisting of acquisition price plus the cost of energy consumed over a projected period of use.

12.15.6 Restrictions. Nothing in subsection 12.15 of this policy shall be deemed to permit contract award to a bidder submitting a higher quality item than designated in the IFB unless the bidder is also the lowest bidder as determined under subsection 12.15.5. Further, except as provided in this subsection, this policy does not permit negotiations with any bidder or disclosing bid amounts to another bidder prior to award. If the lowest responsive bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest responsible bidder may negotiate with the purchaser (i.e., this exception applies only to purchases and does not apply to procurements generally) for a lower total bid to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.

12.15.7 Documentation of award. Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file.

12.15.8 Publicizing awards. Written notice of award shall be sent to the successful bidder. Notice of award shall also be posted at the County Manager's office.

12.16 *Statutory preferences* (Statutory preferences to be applied in determining low bidder). New Mexico law provides certain statutory preferences to resident businesses, resident manufacturers, and for recycled content goods (Sections 13-1-21 and 13-1-22 NMSA 1978). The statute further provides a preference to resident construction contractors (Sections 13-4-1 through 13-4-3 NMSA 1978) which must be applied in determining the lowest bidder.

12.17 Identical low bids.

12.17.1 Definition. Identical low bids are low responsive bids, from responsible bidders, which are identical in price after the application of the preferences referred to in this policy and which meet all the requirements and criteria set forth in the IFB.

12.17.2 Award. When two or more identical low bids are received, the Purchasing Agent may: a) award pursuant to the multiple source award provisions of Sections 13-1-153 and 13-1-154 NMSA 1978; b) award to a resident business if the identical low bids are submitted by a resident business and a nonresident business; c) award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a resident business; d) award to a bidder offering recycled content goods if the identical low bids are for recycled content goods and virgin goods; e) award by lottery to one of the identical low bidders; or f) reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property.



13. **MULTI-STEP SEALED BIDS.**

- 13.1 *General.* Multi-step bidding is a variant of the competitive sealed bidding method. This method may be utilized when the central purchasing office makes a determination that it is impractical initially to prepare specifications to support an award based on price, or that specifications are inadequate or are too general to permit full and free competition without technical evaluation and discussion.
- 13.2 *Phased process.* Multi-step bidding is a phased process which combines elements of both the competitive sealed bid and the competitive sealed proposal methods, seeking necessary information or unpriced technical offers in the initial phase; and regular competitive sealed bidding, inviting bidders who submitted technically acceptable offers in the initial phase, to submit competitive sealed price bids on the technical offers in the final phase. The contract shall be awarded to the lowest responsible bidder. If time is a factor, the central purchasing office may require Offerors to submit a separate sealed bid during the initial phase to be opened after the technical evaluation.
- 13.3 *Public notice.* Whenever multi-step sealed bids are used, public notice for the first phase shall be given in accordance with subsection 12.8 of this policy. Public notice is not required for the second phase.

14. **PAYMENTS FOR PURCHASES.** [Contract clause] All contracts resulting from an invitation for bids shall contain a clause allowing for late payment charges against the contracting agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978. For purchases funded by state or federal grants to the County, payments shall be tendered to the contractor within five working days of receipt of funds from the funding agency.

15. **APPLICATION -- COMPETITIVE SEALED PROPOSALS.**

- 15.1 *General.* Except as provided in subsections 15.2 and 15.3 of this section, the provisions of this section apply to any procurement made by competitive sealed proposals.
- 15.2 *Architects, engineers, landscape architects and surveyors.* The provisions of this section do not apply to the procurement of professional services of architects, engineers, landscape architects and surveyors for local public works projects. Except that when procuring such professional services for local public works projects the County shall comply with Sections 13-66.1, 13-1-120 through 13-1-124 NMSA 1978.
- 15.3 *Professional Services.* "Professional services" are defined in Section 13-1-76 NMSA 1978. The section of statute acknowledges the difficulty of any attempt made to recognize and list each and every service that could conceivably fall within the definition of "professional services". Instead, the statute provides in relevant part that "...other persons or businesses providing similar professional services to those listed may be designated as such by a determination issued by the Purchasing Agent." In instances where "...other persons or businesses providing similar professional services..." as cited in Section 13-1-76, NMSA 1978, is not clearly defined, Contractors shall submit a written request to the purchasing office for issuance of a determination and a finding that the service is to be designated as a professional service.
- 15.4 *General Discussion.*
- 15.4.1 Use of competitive sealed proposals. Except as provided in Section 13-1-119.1G NMSA 1978 for procuring professional services or a design and build project delivery system, or when the Purchasing Agent and the procurement manager with approval of the County Manager makes a



determination that the use of competitive sealed bidding for items of tangible personal property effected by competitive sealed proposals. (Section 13-1-111 NMSA 1978).

- 15.4.2 Definitions. The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" denotes a judgmental assessment of what is in the County's best interest. The use of competitive sealed bids may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the County's best interest.
- 15.4.3 Proposals offer flexibility. The key element in determining advantageousness is the need for flexibility. The competitive sealed proposal method differs from the competitive sealed bid method in two important ways: a) it permits discussions with competing Offerors and changes in their proposals including price; and; b) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of a contract.
- 15.4.4 Determinations by category. The Purchasing Agent's office may make determinations by category of services or items of tangible personal property that it is either not practicable or not advantageous to procure specified types of service or items of tangible personal property by competitive sealed bids in which case competitive sealed proposals shall be utilized. The purchasing office may modify or revoke such determinations at any time.
- 15.5 *Request for Proposals (RFP):*
- 15.5.1 Initiation. The request for proposals (RFP) is used to initiate competitive sealed proposal procurement. The County shall follow published guidelines and procedures issued by the Purchasing Agent's office from development stage through award of RFP-based procurements. At a minimum the RFP shall include the following: a) the specifications for the services or items of tangible personal property to be procured; b) all contractual terms and conditions applicable to the procurement; c) instructions concerning the submission and response to questions; d) the term of the contract and conditions of renewal or extension, if any; e) instructions and information to Offerors, including the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed; f) all of the evaluation factors, and the relative weights to be given to the factors in evaluating proposals; g) a statement that discussions may be conducted with Offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions; h) a notice that the RFP may be canceled and that any and all proposals may be rejected in whole or in part when it is in the best interest of the County; i) a statement of how proposed costs should be submitted; j) a notice that reads substantially as follows: "*The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs*", and k) required federal certifications – see section 27 of this policy, if applicable.
- 15.5.2 Incorporation by reference. The RFP may incorporate documents by reference, provided that the RFP specifies where such documents can be obtained.
- 15.5.3 Form of proposal. The manner, in which proposals are to be submitted, including any forms for that purpose, should be designated in the RFP.
- 15.5.4 Proposal preparation time. Fifteen to thirty calendar days between the date of issue and the proposal due date is the recommended minimum proposal preparation time. A longer preparation time may be required for complex procurements or for procurements that require substantial offeror resources to prepare an acceptable proposal. provided in subsection 12.8 of

this policy. It is further provided that subsection 12.8.2 of this policy does not apply to a solicitation of a professional service contract unless the value of the contract will exceed \$30,000, for architects and engineers - \$25,000, and for landscape architects and surveyors - \$5,000 (Section 13-1-125B NMSA 1978).

- 15.7 *Pre-proposal Conferences.* Pre-proposal conferences may be conducted in accordance with subsection 12.9 of this policy. Any such conference should be held prior to submission of initial proposals.
- 15.8 *Amendments to the Request for Proposals.*
- 15.8.1 Prior to submission of proposals. Prior to submission of proposals, amendments to the RFP may be made in accordance with subsection 12.10 of this policy.
- 15.8.2 After submission of proposals. After submission of proposals, amendments to the RFP shall be distributed only to short-listed Offerors. The short-listed Offerors shall be permitted to submit new proposals or to amend those submitted. If in the opinion of the Purchasing Agent or procurement manager, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled in accordance with sections 20 and 21 of this policy, and a new RFP issued.
- 15.9 *Modification or Withdrawal of Proposals.* Proposals may be modified or withdrawn prior to the established due date in accordance with subsection 12.11 of this policy. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or, if discussions have begun, it is the time and date by which best and final offers must be submitted by short-listed Offerors.
- 15.10 *Late Proposals, Late Modifications and Late Withdrawals.* Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is late. See section 15.9 of this policy for the definition of "established due date". They may be considered only in accordance with section 12.12 of this policy.
- 15.11 *Receipt and Opening of Proposals.*
- 15.11.1 Receipt. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. See section 15.9 of this policy for the definition of "established due date".
- 15.11.2 Opening. Proposals shall **not** be opened publicly and shall not be open to public inspection until after an offeror has been selected for award of a contract. An offeror may request in writing nondisclosure of confidential data. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non- confidential portion of the proposal.
- 15.12 *Evaluation of Proposals.*
- 15.12.1 Evaluation factors. The evaluation shall be based on the evaluation factors and the relative weights set forth in the RFP.
- 15.12.2 Evaluation Committee. The County Manager shall appoint an evaluation committee prior to the due date for receipt of proposals, unless the Board of County Commissioners chooses to appoint an Evaluation Committee. The size of the committee should be manageable and may include both user and technical support representatives.



15.12.3 Classification of proposals. For the purpose of conducting discussions under subsection 15.13 of this policy, proposals shall be initially classified as a) responsive; b) potentially responsive, that is, reasonably susceptible of being made responsive; or c) non-responsive.

15.12.4 Disqualification. Non-responsive proposals are disqualified and eliminated from further consideration. A written determination in the form of a letter must be sent promptly to the disqualified offeror setting forth the grounds for the disqualification, and made a part of the procurement file.

15.13 *Proposal Discussion and Negotiations with Individual Offers.*

15.13.1 Discussions authorized. Discussions may be conducted with responsible Offerors who submit acceptable or responsive, potentially acceptable or potentially responsive proposals. Discussions shall be conducted by the Purchasing Agent, the procurement manager or the evaluation committee as a whole body. Individual discussions by committee members except as otherwise expressed in this subsection are prohibited.

15.13.2 Purposes of discussions. Discussions are held to clarify technical or other aspects of the proposals.

15.13.3 Conduct of discussions. If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror. Proposals may be accepted and evaluated without such discussion. This is not an opportunity for the Offerors to amend the substance of their proposals.

15.13.4 Short list. All responsible Offerors who submit acceptable proposals are eligible for the short list. If numerous acceptable proposals have been submitted, however, the Purchasing Agent or procurement manager may rank the proposals and select the highest ranked proposals for the short list. Those responsible Offerors who are selected for the short list are the short-listed "Offerors" or "finalist Offerors". The short list shall be approved by the County Manager or Business Manager before the procurement process can continue.

15.13.5 Competitive negotiations. Competitive negotiations may be held among the short-listed Offerors to: a) promote understanding of the County's requirements and short-listed Offerors' proposal; and b) facilitate arriving at a contract that will be most advantageous to the County taking into consideration the evaluation factors set forth in the RFP.

15.13.6 Except for circumstances and situations otherwise approved by the purchasing office, negotiations of the relevant terms and conditions as well as any other important factors in an RFP and proposed contract are negotiated prior to award of a contract, not after award.

15.13.7 Conduct of competitive negotiations. Short-listed Offerors shall be accorded fair and equal treatment with respect to any negotiations and revisions of proposals. The procurement manager should establish procedures and schedules for conducting negotiations. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the short-listed offeror.

15.14 *Disclosure.* The contents of any proposal shall **not** be disclosed so as to be available to competing Offerors during the negotiation process and prior to award.

15.15 *Best and Final Offers.* The Purchasing Agent or procurement manager may establish a common date and time for short-listed or finalist Offerors to submit best and final offers. Best and final offers shall

be submitted only once; provided, however, the purchasing office may make a written determination that it is in a County's best interest to conduct additional discussions or change the County's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award. Short-listed Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediately previous offer will be construed as their best and final offer.

15.16 *Mistakes in Proposals.*

- 15.16.1 Modification or withdrawal of proposals. Proposals may be modified or withdrawn as provided in subsection 15.9 of this policy.
- 15.16.2 Mistakes discovered after receipt of proposals. This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals.
- a) Confirmation of proposal. When the Purchasing Agent or procurement manager knows or has reason to conclude before award that a mistake has been made, the Purchasing Agent or procurement manager should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in subsection 15.16.3 of this section are met.
 - b) During negotiations; prior to best and final offers. Once negotiations are commenced or after best and final offers are requested, any short-listed or finalist offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
- 15.16.3 Technical irregularities. Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Purchasing Agent or procurement manager may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the County. Examples include the failure of an offeror to: return the number of signed proposals required by the RFP; sign the proposal, **but only if** the unsigned proposal is accompanied by other material indicating the offeror's intent to be bound; or acknowledge receipt of an amendment to the RFP, but only if: it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.
- 15.16.4 Correction of mistakes. If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
- 15.16.5 Withdrawal of proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: a) the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or b) the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
- 15.16.6 Determination required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied under subsections 15.16.3 through 15.16.5 of this section, the Purchasing Agent or procurement manager shall prepare a written determination showing that the relief was granted or denied in accordance with this section.



15.17 *Public Inspections.*

15.17.1 General. After award, any written determinations made pursuant to this policy, the evaluation committee report and each proposal, except those portions for which the offeror has made a written request for confidentiality, shall be open to public inspection. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed may not be designated as confidential information.

15.17.2 Confidential data. If a request is received for disclosure of data, for which an offeror has made a written request for confidentiality, the purchasing office shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the data will be so disclosed. After award the proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

15.18 *Payments for Purchases.* [Contract Clause] All contracts resulting from a request for proposals shall contain a clause allowing for late payment charges against the County or its subrecipients in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978. For purchases funded by state or federal grants to the County, payments shall be tendered to the contractor within five working days of receipt of funds from the funding agency and after approval by the Board of County Commissioners.

16. **APPLICATION -- SMALL PURCHASES.** The provisions of this section apply to the procurement of nonprofessional services, construction or items of tangible personal property having a value not exceeding \$20,000 and to the procurement of professional services having a value not exceeding \$30,000, except procurement for architects, engineers, landscape architects and surveyors, see subsection 16.3.1. The methods of procurement set forth in subsections 16.2 through 16.4 of this policy provide alternatives to the competitive sealed bid and competitive sealed proposal methods of procurement. If the procurement methods set forth in subsections 16.2 through 16.4 of this policy are not used the competitive sealed bid or competitive sealed proposal methods shall apply.

16.1 *Division of Requirements.* Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

16.2 *Small Purchases of Items of Tangible Personal Property, Construction and Nonprofessional Services.*

16.2.1 Quotation to be obtained. Insofar as it is practical for small purchases of nonprofessional services, construction or items of tangible personal property written quotations are to be recorded and placed in the procurement file as set forth below:

- a) **\$2499.99 or less.** Purchases shall be made according to the **best obtainable price** from a vendor, catalogue or website. This quotation is required to be recorded on a procurement requisition form and made a part of the procurement file .
- b) **\$2,500.00 to 59,999.99.** Purchases shall be made according to the **best obtainable price** provided at least 3 *quotations* from different vendors, have been obtained for such purchases. These quotations are required to be recorded on a procurement requisition form and made a part of the procurement file.

- e) **\$60,000 and above.** All purchases exceeding \$60,000.00 require formal bid procedures as set forth in this policy.
- 16.2.2 Disclosure. Prior to award, the contents of any response to a quotation shall not be disclosed to any other business from which the same request for quotation is also being solicited.
- 16.2.3 Bidders list. Although not required to be published in a newspaper or newspapers of general circulation in the Area, the purchasing office shall send copies of the notice or request for quotes/informal invitation for bids involving the expenditure of more than \$10,000 but not exceeding \$20,000 to those businesses who have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction or services and which have paid any required fees. *For purposes of this policy an annual fee of \$25.00 will place a business on the registration list.*
- 16.2.4 Award. Award shall be made to the business offering the lowest acceptable quotation.
- 16.2.5 Records. The names of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.
- 16.3 *Small Purchases of Professional Services.*
- 16.3.1 Application. The purchasing office may procure professional services: having a value not exceeding **\$60,000**; for the services of architects and engineers having a value not exceeding **\$25,000**; and for landscape architects and surveyors having a value not exceeding **\$5,000**, in accordance with the following subsections. In the case of architects, engineers, landscape architects and surveyors the value shall not include applicable state and local gross receipts.
- 16.3.2 Examination of offeror list. Before contacting any business, the purchasing office is encouraged to examine the office's current list of potential Offerors, if any. The purchasing office is encouraged to contact at least three businesses for written or oral offers before selecting a contractor.
- 16.3.3 Negotiations. The purchasing office shall negotiate a contract for the required services at a fair and reasonable price to the County.
- 16.3.4 Disclosure. If more than one business is contacted, the contents of the written or oral offer of one business shall not be disclosed to another business during the negotiation process.
17. **APPLICATION -- SOLE SOURCE PROCUREMENTS.** The provisions of this section apply to all sole source procurements unless emergency conditions exist as defined in subsection 18 of this policy.
- 17.1 *Sole Source Procurement of Items of Tangible Personal Property, Construction and Nonprofessional Services.*
- 17.1.1 Conditions for use. A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the central purchasing office makes a written determination, after conducting a good-faith review of available, that there is only one source for the required items of tangible personal property, construction or nonprofessional services. In cases of reasonable doubt, competition should be solicited.
- 17.1.2 Request by user agency. Any request by a user agency that procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be



suitable or acceptable to meet the need. The written explanation shall be made on a form provided by the purchasing agent.

- 17.1.3 Negotiations. The purchasing office shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the County.
- 17.2 *Records of sole source procurements.* The purchasing office shall maintain records of sole source procurements for a minimum of three years – see section 31. The record of each such procurement shall be a public record and shall contain: a) the contractor's name and address; b) the amount and term of the contract; c) a listing of the services, construction, or items of tangible personal property procured under the contract; and d) the justification for the procurement method which shall include any written determinations and written approvals.
18. **APPLICATION -- EMERGENCY PROCUREMENTS.** The section applies to any procurement made under emergency conditions that will not permit other source selection methods to be used.
- 18.1 *Definition of Emergency Conditions.* An emergency condition is a situation which creates a threat to public health, welfare, safety or property such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten: a) the functioning of government; b) the preservation or protection of property; or c) the health or safety of any person.
- 18.2 *Scope of Emergency Procurements.* Emergency procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency. Such procurement shall not include the purchase or lease-purchase of heavy road equipment.
- 18.3 *Authority to make Emergency Procurements.* The purchasing office may make or authorize others to make emergency procurements when an emergency condition arises; provided that emergency procurements shall be made with such competition as is practicable under the circumstances.
- 18.4 *Procedure.* The procedure used shall be selected to assure that the required services, construction, or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
- 18.5 *Written Determination Required.* A written determination of the basis for the emergency procurement shall be included in the procurement file.
- 18.6 *Records of Emergency Procurements.* The purchasing agent shall maintain records of emergency procurements for a minimum of three years – see section 31. The record of each such procurement shall be a public record and shall contain: a) the contractor's name and address; b) the amount and term of the contract; c) a listing of the services, construction, or items of tangible personal property procured under the contract; and d) the justification for the procurement method.
- 18.7 *Construction under Emergency or Sole Source Procurement.*
- 18.7.1 Notwithstanding the requirements of Sections 13-1-126 and 13-1-127 NMSA 1978, any procurement including sole source and emergency procurement, other sections of statute apply when procuring construction services. If an emergency or sole source procurement for construction is declared, a state wage rate determination pursuant to Section 13-4-11 NMSA 1978 must be obtained if the construction contract is over \$60,000 (Section 13-4-11 NMSA 1978). If the emergency occurs over a weekend or holiday you must advise the contractor that the contractor will be required to pay state wage rates and the purchasing office must contact the



Labor Commissioner as soon as possible so the Department of Labor can issue a minimum wage rate determination for the project. To obtain a state wage rate determination, contact: State Labor Commissioner, P. O. Box 4218, 1596 Pacheco St., Santa Fe, NM 87503, 505-827-6875 or via the internet at <www.state.nm.us/dol_pubwage.html>.

19. **PROCUREMENT UNDER EXISTING CONTRACTS AUTHORIZED.** The purchasing office may contract for services, construction, or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:
- 19.1 At a price equal to or less than the contractor's current federal supply contract (GSA), providing the contractor has indicated in writing a willingness to extend the contract's pricing, terms and conditions to the County and the purchase order adequately identifies the contract relied upon; or
- 19.2 With a business which has a current price agreement with the purchasing office or the State Purchasing Division of the General Services Department for the item, services, or construction meeting the same standards and specifications as the items to be procured, if the following conditions are met: a) the total quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and b) the purchase order adequately identifies the price agreement relied upon.
- 19.3 *Copies of Contracts and Price Agreements.* The purchasing office shall retain for public inspection and for the use of auditors a copy of each contract or current price agreement relied upon to make purchases without seeking competitive bids.
- 19.4 *Used Items.* As defined in Section 13-1-155 NMSA 1978, the purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds \$5,000, shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications, including but not limited to:
- 19.4.1 Requiring a written warranty for at least ninety days after date of delivery, and
- 19.4.2 An independent "certificate of working order" by a qualified mechanic or appraiser.
- 19.5 Trade-in or exchange of used items. As defined in Section 13-1-156 NMSA 1978, the purchasing office, when *trading in or exchanging used* items of tangible personal property the estimated value of which exceeds \$5,000 as part-payment on the procurement of new items of tangible personal property, shall:
- 19.5.1 Have an *independent* appraisal made of the items to be traded in or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged and the location where the items to be traded in or exchanged may be inspected; or
- 19.5.2 Have two written quotes for purchase of the property at a specified price: a) award shall be based upon the net bid. Bidders or offerors shall compute their net bid or offer by deducting the appraised value or highest quote of the items to be traded in or exchanged from the gross bid or offer on the new items of tangible personal property to be procured; b) if an amount offered in trade is less than the appraised value or the highest quote but is found to be a fair reflection of the current market, representative of the condition of the items of tangible personal property and in the best interest of the agency, the bid or offer may be accepted; and c) documentation of the terms of acceptance shall be in writing, shall be made a part of the procurement file and shall be a public record.



20. CANCELLATION OF SOLICITATIONS OR REJECTION OF BIDS OR PROPOSALS.

The provisions of sections 20 and 21 of this policy shall govern the cancellation of any solicitations whether issued by the central purchasing office under competitive sealed bids, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

20.1 *Policy.* Any solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the County.

20.2 *Cancellation of Solicitations or Rejection of All Bids or Proposals.*

20.2.1 Prior to opening. As used in this section, "opening" means the date set for opening of bids or receipt of proposals.

- a) Prior to opening, a solicitation may be canceled in whole or in part when the purchasing office makes a written determination that such action is in the County's best interest for reasons including but not limited to: 1) the services, construction, or items of tangible personal property are no longer required; 2) the user agency no longer can reasonably expect to fund the procurement; or 3) proposed amendments to the solicitation would significantly change the nature of the procurement.
- b) When a solicitation is canceled prior to opening, notice shall be sent to all businesses solicited. The notice shall: 1) identify the solicitation; 2) briefly explain the reason for cancellation; and 3) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar services, construction, or items of tangible personal property.

20.2.2 After opening.

- a) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the purchasing office makes a written determination that such action is in the County's best interest for reasons including but not limited to: 1) all of the bids and proposals are non-responsive; 2) the services, construction, or items of tangible personal property are no longer required; 3) ambiguous or otherwise inadequate specifications were part of the solicitation; 4) the solicitation did not provide for consideration of all factors of significance to the recipients/ subrecipients; 5) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; 6) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or 7) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- b) A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to subsection 20.2.1.a) of this section.

21. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS.

21.1 *Reasons for rejection.*

21.1.1 Bids. As used in this section, "bid" includes both competitive sealed bids and small purchase quotations. Reasons for rejecting a bid shall include but are not limited to: a) the business that submitted the bid is non-responsive as determined under section 22 of this policy; b) the bid is not responsive; or c) the service, construction, or item of tangible personal property offered in the



bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the IFB.

- 21.1.2 Proposals. As used in this section, "proposal" includes both competitive sealed proposals and small purchase offers. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and a user agency stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to: a) the business that submitted the proposal is non-responsible as determined under section 23 of this policy; b) the proposal is not responsive; or c) the proposed price is clearly unreasonable; or d) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.
- 21.1.3 Written determination required. The purchasing office shall prepare a written determination that contains the reasons for the rejection of an individual bid or proposal. The determination shall be made a part of the procurement file.
- 21.2 "*All or None*" bids. When the term "all or none" is used:
 - 21.2.1 By the purchaser in a solicitation. A solicitation may require bidders to submit bids or offers on all items listed in the solicitation, or may identify certain groups of items in which all items must be bid. If the solicitation is properly so limited, a bidder's failure to bid all items identified as "all or none" items may render the bid non-responsive.
 - 21.2.2 By the bidder or offeror, and not the purchaser. If the bidder restricts acceptance of the bid, or a portion thereof, by such a statement as "all or none", the bidder has "qualified" the offer which may render the bid as non-responsive.
 - 21.2.3 In instances as stated above, such a bid or offer may be accepted only if the purchasing office issues a determination setting forth the basis for accepting the bid or offer as being in the best interest of the County. Also in both, instances, the bid or offer is only eligible for award if it is the overall low bid for the item or items so restricted.
- 22. **RECEIPT, INSPECTION, ACCEPTANCE OR REJECTION OF DELIVERIES.** The County or user agency is responsible for inspecting and accepting or rejecting deliveries.
 - 22.1 The County or user agency shall determine whether the quantity is as specified in the purchase order or contract;
 - 22.2 The County or user agency shall determine whether the quality conforms to the specifications referred to or included in the purchase order or contract;
 - 22.3 If inspection reveals that the delivery does not meet or conform to the quantity or quality specified in the purchase order or contract, the County or user agency shall notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery;
 - 22.4 In case the vendor fails to comply, the County or user agency shall promptly file a purchasing complaint with the purchasing office. Also, in case the vendor fails to comply, the County or user agency shall have no obligation to pay for the nonconforming items of tangible personal property;
 - 22.4.1 If the delivery does conform to the quantity and quality specified in the purchase order or contract, the County or user entity shall certify that delivery has been completed and is satisfactory.



- 22.5 *Summary.* Notwithstanding the requirements of section 22 of this policy, if, after delivery and acceptance of goods, the goods or a portion thereof are later found to be non-conforming to the specifications referred to or included in the purchase order or contract, such acceptance does not waive any rights or remedies which are otherwise granted to the buyer in accordance with other applicable laws of New Mexico.
23. **RESPONSIBILITY OF BIDDERS AND OFFERORS.** A determination of responsibility or non-responsibility shall be governed by this section 23.
- 23.1 Standards of responsibility.
- 23.1.1 Standards for bidders. Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder has: a) submitted a responsive bid; b) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services, construction, or items of tangible personal property described in the IFB; c) a satisfactory record of performance; d) a satisfactory record of integrity; e) qualified legally to contract with the County; and f) supplied all necessary information and data in connection with any inquiry concerning responsibility.
- 23.1.2 Standards for Offerors. Factors to be considered in determining whether the standard of responsibility has been met include whether an offeror has: a) submitted a responsive proposal; b) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services or items of tangible personal property described in the proposal; c) a satisfactory record of performance; d) a satisfactory record of integrity; e) qualified legally to contract with the County; and f) supplied all necessary information and data in connection with any inquiry concerning responsibility.
- 23.1.3 Ability to meet Standards. A bidder or offeror may demonstrate the availability of adequate financial resources, production or service facilities, personnel and experience by submitting, upon request: a) evidence that the bidder or offeror possesses the necessary items; b) acceptable plans to subcontract for the necessary items; or c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- 23.2 *Inquiry by Purchasing Agent.* Before awarding a contract, the Purchasing Agent or procurement manager must be satisfied that the bidder or offeror is responsible. Therefore, a bidder or offeror shall supply information and data requested by the Purchasing Agent concerning the responsibility of the bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information or data in connection with such an inquiry is grounds for a determination that the bidder or offeror is not responsible.
- 23.2.1 Determination Required. If a bidder or offeror who otherwise would have been awarded a contract is found to be non-responsible, a written determination, setting forth the basis of the finding, shall be prepared by the purchasing office. The written determination shall be made part of the procurement file, and a copy of the determination shall be sent to the non-responsible bidder or offeror.
24. **APPLICABILITY -- PROTESTS.** The provisions of this section apply to all protests filed with the purchasing office.
- 24.1 *Right to Protest.* Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the County Manager through the purchasing office.



24.2 *Filing of Protest.*

- 24.2.1 Protest must be written. Protests must be in writing and addressed to the Purchasing Agent.
- 24.2.2 Contents. The protest shall: a) include the name and address of the protestant; b) include the solicitation number; c) contain a statement of the grounds for protest; d) include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; and e) specify the ruling requested from the central purchasing office.
- 24.2.3 Pleadings. No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.
- 24.2.4 Time limit. Protests shall be submitted within fifteen calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence.

24.3 *Procurements after Protest.*

- 24.3.1 In the event of a timely protest, as defined in this section, the purchasing office shall not proceed further with the procurement unless the office makes a written determination that the award of the contract is necessary to protect substantial interests of the County. Such written determination should set forth the basis for the determination. As used in this section, the point in time in which a contract is awarded is that point at which a legally enforceable contract is created unless the context clearly requires a different meaning.
- 24.3.2 Procurement shall not be halted after a contract has been awarded merely because a protest has been filed. After a contract has been awarded, the purchasing office may, in its sole discretion, halt procurement in exceptional circumstances or for good cause shown.

24.4 *Protest procedure.*

- 24.4.1 Upon the filing of a timely protest, the purchasing office shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or Offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.
- 24.4.2 The protestant and every business that receives notice pursuant to this section will automatically be parties to any further proceedings before the purchasing office. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Interveners shall accept the status of the proceedings at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously established time schedules. The purchasing office and all employees thereof, are not parties to the proceedings.
- 24.4.3 The purchasing office may take any action reasonably necessary to resolve a protest. Such actions include, but are not limited to, the following: a) issue a final written determination summarily dismissing the protest; b) obtain information from the staff of the central purchasing; c) require parties to produce for examination information or witnesses under their control; d) require parties to express their positions on any issues in the proceedings; e) require parties to submit legal briefs on any issues in the proceeding; f) establish procedural schedules; g) regulate the course of the proceedings and the conduct of any participants; h) receive, policy on, exclude or limit evidence; i) take official notice of any fact that is among the traditional



matters of official or administrative notice; j) conduct hearings; and k) take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses.

24.4.4 Protest Discovery. Upon written request of any party, or upon its own motion, the purchasing office may require parties to comply with discovery requests.

24.5 *Protest Hearings.*

24.5.1 Hearings will be held only when the purchasing office determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. Any party may request a hearing, but such requests shall be deemed denied unless specifically granted.

24.5.2 Hearings, when held, should be as informal as practicable under the circumstances, but the purchasing office has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the purchasing office required to adhere to formal policies of evidence or procedure.

24.6 *Resolution.*

24.6.1 The purchasing office shall promptly issue a written determination relating to the protest. The determination shall a) state the reasons for the action taken; and b) inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183 NMSA 1978.

24.6.2 A copy of the written determination shall be sent immediately by certified mail, return receipt requested, to each of the parties.

24.7 *Relief.*

24.7.1 Prior to award. If, prior to award, the purchasing office makes a written determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled.

24.7.2 After award.

- a) No fraud or bad faith. If, after an award, the purchasing office makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith: a) the contract may be ratified, affirmed or revised to comply with law, provided that a written determination is made that doing so is in the best interest of the County; or b) the contract may be terminated, and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.
- b) Fraud or bad faith. If, after an award, the purchasing office makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be canceled.
- c) Relief not allowed. Except as provided subsection 24.7.2 a), the purchasing office shall not award money damages or attorneys' fees.

24.8 *Motion for Reconsideration.*

24.8.1 Motion. A motion for reconsideration of a written determination issued pursuant to this policy



may be filed by any party or by any user agency involved in the procurement. The motion for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification of the determination is deemed warranted, specifying any errors of law made, or information not previously considered.

24.8.2 When to file. A motion for reconsideration shall be filed not later than seven calendar days after receipt of the written determination.

24.8.3 Response to motion. The purchasing office shall promptly issue a written response to the motion for reconsideration. A copy of the written response shall be sent immediately by certified mail, return receipt requested, to each of the parties.

24.9 *Designee.*

24.9.1 Designation. At any point during a protest proceeding, the purchasing office may appoint a designee as defined in Section 13-1-51 NMSA 1978 to preside over the proceeding. The designee will have all of the powers described in section 24 of this policy except the power to issue a written determination under subsection 24.6 of this policy. The designee only has authority to recommend a resolution to the purchasing office under subsection 24.6 of this policy.

24.9.2 Who may be designated? Any person, other than the Purchasing Agent, procurement manager or other person not directly involved in the procurement may serve as a designee. The Business Manager may be designated by the Purchasing Agent as the designee.

24.9.3 Recommended written determination. A designee shall present a recommended written resolution to the purchasing office and mail a copy to each of the parties. No party may appeal from the recommended resolution of the designee.

24.9.4 Action by County Manager. The County Manager shall approve, disapprove or modify the recommended resolution of the designee in writing. Such approval, disapproval or modification shall be the written determination required by subsection 24.6 of this policy. Any party may file a motion for reconsideration of the written determination pursuant to section 24.8 of this policy.

24.10 *Final Determination.*

24.10.1 No motion for reconsideration. In those proceedings in which no motion for reconsideration is filed, the written determination issued pursuant to subsection 24.6 of this policy shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183 NMSA 1978.

24.10.2 Motion for reconsideration. In those proceedings in which a motion for reconsideration is filed, the written response to the motion issued pursuant to subsection 24.8 of this policy shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183 NMSA 1978.

24.11 *Copies of Communications.*

24.11.1 Copies to be provided to parties. Each party to a protest proceeding shall certify that it has provided every other party with copies of all documents or correspondence addressed or delivered to the purchasing office.

- 24.11.2 Ex-parte communications. No party shall submit to the central purchasing office, ex-parte, any material, evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest.
- 24.11.3 Counting Days. In computing any period of time prescribed in section 24 of this policy, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.
25. **PROCUREMENT OVERSIGHT.** The County and its user agency shall conduct and document oversight to ensure compliance with the procurement standards established in applicable federal regulations, OMB circulars, the Code and this policy.
- 25.1 *Procurement system.* The County and its user agency shall maintain an administration system that ensures that contractors, subrecipients and vendors perform in accordance with the terms, conditions and specifications of their awards. Such system shall include the maintenance of records sufficient to detail the significant history of the procurement. These records shall include, but are not limited to, rationale for method of procurement, selection of agreement type, awardee selection or rejection, and the basis for the agreement price.
- 25.2 *Contract awards.* The County and its user agency shall adhere to applicable OMB circulars and the Code in selecting and awarding contracts, grants and subgrants.
26. **PERFORMANCE AND PAYMENT BONDS.**
- 26.1 Performance and (labor and material) payments bonds. Pursuant to Section 13-4-18 NMSA 1978 performance and payments bonds are required if the construction contract is over \$25,000. The bonds may be required if a project is under \$25,000 at the County's sole and complete discretion. If a contractor fails to deliver the required bonds, the contractor's bid shall be rejected; its bid security shall be enforced to the extent of actual damages. See Section 13-4-18A(1) & (2) for approved listing of bonding companies.
- 26.2 Bonding of Subcontractors. A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is \$50,000 or more (Section 13-1-21 NMSA 1978).
27. **NONDISCRIMINATION.** Federal grant recipients, subrecipients, contractors and subcontractors shall comply with the nondiscrimination and equal opportunity provisions of the enabling Act, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; the Americans with Disabilities Act of 1990, and any amendments thereto; and all applicable requirements imposed pursuant to regulations implementing those laws. The applicable federal funding agency and the state administrative entity reserve the right to seek judicial enforcement of this assurance.
28. **RESTRICTIONS AND CERTIFICATIONS.** The County, its contractors and subgrantees shall comply with: the Drug-Free Workplace Act of 1998 (Pub L. 100-690, Title V, Sub Title D); Federal Restrictions on Lobbying (20 CFR 93.100); restrictions on the use of funds involving sectarian activities; and certification regarding debarment, suspension and voluntary exclusion-lower tier covered transactions (29 CFR 98, OMB Circular A-133, and Executive Order 12549); certification regarding conflict of interest; and tobacco-free certification, if applicable and County policy.
29. **UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND CONTRACTS.**



Contractor shall comply with the appropriate Uniform Administrative Requirements for Grants and Contracts as promulgated in the Federal Common Rule, including but not limited to OMB circulars A-87, A-102, and A-122.

30. **NON-EXPENDABLE SUPPLIES AND PROPERTY.** Any nonexpendable supplies and property referred to as tangible personal property in this policy acquired using County funds and valued over \$1,000 is a fixed assets property of the County. Staff shall notify the purchasing office when authorized items over \$1,000 are purchased and received so the item can properly be tagged and inventoried.
31. **SALE OR LEASE OF REAL PROPERTY.** The selling or leasing of real property; and the sale, exchange and gift of property is governed by other statutory requirements and *not* by the Code or this policy, but are governed by Sections 13-6-1 through 13-6-4 NMSA 1978.
32. **RECORDS RETENTION.** The purchasing office shall be responsible for retention of all procurement records. The records shall be retained for a period of a minimum of 3 years from the date of final payment under the contract/subgrant. Records shall be retained beyond the 3 year period if audit findings have not been resolved, an independent audit is pending completion, or if requested by the state administrative entity or applicable funding authority or required for pending litigation. In such cases, records shall be retained until such audit findings or litigation is resolved.
33. **PERSONAL USE PROHIBITED.** A county employee, public officer or volunteer is prohibited from making purchases under County procurement for the purpose of personal or private use for themselves or non-County individuals.
34. **INTERPRETATIONS.** Any supplements or revisions to this policy will be issued through interpretive memorandum approved by the County Manager. The County Manager shall report to the County Commission on a quarterly basis regarding such interpretative memoranda. Substantive changes to this Policy shall be through supplemental resolution approved by the County Commission. The provisions of this policy shall be held to be minimum requirements. Whenever the requirements of this policy are at variance with the requirements of any other lawfully adopted rules, regulations or laws, the more restrictive or that imposing the higher standard shall govern.
35. **USE OF CONFIDENTIAL INFORMATION PROHIBITED.** It is unlawful for any state agency or local public body 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.
36. **PENALTIES.**
 - 36.1 Any person, firm or corporation that knowingly violates any provision of the Procurement Code [§13-1-28 NMSA 1978] is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code. The attorney general or the district attorney in the jurisdiction in which the violation occurs is empowered to bring a civil action for the enforcement of any provision of the Procurement Code. Any penalty collected under the provisions of this section shall be credited to the general fund of the County.
 - 36.2 Violation of this policy may subject a County employee to disciplinary action, including but not limited to suspension, demotion or termination, subject to the County Personnel Policy.
37. **CONTRACT MATTERS**
 - 37.1 Uniform Contract Clauses (13-1-170)

- A. The County shall require that contracts include uniform clauses following terms and conditions are included within each of the County's contracts and Purchase Orders. Modifications to these terms and conditions may only be made by the CPD, in consultation with the County Manager and County Attorney, and only after the CPD makes a written determination in the procurement file explaining the basis for each modification, and which determination further identifies how accepting the proposed change advances the interests of the County:
1. Payment is subject to availability of funds by the Board of County Commissioners. All invoices MUST BE received by the County no later than thirty (30) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.
 2. If the County finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the County that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the County shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein. providing for termination,
 3. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).
 4. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the County's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the County is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the County or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE COUNTY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.
 5. Termination Management. Immediately upon receipt by either the County or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the County; 2) comply with all directives issued by the County in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the County shall direct for the protection, preservation, retention or transfer of all property titled to the County and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the County upon termination and shall be submitted to the County as soon as practicable.



6. Appropriations. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners, this Agreement shall terminate immediately upon written notice being given by the County to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the County proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.
7. Status of Contractor (if applicable). The Contractor and its agents and employees are independent contractors performing professional services for the County and are not employees of the County of Cibola. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of county vehicles, or any other benefits afforded to employees of the County of Cibola as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the County of Cibola unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
8. Assignment (if applicable). The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.
9. Subcontracting (if applicable). The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the County. In all cases, the contractor is solely responsible for fulfillment of this Agreement.
10. Release. Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the County, its officers and employees, and the County of Cibola from all liabilities, claims and obligations whatsoever arising from or under this Agreement.
11. Confidentiality. (if applicable). Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.
12. Product of Service – Copyright (if applicable). All materials developed or acquired by the Contractor under this Agreement shall become the property of the County of Cibola and shall be delivered to the County no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.
13. Conflict of Interest; Governmental Conduct Act.
 - A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
 - B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16



NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

- 1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;
 - 2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the County, a member of the family of a public officer or employee of the County, or a business in which a public officer or employee of the County or the family of a public officer or employee of the County has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
 - 3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in the County's making this Agreement;
 - 4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
 - 5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County
- C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties are erroneous on the effective date of the Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties were erroneous on the effective date of the Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the County and notwithstanding anything in the Agreement to the contrary, the County may immediately terminate the Agreement.
14. Amendment. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
 15. Merger. This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior



Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement

16. Penalties for violation of law. The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
17. Equal Opportunity Compliance. The Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
18. Applicable Law. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Seventh Judicial District Court in Cibola County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.
19. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the County.
20. Records and Financial Audit. The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the County, the Department of Finance and Administration and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments
21. Disclaimer and Hold Harmless. Cibola County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the Cibola County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by Cibola County in connection with the performance
22. Indemnification. The Contractor shall defend, indemnify and hold harmless the County of Cibola from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event



that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the County of Cibola and the County's insurer by certified mail.

23. Invalid Term or Condition. If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.
24. Enforcement of Agreement. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
25. Authority. If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.
26. Lobbying (if applicable). No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any County, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
27. Approval of Contractor Personnel (if applicable). Personnel proposed in the Contractor's written proposal to the County are considered material to any work performed under this Agreement. No changes of personnel will be made by the Contractor without prior written consent of the procuring agency of the County. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the County shall retain the right to request the removal of any of the Contractor's personnel at any time.
28. Survival (if applicable). The "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" provisions of the Agreement shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.
29. Succession. This agreement shall extend to and be binding upon the successors and assigns of the parties.



30. Force Majeure. A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.
31. Mediation. In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the County's insurer and the parties shall utilize a striking process until a mediator is agreed upon.
32. Notice to Proceed. It is expressly understood that this Agreement is not binding upon the County until it is executed by the Board of County Commissioners after voting on the contract at a public meeting. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully signed copy of the Agreement.
33. Attorney's Fees. In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.
34. Cooperation. All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.
35. Order of Precedence. The following order of precedence shall apply: Any contract amendment(s), in reverse chronological order; then the contract itself.
36. Patent, Copyright, Trademark and Trade Secret Indemnification (if applicable). The contractor shall defend, at its own expense, the County of Cibola against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the County of Cibola based upon the contractor's trade secret infringement relating to any product or service provided under this agreement, the contractor agrees to reimburse the County of Cibola for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the County of Cibola shall: i. give the contractor prompt written notice of any claim; ii. allow the contractor to control the defense or settlement of the claim; and iii. cooperate with the contractor in a reasonable way to facilitate the defense or settlement of the claim. If any product or service becomes, or in the contractor's opinion is likely to become the subject of a claim of infringement, the contractor shall at its option and expense: i.. provide a procuring agency of the County the right to continue using the product or service; ii. replace or modify the product or service so that it becomes non-infringing; or iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts which are due to the contractor. The contractor's obligation will be void as to any product or service modified by the procuring agency of the County to the extent such modification is the cause of the claim.



37. Professional Liability Insurance (if applicable). Contractor agrees to maintain in full force throughout the duration of the Agreement a professional liability insurance policy with a minimum coverage as deemed most advantageous by the County.
38. Notices. Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: County Manager //700 East Roosevelt // Grants, NM 87031

To the Contractor: To the individual and address identified by the Contractor.

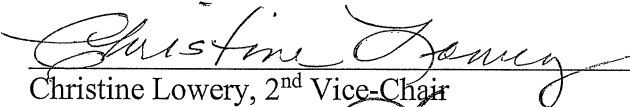
APPROVED, ADOPTED, AND PASSED on this 28th day of September, 2023.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CIBOLA
ABSENT

Daniel Torrez, Chair

ABSENT


Martha Garcia, 1st Vice-Commissioner


Christine Lowery, 2nd Vice-Chair


Robert Windhorst, Commissioner


Ralph Lucero, Commissioner

ATTEST:



Michelle E. Dominguez
Cibola County Clerk

