

STATE OF NEW MEXICO  
CITY OF RIO COMMUNITIES

RESOLUTION NUMBER: 2020-168  
PROCUREMENT POLICY AND PROCEDURES

**WHEREAS,** the Governing body in and for the City of Rio Communities, State of New Mexico has adopted a procurement policy and procedures manual, and

**WHEREAS,** said procurement policy and procedures manual was obtained in cooperation with all user departments, elected officials, and other department supervisors, and

**WHEREAS,** the official meetings for the review of said documents were duly advertised in compliance with the State Open Meetings act, and Resolution 2015-52,

**WHEREAS,** it is the majority opinion of this Board that the procurement policy and procedures manual meets the requirements as currently determined for the City,

**NOW,** THEREFORE, BE IT HEREBY RESOLVED that the Governing Body of the City of Rio Communities, State of New Mexico hereby adopts the procurement policy and procedures manual hereinabove described.

**PASSED, APPROVED AND ADOPTED THIS 25<sup>th</sup> DAY OF MARCH 2020 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

**City of Rio Communities Governing Body**

\_\_\_\_\_  
Mark Gwinn, Mayor

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Margaret (Peggy) Gutjahr, Mayor Pro-tem

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Bill Brown, Councilor

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Joshua Ramsell, Councilor

\_\_\_\_\_  
Jim Winters, Councilor

ATTEST:

\_\_\_\_\_  
Elizabeth (Lisa) Adair, Municipal Clerk



# City of Rio Communities

## Procurement Policies & Procedures Manual

Update 03-25-2020

Resolution 2020-168

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## **PURCHASING RULES AND REGULATIONS**

### Centralization of Procurement Authority

All procurement for the City shall be performed by a purchasing officer designated by the City Council, except as otherwise provided in the Procurement Code. The City shall identify their designated purchasing officer and information identifying the City's purchasing office to the State Purchasing Agent on or before January 1 of each year. The purchasing officer must be certified by the State Purchasing Agent. After July 1, 2015, only a certified chief purchasing officer may make determinations, including determination regarding exemptions; issue purchase orders; authorize small purchases; and approve procurement pursuant to the Procurement Code.

### **1.0 DEFINITIONS**

#### **1.1 GENERAL**

Regulations regarding definitions are adopted to clarify particular terms defined in the New Mexico Procurement Code (Section 13-1-28 through 13-1-199 NMSA, 1978 – the "Procurement Code") and governed by rule 1 of these regulations.

#### **1.2 Definition: ARCHITECTURAL SERVICES**

"Architectural services" means services related to the art and science of designing and building structures for human habitation or use and includes planning, providing preliminary studies, designs, specifications, working drawings and providing for general administration of construction contracts.

#### **1.3 Definition: BLIND TRUST**

"Blind trust" means a trust managed by a person other than the employee-beneficiary in which the employee-beneficiary is not given notice of alterations in the property of the trust.

#### **1.4 Definition: BRAND-NAME SPECIFICATION**

"Brand-name specification" means a specification limited to describing an item by manufacturer's name or catalogue number.

#### **1.5 Definition: BRAND-NAME OR EQUAL SPECIFICATION**

"Brand-name or equal specification" means a specification describing one or more items by manufacturer's name or catalogue number to indicate the standard of quality, performance or other pertinent characteristics and providing for the substitution of equivalent items.

#### **1.6 Definition: BUSINESS**

"Business" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

#### **1.7 Definition: CAMPAIGN CONTRIBUTION**

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or

received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individual who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**1.8 Definition: CATALOGUE PRICE**

"Catalogue price" means the price of items of tangible personal property in the most current catalogue, price list, schedule or other form that:

- a. is regularly maintained by the manufacturer or vendor of an item;
- b. is either published or otherwise available for inspection by a customer.

**1.9 Definition: CENTRAL PURCHASING OFFICE**

"Central purchasing office" means that office or officer within the City responsible for the control of procurement of items of tangible personal property, services or construction. There is hereby created a Central Purchasing Office within the City to be administered by the Central Purchasing Officer who shall be the Procurement Director of the City or his/her designee except as otherwise provided in the Procurement Code.

**1.10 Definition: CHANGE ORDER**

"Change order" means a written order signed and issued by the central purchasing officer or his/her designee directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order with or without the consent of the contractor.

**1.11 Definition: CENTRAL PURCHASING OFFICER**

"Central Purchasing Officer" or "Purchasing Officer" or "chief procurement officer" means that person within the City's central purchasing office who is responsible for the control of procurement of items of tangible personal property, services, or construction.

**1.12 Definition: CONFIDENTIAL INFORMATION**

"Confidential information" means any information, which is available to an employee because of the employee's status as an employee of a state agency or a local public body and which is not a matter of public knowledge or available to the public on request.

**1.13 Definition: CONSTRUCTION**

- A. "Construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any:
  - 1. road, highway, bridge, parking area or related project;
  - 2. building, stadium or other structure;
  - 3. airport, subway or similar facility;
  - 4. park, trail, athletic field, golf course or similar facility;

5. dam, reservoir, canal, ditch or similar facility;
6. sewage or water treatment facility, power generating plant, pump station,
7. natural gas compressing station or similar facility;
8. sewage, water, gas or other pipeline;
9. transmission line;
10. radio, television or other tower;
11. water, oil or other storage tank;
12. shaft, tunnel or other mining appurtenance;
13. electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances
14. or water conditioners;
15. air conditioning conduit, heating or other similar mechanical work; or
16. similar work, structures or installations.

B. "Construction" shall also include:

1. leveling or clearing land;
2. excavating earth;
3. drilling wells of any type, including seismographic shot holes or core
4. drilling; and
5. similar work, structures or installations.

**1.14 Definition: CONSTRUCTION MANAGEMENT AND CONSTRUCTION MANAGER**

A. "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project.

B. "Construction manager" means a person who acts as an agent of the City for construction management, for whom the City shall assume all the risks and responsibilities.

**1.15 Definition: CONTRACT**

"Contract" means any agreement for the procurement of items of tangible personal property, services or construction.

**1.16 Definition: CONTRACT MODIFICATION**

"Contract modification" means any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.

**1.17 Definition: CONTRACTOR**

"Contractor" means any business having a contract with a state agency or local public body.

**1.18 Definition: COOPERATIVE PROCUREMENT**

"Cooperative procurement" means procurement conducted by or on behalf of more than one state agency or local public body, or by a state agency or local public with an external procurement unit.

**1.19 Definition: COST ANALYSIS**

“Cost analysis” means factual information concerning the cost of labor, material, overhead and other cost elements that are expected to be incurred by a contractor or which have been actually incurred by a contractor in performing the contract.

**1.20 Definition: COST DATA**

“Cost data” means factual information concerning the cost of labor, material, overhead and other cost elements that are expected to be incurred by a contractor or which have been actually incurred by a contractor in performing the contract.

**1.21 Definition: COST REIMBURSEMENT CONTRACT**

“Cost reimbursement contract” means a contract that provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.

**1.21 Definition: DATA**

“Data” means recorded information regardless of form or characteristic.

**1.22 Definition: DEFINITE QUANTITY CONTRACT**

“Definite quantity contract” means a contract that requires the contractor to furnish a specified quantity of services, items of tangible personal property or construction at or within a specified time.

**1.23 Definition: DESIGNEE**

“Designee” means a representative of a person holding a superior position.

**1.24 Definition: DETERMINATION**

“Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

**1.25 Definition: DIRECT OR INDIRECT PARTICIPATION**

“Direct or indirect participation” means involvement through decision, approval, disapproval, recommendation, formulation of any part of a purchase request, influencing the content of any specification, investigation, auditing or the rendering of advice.

**1.26 Definition: EMPLOYEE**

“Employee” means an individual receiving a salary, wages or per diem and mileage from the City whether elected or not any non-compensated individual performing personal services as an elected or appointed official or otherwise for the City.

**1.27 Definition: ENGINEERING SERVICES**

“Engineering services” means any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems,

engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such practices include the performance of architectural work incidental to the practice of engineering. "Engineering services" does not include responsibility for the superintendence of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the workplace.

**1.28 Definition: EXTERNAL PROCUREMENT UNIT**

"External procurement unit" means any procurement organization not located in this state that, if in this state, would qualify as a state agency or a local public body. An agency of the United States government is an external procurement unit.

**1.29 Definition: FINANCIAL INTEREST**

"Financial interest" means:

1. Holding a position in a business as officer, director, trustee or partner or holding any position in management; or
2. Ownership of more than five percent interest in a business.

**1.30 Definition: FIRM FIXED PRICE CONTRACT**

"Firm fixed price contract" means a contract which has a fixed total price or fixed unit price.

**1.31 Definition: GRATUITY**

"Gratuity" means a payment, loan subscription, advance, deposit of money, service or anything of more than nominal value, received or promised, unless consideration of substantially equal or greater value is exchanged.

**1.32 Definition: HEAVY ROAD EQUIPMENT**

"Heavy road equipment" means any motor-driven vehicle or apparatus capable of use for earth moving or mixing components which has an aggregate value or price of over one thousand dollars (\$1,000).

**1.33 Definition: HIGHWAY RECONSTRUCTION**

"Highway reconstruction" means the rebuilding, altering or repairing of any road, highway, bridge, parking area or related project. "Highway reconstruction" does not include routine maintenance.

**1.34 Definition: IMMEDIATE FAMILY**

"Immediate family" means a spouse, children, parents, brothers and sisters.

**1.35 Definition: INDEFINITE QUANTITY CONTRACT**

“Indefinite quantity contract” means a contract that requires the contractor to furnish an indeterminate quantity of specified services, items of tangible personal property or construction during a prescribed period of time at a definite unit price or at a specified discount from list or catalogue prices.

**1.36 Definition: INVITATION or REQUEST FOR BIDS**

“Invitation for bids” means all documents, including those attached or incorporated by reference, utilized for soliciting sealed bids.

**1.37 Definition: LANDSCAPE ARCHITECTURAL SERVICES**

“Landscape architectural services” means services including not limited to consultation, investigation, reconnaissance, research design, preparation of drawings and specifications and administration of contracts where the dominant purposes of such services are:

1. The preservation or enhancement of land uses and natural features.
2. The location and construction of functional approaches for structures, pathways or walkways; or
3. The design of trails, plantings and landscape irrigation.

Excluded from the provisions of this section are the services of architects, engineers and surveyors as defined in the Procurement Code.

**1.38 Definition: LOCAL PUBLIC WORKS PROJECT**

“Local public works project” means a project of a local public body which uses architectural or engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more, or landscape architectural or surveying services requiring professional services costing ten thousand dollars (\$10,000) or more, excluding applicable state and local gross receipts taxes.

**1.39 Definition: LOCAL PUBLIC BODY**

“Local public body” means every political subdivision of the state and agencies, instrumentalities and institutions thereof, including two-year post-secondary educational institutions, school districts and local school Councils and municipalities, except as exempted pursuant to the Procurement Code.

**1.40 Definition: MULTI-TERM CONTRACT**

“Multi-term contract” means a contract having a term longer than one year.

**1.41 Definition: MULTIPLE SOURCE AWARD**

“Multiple source award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one bidder of offeror.

**1.42 Definition: NOTICE OF REQUEST/INVITATION FOR BIDS**

“Notice of invitation for bids” means a document issued by a procurement officer which contains a brief description of the services, construction or items of tangible personal property to be procured, the location where copies of the invitation for bid may be obtained, the location where bids are to be received, the cost, if any for copies of plans and specifications, the date and place of the bid opening and such information as the procurement officer deems necessary.

**1.43 Definition: PRICE AGREEMENT**

“Price agreement” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

**1.44 Definition: PENDENCY OF THE PROCUREMENT PROCESS**

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**1.45 Definition: PERSON**

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

**1.46 Definition: PRICE ANALYSIS**

“Price analysis” means the evaluation of pricing data without analysis of the separate cost components and profits.

**1.47 Definition: PRICING DATA**

“Pricing data” means factual information concerning prices for items identical to or substantially similar to those being procured.

**1.48 Definition: PROCUREMENT**

“Procurement” means:

1. Purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction; and
2. All procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration.

**1.49 Definition: PROCUREMENT OFFICER**

“Procurement officer” means any person or a designee authorized by a state agency or a local public body to enter into or administer contracts and make written determinations with respect thereto.

**1.50 Definition: PROFESSIONAL SERVICES**

“Professional services” means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office.

**1.51 Definition: PURCHASE ORDER**

“Purchase order” means the documents issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction.

**1.52 Definition: PURCHASE REQUEST**

“Purchase request” means the document by which a using agency requests that a contract be obtained for a specified service, construction or item of tangible personal property and may include but is not limited to the technical description of the requested items, delivery schedule, transportation requirements suggested sources of supply and supporting information.

**1.53 Definition: QUALIFIED PRODUCTS LIST**

“Qualified products list” means a list of items of tangible personal property described by model or catalogue number which, prior to the solicitation of competitive sealed bids or competitive sealed proposals, are items the state purchasing agent or a central purchasing office has determined will meet the applicable specifications.

**1.54 Definition: REGULATION**

“Regulation” means any rule, order or statements of policy, including amendments thereto and repeals thereof, issued by a state agency or a local public body to affect persons not members or employees of the issuer.

**1.55 Definition: REQUEST FOR PROPOSALS**

“Request for proposals” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

**1.56 Definition: RESPONSIBLE BIDDER**

“Responsible bidder” means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.

**1.57 Definition: RESPONSIBLE OFFEROR**

"Responsible offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to



make satisfactory delivery of the services or items of tangible personal property described in the proposal.

**1.58 Definition: RESPONSIVE BID**

“Responsive bid” means a bid that conforms in all material respects to the requirements set forth in the invitation for bids. Material respects of a bid include but are not limited to price, quality, quantity or delivery requirements.

**1.59 Definition: RESPONSIVE OFFER**

“Responsive offer” means an offer that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to, price, quality, quantity or delivery requirements.

**1.60 Definition: SELECTION COMMITTEE**

“Selection Committee” A committee appointed by the Mayor, City Clerk, or his/her designee to evaluate and select all offerors to a request for proposals.

**1.61 Definition: SERVICES**

“Services” means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. “Services” includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body.

**1.62 Definition: SMALL BUSINESS**

“Small business” means a business, not a subsidiary or division of another business, having an average annual volume for the preceding three fiscal years which does not exceed one million five hundred thousand dollars (\$1,500,000).

**1.63 Definition: SPECIFICATION**

“Specification” means a description of the physical or functional characteristics or of the nature of items of tangible personal property, services or construction. “Specification” may include a description of any requirement for inspecting or testing, or for preparing items of tangible personal property, services or construction for delivery.

**1.64 Definition: SURVEYING SERVICES**

“Surveying services” means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

1. The measuring and locating of lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volume;
2. The monumenting of property boundaries and the platting and layout of lands and subdivisions thereof;
3. The application of photogram metric methods used to derive topographic and other data;

4. The establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogram metric methods, construction surveys for engineering and architectural public works; and,
5. The preparation and perpetuation of maps, records, plats, field notes and property descriptions.

### **1.65 Definition: TANGIBLE PERSONAL PROPERTY**

“Tangible personal property” means tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials.

## **2.0 PURCHASE REQUESTS**

### **2.1 SPECIFICATION FOR PURCHASE REQUESTIONS**

- A) All using agency requests for procurement shall contain:
  - i) A statement of need and the specifications of the item(s), construction or service(s) needed; and
  - ii) A statement of the quantity needed and a general statement of quality.
- B) The central purchasing office may consolidate procurements and may contract for items of tangible personal property or services at a firm price at which the items or services needed during the year or portion of a year shall be purchased.
- C) A brand name may be used when the brand name is the clearest and best understood manner of describing the item. When a brand name is used, it must be followed by the words “or equal,” except for those instances where the materials or services are designed to match other in use on a particular public improvement, either completed or in the course of completion, or where a unique or novel product application is required to be used in the public interest as per Section 22.
- D) The Central Purchasing Office shall notify the department who filed the requisition, if any changes are needed of the department’s requisition, relative to specifications, price, contractual conditions, quantity or delivery costs, proper account use, and prior to the issuance of a purchase order.
- E) A purchase order shall be a statement of intent to purchase and shall clearly state the quantity and quality of items to be purchased. The Central Purchasing Office may consolidate purchases and may contract for items at a firm price at which the materials or services needed during the year, or portion of a year, shall be purchased.
- F) Procurement shall not be artificially divided so as to constitute a small purchase under these regulations.
- G) All contracts and solicitations shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

## 2.2 SMALL PURCHASES

- A) A central purchasing office shall procure services, (except for professional services, see section 2.3) construction or items of tangible personal property having a value not exceeding sixty thousand dollars (\$60,000) in accordance with these regulations:
- i) **\$2,499.99 or less.** Purchases shall be made according to the **best obtainable price** from a vendor or catalogue. Note: purchases may be from petty cash, not to exceed \$50.00, in accordance with petty cash purchases as established by written procedures.
  - ii) **\$2,500 to \$9,999.99.** Purchases shall be made according to the **best obtainable price** provided at least 2 businesses shall be solicited using bona fide *phone* quotations from a vendor or catalogue.
  - iii) **\$10,000 to \$19,999.99.** Purchases shall be made according to the **best obtainable price** provided at least 3 bona fide *phone* quotations from different vendors and catalogues have been obtained for such purchases. These quotations are required to be recorded on a procurement quotation form and made a part of the procurement file.
    - a) Proposed expenditures over \$10,000 must be approved by the Mayor or his/her designee.
  - iv) **\$20,000 to \$60,000.00.** Purchases shall be made according to the **best obtainable price** provided at least 3 bona fide *written* quotations are obtained from vendors or catalogues. The Purchasing Agent may, in unique circumstances, waive request for quotation procedures, and require 3 bona fide *phone* quotations.
    - a) Proposed expenditures over \$20,000 must be brought before the Governing Body for approval.
  - v) **Above \$60,000.00.** All purchases exceeding \$60,000 require formal bid procedures as set forth in this policy.
- B) If any responsible bid is the same as the lowest bid, the Central Purchasing Office shall notify the Department Director involved in the purchase, who shall be given the option of selecting the bidder to whom the award will be given.
- C) Without regard to the bid requirements of these regulations, the City may purchase materials at prices equal to or less than the prices paid for material meeting the same specifications or standards purchased under State Purchasing Agent or Procurement Officer if the following conditions are met:
- i) Prices must be from a current contract entered into by the State Purchasing Agent.
  - ii) The quantity purchased shall not exceed the quantity that may be purchased under the applicable State Purchasing Agent contract.
  - iii) The material shall be purchased at the best available price.

- iv) The Requisition for Purchase shall adequately identify the State Purchasing Agent contract relied upon, recording, contract number, item(s) number, contract expiration date and copy of contract attached.
- v) The Central Purchasing Office shall retain for public inspection and for the use of auditors a copy of each state purchasing agent contract relied upon to make purchases without seeking competitive bids.
- vi) Purchases shall not be made from other than state contract vendors if the contract so provides and if the state contract has been arrived at by utilization of the requirements of other than State Agencies under the supervision of the State Purchasing Agent.

### **2.3 PROFESSIONAL SERVICES**

With regard to contracts for technical and professional services, including but not limited to contracts for legal services, appraisal services, engineering consulting, or other consulting services, when the contract is for less than \$60,000.00, a determination shall be made by the department involved in the procurement stating the service is required, the criteria used for selection, the persons, partnerships, corporations or associations considered and the basis for the final selection.

### **3.0 EXEMPTIONS FROM THE PROCUREMENT CODE**

**The provisions of the Procurement Code shall not apply to:**

- A) procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;
- B) procurement of tangible personal property or services for the governor's mansion and grounds;
- C) printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;
- D) purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;
- E) purchases of books, periodicals and training materials in printed or electronic format from the publishers or copyright holders thereof and purchases of print, digital or electronic format library materials by public, school and state libraries for access by the public;
- F) travel or shipping by common carrier or by private conveyance or to meals and lodging;
- G) purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;
- H) contracts with businesses for public school transportation services;

- I) procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;
- J) purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;
- K) municipalities having adopted home rule charters and having enacted their own purchasing ordinances;
- L) the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;
- M) contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;
- N) contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;
- O) contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;
- P) contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;
- Q) contracts with professional entertainers;
- R) contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
- S) contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;
- T) works of art for museums or for display in public buildings or places;

- U) contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;
- V) purchases of advertising in all media, including radio, television, print and electronic;
- W) purchases of promotional goods intended for resale by the tourism department;
- X) procurement of printing, publishing and distribution services for materials produced and intended for resale by the cultural affairs department;
- Y) procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000);
- Z) procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act;
- AA) purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;
- BB) procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;
- CC) contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act;
- DD) the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock;
- EE) contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act of 1984 and the federal Violence Against Women Act of 1994;

- FF) procurement by or through the children, youth and families department of pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act;
- GG) procurement of services of commissioned advertising sales representatives for New Mexico magazine; and
- HH) procurements exempt from the Procurement Code as otherwise provided by law.

#### **4.0 SOLE SOURCE**

A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the central purchasing office determines, in writing, that:

- (1) there is only one source for the required service, construction or item of tangible personal property;
- (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and
- (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

The central purchasing office shall use due diligence in determining the basis for the sole source procurement, including reviewing available sources and consulting the using agency, and shall include its written determination in the procurement file.

The central purchasing office shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to the state agency or a local public body.

The central purchasing office shall not circumvent this section by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.

At least thirty days before it awards a sole source contract, the central purchasing agent shall post notice of its intent to award the contract on its website. At least thirty days before it awards a sole source contract, a central purchasing office shall post notice of its intent to award the contract on its website, if it maintains one, and shall transmit the notice to the state purchasing agent for posting on the state purchasing agent's website. In each case, the notice shall identify, at a minimum:

- (1) the parties to the proposed contract;
- (2) the nature and quantity of the service, construction or item of tangible personal property being contracted for; and
- (3) the contract amount.

Any qualified potential contractor who was not awarded the sole source contract may submit a written protest to the central purchasing office within fifteen (15) calendar days after the notice is posted.

## **5.0 EMERGENCY PROCUREMENTS**

A. The central purchasing office may only make an emergency procurement when the service, construction or item of tangible personal property procured:

(1) is needed immediately to:

(a) control a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; or

(b) plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; and

(2) cannot be acquired through normal procurement methods.

B. The central purchasing office:

(1) in making an emergency procurement, shall:

(a) employ a competitive process to the extent practicable under the circumstances; and

(b) use due diligence in determining the basis for the procurement and in selecting a contractor; and

(2) shall not make an emergency procurement for the purchase or lease of heavy road equipment.

C. The central purchasing office that makes an emergency procurement shall outline its determination of the basis for the procurement and its selection of the contractor in writing and include the writing in the procurement file. Promptly thereafter:

(1) the central purchasing agent shall post notice of the procurement on its website; or

(2) the central purchasing office shall post notice of the procurement on its website, if it maintains one, and shall transmit the notice to the state purchasing agent for posting on the state purchasing agent's website.

D. The state purchasing agent or a central purchasing office that makes an emergency procurement to plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event shall account for the money spent in making the procurement and report on that



accounting to the legislative finance committee and the department of finance and administration within sixty days after the end of the fiscal year in which the procurement was made.

## **5.1 SOLE SOURCE AND EMERGENCY PROCUREMENTS: CONTENT AND**

### **SUBMISSION OR RECORD; PUBLICATION OF AWARD TO WEB SITE AND SUNSHINE PORTAL**

A. The central purchasing office shall maintain, for a minimum of three years, records of sole source and emergency procurements. The record of each such procurement shall be public record and shall contain:

- 1) The contractor's name and address;
- 2) The amount and term of the contract;
- 3) A listing of the services, construction or items of tangible personal property procured under the contract;
- 4) Whether the contract was a sole source or emergency procurement contract; and
- 5) The justification for the procurement method.

B. Prior to award of a sole source procurement contract, the central purchasing office shall provide to the department of information technology for posting on the sunshine portal; and forward the same information to the legislative finance committee:

- 1) the contractor's name and address,
- 2) the amount and term of the contract,
- 3) a listing of the services, construction or items of tangible personal property procured under the contract,
- 4) whether the contract was a sole source or emergency procurement contract, and;
- 5) the justification for the procurement method

## **6.0 GARAGE LIABILITY REQUIREMENT**

In the case of vehicle repair (mechanics), vendor shall provide garage liability insurance.

## **7.0 COMPETITIVE SEALED BIDS**

All procurement shall be achieved by competitive sealed bid pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978, except procurement achieved pursuant to the following sections of the Procurement Code:

- A. Sections 13-1-111 through 13-1-122 NMSA 1978, competitive sealed proposals;
- B. Section 13-1-125 NMSA 1978, small purchases;
- C. Section 13-1-126 NMSA 1978, sole source procurement;
- D. Section 13-1-127 NMSA 1978, emergency procurements;
- E. Section 13-1-129 NMSA 1978, existing contracts;
- F. Section 13-1-130 NMSA 1978, purchases from antipoverty program businesses; and
- G. the Educational Facility Construction Manager At Risk Act.

## **7.1 COMPETITIVE SEALED BIDS: INVITATION FOR BIDS**

- A. An invitation for bids shall be issued and shall include the specifications for the services, construction or items of tangible personal property to be procured, all contractual terms and conditions applicable to the procurement, the location where bids are to be received, the date, time and place of the bid opening and the requirements for complying with any applicable in-state preference provisions as provided by law.
- B. If the procurement is to be by sealed bid without electronic submission, the invitation for bids shall include the location where bids are to be received and the date, time and place of the bid opening.
- C. If the procurement is to be by sealed bid with part or all of the bid to be submitted electronically, the invitation for bids shall comply with the requirements of Section 13-1-95.1 NMSA 1978.

## **7.2 SIGNATURES FOR RFB**

Review and signatures are required from the City Procurement Officer. The final signed RFB/RFP is complete only when a signature and a bid number are issued by the Purchasing Officer. The RFB/RFP is then scheduled for an opening date and recorded in the bid list. The completed RFB/RFP original is then recorded with the City Procurement Officer. A copy of the signed original is submitted to the Purchasing Department.

## **7.3 CAMPAIGN CONTRIBUTION DISCLOSURE**

Pursuant to NMSA 1978, Section 13-1-191.1 (2007), any prospective contractor seeking to enter into a contract with any state agency or local public body must file the form provided in Appendix "A" with the state agency or local public body.

## **7.4 AMENDMENTS TO REQUEST FOR BIDS**

The Purchasing Officer and/or the Department involved in the purchase may amend the invitation for bids in compliance with the Procurement Code and City regulations to:

- A) Make any changes in the invitation for bids such as changes in quantity, purchase descriptions, specifications, delivery schedules, opening dates.
- B) Correct defects or ambiguities.
- C) Furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting a bid or if the lack of such information would prejudice the other bidders.
- D) The amendment shall be mailed first class to all bidders who have supplied their current mailing address, pursuant to the bidder, not less than seven (7) days prior to the scheduled bid opening.

## **7.5 COMPETITIVE SEALED BIDS: PUBLIC NOTICE**

A. An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. In the case of purchases made by the state purchasing agent, the invitation or notice shall be published at least once in at least three newspapers of general circulation in this state; in addition, an invitation or notice may be published electronically on the state purchasing agent's web site that is maintained for that purpose. In the case of purchases made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in addition to any other procedures that may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including publication in a trade journal, if available. If there is no newspaper of general circulation in the area in which the central purchasing office is located, such other notice may be given as is commercially reasonable.

B. Central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than twenty thousand dollars (\$20,000) to those businesses that have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and that have paid any required fees. A central purchasing office may set different registration fees for different categories of services, construction or items of tangible personal property, but such fees shall be related to the actual, direct cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders.

C. A central purchasing office may satisfy the requirement of sending copies of a notice or invitation for bids by distributing the documents to prospective bidders through electronic media. Central purchasing offices shall not require that prospective bidders receive a notice or invitation for bids through electronic media.

D. As used in this section, "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a

general contractor for work to be subcontracted pursuant to the construction contract. Central purchasing offices shall make copies of invitations for bids for construction contracts available to prospective bidders. A central purchasing office may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents for bid, which time limits shall be no less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the applicable central purchasing office.

#### **7.6 COMPETITIVE SEALED BIDS: RECEIPT AND ACCEPTANCE OF BIDS**

- A) Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code (13-1-28 NMSA 1978). In addition to the requirement for the prime contractor and subcontractors to be registered as provided in Section 13-4-13.1 NMSA 1978, bids shall be evaluated based on the requirements set forth in the invitation for bids, which requirements may include criteria 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 lifecycle costs that will affect the bid price shall be objectively measurable, which shall be defined by rule. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids. A bid submitted by a prime contractor that was not registered as required by Section 13-4-13.1 NMSA 1978 shall not be considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with that section may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978.
- B) If the lowest responsible bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budget project funds.

#### **7.7 COMPETITIVE SEALED BIDS: CORRECTION OR WITHDRAWAL OF BIDS**

- A) A bid containing a mistake discovered before bid opening may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the invitation for bids as the place where bids are to be received. After bid opening, no modifications in bid prices or other provisions of bids shall be permitted. A low bidder alleging a material mistake of fact which makes his bid non-responsive may be permitted to withdraw its bid if:
1. The mistake is clearly evident on the face of the bid documents; or

2. The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.
- B) Any decision by a procurement officer to permit or deny the withdrawal of a bid on the basis of a mistake contained therein shall be supported by a determination setting forth the grounds for the decision.

#### **7.8 COMPETITIVE SEALED BIDS: BID OPENING**

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the state purchasing agent or a central purchasing office, together with the name of each bidder, shall be recorded, and the record and each bid shall be open to public inspection.

#### **7.9 COMPETITIVE SEALED BIDS: AWARD**

A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or applicable local option tax but that the contracting agency shall be required to pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax shall be shown as a separate amount on each billing or request for payment made under the contract.

#### **7.10 COMPETITIVE SEALED BIDS: MULTI-STEP SEALED BIDDING**

When the Procurement Officer makes a determination that it is impractical to initially prepare specifications to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids.

#### **7.11 COMPETITIVE SEALED BIDS: IDENTICAL BIDS**

When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the Procurement Officer may:

- A) Award pursuant to the multiple source award provisions of Sections 126 and 127 (13-1-153 and 13-1-154 NMSA 1978) of the Procurement Code;
- B) Award to a resident business if the identical low bids are submitted by a resident business and a nonresident business;
- C) Award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a resident business;
- D) Award by lottery to one of the identical low bidders; or
- E) Reject all bids and resolicit bids or proposals for the required services, construction or items of tangible personal property.

## **8.0 COMPETITIVE SEALED PROPOSALS: CONDITIONS FOR USE**

- A) Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, when a local public body is procuring professional services or a design and build project delivery system, or when the Procurement Officer or designee makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals.
- B) Competitive sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs.
- C) Competitive sealed proposals may also be used for construction manager at risk contracts if a three-step selection procedure is used pursuant to the Educational Facility Construction Manager At Risk Act.
- D) Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1 120 through 13-1-124 NMSA 1978.
- E) Competitive sealed proposals shall also be used for contracts for the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (6-23-1 NMSA 1978).

## **8.1 COMPETITIVE SEALED PROPOSALS: REQUEST FOR PROPOSALS**

A. Competitive sealed proposals, including competitive sealed qualifications-based proposals, shall be solicited through a request for proposals that shall be issued and shall include:

- (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) the form for disclosure of campaign contributions given by prospective contractors to applicable public officials pursuant to Section 13-1-191.1 NMSA 1978;
- (4) the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed; and
- (5) the requirements for complying with any applicable in-state preference provisions as provided by law.

B. A request for proposals may, pursuant to Section 13-1-95.1 NMSA 1978, require that all or a portion of a responsive proposal be submitted electronically.

C. In the case of requests for competitive qualifications-based proposals, price shall be determined by formal negotiations related to scope of work.

## **8.2 CAMPAIGN CONTRIBUTION DISCLOSURE**

Pursuant to NMSA 1978, Section 13-1-191.1 (2007), any prospective contractor seeking to enter into a contract with the City must file this form with the City.

## **8.3 COMPETITIVE SEALED PROPOSALS: PUBLIC NOTICE**

Public notice of the request for proposals shall be given in the same manner as provided in Section 77 of the Procurement Code.

## **8.4 AMENDMENTS TO THE REQUEST FOR PROPOSALS**

- A) Prior to submission of proposals, amendments to the RFP may be made only as follows:
- i) Form. An amendment to the RFP shall be identified as such and shall require that offerors acknowledge its receipt. The amendment shall refer to the portions of the RFP it amends.
  - ii) Distribution. Amendments shall be sent to all prospective offerors known to have received the RFP.
  - iii) Timeliness. Amendments shall be distributed within a reasonable time to allow prospective offerors to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone or by other electronic means and confirmed in the amendment.
  - iv) Use of amendments. Amendments should be used to:
    - a) make any changes in the RFP, such as changes in scope of services, opening dates, etc.;
    - b) correct defects or ambiguities; or
    - c) furnish to other offerors information given to one offeror if such information will assist the other offerors in submitting offers or if the lack of such information would prejudice the other offerors.
- B) 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 officer, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be cancelled and a new RFP issue.

## **8.5 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Proposals may be modified or withdrawn prior to the established due date only in accordance with this policy. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or, if discussions have begun, it is the time and date by which best and final offers must be submitted by short-list offerors.

## **8.6 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 and may only be considered in accordance with this Policy.

## **8.7 RECEIPT AND OPENING OF PROPOSALS**

- A) Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date.
- B) Proposals shall not be opened publicly and shall not be open to public inspection until after an offeror has been selected for award of a contract. An offeror may request in writing nondisclosure of confidential data. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

## **8.8 COMPETITIVE SEALED PROPOSALS: EVALUATION FACTORS**

The request for proposals shall state the relative weight to be given to the factors in evaluating proposals. Numerical rating systems are required for procurements of information systems resources.

## **8.9 COMPETITIVE SEALED PROPOSAL: NEGOTIATIONS**

Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. This section shall not apply to architects, engineers, landscape architects and surveyors who submit proposals pursuant to Sections 13-1- 120 through 13-1-124 NMSA 1978.

## **8.10 COMPETITIVE SEALED PROPOSALS: DISCLOSURE; RECORD**

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

## **8.11 COMPETITIVE SEALED PROPOSALS: AWARD**

The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the City, taking into consideration the evaluation factors set forth in the request for proposals.

## **9.0 PROCUREMENT OF PROFESSIONAL SERVICES**

### **9.1 PROCUREMENT OF PROFESSIONAL SERVICES; SELECTION AND AWARD**

The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the City, taking into consideration the evaluation factors set forth in the request for proposals.

### **9.2 PROCUREMENT OF PROFESSIONAL SERVICES; PROFESSIONAL TECHNICAL ADVISORY ASSISTANCE**

- A) The City shall have appointed to it or have the appointment waived by the appropriate New Mexico professional society listed in Subsection D of this section, an individual to serve as a professional technical advisor. The professional technical advisor shall be a senior member



of an architectural, engineering, surveying or landscape architectural business with experience appropriate to the type of local public works project proposed and shall be a resident licensed architect, professional engineer, surveyor or landscape architect in the state who possesses at least ten years of experience in responsible charge as defined in the Architectural Act (Chapter 61, Article 15 NMSA 1978), the Engineering and Surveying Practice Act (Chapter 61, Article 23 NMSA 1978) or the Landscape Architects Act (Chapter 61, Article 24B NMSA 1978), respectively.

- B) The professional technical advisor to the City shall serve as an agent of the City and shall be indemnified and held harmless. He may be reimbursed as provided in the Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978) for per diem and mileage in connection with his service as a professional technical advisor and shall receive no other compensation, perquisite or allowance.
- C) The duties and responsibilities of the professional technical advisor shall include but may not be limited to the following activities:
  - i) Advise the local public body in the development of requests for proposals for engineering, surveying, architectural or landscape architectural services procured by the local public body;
  - ii) Advise the local public body in giving public notice of requests for proposals;
  - iii) Advise in the evaluation and selection of professional businesses to perform services for the local public body, based upon demonstrated competence and qualification for the type of professional services required; and
  - iv) Assist in contract negotiations.
- D) Professional technical advisors shall be obtained through the professional technical advisory Council, a consortium of the consulting engineers council of New Mexico and the professional engineers in private practice division of the New Mexico society of professional engineers; the New Mexico professional surveyors; the New Mexico society of architects; or the New Mexico chapter of the American society of landscape architects.
- E) No individual or firm whose principal officer, director or employee serves as a professional technical advisor to a local public body shall be permitted to submit a proposal to the local public body during the period in which the individual, principal, officer, director or employee serves as a professional technical advisor to the local public body; however, nothing in this section shall prohibit an individual or firm from submitting a proposal to any local public body in which the individual or a principal, officer, director or employee is not serving as a professional technical advisor.

### **9.3 CONTRACTS FOR THE DESIGN AND INSTALLATION OF MEASURES FOR THE CONSERVATION OF NATURAL RESOURCES**

The City may solicit competitive sealed proposals for a contract that provides for both the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (6-23-1 NMSA 1978).

**9.4 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS;  
ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS;  
ADDITIONAL REQUIREMENTS**

In addition to compliance with the requirements of Sections 13-1-112 through 13-1-114 and 13-1-116 through 13-1-118 NMSA 1978, a local public body, when procuring the services of architects, landscape architects, engineers or surveyors for public works projects, shall comply with Sections 13-1-120 through 13-1-124 NMSA 1978.

**9.5 PUBLIC WORKS PROJECT DELIVERY SYSTEM; DESIGN AND BUILD  
PROJECTS AUTHORIZED**

- A) Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the Procurement Officer makes a determination in writing that it is appropriate and in the best interest of the City to use the system on a specific project. The determination shall be issued only after the Procurement Officer has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:
- i) The extent to which the project requirements have been or can be adequately defined;
  - ii) Time constraints for delivery of the project;
  - iii) The capability and experience of potential teams with the design and build process;
  - iv) The suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and
  - v) The capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.
- B) When a determination has been made by the Procurement Officer that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect and a contractor properly licensed in New Mexico for the type of work required.
- C) Except as provided in Subsections F and G of this section, for each proposed City public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following:
- i) During phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in-house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria; and
  - ii) During phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made, and the contract awarded to the highest ranked firm.

- D) Except as provided in Subsections F and G of this section, to ensure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate rules applicable to all using agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.
- E) The City shall make the decision on a design and build project delivery system for a City public works project. A state agency shall not make the decision on a design and build project delivery system for a City public works project.
- F) The requirements of Subsections C and D of this section and the minimum construction cost requirement of Subsection A of this section do not apply to a design and build project delivery system and services procured for the project if:
  - i) The maximum allowable construction cost of the project is four hundred thousand dollars (\$400,000) or less; and
  - ii) The only requirements for architects, engineers, landscape architects, or surveyors is limited to either site improvements or adaptation for a pre-engineered building system.
- G) The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978.

**9.6 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS:  
ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS;  
SELECTION PROCESS**

- A) For each proposed City or construction management contract, the architect, engineer, landscape architect, construction management and surveyor selection committee, or local selection committee, as appropriate, shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.
- B) The appropriate selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by the using agency authorizing the project:
  - i) Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;
  - ii) Capacity and capability of the business, including any consultants, their representatives, qualifications and locations, to perform the work, including any specialized services, within the time limitations;
  - iii) Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;
  - iv) Proximity to or familiarity with the area in which the project is located;

- v) The amount of design work that will be produced by a New Mexico business within this state;
  - vi) The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated; and
  - vii) Notwithstanding any other provisions of this subsection, price may be considered in connection with construction management contracts, unless the services are those of an architect, engineer, landscape architect or surveyor.
- C) Notwithstanding the requirement of Subsections, A and B of this section, if fewer than three businesses have submitted a statement of qualifications for a particular project, the appropriate committee may:
- i) Rank in order of qualifications and submit to the secretary or local governing authority of the public body for award those businesses which have submitted a statement of qualifications; or
  - ii) Recommend termination of the selection process pursuant to Section 13-1-131 NMSA 1978. Any proposal received in response to the terminated solicitation is not public information and shall not be made available to competing offerors.
- D) The names of all businesses submitting proposals and the names of all businesses, if any selected for interview shall be public information. After an award has been made, the appropriate selection committee's final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected for contract award shall be so notified in writing within fifteen days after an award is made.

**9.7 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS: AWARD OF ARCHITECT; ENGINEERING, LANDSCAPE ARCHITECT AND SURVEYING CONTRACTS**

The designee of a local public body shall negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering or surveying services at compensation determined in writing to be fair and reasonable. In making this decision, the designee of a local public body shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services. Should the designee of a local public body be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The designee of a local public body shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee of a local public body shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee of a local public body shall formally terminate negotiations with that business. The designee of the local public body shall then undertake negotiations with the third most qualified business. Should the designee of a local public body be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the secretary or his designee or the designee of a local public body shall continue negotiations in accordance with

this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated. The representative of a local public body shall publicly announce the business selected for award.

## **9.8 ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL AND SURVEYING CONTRACTS**

- A) All contracts between a local public body and an architect for the construction of new buildings or for the remodeling or renovation of existing buildings shall contain the provision that all designs, drawings, specifications, notes and other work developed in the performance of the contract are the sole property of the local public body.
- B) All documents, including drawings and specifications, prepared by the architect, engineer, landscape architect or surveyor are instruments of professional service. If the plans and specifications developed in the performance of the contract shall become the property of the contracting agency upon completion of the work, the contracting agency agrees to hold harmless, indemnify and defend the architect, engineer, landscape architect or surveyor against all damages, claims and losses, including defense costs, arising out of any reuse of the plans and specifications without the written authorization of the architect, engineer, landscape architect or surveyor.

## **10.0 BID SECURITY**

### **10.1 BID SECURITY: REQUIREMENTS**

Bid security shall be required of bidders for construction contracts procured by competitive sealed bid when the price is estimated by the procurement officer to exceed twenty-five thousand dollars (\$25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety company authorized to do business in this state; or the equivalent in cash, or otherwise supplied in a form satisfactory to the City.

### **10.2 DIRECTED SURETYSHIP PROHIBITED: PENALTY**

A. Except to the extent necessary to ensure that a surety company meets the requirements of Subsection A of Section 13-4-18 NMSA 1978, an employee of the state or its political subdivisions, or a person acting or purporting to act on behalf of that employee, shall not require a bidder or an offeror in a procurement for a construction contract pursuant to the Procurement Code (13-1-28 NMSA 1978) to make application or furnish financial data for a surety bond or to obtain a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid or proposal.

B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

### **10.3 BID SECURITY: REJECTION OF BIDS**

A. When the invitation for bids requires bid security, noncompliance by the bidder requires that the bid be rejected.

B. If a bidder is permitted to withdraw its bid before award, no action shall be made against the bidder or the bid security.

#### **10.4 BID AND PERFORMANCE BONDS: ADDITIONAL REQUIREMENTS**

A. Bid and performance bonds or other security may be required for contracts for items of tangible personal property or services as the Procurement Officer deems necessary to protect the interests of the City. Any such bonding requirements shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.

B. As to performance and payment bonds for construction contracts, see the requirements of Section 13-4-18 NMSA 1978.

#### **10.5 BONDING OF SUBCONTRACTORS**

A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is one hundred twenty-five thousand dollars (\$125,000) or more.

#### **11.0 MULTIPLE SOURCE AWARD**

##### **11.1 MULTIPLE SOURCE AWARD: LIMITATIONS ON USE**

A Multiple Source Award may be made pursuant to Section 13-1-110 NMSA 1978 of the Procurement code when awards to two or more bidders or offerors are necessary for adequate delivery or service. Multiple source awards shall not be made when a single award will meet the needs of the City without sacrifice of economy or service. Awards shall be limited to the least number of suppliers in one geographical area necessary to meet the requirements of the City. A multiple source award shall be based upon the lowest responsible bid or proposal received in each geographical area unless the award is made in response to a qualifications-based proposal.

##### **11.2 MULTIPLE SOURCE AWARD: DETERMINATION REQUIRED**

The Procurement Officer shall make a determination setting forth the reasons for a multiple source award.

#### **12.0 REJECTION OR CANCELLATION OF BIDS OR PROPOSALS**

##### **12.1 CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS**

An invitation for bids, a request for proposals or any other 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 state agency or a local public body. A determination containing the reasons for cancellation shall be made part of the procurement file. If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then new invitations for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are secured, the central purchasing office may purchase the tangible personal property, construction or services in the open market at the best obtainable price.

##### **12.2 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:**

A) Reasons for rejection.

- i) Bids. As used in this section, "bid" includes both competitive sealed bids and small purchase quotations. Reasons for rejecting a bid shall include but are not limited to:

- a) the business that submitted the bid is non-responsible; or
  - b) the bid is not responsive; or
  - c) the service, construction, or item of tangible personal property offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the RFB.
- ii) 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 the City's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:
- a) the business that submitted the proposal is non-responsible; or
  - b) the proposal is not responsive; or
  - c) the proposed price is clearly unreasonable; or
  - d) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.
- B) Written determination required. A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the Procurement Officer 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 Procurement Officer 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.

### **12.3 REJECTION OR CANCELLATION OF BIDS OR REQUESTS FOR PROPOSALS: NEGOTIATIONS**

An invitation for bids, a request for proposals or any other solicitation may be cancelled, or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state agency or a local public body. A determination containing the reasons for cancellation shall be made part of the procurement file. If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then a new invitation for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are secured, the Procurement Officer may purchase the tangible personal property, construction or services in the open market at the best obtainable price.

### **12.4 IRREGULARITIES IN BIDS OR PROPOSALS**

The Procurement Officer may waive technical irregularities in the form of the bid or proposal of the low bidder or offeror that do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offer.

### **12.5 RESPONSIBILITY OF BIDDERS AND OFFERORS**

If a bidder or offeror who otherwise would have been awarded a contract is found not to be a responsible bidder or offeror, a determination that the bidder or offeror is not a responsible bidder or offeror, setting forth the basis of the finding, shall be prepared by the Procurement Officer. The unreasonable failure of a bidder or offeror to promptly supply information in

connection with an inquiry with respect to responsibility is grounds for a determination that the bidder or offeror is not a responsible bidder or offeror.

## **12.6 PREQUALIFICATION OF BIDDERS**

A business may be pre-qualified by a central purchasing office as a bidder or offeror for particular types of services, construction or items of tangible personal property. Mailing lists of potential bidders or offers shall include but shall not be limited to such prequalified businesses.

## **13.0 CONSTRUCTION CONTRACTS**

### **13.1 CONSTRUCTION CONTRACTS: CENTRAL PURCHASING OFFICE**

The award and execution of contracts for major construction, including but not limited to roads, bridges, airports, buildings and dams, shall be made by the City Council. The procurement officer responsible for the procurement shall give notice to prospective bidders pursuant to Section 13-1-10 NMSA 1978.

### **13.2 CONSTRUCTION CONTRACTS: CONSTRUCTION MANAGEMENT SERVICES**

- A) A construction management services contract may be entered into for any construction or City public works project when the City makes a determination that it is in the public's interest to utilize construction management services. Construction management services shall not duplicate and are in addition to the normal scope of separate architect or engineer contracts, the need for which may arise due to the complexity or unusual requirements of a project as requested by the City.
- B) To insure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project, on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate regulations, which shall be adopted by the City and shall be followed by the City when procuring construction management services as authorized in Subsection A of this section.
- C) A local public body shall make the decision on a construction management services contract for a City public works project. A state agency shall not make the decision on a construction management services contract for a City public works project.

### **13.3 CONSTRUCTION CONTRACT: RIGHT TO INSPECT PLANT**

A contract or a solicitation therefore may include a provision permitting the City, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded.

## **14.0 PROCUREMENT UNDER EXISTING CONTRACTS**

A) Notwithstanding the requirements of Sections 13-1-102 through 13-1-118 NMSA 1978, the Procurement Officer may contract for services, construction or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:

- i) At a price equal to or less than the contractor's current federal supply contract price (GSA), providing the contractor has indicated in writing a willingness to extend such



contractor pricing, terms and conditions to the City and the purchase order adequately identifies the contract relied upon; or

- ii) With a business which has a current exclusive or nonexclusive 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 if the following conditions are met:
  - a) The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and
  - b) The purchase order adequately identifies the price agreement relied upon.
- B) The Procurement Officer shall retain for public inspection and for the use of auditors a copy of each federal supply contractor state purchasing agent price agreement relied upon to make purchases without seeking competitive bids or proposals.

## **15.0 COOPERATIVE PROCUREMENT**

### **15.1 COOPERATIVE PROCUREMENT: AUTHORIZED**

- A) The City may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external procurement units involved. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative procurement agreement entered into pursuant to this subsection shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the contracting parties may be located outside this state. An approved and signed copy of all cooperative procurement agreements entered into pursuant to this subsection shall be filed with the state purchasing agent. A cooperative procurement agreement entered into pursuant to this subsection is limited to the procurement of items of tangible personal property, services or construction.
- B) Notwithstanding the provisions of Subsection A of this section, a cooperative procurement agreement providing for mutually held funds or for other terms and conditions involving public funds or property included in Section 11-1-4 NMSA 1978 shall be entered into pursuant to the provisions of the Joint Powers Agreements Act (11-1-1 to 11-1-7 NMSA 1978)
- C) The City may cooperate by agreement with the State purchasing agent in obtaining contracts or price agreements, and such contract or agreed prices shall apply to purchase orders subsequently issued under the agreement.

### **15.2 COOPERATIVE PROCUREMENT: RECYCLED CONTENT GOODS**

- A) The Procurement Officer shall, whenever its price, quality, quantity, availability and delivery requirements are met, purchase recycled content goods through contracts established by the purchasing division of the general services department or with other central purchasing offices.

- B) For purposes of this section, “recycled content goods” means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

#### **16.0 SALE, ACQUISITION OR USE OF PROPERTY BY THE CITY**

The City may sell property to, acquire property from or cooperatively use any items of tangible personal property or services belonging to a state agency or another local body or external procurement unit:

- A) In accordance with an agreement entered into with the approval of the state Council of finance or the data processing and data communications planning council; or
- B) Subject to the provisions of Sections 3-46-1 through 3-46-45; 3-54-1 through 3-54-3; 3-60-1 through 3-60-37 and 3-60A-1 through 3-60A-48 NMSA 1978.

#### **17.0 COST OR PRICING DATA**

##### **17.1 COST OR PRICING DATA: REQUIRED**

When the Procurement Officer, a prospective contractor shall submit cost or pricing data when the contract is expected to exceed twenty-five thousand dollars (\$25,000) and is to be awarded by a method other than competitive sealed bids.

##### **17.2 COST OR PRICING DATA: NOT REQUIRED**

The cost or pricing data relating to the award of a contract shall not be required when:

- A) The procurement is based on competitive sealed bid;
- B) The contract price is based on established catalogue prices or market prices;
- C) The contract price is set by law or regulation;
- D) The contract is for professional services; or
- E) The contract is awarded pursuant to the Public Building Energy Efficiency Act (Chapter 6, Article 23 NMSA 1978).

##### **17.3 COST OR PRICING DATA: CHANGE ORDERS OR CONTRACT MODIFICATIONS**

When required by the City, a contractor shall submit cost or pricing data prior to the executive of any change order or contract modification, whether or not cost or pricing data was required in connection with the initial award of the contract, when the change order or modification involves aggregate increases or aggregate decreases that are expected to exceed twenty-five thousand dollars (\$25,000).

##### **17.4 COST OR PRICING DATA: CHANGE ORDERS, CONTRACT MODIFICATIONS, EXCEPTIONS**

The submission of cost or pricing data relating to the execution of a change order or contract modification shall not be required when unrelated change orders or contract modifications for which cost or pricing data would not be required are consolidated for administrative convenience.

### **17.5 COST OR PRICING DATA: CERTIFICATION REQUIRED**

A contractor, actual or prospective, required to submit cost or pricing data shall certify that to the best of its knowledge and belief the cost or pricing data submitted was accurate, complete and current as of a specified date.

### **17.6 COST OR PRICING DATA: PRICE ADJUSTMENT PROVISION REQUIRED**

Any contractor award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the local public body, including profit or fee, shall be adjusted to exclude any significant sums by which the local public body reasonably finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date specified.

### **17.7 COST OR PRICE DATA: ANALYSIS**

A cost analysis or a price analysis, as appropriate, may be conducted prior to the award of a contract other than one awarded by competitive sealed bidding. A written record of such cost or price analysis shall be made a part of the procurement.

### **17.8 COST PRINCIPLES: REGULATIONS**

The Procurement Officer has the authority to issue regulations may promulgate regulations setting forth principles to be used to determine the permissibility of incurred costs for the purpose of reimbursing costs to a contractor.

### **17.9 AUDIT OF COST OR PRICING DATA**

- A) The City may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data, to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain books and records that relate to such cost or pricing data for three years from the date of final payment under the contract unless a shorter period is otherwise authorized in writing.
- B) The City shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

### **18.0 TYPES OF CONTRACTS**

Subject to the limitations of Sections 123 through 127 of the Procurement Code, any type of contract, including but not limited to definite quantity contracts, indefinite quantity contracts and price agreements, which will promote the best interests of the state agency or a local public body may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited except for the purchase of insurance. A cost-reimbursement contract may be used when such contract is likely to be less costly or it is impracticable to otherwise obtain the services, construction or items of tangible personal property required.

### **18.1 MULTI-TERM CONTRACTS: SPECIFIED PERIOD**

A. A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed ten years, including all extensions and renewals, except that for a contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act, the term shall not exceed twenty-five years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. A contract for professional services may not exceed four years, including all extensions and renewals, except for the following:

- (1) services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems;
- (2) services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125;
- (3) a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding;
- (4) services relating to the implementation, operation and administration of the Education Trust Act;
- (5) services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act; and
- (6) services relating to the design and engineering of a state public works project:
  - (a) for a period not to exceed the requisite time for project completion and a subsequent warranty period; and
  - (b) upon approval of the secretary of finance and administration.

## **18.2 MULTI-TERM CONTRACTS: DETERMINATION PRIOR TO USE**

Prior to the utilization of a multi-term contract, the Procurement Officer shall make a determination that:

- a. The estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- b. The contract will serve the best interests of the City.

## **18.3 MULTI-TERM CONTRACTS: CANCELLATION DUE TO UNAVAILABILITY OF FUNDS**

When funds are not appropriated or otherwise made available to support continuation of performance of a multi-term contract in a subsequent fiscal period, the contract shall be cancelled.

## **19.0 PROCUREMENT OF USED ITEMS**

### **19.1 PROCUREMENT OF USED ITEMS: APPRAISAL REQUIRED**

A central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds five thousand dollars (\$5,000), shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications, including but not limited to requiring a warrant for at least ninety (90) days after date of delivery and an independent "certificate of working order" by a qualified mechanic or appraiser.

### **19.2 TRADE OR EXCHANGE OF USED ITEMS: APPRAISAL REQUIRED**

- A) A central purchasing office, when trading in or exchanging used items of tangible personal property the estimated value of which exceeds five thousand dollars (\$5,000) as part-payment on the procurement of new items of tangible personal property, shall:
  - i) Have an independent appraisal made of the items to be traded or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged and location where the items to be traded in or exchanged may be inspected; or
  - ii) Have two written quotes for purchase of the property at a specified price.
- B) Award shall be based upon the net bid. Bidders or offerors shall compute their net bid or offer by deducting the appraised value or highest quote of the items to be traded in or exchanged from the gross bid or offer on the new items of tangible personal property to be procured. If an amount offered in trade is less than the appraised value or the highest quote but is found to be a personal property and in the best interest of the agency, the bid or offer may be accepted. Documentation of the terms of acceptance shall be in writing, shall be made a part of the procurement file and shall be a public record.

### **19.3 RECEIPT: INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES**

The using agency is responsible for inspecting and accepting or rejecting deliveries.

The using agency shall determine whether the quantity is as specified in the purchase order or contract and whether the quality conforms to the specifications referred to or included in the purchase order or contract. If inspection reveals that the delivery does not conform to the quantity or quality specified in the purchase order or contract, the using agency 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 City shall have no obligation to pay for the nonconforming items of tangible personal property. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify to the City that delivery has been completed and is satisfactory.

## **20.0 PAYMENTS PURCHASES**

- A) No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the Procurement Officer or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code (13-1-28 NMSA 1978).
- B) Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the Procurement Officer or using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the Procurement Officer or using agency shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.
- C) Except as provided in Subsection D of this section, upon certification by the Procurement Officer or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency.
- D) If the Procurement Officer or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contract may proceed to provide remedial action.
- E) Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New

Mexico public utility commission or the state corporation commission (public regulation commission).

## **21.0 BRAND-NAME SPECIFICATION**

### **21.1 BRAND-NAME SPECIFICATION: USE**

A brand-name specification may be used only when the Procurement Officer makes a determination that only the identified brand-name item or items will satisfy the needs of the City.

### **21.2 BRAND-NAME SPECIFICATION: COMPETITION**

The Procurement Officer shall seek to identify sources from which the designated brand-name items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 99 of the Procurement Code.

### **21.3 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED CHARACTERISTICS**

Unless the Procurement Officer makes a determination that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand-name or equal specifications shall include a description of the particular design, function or performance characteristics which are required.

### **21.4 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED LANGUAGE**

Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of 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.

## **22.0 UNIFORM CONTRACT CLAUSES**

- A) The City may require by regulation that contracts include uniform clauses providing for termination of contracts, adjustments in prices, adjustments in time of performance or other contract provisions as appropriate, including but not limited to the following subjects:
- i) The unilateral right of the City to order in writing:
    - a) Changes in work within the scope of the contract; and
    - b) Temporary stoppage of the work of the delay of performance;
  - ii) Variations occurring between estimated quantities of work in a contract and actual quantities;
  - iii) liquidated damages;
  - iv) permissible excuses for delay or nonperformance;
  - v) termination of the contract for default;
  - vi) termination of the contract in whole or in part for the convenience of the City;
  - vii) assignment clauses providing for the assignment by the contractor to the City of causes of action for violation of state or federal antitrust statutes;
  - viii) identification of subcontractors by bidders in bids; and
  - ix) uniform subcontract clauses in contracts.

- B) The City shall require by regulation that contracts include a clause imposing late payment charges against the City in the amount and under the conditions stated in Section 13-1-158 NMSA 1978.

### **23.0 PRICE ADJUSTMENTS**

Adjustments in price shall be computed in one or more of the following ways as specified in the contract:

- A) By agreement on a fixed-price adjustment before commencement of performance or as soon thereafter as practicable;
- B) By unit prices specified in the contract or subsequently agreed upon by the parties.
- C) By the costs attributable to the events or conditions as specified in the contract or subsequently agreed upon by the parties;
- D) By a provision for both upward and downward revision of stated contract price upon the occurrence of specified contingencies if the contract is for commercial items sold in substantial quantities to the general public with prices based upon established catalogue or list prices in a form regularly maintained by the manufacturer or vendor and published or otherwise available for customer inspection. In the event of revision of the stated contract price, the contract file shall be promptly documented by the Procurement Officer.
- E) In such other manner as the contracting parties may mutually agree; or
- F) In the absence of agreement by the parties, by a unilateral determination reasonably computed by the City of the costs attributable to the events or conditions.

### **24.0 Procurement Protest Policy**

**Scope.** This regulation applies to all protests filed in connection with procurements made by the City of Rio Communities (hereinafter “City”).

**24.1 Definitions.** As used in this regulation:

**24.1.1 award of contract** means the Chief Procurement Officer or his designee has issued a Purchasing Department document to the successful bidder.

**24.1.2 protestor** means any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract and files a written protest.

**24.2 Right to protest.** Pursuant to NMSA 13-1-172, Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the state purchasing agent or a central purchasing office. The protest shall be submitted in writing within fifteen calendar days after knowledge of the facts or occurrences giving rise to the protest.

**24.3 Presumption of knowledge.** Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence.



#### **24.4 Time limits for filing protest.**

**24.4.2** For protests regarding specifications, the time limit runs from three (3) calendar days after the date the Chief Procurement Officer posts on the Internet or mails an Invitation for Bids, a Request for Proposals, or a written amendment to either.

**24.4.3** For protests regarding the type of solicitation or the solicitation process, the time limit runs from three (3) calendar days after the date the Chief Procurement Officer posts on the Internet or mails the Invitation for Bids or the Request for Proposals.

**24.4.4** For protests regarding award of a contract, the time limit runs from three (3) calendar days after the date the Chief Procurement Officer posts on the Internet or mails the notice of award.

#### **25.0 FILING A PROTEST.**

**25.1 Subject of protest.** Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation or award.

**25.2 Where to file.** Protests must be addressed to the Chief Procurement Officer.

**25.3 Contents.** A protest shall be in writing and shall:

**25.3.1** include the name and address of the protestor;

**25.3.2** include the solicitation number;

**25.3.3** contain a statement of the grounds for the protest;

**25.3.4** include supporting exhibits, evidence or documents to substantiate any claim; if such supporting exhibits, evidence or documents are not available within the time limit for filing, the protestor shall indicate the expected availability date; and

**25.3.5** specify the action the vendor wants the Chief Procurement Officer to take.

**25.4 Pleadings not required.** No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.

## **26.0 EFFECT OF PROTEST ON PROCUREMENTS.**

**26.1 Before contract awarded.** In the event of a timely protest, the state purchasing agent or a central purchasing office shall not proceed further with the procurement unless the state purchasing agent or a central purchasing office makes a determination that the award of the contract is necessary to protect substantial interests of the state agency or a local public body.

**26.2 After contract awarded.** 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 Chief Procurement Officer may, in his sole discretion, halt a procurement in exceptional circumstances or for good cause shown.

## **27.0 PROTEST PROCEDURE.**

**27.1 Preliminary review.** Upon receipt of a timely filed protest, the Chief Procurement Officer or his designee shall review the protest and, whenever possible, attempt to resolve it informally. The Chief Procurement Officer or his designee may discuss the protest with the protester to determine whether the protest was based on a misconception, misinformation, or a misunderstanding of the procurement process. If such is the case, the Chief Procurement Officer or his designee shall note the informal resolution of the protest in the appropriate procurement file.

**27.2 Notice of protest.** If the Chief Procurement Officer or his designee is unable to informally resolve the protest, the Chief Procurement Officer or his designee shall give notice of the protest to the contractor if award has been made or to all bidders or offerors who responded to the solicitation if no award has been made.

### **27.3 Parties.**

**27.3.1** The protestor shall automatically be made a party to any protest proceeding before the Chief Procurement Officer.

**27.3.2** Any person that receives notice of a protest and requests to be made a party shall be made a party to any further proceedings before the Chief Procurement Officer.

**27.3.3** Neither the Chief Procurement Officer nor his employees shall be parties to a protest proceeding.

**27.4 Written comments.** Any party may file written comments regarding the subject matter of the protest.

**27.5 Appointment of designee.**

**27.5.1 Designation.** At any point during a protest proceeding, the Chief Procurement Officer may appoint a designee to preside over the proceeding. The designee shall have all of the powers described in this regulation except the power to issue a written determination.

**27.5.2 Who may be designated.** Any person may serve as a designee, except a procurement officer, procurement manager or other person who has been directly involved in the procurement.

**27.6 Time for decisions.** The Chief Procurement Officer or his designee shall make a decision on a protest as expeditiously as possible after receiving all relevant requested information.

**27.7 Written determinations required.** All determinations required by this regulation shall be in writing, shall set forth the basis for the determination, and shall be made part of the appropriate procurement file.

## **28.0 REQUESTED INFORMATION.**

**28.1 Additional information.** In order to expedite consideration of a protest, any additional information requested by the Chief Procurement Officer or his designee or a party should be submitted within the time periods established by the requesting source.

**28.1.1** The failure of any party to comply expeditiously with a request for information may result in resolution of the protest without consideration of information that is untimely filed pursuant to such request.

**28.1.2** Any party may appeal to the Chief Procurement Officer or his designee if a request for information is unduly burdensome or the time period is unreasonably short.

**28.2 Making information available.** The Chief Procurement Officer or his designee shall, upon written request, make available to any party information submitted that bears on the substance of the protest except where information

is proprietary, confidential, or otherwise permitted or required to be withheld by law or regulation.

## **29.0 COPIES OF COMMUNICATIONS.**

**29.1 Copies to be provided to parties.** Each party to a protest proceeding shall certify that it has provided every other party with copies of all documents or correspondence addressed or delivered to the Chief Procurement Officer.

**29.2 Ex parte communications.** No party shall submit to the Chief Procurement Officer, *ex parte*, any material, evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest.

## **30.0 AUTHORITY TO RESOLVE PROTEST.**

### **30.1 Authority granted.**

The state purchasing agent, a central purchasing office or a designee of either shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder or offeror. This authority shall be exercised in accordance with regulations promulgated by the secretary, a local public body or a central purchasing office which has the authority to issue regulations but shall not include the authority to award money damages or attorneys' fees.

**30.2 Authorized actions.** The Chief Procurement Officer or a designee may:

**30.2.1** issue a final determination summarily dismissing the protest;

**30.2.2** obtain information from Purchasing Department staff;

**30.2.3** require parties to produce for examination information or witnesses under their control;

**30.2.4** require parties to submit legal briefs or otherwise express their positions on any issues raised by the protest;

**30.2.5** establish procedural schedules;

**30.2.6** regulate the course of the proceedings and the conduct of parties and witnesses;

**30.2.7** receive, rule on, exclude or limit evidence;

**30.2.8** take official notice of any fact that is among the traditional matters of official or administrative notice; and

**30.2.9** conduct hearings.

### **31.0 HEARINGS ON PROTESTS.**

**31.1 Requests deemed denied.** Any party may request a hearing, but such requests shall be deemed denied unless specifically granted.

**31.2 When hearings held.** The Chief Procurement Officer or a designee shall hold a hearing when he determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record and in such other cases as he in his discretion deems appropriate.

**31.3 Notice of hearing.** If a hearing is to be held, the Chief Procurement Officer or his designee shall mail written notice of hearing to all parties at least ten (10) business days before the hearing unless all parties agree to an earlier date. The notice shall set forth the date, time, and place of the hearing.

**31.4 Hearings informal.** Hearings, when held, should be as informal as practicable under the circumstances, but the Chief Procurement Officer or a designee shall have absolute discretion to establish the degree of formality for any particular hearing. In no event shall the Chief Procurement Officer be required to adhere to formal rules of evidence or procedure.

### **32.0 RESOLUTION OF PROTEST.**

**32.1 Written determination required.**

The state purchasing agent, a central purchasing office or a designee of either shall promptly issue a determination relating to the protest. The determination shall:

- A) state the reasons for the action taken; and
- B) inform the protestor of the right to judicial review of the determination pursuant to 13-1-183 NMSA 1978 of the Procurement Code.

**32.2 When designee presides.** A designee shall present a recommended written determination to the Chief Procurement Officer. The Chief Procurement Officer shall review the recommendation of the designee and shall issue a determination.

**32.3 Notice of determination.** The Chief Procurement Officer or his designee shall send the notice of determination to all parties to the protest by certified mail, return receipt requested, and to all other bidders or offerors involved in the procurement by first- class mail.

### **33.0 RELIEF.**

If the Chief Procurement Officer determines that a protest should be granted, he shall award appropriate relief.

#### **33.1 Prior to award.**

If, prior to award, the state purchasing agent or a central purchasing office makes a determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be cancelled.

#### **33.2 After award; no fraud or bad faith.**

If, after an award, the state purchasing agent or a central purchasing office makes a determination that a solicitation or award of a contract is in violation of law and if the business awarded the contract has not acted fraudulently or in bad faith:

- A. the contract may be ratified, affirmed and revised to comply with law, provided that a determination is made that doing so is in the best interests of a state agency or a local public body; or
- B. the contract may be terminated and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination.

**33.3 After award; fraud or bad faith.** If, after an award, the Chief Procurement Officer makes a determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be canceled.

**33.4 Relief not allowed.** Except as provided in NMSA 1978 Section 13-1-182, the Chief Procurement Officer shall not award money damages or attorneys' fees.

### **34.0 REQUEST FOR RECONSIDERATION.**

**34.1 Who may file.** Any party involved in a protest may file a request for reconsideration of a written determination.

**34.2 Contents.** The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification of the determination is deemed warranted, specifying any errors of law made, or information not previously considered.

**34.3 When to file.** A request for reconsideration shall be filed not later than ten (10) calendar days after the date the Chief Procurement Officer mails the written determination.

**34.4 Response to request.** The Chief Procurement Officer shall promptly issue a written response to the request for reconsideration. A copy of the written response shall be sent immediately by certified mail, return receipt requested, to the parties.

## **35.0 FINAL DETERMINATION.**

### **35.1 No request for reconsideration.**

In those proceedings in which no request for reconsideration is filed, the written determination issued shall be the final determination for purposes of the time limits for seeking judicial review under NMSA 1978 Section 13-1-183.

### **35.2 Request for reconsideration.**

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

### **35.3 Judicial review.**

All actions authorized by the Procurement Code [13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978] for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

## **36.0 AUTHORITY TO DEBAR OR SUSPEND**

A. The central purchasing office, after consultation with the using agency, may suspend a person from consideration for award of contracts if the state purchasing agent or central purchasing office, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to Section 13-1-178 NMSA 1978.

B. The term of a suspension pursuant to this section shall not exceed three months; however, if a person, including a bidder, offeror or contractor, has been charged with a criminal offense that would be a cause for debarment pursuant to Section 13-1-178 NMSA 1978, the suspension shall remain in effect until the criminal charge is resolved and the person is debarred or the reason for suspension no longer exists.

C. The central purchasing office, after reasonable notice to the person involved, shall have authority to recommend to the governing authority of a state agency or a local public body the debarment of a person for cause from consideration for award of contracts, other than

contracts for professional services. The debarment shall not be for a period of more than three years. The authority to debar shall be exercised by the governing authority of a state agency or a local public body in accordance with rules that shall provide for reasonable notice and a fair hearing prior to debarment.

D. As used in this section, the terms “person”, “bidder”, “offeror” and “contractor” include principals, officers, directors, owners, partners and managers of the person, bidder, offeror or contractor

### **36.1 CAUSES FOR DEBARMENT OR SUSPENSION: TIME LIMIT**

A. The causes for debarment or suspension occurring within three years of the date final action on a procurement is taken include but are not limited to the following:

- (1) criminal conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;
- (2) civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;
- (3) conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving stolen property or for violation of federal or state tax laws;
- (4) conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;
- (5) criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;
- (6) civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;
- (7) civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act;
- (8) violation by a bidder, offeror or contractor of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the state purchasing agent or a central purchasing office to be so serious as to justify suspension or debarment action, including:
  - (a) willful failure to perform in accordance with one or more contracts; or
  - (b) a history of failure to perform or of unsatisfactory performance of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (9) any other cause that the state purchasing agent, or a central purchasing office determines to be so serious and compelling as to affect responsibility as a contractor; or



(10) for a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code.

B. As used in this section, the terms “bidder”, “offeror” and “contractor” include principals, officers, directors, owners, partners and managers of the bidder, offeror or contractor.

### **36.2 DEBARMENT OR SUSPENSION: DETERMINATION.**

The City Council shall issue a written determination to debar or suspend. The determination shall:

- A. state the reasons for the action taken; and
- B. inform the debarred or suspended business involved of its rights to judicial review pursuant to Section 156 of the Procurement Code.

A copy of the determination made pursuant to Section 13-1-179 NMSA 1978 shall be mailed to the last known address on file with the central purchasing office, by first class mail, within three business days after issuance of the written determination; or transmitted electronically within three business days after issuance of the written determination.

### **37.0 EXECUTION OF CONTRACT**

#### **37.1 REMEDIES PRIOR TO EXECUTION OF CONTRACT**

If prior to the execution of a valid, written contract by all parties and necessary approval authorities, the procurement officer makes a determination that a solicitation or proposed award of the proposed contract is in violation of law then the solicitation or proposed award shall be cancelled.

#### **37.2 RATIFICATION OR TERMINATION AFTER EXECUTION OF CONTRACT**

If after the execution of a valid, written contract by all parties and necessary approval authorities, procurement officer makes a determination that a solicitation or award of the contract was in violation of law and if the business awarded the contract did not act fraudulently or in bad faith:

- A) The contract may be ratified, affirmed and revised to comply with law, provided that a determination is made that doing so is in the best interests of the City; or
- B) The contract may be terminated, and the contractor shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

#### **37.3 JUDICIAL REVIEW**

All actions authorized by the Procurement code for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

### **38.0 ASSISTANCE TO SMALL BUSINESS**

#### **38.1 ASSISTANCE TO SMALL BUSINESS: POLICY**

It shall be the policy of this City to encourage small businesses to do business with the City.

### **38.2 ASSISTANCE TO SMALL BUSINESS: DUTIES OF THE PURCHASING AGENT**

- A) Purchasing agent shall issue publications designed to assist small businesses in learning how to do business with the state agencies and local public bodies.
- B) Purchasing agent shall compile, maintain and make available source lists of small businesses for the purpose of encouraging procurement by the state agencies and local public bodies from small businesses.
- C) Purchasing shall take all reasonable action to ensure that small businesses are solicited on each procurement for which they appear to be qualified.
- D) Purchasing agent may develop training programs to assist small businesses in learning how to do business with the City.
- E) Purchasing agent or a central purchasing office may make special provisions for progress payments as such office or officer may deem reasonably necessary to encourage procurement from small businesses in accordance with regulations promulgated by the City Council.

### **38.3 ASSISTANCE TO SMALL BUSINESS: BID BONDS; REDUCTION**

The procurement officer may reduce bid bond, performance bond or payment bond requirements authorized by the Procurement Code (13-1-28 NMSA 1978) to encourage procurement from small businesses.

### **39.0 ANTIPOVERTY PROGRAM BUSINESS**

- A) Without regard to the bid requirements of Section 75 of the Procurement Code, the procurement officer may negotiate a contract for materials grown, processed, or manufactured in this state by small businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or through private philanthropy.
- B) Prior to negotiating a contract under this section, the procurement officer shall make a determination of the reasonableness of the price and quality of the materials and that the public interest will best be served by the procurement.

### **40.0 BRIBES, GRATUITIES AND KICKBACKS**

#### **40.1 UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED**

- A) Except as permitted by the University Research Park Act (2-28-2 to 21-28-25 NMSA 1978), it is unlawful for any City employee, as defined in the Procurement Code (13-1-28 NMSA 1978), to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.
- B) An employee or any member of any employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest with regard to matters pertaining to that trust.

#### **40.2 BRIBES, GRATUITIES AND KICKBACKS: CONTRACT REFERENCE REQUIRED**

All contracts and solicitations therefore shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

#### **40.3 CONTINGENT FEES PROHIBITED**

It is unlawful for a person or business to be retained or for a business to retain a person or business to solicit or secure a contract upon an agreement or understanding that the compensation is contingent upon the award of the contract, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business and persons or businesses employed by the City which are providing professional services to the City in anticipation of the receipt of federal or state grants or loans.

#### **40.4 CONTEMPORANEOUS EMPLOYMENT PROHIBITED**

It is unlawful for any City employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

#### **40.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT AND UNLAWFUL EMPLOYEE PARTICIPATION PERMITTED**

The City may grant a waiver from unlawful employee participation pursuant to Section 153 (13-1-190 NMSA 1978) of the Procurement Code, or contemporaneous employment pursuant to Section 166 (13-1-193 NMSA 1978) of the Procurement Code, upon making a determination that:

- A) The contemporaneous employment of financial interest of the employee has been publicly disclosed;
- B) The employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- C) The employee participation is in the best interests of the City.

#### **40.6 USE OF CONFIDENTIAL INFORMATION PROHIBITED**

It is unlawful for any City employee or former employee to knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

#### **41.0 Campaign Contribution**

##### **41.1: CAMPAIGN CONTRIBUTION DISCLOSURE AND PROHIBITION**

- A. This section applies to prospective contractors with the state or a local public body.
- B. A prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small

purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period.

C. The disclosure shall indicate the date, the amount, the nature and the purpose of the contribution. The disclosure statement shall be on a form developed and made available electronically by the department of finance and administration to all state agencies and local public bodies. The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor for each competitive sealed proposal, sole source or small purchase contract. The form shall be filed with the state agency or local public body as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.

D. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

E. A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

F. A solicitation or proposed award for a proposed contract may be canceled pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 if:

(1) a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or

(2) a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

G. As used in this section:

(1) "applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal;

(2) "family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:

(a) a prospective contractor, if the prospective contractor is a natural person; or

(b) an owner of a prospective contractor;

(3) "pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals;

(4) "prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract; and

(5) "representative of the prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

#### **42.0 CIVIL PENALTY**

Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code. The attorney general or the district attorney in the jurisdiction in which the violation occurs is empowered to bring a civil action for the enforcement of any provision of the Procurement Code. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought.

#### **43.0 SEVERABILITY**

If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in this Resolution is, for any reason, held to be unconstitutional, invalid or void, the remaining portion shall not be affected since it is the express intention of the City Council of the City of Rio Communities to pass such article, section, subsection, paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.

#### **44.0 REPEAL OF FORMER POLICY**

Any other ordinance, policy or resolution in conflict with the above provisions, are repealed with the adoption of this Resolution.