

**RESOLUTION NO. 2006-60**

**A RESOLUTION ADOPTING SANTA FE COUNTY  
PURCHASING REGULATIONS AND POLICY MANUAL**

**WHEREAS**, the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 (1979) (as amended) (hereinafter referred to as "the Code") permits a unit of local government to conduct public purchasing pursuant to the Code through a central purchasing office, and to adopt rules and regulations that govern procurement by the local government;

**WHEREAS**, in recent years, Santa Fe County has not had in place rules and regulations that govern the procurement of goods and services, establish procedures by which procurement is performed, appoint persons responsible for procurement, establish procedures for resolving protests, establish the authority of persons to conduct procurement, establish authority of persons to execute purchase orders and contracts on behalf of the County;

**WHEREAS**, the lack of such rules, regulations and procedures has caused inefficiency, confusion and uncertainty in the procurement process; and

**WHEREAS**, for the reasons stated above, the Board of County Commissioners desires to immediately implement rules and regulations to govern procurement pursuant to the Code by the County.

**IT IS THEREFORE RESOLVED, AS FOLLOWS:**

1. The Board of County Commissioners of Santa Fe County hereby adopts Attachment A hereto as its Purchasing Regulations and Policy Manual.
2. Attachment A shall henceforth govern procurement pursuant to the Code by Santa Fe County.
3. Attachment A does not contain rules governing the procurement of public works projects or rules governing the procurement of the services of engineers, architects, landscape architects and surveyors on public works projects, which shall be prepared by staff and presented to the Board of County Commissioners separately.
4. Any resolution or policy of the County that is inconsistent herewith shall be, and hereby is, rescinded.

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## ATTACHMENT A

### SANTA FE COUNTY PURCHASING REGULATIONS AND POLICY MANUAL

#### 1. SCOPE:

These regulations apply to all County Departments and Elected Official Offices (hereinafter referred to as "Departments" and "Offices"). Except as otherwise provided in the Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, the Procurement Code applies to every procurement by the County of Santa Fe of items of tangible personal property, services and construction.

#### 2. DEFINITIONS:

A. Most of the terms which appear in these regulations are defined in the Procurement Code. Words not defined herein shall be given the meaning given in the Procurement Code, NMSA 1978 Sections, 13-1-1 et seq.

B. In these regulations, the following definitions apply:

1. "Purchasing Manager" means the person or persons authorized by the County Manager to manage procurement on behalf of the County.
2. "Determination" means the written documentation of a decision of the Procurement Manager including any findings of fact that have been prepared to support a decision. A "determination" becomes part of the procurement file to which it pertains.
3. "Department" means a department of Santa Fe County government.
4. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item.
5. "Bid sample" means a sample furnished by a bidder that shows the characteristics of an item offered in the bid.
6. "Emergency Conditions" means 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 the functioning of government, the preservation or protection of property, or the health or safety of any person.
7. "Late bids, late withdrawals and late modifications" means 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 considered late.
8. "Identical low bids" are low responsive bids from responsible bidders that are identical in price after applying the preferences referred to in herein and that meet all the requirements and criteria set forth in the IFB.
9. 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.

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"Advantageous" denotes an assessment of what is in the County's best interest. Thus, 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.

10. "Office" means an office of an Elected Official of Santa Fe County, including the office of the County Treasurer, County Clerk, County Assessor, and County Sheriff.

11. "Opening" means the date set for opening of bids or the date set for the receipt of proposals.

### **3. DOLLAR AMOUNTS:**

Whenever a dollar amount appears in these regulations, such amount is exclusive of applicable gross receipts and local option taxes as defined in NMSA 1978, Section 7-9-3(Q).

### **4. INDEMNIFICATION AND INSURANCE:**

**A. Tort liability.** Except as provided for in the Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-27, no contract governed by these regulations shall contain any provision whereby the County agrees to indemnify or provide tort liability insurance for any contractor. Any indemnification or insurance provisions of contracts prepared by contractors shall be approved in writing by the County Attorney before being executed.

**B. Other risks.** No contract governed by this rule 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 as to form, in writing, by the County Attorney.

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

### **5. SEVERABILITY:**

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

### **6. COMPETITIVE SEALED BIDS REQUIRED:**

All procurement shall be achieved by competitive sealed bids except for procurements achieved pursuant to the following methods:

- A. competitive sealed proposals;
- B. small purchases;
- C. sole source procurement;
- D. emergency procurement; and
- E. procurement under existing contracts

### **7. INVITATION FOR BIDS ("IFB"):**

**A. General.** The Invitation For Bids ("IFB") is used to initiate a competitive sealed bid procurement. The IFB shall include the following:

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1. the specifications for the services, construction or items of tangible personal property to be procured;
2. all contractual terms and conditions applicable to the procurement;
3. the term of the contract and conditions of renewal or extension, if any;
4. instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening;
5. 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; and
6. 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."

**B. Incorporation by reference.** The IFB may incorporate documents by reference, provided that the IFB specifies where such documents can be obtained.

**C. 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 are not set forth in the IFB.

**D. 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. Telegraphic 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.

**E. Bid samples and descriptive literature.** Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the item bid. 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.

**F. 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

## **8. NOTICE OF AN INVITATION FOR BID:**

**A. Publication.** The IFB or notice thereof shall be published not less than ten (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 newspapers of general circulation in this state. Nothing in this paragraph precludes notifying interested bidders of a pending solicitation in trade journals and other similar publications.

**B. Bidder lists.** The County shall send copies of the notice or IFB 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 pursuant to NMSA 1978, Section 13-1-104.

**C. Public availability.** A copy of the IFB shall be made available for public inspection at the Purchasing Office.

**9. PRE-BID CONFERENCES:**

A pre-bid conference may be conducted to explain the procurement requirements. A pre-bid conference shall be announced to each 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 the IFB, 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 or addendum as provided in this rule.

**10. AMENDMENTS OR ADDENDA TO THE INVITATION FOR BIDS:**

**A. Use of amendments/addenda.** An amendment or addendum shall be used to make any changes in the IFB such as changes in quantity, purchase descriptions, delivery schedules, and opening dates, to correct defects or ambiguities, or 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.

**B. Form.** An amendment or addendum to the IFB shall be identified as such and shall require that bidders acknowledge its receipt. The amendment or addendum shall refer to the portions of the IFB it amends.

**C. Distribution.** An amendment or addendum shall be sent to all prospective bidders known to have received the IFB.

**D. Timeliness.** An amendment or addendum shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bid.

**11. PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS:**

**A. Procedure.** A bid may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written notice by US mail, Facsimile transmission, or electronic mail to the location designated in the IFB as the place where bids are to be received.

**B. 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.

**C. Records.** All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

**12. LATE BIDS, LATE WITHDRAWAL AND LATE MODIFICATIONS:**

No late bid, late modification, or late withdrawal will be accepted or considered unless received before opening of bids. All documents relating to late bids, late modifications, or late withdrawals shall be made a part of the appropriate procurement file.

**13. BID OPENING:**

**A. Receipt of Bid.** Upon receipt of a bid, the bid and each modification thereof shall be time-stamped but not opened, and shall be stored in a secure place until the time and date set for bid opening.

**B. No bids received.** Except as provided in NMSA 1978, Section 13-1-105, if no bids are received or if all bids received are rejected, a new IFB may 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 received, the County 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.

**C. Opening and recording.** Each bid and modification thereof 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 Procurement Manager 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 information or data which a bidder believes should be kept confidential shall accompany the bid, but it shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices, makes and models, catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening.

**D. Consideration.** Bids shall be accepted and considered for award without alteration or correction, except as authorized in NMSA 1978, Section 13-1-108.

**14. MISTAKES IN BIDS:**

**A. General principles.** Correction or withdrawal of a bid because of an inadvertence or mistake requires careful consideration to protect the integrity of the competitive bidding system and to assure fairness. If an inadvertence or mistake is attributable to an error in judgment, the bid may not be corrected. Correction or withdrawal by reason of a mistake is permissible, but only as set forth in NMSA 1978, Section 13-1-106.

**B. Mistakes discovered before opening.** A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid only as provided in NMSA 1978, Section 13-1-106.

**C. Confirmation of bid.** When the Procurement Manager knows or has reason to conclude that a mistake has been made in a bid, the Procurement Manager may request that the low bidder 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 so long as the conditions set forth in Subsection D of this section are met.

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**D. 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.

**1. Technical irregularities.** Technical irregularities are matters of form rather than substance or insignificant mistakes that can be waived or corrected without prejudice to other bidders. The Procurement Manager may waive such technical irregularities or permit the bidder to correct them if either is in the best interest of the County. Examples of technical irregularities addressed by this subsection include the failure of the low bidder to return the number of signed bids required by the IFB; sign the bid (but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound by the terms of the OFB); or 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.

**2. Mistakes where intended correct bid is evident.** If the mistake is clearly evident on the face of a bid, the bid shall be corrected 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. Mistakes in unit prices cannot be corrected.

**3. Mistakes where intended correct bid is not evident.** A bidder alleging a material mistake of fact which makes the bid non-responsive may be permitted to withdraw the bid if the mistake is clearly evident on the face of the bid but it is not clear from the bid what the correct bid should be; or the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

**4. Written determination.** When a bid is corrected or withdrawn, or a correction or withdrawal is denied, the Procurement Manager shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

## **15. BID EVALUATION AND AWARD:**

**A. In General.** A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest most responsive 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. The tax shall be shown as a separate amount on each billing or request for payment made under the contract.

**B. 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: (i) inspection or testing of a product for such characteristics as quality or workmanship; (ii) examination of such elements as appearance, finish, taste or feel; or (iii) other examinations to determine whether it conforms with other purchase description requirements.

**C. Purpose of acceptability evaluation.** An acceptability evaluation is not conducted to determine whether 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.

**D. 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 Procurement Manager that their product is, in fact, equal to the one specified. The Procurement Manager shall have the responsibility for making a determination whether a proposed substitution is "or equal".

**E. Determination of lowest bidder.**

**1. In General.** Following a determination of product acceptability as set forth in Subsections B, C and D of this section, bids will be evaluated to determine which bidder has offered the lowest cost to the County in accordance with the evaluation criteria set forth in the IFB. Prompt payment discounts shall not be considered in computing the low bid. Such discounts may be considered after award of the contract.

**2. Consideration of Discounts.**

**a. 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.

**b. 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.

**c. 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.

**d. 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.

**e. 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.

**F. Restrictions.** Nothing in these regulations shall be deemed to permit award of a contract to a bidder who submits a higher quality item than designated in the IFB unless the bidder is also the lowest bidder as determined under Subsection E of this section. Further, except as provided in this resolution does not permit negotiations with any bidder except as set forth in NMSA 1978, 13-1-115. 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 for a lower total bid to avoid rejection of all bids for the reason that the lowest bid was up to ten percent (10%) higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent (10%) over budgeted project funds.

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

**H. Publicizing awards.** Written notice of award shall be sent to the successful bidder. Notice of award may also be posted, at the discretion of the County.

**16. STATUTORY PREFERENCES:**

New Mexico law provides certain statutory preferences to resident businesses, resident manufacturers, New York state business enterprises, and for recycled content goods . See NMSA 1978, Sections 13-1-21 and 13-1-22. The Procurement Code provides a preference for resident construction contractors and New York state business enterprises pursuant to NMSA 1978, Sections 13-4-1 through 13-4-3.

**17. IDENTICAL LOW BIDS:**

**A. Award.** When two or more identical low bids are received, the Purchasing Manager may:

1. award pursuant to the multiple source award provisions of NMSA 1978, Sections 13-1-153 and 13-1-154;
2. award to a resident business or a New York state business enterprise if the identical low bids are submitted by a resident business or a New York state business enterprise and a nonresident business;
3. award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a resident business or New York business enterprise;
4. award to a bidder offering recycled content goods if the identical low bids are for recycled content goods and virgin goods;
5. award by lottery to one of the identical low bidders; or
6. reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property.

**18. MULTI-STEPSEALED BIDS:**

**A. General.** Multi-step bidding is a variant of the competitive sealed bidding method. This method may be utilized when Purchasing Manager 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.

**B. Phased process.** Multi-step bidding is a phased process that combines elements of both the competitive sealed proposal method. Multi-step bidding seeks necessary information or unpriced technical offers in the initial phase; and employs competitive sealed bidding in the final phase, inviting bidders who submitted technically acceptable offers to submit competitive sealed price bids on the technical offers. The contract shall be awarded to the lowest responsible bidder. If time is a factor, the Purchasing Manager may require offerors to submit a separate sealed bid during the initial phase to be opened after the technical evaluation.

**C. Public notice.** Whenever multi-step sealed bids are used, public notice for each phase shall be given.

**19. PAYMENTS FOR PURCHASES:**

Each contract resulting from an invitation for bids shall contain a clause addressing late payment pursuant to NMSA 1978, Section 13-1-158.

**20. COMPETITIVE SEALED PROPOSALS:**

**A. Use of competitive sealed proposals.** When the County procures professional services that are not related to a design and build project delivery system in accordance with NMSA 1978, Section 13-

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1-119.1 or when the Purchasing Manager makes a determination that the use of competitive sealed bids is either not practicable or not advantageous to the County, a procurement shall be effected by competitive sealed proposals.

**B. Flexibility.** The key element in determining whether a proposal is advantageous is flexibility. The competitive sealed proposal method differs from the competitive sealed bid method in two important ways: (i) it permits discussions with competing offerors and changes in their proposals including price; and; (ii) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of a contract.

**C. Determinations by category.** The Purchasing Manager may make a determination by category of services or items of tangible personal property that are 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.

## 21. INITIATION OF RFP'S:

**A. In general.** A request for proposals ("RFP") is used to initiate a competitive sealed proposal procurement.

**B. Contents.** At a minimum, an RFP should include the following:

1. the specifications for the services or items of tangible personal property to be procured;
2. all contractual terms and conditions applicable to the procurement;
3. instructions concerning the submission and response to questions;
4. the term of the contract and conditions of renewal or extension, if any;
5. 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;
6. all of the evaluation factors, and the relative weights to be given to the factors in evaluating proposals;
7. 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;
8. 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 Santa Fe County; and
9. a statement of how proposed costs should be submitted; and
10. 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"

**C. Incorporation by reference.** The RFP may incorporate documents by reference, provided that the RFP specifies where such documents can be obtained.

**D. Form of proposal.** The manner in which proposals are to be submitted, including any forms for that purpose, should be designated in the RFP.

## 22. NOTICE:

**A. Required Notice.** The Procurement Manager shall give notice of the RFP in the same manner as provided in NMSA 1978, Section 13-1-104 and 13-1-114. However, an RFP or a notice shall

be published not less than twenty (20) days prior to the date set for receipt of proposals unless a shorter time frame is requested and approval granted by the Purchasing Manager.

**B. Procurement of tangible personal property or services.** When procuring tangible personal property or services, the Purchasing Manager shall provide the following notice:

1. a one-page notice suitable for distribution that contains the procurement title, purpose statement, the issue date, the name of the department or office conducting the procurement, the place where a copy of the RFP document may be obtained, the date and location of the pre-proposal conference, if one is held, the name, address and phone number of the Purchasing Manager and the deadline for submission of proposals;
2. a list containing the names and addresses of suggested sources, if any;
3. a copy of the complete RFP document.

**C. Procurement of professional services.** When procuring professional services, Departments, Divisions or Elected Officials' Offices shall provide the following:

1. An RFP shall be prepared and issued, or a notice of the issuance thereof, shall be published not less than ten (10) calendar days prior to the date set for the receipt of proposals. It is recommended, however, that the time period between the published date and the date set for receipt of proposals be no less than twenty (20) days. The RFP or notice shall be published at least once in a newspaper of general circulation in the Santa Fe area; and
2. A copy of the RFP and notice shall be delivered to the Purchasing Manager not less than fifteen (15) calendar days prior to the date set for the issuance. The Purchasing Manager shall distribute the RFP or notice to prospective offerors who have registered with the Purchasing Division; and
3. A copy of the RFP shall be made available for inspection at the Purchasing Division.

**D. Additional notice.** The requirements of Subsections A, B and C of this section are in addition to any other procedures which may be adopted by the County to notify prospective offerors that proposals will be received, including but not limited to publication in professional journals, if available.

### **23. PRE-PROPOSAL CONFERENCE:**

A pre-proposal conference may be conducted at the discretion of the County. Any such conference should be held prior to submission of initial proposals.

### **24. AMENDMENTS:**

**A. Prior to submission of proposals.** Prior to submission of proposals, amendments to the RFP may be made in accordance with Section 12 of this rule.

**B. 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 Procurement Manager, an amendment will significantly change the nature of the procurement, the RFP shall be canceled.

### **25. MODIFICATION OR WITHDRAWAL OF PROPOSALS:**

Proposals may be modified or withdrawn prior to the Established Due Date. 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.

## **26. LATE PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS:**

Any proposal, withdrawal, or modification received after the Established Due Date at the place designated for receipt of proposals is late.

## **27. RECEIPT AND OPENING:**

A. Receipt. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the Established Due Date.

B. 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 nonconfidential portion of the proposal.

## **28. EVALUATION:**

A. Evaluation factors. Evaluation of the proposal shall be based on the evaluation factors and the relative weights set forth in the RFP. Numerical rating systems are required for procurements of information systems resources.

B. Evaluation committee. The Purchasing Manager shall appoint an evaluation committee prior to the due date for receipt of proposals. The size of the committee should be manageable and should include a member of the affected Department, Division or Elected Officials' Office, and user and technical support representatives.

C. Classification of proposals. For the purpose of conducting discussions, proposals shall be initially classified as responsive, potentially responsive, that is, reasonably susceptible of being made responsive, or non-responsive.

D. 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 procurement file.

## **29. DISCUSSIONS AND NEGOTIATIONS WITH OFFERORS:**

A. Discussions authorized. Discussions may be conducted with responsible offerors who submit acceptable or responsive, potentially acceptable or potentially responsive proposals.

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

C. 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 an offeror to amend the substance of the proposal.

**D. Short list.** All responsible offerors who submit acceptable proposals are eligible for the short list. If numerous acceptable proposals have been submitted, however, the procurement officer 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".

**E. Competitive negotiations.** Competitive negotiations may be held among the short-listed offerors to promote understanding of the County's requirements and short-listed offerors' proposal, and facilitate arriving at a contract that will be most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. Except for circumstances and situations otherwise approved by the Purchasing Manager, 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.

**F. 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.

### **30. 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.

### **31. BEST AND FINAL OFFERS:**

The Purchasing 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 Manager may make a written determination that it is in the 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.

### **32. MISTAKES:**

**A. Modification or withdrawal of proposals.** Proposals may be modified or withdrawn as provided herein.

**B. 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.

1. Confirmation of proposal. When the Purchasing Manager knows or has reason to conclude before award that a mistake has been made, the Purchasing 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 herein are met.

2. 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.

**C. 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 Manager may waive such irregularities or allow an offeror to correct them if either is in the best interest of the state. 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).

**D. 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.

**E. 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 the mistake is clearly evident on the face of the proposal but the intended correct offer is not, or the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

**F. Determination required.** When a proposal is corrected or withdrawn, or correction or withdrawal is denied of this section, the Purchasing Manager shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

### **33. AWARD: PROFESSIONAL SERVICES:**

**A. Procedure.** An award shall be made to the responsible offeror whose proposal is most advantageous to the County's, taking into consideration the evaluation factors set forth in the RFP. The Purchasing Manager shall make a written determination showing the basis on which an award was found to be most advantageous to the County based on the factors set forth in the RFP.

**B. Publicizing awards.** After a contract is entered into, notice of award shall be publicized.

**C. Publicizing awards.** The Purchasing Manager shall promptly provide all offerors who submitted proposals written notice of the award. The written notice shall be sent via certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

### **34. DESIGN BUILD PROJECTS, REQUEST FOR PROPOSALS:**

**A. Applicability.** An alternative for construction of projects whose value exceeds \$10,000,000 is available through the design-build delivery method. The objective of design-build contracting is to

complete construction projects more efficiently than conventional design-bid-build, however, a benefit-oriented evaluation should be used to assess if design-build is appropriate.

**B. Practical or Advantageous.** When the Purchasing Manager determines pursuant to this Section that the design-build delivery method is either practical or advantageous to the County, the procurement may be effected by competitive design-build proposals. The process is intended to be fair, uniform, clear and effective for the delivery of a quality project on time and within budget.

**C. Written Determination.** The County department(s) or office shall submit a written recommendation to the Purchasing Manager for review. The primary factors that should be addressed in the memo include:

1. A summary of the project, to include a description of project, goals and requirements, estimated design/engineering costs, estimated construction costs, an estimated project schedule, and identification of County staff included on the design-build team who will formulate, evaluate, and administer Request for Proposals.

2. A description of the funding source and amount. The funding for the design and construction must be fully in place or reasonably expected to be in place for the immediate completion of the design-build project. If not in place or reasonable expected to be in place to complete the design-build project without delay, the design should be procured separately under a bid when funds are in place.

3. A summary of why would it be in the best interest of the County to use design-build and the reasons for the potential benefits, such as significant time savings, higher quality realized through designs tailored to contractor capability, design and builder work together to enhance each capabilities and methods, and/or combined expertise of contractor with designer to maximize potential benefits, less impact on the public with the use of expedited construction processes, unusual or unique requirements that could be effectively addressed by design-build, specialty skills needed for design or construction, reduction of total costs, and best value solution with value engineering.

4. A summary of potential risks or problems due to using design-build for specific project and mitigation solutions, including a statement concerning the capability of the County (with a consultant, as applicable) to effectively administer and manage the design-build project., and who will ultimately be responsible.

5. If approved by the Purchasing Manager, the recommendation shall be reviewed by the County Manager. If approved by the County Manager, the proposed use of design-build shall be submitted to the Board of County Commissioners for concept approval to proceed with the procurement process under design-build.

#### **D. Basic Process.**

1. The following is recommended as a basic process in initiating and planning a design build project. Often it can be expected that there is more upfront time and effort required to clearly define the project expectations than in a design-bid-build process, although time savings may be seen in the overall project.

- a. Identify the goal;
- b. Assign the project manager;
- c. Assemble project team, including consultant if advisable;
- d. Develop project requirements, including project scope, project goals, quality expectations, final project expectations, technical requirements, contract development, decision-making process, project schedule, clean and complete definition of project and technical areas, and provide equal platform of information for proponents to be able to prepare competitive proposals



**E. Determinations prior to Requests for Proposals.**

1. The County project team should determine what will be done by County staff, and what tasks are included in the Requests for Proposals, including but not limited to the following:

- a. Environmental studies
- b. Public participations through public hearings and other input
- c. Interagency agreements
- d. Utility agreements/relocations
- e. Right-of-way acquisition
- f. Handling and resolution of hazardous materials
- g. Cultural and archeological resource site investigation
- h. Endangered species investigations
- i. Permit requirements
- j. Determine risks and clarify mitigation and responsibility
- k. Surveys
- l. Mapping
- m. Hydraulic analysis
- n. Geotechnical investigations

2. Other areas and expectations that should be addressed in the Request for Proposals may include the following:

- a. Legal description of site
- b. Maximum Available Construction Costs (MACC)
- c. Aesthetic considerations and compatibility with existing facilities
- d. Site development requirements
- e. Special codes, regulations, ordinances or statutes
- f. Utilities, parking and landscaping requirements
- g. Future expansion requirements
- h. Future expansion requirements
- i. Special materials
- j. Space requirements
- k. Special equipment and systems requirements
- l. Construction administration
- m. Labor disputes
- n. Weather conditions
- o. Inflation
- p. Schedule requirements
- q. Incremental acceptance of work
- r. Performance guarantees/warranties
- s. Design reviews/approvals
- t. Liability for design
- u. Site conditions
- v. Contract changes
- w. Liquidated damages
- x. Ownership during phases
- y. Payment methodology
- z. Incentives and disincentives
- aa. Bonding requirements

- bb. Errors and omissions insurance
- cc. Guaranteed completion date
- dd. Warranties
- ee. Determination of criteria for completion of contract

3. Request for Proposals.

a. The County project team shall prepare a Request for Proposals setting forth the scope of the project that should include, but is not limited to: (i) the size, type and desired design requirements of the building and site; and (ii) performance specifications covering the quality of materials, equipment, and workmanship, durability, life cycle costs, preliminary plans or building layouts, or any other information deemed necessary to adequately and clearly describe the County needs.

b. The performance specifications and plans shall be reviewed and approved by a registered engineer or architect professional licensed by the State of New Mexico, which may be a County employee or outside provider. This review shall ensure the validity of technical areas and that the information in the Request for Proposals and provide for a fair and complete Request for Proposals process. If an outside provider contracts for review services, the design/engineering professional or the related firm shall not later submit a proposal in any capacity.

**F. Applicable Section for Request for Proposals.** The procedures for Competitive Sealed Proposals for Procurement of Professional Services shall apply to design-build solicitations, unless the procedures specified are clearly not applicable to the design-build process.

**G. Step One of the Request for Proposals.**

1. Step one may include programming and schematic design including recommended or required building systems, elevations, areas, floor plans and cross section in limited detail for further development by proponents.

2. The Request for Proposals issued under this Step One of the Request for Proposals process are referred to as the Request for Qualifications. The Request for Proposals issued under Step One shall include:

- a. the project scope and requirements
- b. submittal requirements from proponents
- c. composition of selection committee, with statement that the County retains the option to change committee members, if necessary
- d. description of step two and/or interviews in process
- e. evaluation criteria for each step of the process (step one, step two, interviews, and best and final offers, as applicable)
- f. mandatory pre-proposal meeting requirement
- g. number of firms that will be short listed as detailed in the request for proposals
- h. estimated procurement and approval schedule
- i any and all further steps in the selection process
- j. An independent outside consultant or other qualified outside representative(s) may serve on the selection committee.

**H. Submittal Requirements.** The submittal requirements shall include:

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1. Request for information on the qualifications of proponent as to capability, capacity, availability, and experience;
2. A Description of similar contracts with counties and municipalities;
3. A preliminary proposed work plan;
4. A preliminary proposed project schedule with key tasks, key staff and their professional licenses who will be assigned to this project;
5. A proposed contractor and similar information and qualifications, certification to meet all insurance and bonding requirements/certification of no debarment, disqualification, default, or early termination from contract in the last 5 years;
6. A certification of no commercial bankruptcy in the last 5 years of any member or subcontractor of the entity;
7. Information on all settled adverse claims, disputes or lawsuits with an owner of a project;
8. A description of OSHA violations, workers' compensation claims, or safety claims;
9. A description of any state licensing violations; and
10. Any additional information deemed necessary by the County.

**I. Mandatory Pre-Proposal Meeting.** A mandatory pre-proposal meeting is required to explain the project and the procurement process. Addenda shall be issued to answer and clarify questions and other concerns addressed during the pre-proposal meeting. Failure of a proponent to attend the meeting will cause a future proposal submittal to be considered non-responsive. It is a proponent's right to determine who attend and represents the proponent or related firm. One person cannot represent more than one proponent. Extenuating circumstances may be considered by the Purchasing Manager if meeting is missed.

**J. Receipt of the Step One Proposals.** Step One proposals are received as a formal sealed proposals at the Purchasing Office.

**K. Evaluation under Step One of Request for Proposals.** All responsive submittals shall be evaluated based on the evaluation criteria. This step evaluates experience, technical competence, capability to perform, past performance and other criteria set forth in the Step One Request for Proposals. The top rated firms shall be short listed based on the totals of the ratings of the committee.

**L. Step Two of the Request for Proposals.**

1. The short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling as a formal sealed proposal to the Purchasing Office. If at least 3 firms do not submit responsive proposals, the short list may be composed of the number of responsive proposals received.
2. Cost shall be at least 60% of the evaluation criteria. Cost may be based on life cycle cost if so stated and explained in the Requests for Proposals for a period of time determined by the Purchasing Director but not exceeding the expected asset life of the project.
3. Other evaluation criteria may include technical expertise, skilled labor force availability, safety record, time schedule. Additional evaluation criteria information requirements may be included at the discretion of the County.
4. For a complex project or a project in which more detailed proposals are requested, as stipend may be paid to cover costs of the preparation of this phase. The amount shall be determined in advance, although a stipend is not required and is at the sole option of the County.
5. Interviews may be conducted, but are not required and are at the sole option of the County.

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6. Based on evaluation of Step Two proposals, new information may be issued by the County and Best and Final Offers may be submitted. The Best and Final Offers shall be evaluated based on the evaluation criteria for step two, unless specified in writing to the top listed proponents otherwise.

7. All information received shall be deemed to be confidential to the evaluation committee and County administration until a recommendation is made to the first review committee prior to County consideration.

**M. Evaluation Under Step Two of Request for Proposals.** All submittals shall be evaluated unless a given submittal is determined to be non-responsive. The qualifications, quality of proposed design and technical submittals, quality of construction approach, demonstrated response to program requirements, management plan for constructing the project, cost, schedule and other factors and criteria shall be evaluated as set forth in the Request for Proposals. Final contract negotiations shall proceed with the top rated firm. A single contract will be issued for design services and construction services. If negotiations are successful, the top rated firm based on the totals of the ratings of the committee shall be recommended to the applicable committees and Board of County Commissioners. If negotiations with the top rated firm are not successful, as determined at any time by the County in its sole discretion, the County may terminate such negotiations and initiate contract negotiations with the next top rated firm in order of ranking.

**N. Construction Inspection.** A separate contract with a fully independent licensed architect or engineer to provide construction inspection services is advisable, but not required.

**M. Other Services.** Finance services, maintenance services, operation services, and other relate services may be included, but must be clearly stated in the Request for Proposals. Such services could be included as an optional component, such that a basic design-build contract could be awarded or a contract including other services. The Request for Proposal must be very clear as to the evaluation process and criteria and how optional services would be evaluated and considered as part of the contract awarded.

### **35. AWARD: TANGIBLE PERSONAL PROPERTY OR SERVICES:**

**A. Procedure.** The award shall be made by the Purchasing Manager to the responsible offeror whose proposal is most advantageous to County, taking into consideration the evaluation factors set forth in the RFP. The Purchasing Manager shall make a written determination in the form of an evaluation committee report showing the basis on which the recommended award was found to be most advantageous to the County based on the factors set forth in the RFP.

**B. Notice of award.** The Purchasing Manager shall promptly notify offerors notice of the award. The written notice shall be sent certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

### **36. PUBLIC INSPECTION:**

**A. General.** After award, any written determinations made pursuant to this Resolution 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, NMSA 1978, Sections 57-3A-1 to 57-3A-7, and other applicable law. The price of products offered or the cost of services proposed may not be designated as confidential information.

**B. Confidential data.** If a request is received for disclosure of data, for which an offeror has made a written request for confidentiality, the Purchasing Manager 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.

**37. PAYMENTS FOR PURCHASES:**

All contracts resulting from a request for proposals shall contain a clause allowing for late payment charges against the County in the amount and under the conditions set forth in NMSA 1978, Section 13-1-158.

**38. DIVISION OF REQUIREMENTS:**

Procurement requirements shall not be artificially divided so as to constitute a small purchase pursuant to NMSA 1978, Section 13-1-125.

**39. SMALL PURCHASES, \$5,000 OR LESS:**

Any Department or Office may procure services, construction or items of tangible personal property having a value not exceeding five thousand dollars (\$5,000) by issuing a purchase order based upon the best obtainable price pursuant to NMSA 1978, Section 13-1-126.

**40. SMALL PURCHASES OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:**

**A. Quotations to be obtained.** Insofar as it is practical for small purchases of nonprofessional services, construction or items of tangible personal property having a value exceeding five thousand dollars (\$5,000) but not exceeding twenty thousand dollars (\$20,000), no fewer than three businesses shall be solicited to submit written quotations that are recorded and placed in the procurement file. If three written quotes cannot be obtained, the Department or office shall document the reasons and include that document in the procurement file.

**B. 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.

**C. Award.** Award shall be made to the business offering the lowest acceptable quotation.

**D. 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.

**41. SMALL PURCHASES OF PROFESSIONAL SERVICES:**

The Purchasing Manager may procure professional services having a value that does not exceed the sum of thirty thousand dollars (\$30,000) (except for the services of architects, engineers, landscape architects, or surveyors for public works projects, in accordance with this section). The Purchasing Manager shall negotiate a contract for the required services at a fair and reasonable price. If more than one business is contacted in connection with the proposed professional services contract, the contents of

the written or oral offer of one business shall not be disclosed to another business during the negotiation process.

**42. SOLE SOURCE PROCUREMENT OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:**

**A. Conditions for use.** A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of cost, when the Purchasing Manager makes a written determination, after conducting a good-faith review of available sources and consulting the using Department or Office, that there is only one source for the required items of tangible personal property, construction or nonprofessional services.

**B. Request For a Sole Source Procurement.** Any request by a Department or Office for a sole source procurement shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need.

**C. Negotiations.** The Purchasing Manager shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the County.

**43. RECORDS OF SOLE SOURCE PROCUREMENT:**

The Purchasing Division shall maintain records of sole source procurements for a minimum of three years. The record of each such procurement shall be a public record and shall contain the contractor's name and address, the amount and term of the contract, a listing of the services, construction, or items of tangible personal property procured under the contract, and the justification for the procurement method which shall include any written determinations and written approvals required by any provision of NMSA 1978, Section 13-1-128.

**44. EMERGENCY PROCUREMENT:**

Emergency procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency.

**45. AUTHORITY TO MAKE EMERGENCY PROCUREMENT:**

The Purchasing Manager may make or authorize others to make emergency procurement when an emergency condition arises; provided that emergency procurements shall be made with such competition as is practicable under the circumstances pursuant to NMSA 1978, Section 13-1-127.

**46. PROCEDURE, EMERGENCY PROCUREMENT:**

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. Such competition as is practicable shall be obtained.

**47. WRITTEN DETERMINATION REQUIRED:**

A written determination from the Purchasing Manager or the County Manager shall be required to initiate the emergency condition that justifies the procurement, and the basis for the emergency procurement shall be included in the procurement file.

**48. RECORDS OF EMERGENCY PROCUREMENT:**

The Purchasing Division shall maintain records of emergency procurement for a minimum of three years following the procurement. The record of each such procurement shall be a public record and shall contain the contractor's name and address; the amount and term of the contract; a listing of the services, construction, or items of tangible personal property procured under the contract; and the justification for the procurement method.

**49. PROCUREMENT UNDER EXISTING CONTRACTS:**

The County may contract for services, construction, or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals pursuant to NMSA 1978, Section 13-1-129, 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 with a business which has a current price agreement with the state purchasing agent or a central purchasing office for the item, services, or construction meeting the same standards and specifications as the items to be procured, so long as the total quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement and the purchase order adequately identifies the price agreement relied upon.

**50. COPIES OF CONTRACTS AND PRICE AGREEMENTS:**

The Purchasing Division shall retain for public inspection a copy of each contract or current price agreement relied upon to make purchases.

**51. CANCELLATION OF SOLICITATIONS:**

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.

**52. CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS:**

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

**B. After opening.**

1. After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Purchasing Manager makes a written determination that such action is in the County's best interest for reasons including but not limited to:

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- required;
- a. all of the bids and proposals are nonresponsive;
  - b. the services, construction, or items of tangible personal property are no longer required;
  - c. ambiguous or otherwise inadequate specifications were part of the solicitation;
  - d. the solicitation did not provide for consideration of all factors of significance to the using agency;
  - e. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  - f. all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
  - g. 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.

**C. Notice of rejection.** A notice of rejection should be sent to all businesses that submitted bids or proposals.

### **53. REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:**

**A. 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 the following: (i) the bid is nonresponsive; or (ii) the service, construction, or item of tangible personal property offered in the bid is unacceptable because it fails to meet the requirements of the specifications, or permissible alternates, or other criteria set forth in the IFB.

**B. 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 using Department's or Offices 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 the following: (i) the proposal is not responsive; (ii) the proposed price is clearly unreasonable; or (iii) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.

**C. Written determination required.** A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the Purchasing Manager and made a part of the procurement file. In the case of procurements for information system resources, a written determination which contains the reasons for the rejection of an individual proposal shall be prepared by the Purchasing Manager and shall be included as an attachment to the evaluation committee report as a part of the procurement file. Further, a copy of the determination shall also be sent to the nonresponsive offeror.

### **54. "ALL OR NONE" BIDS:**

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 so limited, a bidder's failure to bid all items identified as "all or none" items may render the bid nonresponsive. If the bidder restricts acceptance of the bid, or a portion thereof, the bidder has qualified the offer and the bid or offer may be rejected as nonresponsive.



**55. RECEIPT; INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES:**

The using Department or Office is responsible for inspecting and accepting or rejecting deliveries. The using Department or Office shall determine whether the quantity is as specified in the purchase order or contract. The using Department or Office shall determine whether the quality received conforms to the specifications referred to or included in the purchase order or contract. If inspection reveals that the delivery does not meet or conform to the quantity or quality specified in the purchase order or contract, the Department or Office shall immediately notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery. In case the vendor fails to comply, the Department or Office shall promptly file a purchasing complaint with Purchasing Manager. If the vendor fails to correct the delierviceery promptly, the County shall have no obligation to pay for the nonconforming items or services. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using Department or Office shall certify that delivery has been completed and is satisfactory.

**56. SUMMARY:**

Notwithstanding the requirements of these regulations, 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 in accordance with other applicable laws of the State of New Mexico.

**57. STANDARDS OF RESPONSIBILITY:**

**A. Standards for bidders.** Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder:

1. submitted a responsive bid;
2. has 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;
3. has a satisfactory record of performance;
4. has a satisfactory record of integrity;
5. is qualified legally to contract with the County; and
6. has supplied all necessary information and data in connection with any inquiry concerning responsibility;

**B. Standards for offerors.** Factors to be considered in determining whether the standard of responsibility has been met including whether an offeror:

1. has submitted a responsive proposal;
2. has 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;

3. has a satisfactory record of performance;
4. has a satisfactory record of integrity;
5. is qualified legally to contract with the County; and
6. supplied all necessary information and data in connection with any inquiry concerning responsibility.

**58. ABILITY TO MEET STANDARDS:**

A bidder or offeror shall, upon request of the Procurement Manager or if an IFB or RFP so requests, demonstrate adequate financial resources, production or service facilities, personnel and experience to perform the work or supply the goods.

**59. INQUIRY BY THE COUNTY OF THE RESPONSIVENESS OF BIDDERS AND OFFERORS:**

Before awarding a contract, the Purchasing 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 Manager concerning the responsibility of the bidder or offeror and the responsiveness of the bid or offer. Failure of a bidder or offeror to promptly supply information or data in connection with such an inquiry to the Purchasing Manager shall be grounds for a determination that the bidder or offeror is not responsible.

**60. NON-RESPONSIVENESS, DETERMINATION REQUIRED:**

If a bid or offer is found to be non-responsive, or the bidder or offeror is found not to be qualified to perform the work, the Purchasing Manager shall prepare a written determination of nonresponsiveness that sets forth the basis of the finding. The written determination shall be made part of the procurement file, and a copy of the determination shall be sent to the non-responsive bidder or offeror.

**61. RIGHT TO PROTEST:**

Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the Purchasing Division.

**62. FILING OF PROTEST:**

**A. Must be in writing.** A protest must be submitted in writing and addressed to the Purchasing Manager.

**B. Contents.** The protest shall include the name and address of the protestant, the solicitation number, a statement of the grounds for protest, supporting exhibits, evidence or documents to substantiate the claim, and specify the ruling requested from the Purchasing Manager.

**C. Pleadings.** No formal pleading is required to initiate a protest, but protests should be concise, complete, logically arranged, and direct.

**D. 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.

**63. PROCUREMENT AFTER PROTEST:**

In the event of a timely protest, the Purchasing Division shall not proceed further with the procurement unless the Purchasing Manager 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. A 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 Manager may, in its sole discretion, halt a procurement in exceptional circumstances or for good cause shown.

**64. PROTEST PROCEDURE:**

A. Upon filing of a timely protest, the Purchasing Manager 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. The protestant and every business that receives notice will automatically be parties to any further proceedings. Any other person or business with a substantial interest in the outcome 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. Upon intervention, interveners shall be bound by all prior rulings and previously-established time schedules. The Purchasing Manager, the Purchasing Division, and all employees thereof, shall not be parties to the proceedings.

B. The Purchasing Manager may take any action reasonably necessary to resolve a protest. Such actions include, but are not limited to, the following:

1. issue a final written determination summarily dismissing the protest;
2. obtain information from staff of the central purchasing office or the using Department or Office;
3. require parties to produce for examination information or witnesses under their control;
4. require parties to express their positions on any issues in the proceedings;
5. require parties to submit legal briefs on any issues in the proceeding;
6. establish procedural schedules;
7. regulate the course of the proceedings and the conduct of any participants;
8. receive, rule on, exclude or limit evidence;
9. take official notice of any fact that is among the traditional matters of official or administrative notice;
10. conduct hearings; and
11. take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses.

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**65. DISCOVERY:**

Upon written request of any party, or upon its own motion, the Purchasing Manager may require parties to comply with discovery requests.

**66. HEARINGS:**

A. A hearing on the protest will only be conducted when the Purchasing Manager, in his or her discretion, 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.

B. A hearing shall be informal, but the Purchasing Manager shall have the discretion to provide for more formality if needed to resolve a protest. The hearing shall not be subject to formal rules of evidence or procedure.

**67. FINAL DETERMINATION:**

The Purchasing Manager shall promptly issue a written determination relating to the protest. The determination shall state the reasons for the action taken, and inform the protestant of the right to judicial review of the determination pursuant to NMSA 1978, Section 13-1-183. A copy of the written determination shall be sent immediately by certified mail, return receipt requested, to each of the parties.

**68. RELIEF:**

A. **Prior to award.** If, prior to award, the Purchasing Manager makes a final determination pursuant to Section 68, above, that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled.

**B. After award.**

1. **No fraud or bad faith.** If, after an award, the Purchasing Manager makes a final determination pursuant to Section 68, above, 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, the contract may (i) 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 state; (ii) 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; or (iii) any other action that is in the best interest of the County.

2. **Fraud or bad faith.** If, after an award, the Purchasing Manager makes a final determination pursuant to Section 68, above, 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. **Money Damages.** Except as otherwise provided herein, the Purchasing Manager shall not award money damages or attorneys' fees.

**69. [RESERVED]**

**70. [RESERVED]**

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**71. SERVICE OF DOCUMENTS DURING A PROTEST PROCEEDING:**

No party shall submit to the Purchasing Manager, ex parte, any material, evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest, without also providing each party to the protest proceeding with a copy. Failure to do so may result in sanctions up to and including an adverse finding against the party engaging in prohibited conduct.

**72. TIME:**

In computing any period of time prescribed in resolution this, 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.

**73. AUTHORITY OF THE PURCHASING MANAGER, PURCHASE ORDERS:**

The Procurement Manager shall serve as the procurement officer of the County, and shall possess the authority to take actions specified by these regulations, including, but not limited to: (i) the authority to procure or supervise the procurement of all tangible personal property, supplies, services, and construction needed by the County; (ii) the authority to issue appropriate purchase orders so long as adequate funds exist to satisfy the purchase order, (iii) to exercise general supervision and control over all inventories of supplies belonging to the County, (iv) to sell, trade or otherwise dispose of tangible personal property and surplus supplies belonging to the County, (v) to sell, trade, or otherwise dispose of surplus tangible personal property belonging to the County, and (vi) to ensure compliance with these regulations and the Procurement Code by reviewing and monitoring procurements conducted by any Department or Office. Consistent with the requirements in these regulations, the Procurement Manager may delegate authority to designees or to any Department or office.

**74. PROCEDURE FOR REVIEW AND APPROVAL OF CONTRACTS:**

**A. Review.** Any contract for the purchase of tangible personal property, services or construction shall first be reviewed and approved as to form by the Office of the County Attorney, and evidence that funds exist to satisfy the proposed procurement shall be provided by the using Department or Office. In addition, no contract for the purchase of tangible personal property, services or construction shall be awarded without the recommendation of the Procurement Manager.

**B. Approval by the Board of County Commissioners.** Any contract for purchase of tangible personal property or professional services that exceeds the sum of One Hundred Thousand Dollars (\$100,000) shall be presented to the Board of County Commissioners for approval before becoming effective. Any contract for purchase of construction, or relating thereto, that exceeds the sum of One Hundred Thousand Dollars (\$100,000) shall be presented to the Board of County Commissioners for approval prior to becoming effective. Any amendment to a contract approved by the Board of County Commissioners for purchase of tangible personal property, professional services or construction that increases the total amount of a contract previously approved by the Board of County Commissioners by ten percent or more or whose total value is \$50,000 or more (whichever is less) shall be presented to the Board of County Commissioners prior to becoming effective.

**C. Approval by the County Manager.** Any contract for purchase of tangible personal property or professional services for the sum of One Hundred Thousand Dollars (\$100,000) or less shall be presented to the County Manager for approval before becoming effective. Any contract for purchase of

construction, or relating thereto, for the sum of One Hundred Thousand Dollars (\$100,000) or less shall be presented to the County Manager for approval prior to becoming effective.

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