

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

ORDINANCE NO. 2010-8

AN ORDINANCE REFORMING THE COUNTY'S PROCUREMENT PRACTICES WITH RESPECT TO ROAD AND BUILDING CONSTRUCTION PROJECTS TO ENSURE THAT THE PUBLIC TRUST IS MAINTAINED, THAT PROJECTS ARE PROPERLY DESIGNED AND CONSTRUCTED AND COMPLETED WITHIN BUDGET, THAT PROJECTS ARE CONTRACTED ONLY AFTER A FAIR AND TRANSPARENT PROCUREMENT PROCESS; PROVIDING FOR TRAINING, AUDITING AND CONFIDENTIAL REPORTING; DECLARING AN EMERGENCY.

WHEREAS, recent events make it clear that the County's internal procedures may be inadequate to protect against abuse, waste or fraud in road and building construction projects, and that it is possible to engage in a major road or building construction project without any direction from the Board of County Commissioners;

WHEREAS, recent events make it clear that additional financial, technical and legal oversight of such projects is needed to ensure a fair and transparent public process, that projects are well planned and executed, and projects justify the public trust and confidence;

WHEREAS, the practice of purchasing from existing contracts of other governmental units, while legal, can lead the public to question the fairness of the contracting decisions and in turn lead to concerns that County employees and officials personally benefit from the expenditures, and therefore most road and building construction projects should be contracted through a County initiated competitive bidding process to avoid any appearance of impropriety;

WHEREAS, multi-year contracts awarded by the County should be re-bid periodically to ensure transparency, discourage complacency and the possibility of fraud or abuse, and to ensure that the County is purchasing the goods and services of the highest quality and lowest cost;

WHEREAS, the practice of constructing certain roads without detailed specifications against which to measure the performance of contractors has lead to concerns about the quality of work done by contractors and created a situation where performance could not be audited because of the lack of specifications and drawings against which to measure the work;

WHEREAS, professional construction supervisors can provide valuable professional oversight of a road or building construction project and should be used wherever appropriate to ensure that the County and its taxpayers get what is paid for;

WHEREAS, clear authority to engage in procurement, sign requisitions and otherwise authorize County expenditures should be placed in the hands of the most responsible,

experienced and capable employees, and the employees selected to possess these responsibilities should be specifically designated by a Department Head or Deputy Department Head, who should also be strictly responsible for any resulting procurement, requisition or expenditures;

WHEREAS, financial accounting should be routine for all County construction projects to ensure that the County and its taxpayers get what is paid for and to ensure that financial irregularities are detected and eliminated;

WHEREAS, as a general rule, County employees are not educated about the restrictions placed on local government by the New Mexico Constitution and the Laws of the State of New Mexico, but should be so educated so that each employee can be a guardian of the public trust;

WHEREAS, employees should be encouraged to report any potential wrongdoing or concerns about construction projects, and be free of retaliation or other consequences for making such a report;

WHEREAS, the taxpayers and the public deserve government construction projects that are well designed and constructed, completed within budget, and are the product of a fair and transparent procurement process, that are well planned and executed, without any appearance of impropriety; and

WHEREAS, it is imperative for public health, safety and welfare, and for the protection of public property that is at risk as described herein, that the precautions specified herein take effect upon recordation of this Ordinance.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO:

Section One. Outside Contracts. The practice of purchasing projects utilizing contracts with another government agency pursuant to NMSA 1978, Section 13-1-129 (1984, 1991), while legal, should not be used unless the Procurement Manager makes a specific finding that competitive bidding for the particular product would not be advantageous to the County. In no event shall a contract in total value exceeding \$100,000 be awarded without competitive bidding unless the Board of County Commissioners specifically approves.

Section Two. Periodic Rebidding. All multi-year contracts awarded henceforth following a competitive procurement process shall be limited to a term of two years to ensure that the contracts are re-bid periodically; a contract with a term greater than two years may be executed upon express approval of the County Manager.

Section Three. Board of County Commissioners to Approve Capital Projects. All construction projects undertaken by the County (except those projects that are funded by a grant from the New Mexico Legislature or the federal government) whose construction budget exceed the sum of \$100,000 must, before being constructed, be included in the Capital Improvements Plan (CIP) and voted as a part of the CIP by the Board of County Commissioners. Capital projects must be identified equally in each Commission District, unless there is no need for a

project in a particular district. This section shall not apply to a construction project that is necessary to address an emergency declared by the Board of County Commissioners that endangers the public health, safety, welfare or property.

Section Four. Road Maintenance List. Road maintenance shall only be performed on a County-maintained road. All road maintenance work shall be placed on a list developed by staff and recommended by the Road Advisory Committee and approved by the Board of County Commissioners. The list must be updated through the same process at least annually. Road maintenance work, including routine and priority maintenance, must be identified equally in each Commission District, unless there is no need for a project in a particular district.

Section Five. Community Funds. Community funds shall be expended only through a valid written professional services agreement that clearly delineates the services to be provided, whose total value must be equal to or exceed the amount of funds expended.

Section Six. Bidding and Engineering of Construction Projects. All construction contracts must be individually bid if the total value of the project exceeds \$100,000. All construction projects whose construction budget exceeds the sum of \$100,000 must have plans and specifications drawn by a registered professional engineer or architect, as appropriate.

Section Seven. Construction Management. All construction projects whose construction budget exceeds the sum of \$250,000 must be supervised by a professional construction management firm, under contract to the County.

Section Eight. Constituent Requests. All requests by constituents for maintenance, repair, construction or reconstruction must be referred to the Constituent Services Liaison for the district in question. The Constituent Service Liaison must work with appropriate County staff and the legal department to ensure that the request meets constitutional scrutiny and is placed on the CIP or the road maintenance list, as appropriate. If the request pertains to a road, the Constituent Service Liaison must work with appropriate County staff and the legal department to ensure that the road in question is a County-maintained road.

Section Nine. Auditing. The Finance Division must audit each road and building construction project during the construction of the project and after the project is complete to ensure that financial control is achieved, that pay requests are properly scrutinized, the project budget is met, that any change orders are properly documented, and all financial aspects of the project are properly checked and documented. The Finance Division must also periodically randomly review and audit procurement files to ensure compliance with the Procurement Code and the County's Purchasing Regulations; and variances shall be reported to the Department Head and the County Manager. Any violation of a criminal statute discovered in connection with the audits required by this section shall be promptly reported to the appropriate law enforcement agency with all relevant information, and reported to the State Auditor pursuant NMSA 1978, 12-6-6 (1969, as amended).

Section Ten. Training. A comprehensive and mandatory training program must be developed for County employees on the constitutional limitations of county government and on

the legal limitations of procurement pursuant to the Procurement Code and other relevant statutes.

Section Eleven. Appointment of Persons With Purchasing and Financial Responsibilities. Persons responsible for procurement, persons with authority to sign requisitions, and persons otherwise authorized to accomplish County expenditures, must be the most responsible, experienced and capable employees. Persons possessing these responsibilities must be specifically designated in writing by the Department Head or Deputy Department Head and approved by the County Manager. The designation may be revoked at any time. Each person responsible for procurement, sign requisitions or otherwise authorize County expenditures, and the Department Head and Deputy Department Head, shall be strictly responsible for any such actions, and may be disciplined, up to and including termination, for failure to exercise those responsibilities in a proper and lawful manner.

Section Twelve. Confidential Reporting. Employees and members of the public are encouraged to report confidentially any potential wrongdoing or other concern relating to a construction project or any fraud, abuse, illegal or unlawful activity within County government. The County Attorney shall be the recipient of such reports, which, if a report concerns criminal conduct, shall be reported to the appropriate law enforcement agency, and if not, reported to the Board of County Commissioners and the County Manager. The County Attorney shall provide forms and other means of confidential reporting so that persons concerned about potential wrongdoing can report either in person, through a confidential reporting system, or confidentially on the County's internet web site. Anonymous reporting will be permitted with the understanding that anonymous reports may not provide a reasonable basis for action if the complaint cannot be verified. Any employee making a truthful report shall be free from workforce discrimination or harassment of any kind resulting from the giving of the report.

Section Thirteen. Definition, "Construction." The term "construction" as used herein shall have the meaning assigned by NMSA 1978, Section 13-1-40 (1984).

Section Fourteen. Effective Date, Declaration of Emergency. The Board of County Commissioners declares that the circumstances described herein constitute an immediate danger to the public welfare and the public peace and therefore this ordinance shall take immediately upon recordation as specified in NMSA 1978, Section 4-37-9(C) (1975, 1997).

Section Fifteen. Severability. If any section, subsection, sentence, clause, item, change or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

PASSED AND ENACTED THIS 29th Day of June, 2010.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO

By: [Signature]
Harry B. Montoya, Chair

ATTEST:
[Signature] vt
Valerie Espinoza, County Clerk

APPROVED AS TO FORM

By: [Signature]
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

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PAGES: 5

I Hereby Certify That This Instrument Was Filed for
Record On The 30TH Day Of June, 2010 at 12:09:18 PM
And Was Duly Recorded as Instrument # 1603025
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM
Deputy [Signature]