



PURCHASING POLICY

PREFACE

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OTERO COUNTY PURCHASING POLICY

- 1.1 **User Applicability.** This Purchasing Policy (hereinafter referred to as “this Policy”) and its procedures apply to Elective Officials, all departments, agencies, personnel, individuals or other users authorized to make purchases from public funds budgeted and administered by, or otherwise under supervision of, Otero County Government. The purchasing function shall be conducted in a manner above reproach, with complete impartiality and without preferential treatment. Users shall avoid any conflict of interest. No user may solicit or accept, directly or indirectly, any gratuity, gifts, favor, entertainment, loan, or anything of value from any offerors.
- 1.2 **Administration.** The County Manager shall be responsible for the administration of this Policy and shall hire a Purchasing Agent to ensure that all provisions of law and this Policy are followed. All Purchasing situations that involve a major question, problem, or legal opinion shall be brought to the County Manager, who shall decide the appropriate action for resolution.
- 1.3 **Implementation.**
 - A. **Purchasing Agent and Purchasing Office.** The Purchasing Agent and Purchasing Office are the general terms for the individuals or offices designated by the County Manager to fulfill the responsibility and functions of the Purchasing Agent and Purchasing Office as provided in this Policy.
- 1.4 **User Authority and Responsibility.**
 - A. Only individuals authorized by the department’s Elected Official or Department Director shall be permitted to make Otero County purchases consisted with the provisions of this Policy. Authorization shall be submitted to the Purchasing Agent on the signature form. All authorized users shall receive and sign for a copy of this Policy, and shall thereby be responsible for the knowledge and appropriate compliance and use of the provisions of this Policy.
 - B. Authorized users may contact vendors to obtain technical information, prices and quotes for planning purposes. Purchasing Office personnel will review technical information, confirm prices are reasonable, ensure availability of County funds, and issue a purchase order. All quotations documented or receive by users shall be attached to the Requisition and turned in to the Purchasing Office.
- 1.5 **Definition of a Purchase.** For the purpose of this Policy, a purchase is the commitment, obligation, and/or expenditure of Otero County supervised funds to obtain goods or services.
- 1.6 **Unauthorized and Questionable Purchases.** Any purchase which is not legally and appropriately approved within the County budget or by other County Commission action, or which does not substantially comply with the provisions of the State Statutes, particularly the State Procurement Code, and the provisions of this Policy, shall be considered and unauthorized. All questionable purchases shall be reviewed and

determination under the provisions of this Policy. **All unauthorized purchases shall go before the Otero County Commission for explanation why and how purchase was obtained.**

- 1.7 **Penalties.** Any business or person (s) that willfully violates the Procurement Code is guilty of:
 - A. a misdemeanor if the transaction involves fifty thousand dollars (\$50,000.0) or less; or
 - B. a fourth-degree felony if the transaction involves more than fifty thousand dollars (\$50,000.00)
- 1.8. **Consistency with State Procurement Code.** The provisions of this Policy are subject to change in accordance with New Mexico Statutes updates or State Procurement Code revisions. Any revisions that are inconsistent with the provisions of this Policy shall be resolved in favor of the State Statutes or State Procurement Code. All authorized users shall be given a copy of each revision and notified that it is in effect.
- 1.9. **Amendment.** Amendments shall be executed by resolution approved by the County Commission prior to implementation.
- 1.2 Procurement involving the expenditure of federal funds, in addition to conforming to the Procurement Code and these regulations, must be conducted in accordance with the mandatory applicable federal laws and regulations. Such laws and regulations will supersede the New Mexico Procurement Code where the New Mexico Procurement Code is inconsistent with those federal laws and regulations.

SECTION II DEFINITIONS

- 2 **DEFINITIONS**
- 2.1 **GENERAL.** Regulations regarding definitions are adopted to clarify those particular terms defined in the New Mexico Procurement Code (13-1-28 to 13-1-199 NMSA 1978-the “Procurement Code”) and governed by Section 2 of these regulations. In each instance, the Procurement Code definition as set forth in the cited statutory section shall apply as modified or clarified by these definitions.
- 2.2 **ADVANTAGEOUS.** (13-1-111). The word “advantageous” as used in §13-1-111 NMSA 1978 is to be given an ordinary dictionary meaning. Advantageous denotes a judgmental assessment of what is in the County’s best interest.
- 2.3 **ARCHITECTURAL SERVICES** (13-1-31). Architectural 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 for construction contracts
- 2.4 **BIDDING TIME** means the period of time between publication of the invitation for bids and the date of bid opening.

2.5 BID SAMPLE means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

2.6 **BID-TYPE OF QUOTATION OR BID REQUIRED:**

- a. In purchases, the total amount of which is the sum of Eight Thousand and no/100 (\$8000.00) dollars or less, the Purchasing Agent may obtain prices for the items to be purchased by obtaining telephone quotations. (CHANGE: 11-29-05/94-30)
- b. For purchases of services or items in an amount greater than Eight Thousand and no/100 (\$8,000.00) dollars but less than twenty and no/100 (\$20,000.00) Dollars, the Purchasing Agent may obtain prices therefor by requesting written quotes from the vendors. (CHANGE: 10-11-12/101-18)
- c. All purchases in an amount equal to or greater than Twenty Thousand and no/100 (\$20,000.00) dollars shall be obtained in compliance with the Procurement Code through sealed bidding procedures. (CHANGE10-11-12/101-18)

2.7 **CENTRAL PURCHASING OFFICE** (13-1-37). There is hereby created a Central Purchasing Office to be administered by the Purchasing Agent.

2.8 **CONSTRUCTION** (13-1-40). Construction shall not include routine maintenance, operation or repair of existing facilities.

2.9 **CONTRACT MODIFICATION** (13-1-42). Contract modification means any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.

2.10 **COOPERATIVE PROCUREMENT** (13-1-44). Cooperative procurement means the procurement of any services, construction or items of tangible personal property that is obtained through joint participation in sponsoring of or administration of an effort to procure such items, together with any other State agency, local public body, or external procurement unit in accordance with an agreement entered into under the Joint Powers Agreements Act.

2.11 **DESCRIPTIVE LITERATURE** means information available in the ordinary course of business which shows the characteristics, construction or operation of an item which enables the County to consider whether the item meets its needs.

2.12 **DETERMINATION** (13-1-52). Determination is the written documentation of a decision of the Purchasing Agent. It must include those findings of fact that are necessary to support a decision. This section requires that the Purchasing Agent comply with the basic mandates of due process of law in that a decision of the Purchasing Agent must be in writing and include findings of fact which are required to support the decision reached. In any litigation, the determination will form a major portion of the record upon which the court will base its decision.

2.13 **DIRECT OR INDIRECT PARTICIPATION** (13-1-53). This definition is quite broad and covers any type of involvement in the approval, disapproval,

recommendation, formulation of any part of a purchase request, or influencing the content of any specification, investigation, auditing or the rendering of advice.

- 2.14 **EMPLOYEE** (13-1-54). An employee is any individual receiving salary, wages or per diem and mileage from the County. They can be elected officials and can even be non-compensated individuals who are performing personal services as an elected or appointed official or performing personal services in some other capacity for the County.
- 2.15 **EXTERNAL PROCUREMENT UNIT** (13-1-56). External procurement unit means any procurement organization not located in this state, which, if in this state, would qualify as a state agency or a local public body. An agency of the United States government, for example, is an external procurement unit.
- 2.16 **LOCAL PUBLIC BODY** (13-1-67). The word “County” is used in the regulation as a substitute for the term “local public body”.
- 2.17 **MULTI-TERM CONTRACTS** (13-1-68). Multi-term contract means a contract having a term longer than one year.
- 2.18 **MULTIPLE SOURCE AWARD** (13-1-69). 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 or offeror.
- 2.19 **NOTICE OF INVITATION FOR BIDS** (13-1-70) A document issue by the Purchasing Agent and containing a brief description of the services, construction, or items of personal property to be procured. It also sets forth the location where the invitation for bid can be obtained, where bids are to be received, and the cost, if any, or copies of plans and specifications, the date and place of the bid opening and any other information as the Purchasing Agent deems necessary.
- 2.20 **PRACTICABLE** (13-1-111). The word “practicable” as used in 813-1-111 NMSA 1978, is to be given an ordinary dictionary meaning. It denotes what may be accomplished or put into practical application, what is reasonably possible.
- 2.21 **PRICE AGREEMENT** (13-1-71). A Price Agreement is any definite or indefinite quantity contract. The County shall issue a purchase order in order to obtain tangible personal property, services or construction under the definite quantity or indefinite quantity contract.
- 2.22 **PROCUREMENT** (13-1-74).
 - a. Procurement includes the purchasing, renting, leasing, lease-purchasing or otherwise acquiring items of tangible personal property, services or construction.
 - b. Procurement also includes all aspects of purchasing, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration. Thus, it is far more than the act of

buying and bidding that forms the procurement process. Preparation of specifications upon which bidders will rely is also part of procurement, as is contract administration after the contract has been let.

(Commentary: Note that the selling or leasing of County utility facilities or real property; and the sale, exchange and gift of property is governed by Section 3-54-1 through 3-54-3 NMSA 1978 and not by the Procurement Code.)

- 2.23 **PROCUREMENT OFFICER** (13-1-75). This is the person authorized by the Board of County Commissioners to administer contracts and make written determinations with respect thereto. The Otero County Purchasing Agent or her assistant is the Procurement Officer for purposes of these regulations.
- 2.24 **PROFESSIONAL SERVICES** (13-1-76). The services of architects, archaeologists, engineers, land surveyors, landscape architects, medical arts practitioners, scientists, management and system analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers and persons or businesses providing similar services are professional services.
- 2.25 **PURCHASE ORDER** (13-1-77). A Purchase Order is the document issued by the Central Purchasing Office directing a contractor to deliver items of tangible personal property, services, or construction pursuant to an existing contract.
- 2.26 **PURCHASE REQUEST-REQUISITION** (13-1-78). These documents are submitted by a using agency to request that the Central Purchasing Office obtain a contract for a specified service, construction or item of tangible personal property.
- 2.27 **REGULATION** (13-1-80). This term refers to any rule, order or statement of policy, including amendments thereto and repeals thereof issued by the County, normally adopted by resolution or ordinance, which affect persons who are not members or employees of the County.
- 2.28 **RESPONSIBLE BIDDER** (13-1-82). A responsible bidder is a person, firm or corporation who submits a responsive bid and supplies, when required, sufficient information and data to prove that the bidder can perform as promised in the bid.
- 2.29 **RESPONSIBLE OFFEROR** (13-1-83). 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 request for proposals.
- 2.30 **RESPONSIVE BID** (13-1-84). A responsive bid is a bid which conforms in all material respects to the requirements established in the invitation for bids.
- 2.31 **RESPONSIVE OFFER** (13-1-85). Is an offer which conforms in all material respects to requirements set forth in the request for proposals?

2.32 **SERVICES** (13-1-87). Services means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports or other material 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 the County.

2.33 **SMALL PURCHASES** (13-1-125). A small purchase is any purchase of services or goods which have a value that does not exceed the sum **Otero County (\$5,000.00)**

SECTION III: STANDARD PURCHASING PROCEDURE

ALL PURCHASES ARE TO BE TURNED IN TO THE PURCHASING DEPARTMENT

3.1 **Standard Purchasing Procedures Applicability.** “Standard Purchases” are described as systematic, planned, and necessary purchases for administration and operation of a project, and/or department. There shall be no exception to these standard procedures except as provided in “Non-Standard, Urgent, and Emergency Purchase Procedures” in Section III of this Policy.

3.2 **Initiating a Purchase: Purchase Order/Requisition.** All standard purchases as authorized by this section require that the buyer utilize a requisition /purchase order be issued prior to placing an order or making a purchase. All purchase orders must be issued by the Purchasing Office. The purchase order shall contain all information as required by the Purchasing Department to include but not limited to, the following:

- A. **Vendor**- the business to which the purchase order will be issued.
- B. **Vendor Number**- to be taken from the listing of vendors. Numbers for new vendors shall be assigned only through the Purchasing/Finance Department. A vendor number must be on file for the vendor prior to issuance of a purchase order.
- C. **Terms**- Otero County pays net within 30 days of receipt of invoice unless other arrangements are made.
- D. **Quantity**- specify a unit and the approximate amount per unit being requested. Units may be “each”, “box”, “gals,”, “reams”, “pounds”, etc. If exact quantity is not known, user shall provide the best estimate of quantity.
- E. **Description of Item**- the description of the item or services should be sufficiently complete to identify the item being purchased. Services that have been obtained through the use of an agreement must reference the agreement number and attach a copy of the agreement. Services that have been obtained through the use of a bid must reference the bid number. Commonly used items may be identified by brand names.
- F. **Estimate Amount**- Calculation of the quantity multiplied by the unit price. If exact cost cannot be determined, users shall provide the best estimate of cost.

- G. **Requisition**- enter name of department initiating the requisition.
- H. **Employee**- Signature of the department head or authorized user, as recorded by the Purchasing Office.
- I. **Fund**- enter appropriate fund number to be charged for purchase.
- J. **Department**- enter appropriate dept. to be charged for purchase.
- K. **Line code**- enter the appropriate budget line-item account to be charged. It is the authorized user's responsibility to assign the correct line-item account number to the requisition. Multiple line-item accounts may be included on the requisition.

- 3.3. **Authorization of Purchase Orders.** A purchase order will be issued through the purchasing department only. Purchase Orders will be transmitted to vendors by fax or email. Purchases executed prior to obtaining a purchase order are prohibited except as otherwise provided in "Non-Standard and Emergency Purchasing Procedures" Section III of this policy.
- 3.4. **Invoices.** An invoice is an itemized statement submitted by the vendor to the County for payment of material or services delivered to the County. It is the responsibility of the vendor to ensure that a requisition or purchase order is provided prior to issuing materials or services and the vendor shall include the requisition or purchase order number on the invoice submitted to the County for payment.
- 3.5. **Over Expenditures.** Purchase orders shall not be issued, approved, or processed in cases that line items will be over expended, except as approved by the Finance Director in accordance with State and County regulations.
- 3.6. **Competitive Purchases.** Authorized users shall attempt to ensure that all purchases are made at the best possible prices. Purchases shall be made in accordance with the following provisions.
- 3.7. **More than \$ 5,000.00 (Small Purchase)** Purchases shall be made in the State of New Mexico. All Purchase(s) require a purchase order prior to purchase.

- A. **\$5,000.00 to \$ 50,000.00** Written quote from vendors. Purchases shall be made according to the best obtainable price at least three (3) bona fide written quotes are obtained from vendor's official letterhead or quote form, or through and email or fax the quotes will be submitted to the Purchasing Department for our approval, then a Purchase order will be issued only after Purchasing approval. Purchasing Agent reserves the right to delay approval, to seek additional confirmation or information regarding any quote, and to request additional quotes be obtained.
- B. **\$50,000.00 and Above.** All purchases exceeding \$50,000 require formal bid procedures as specified by State regulations and shall be processed and executed by the Purchasing Agent, through formal procedures. Such purchases must be approved in the current budget, and purchases not approved in the current budget require approval by the County Commission prior to advertising for bids. Bids may be rejected by the Purchasing Agent or County Manager in the event that they are in

excess of budgetary limits, are non-responsive to specifications, or due to irregularities in the bid's specifications.

C. Written Quote Exceptions. In the event there are not three (3) known vendors, which have materials/services available, less than three (3) quotes are permissible provided the user attaches the quotes obtained and identifies, on the quote or separate attachment, the names of other vendors contacted who could not provide the materials/services.

D. State or Federal Purchasing Contracts and Cooperative Bid Exceptions.

Quotations or bids are not required for purchases under this section. Purchases may be made providing that the vendor has a State or Federal Purchasing Contract or a qualified, documented procurement done by another State or local government agency. Any such "piggyback" purchase must include appropriate written authorization for Otero County 's use either in the original solicitation or in writing by both the original procuring agency and the vendor. The Purchasing Department shall keep copies of a period of seven years.

The County may purchase items cooperatively through another public body's bid or request for proposals process, provided the original solicitation was conducted consistent with the New Mexico State Procurement Code. Complete copies of the original solicitation documents, vendor responses, verification of award and any other pertinent information shall be kept in file by the Purchasing Department for a period of seven years.

F. Bid Specifications. Specifications should be written primarily to address the need of the County for a specific item to perform a specific function. Specifications written for purchases shall not be "closed or exclusive", or otherwise written in such a way as to intentionally favor or exclude a vendor. Reference to specific types or quality shall be followed by wording "or equal" and all specifications regardless of wording shall be considered as "or equal" It shall be the authorized user's responsibility to ensure that all specialized technical aspects of specifications are correct and appropriate. It shall be the Purchasing Department responsibility to review and ensure that all other provisions, procedures and considerations are correct and appropriate, and to address any questionable unusual or inappropriate specifications prior to processing. The bidding process may be waived by the Purchasing Department in cases that a vendor has a State, Federal or other qualified Purchasing Contract. All bids are submitted before Commission for approval before officially awarding, unless it was necessary to award due to some unforeseen reason before a Commission meeting is to be held will then be submitted to the Commission for ratification of that award.

3.8 Sole Source Purchase. (13-1-126) A sole source purchase is permissible when there is only one vendor that can provide an item or service. **Sole Source must be posted on web site 30 days prior to purchase.** The department head or Elected Official shall certify on the back of the requisition that a good faith effort has been made to contract other vendors and that the item or service is the only source found to be available in the region. 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 other similar service, construction or items of tangible personal property cannot meet the intended purpose of the contract. The Purchasing Department 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 purchasing office shall maintain, for a minimum of three years, records of all sole source procurements. At least thirty days before a sole source contract is awarded the purchasing agent shall post notice of the intent to award a sole source contract on its web site and the notice shall identify of 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 amounts.

B. Any qualified potential contractor who was not awarded a sole source contract may protest to the county purchasing office. The protest shall be submitted in writing within fifteen calendar days of the notice of intent to award a contract being posted by the county purchasing office.

The record of such procurement shall be public record and shall contain:

- A. The contractor's name and address
- B. The amount and term of the contract
- C. A listing of the service, construction, or items of tangible personal property procured under the contract; the justification for the procurement method; and names of other vendors contracted.
- D. Whether the contract was a sole source or emergency procurement contract and the justification of the procurement method.

3.9 Procurement of Professional Services.

Professional service shall not exceed \$60,000 this does not include landscape architectural or surveying processional service or architectural or engineering professional services which will be solicited as outlined in the Procurement Code.

3.10 Telephone Orders and Repairs. All orders for new telephones or telephone repairs must be initiated through the Data Processing Office.

3.11 Personal use Prohibited. No purchases shall be made for the purpose of personal or private use

3.12 Purchase of Inventory Items.

- A. All capital outlay and non-expendables supply purchases are considered inventory items and shall be noted as such on the purchase order and the fixed asset form by the Purchasing Office. It shall be the responsibility of the Purchasing Office to identify inventory items in accordance with all current State and County provisions and laws.

3.13 Employee Exclusion from Procurement

- A. It is unlawful for any employee, as defined in the Procurement Code 13-1-28 NMSA 1978, to participate directly or in directly in procurement when the employee knows that Employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.

B. It is unlawful for any 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 which the employee is employed.

3.14 Used Equipment and Item Purchases. Used equipment purchases shall be made in accordance with Section 2.6 of this Policy to include the following provisions: Used equipment or items with a price or estimate value of \$50,000 or more shall require bids as thought the item was new, adding specifications that permit used items under conditions to be outlined in the bid specifications including but not limited to requiring a written warranty for at least ninety days after date of delivery, and an independent "certificate of working order" by a qualified mechanic or appraiser. Items may be purchased directly from another government agency for less or equal to the depreciated cost.

3.15 End of Fiscal Year, Special purchasing procedures shall be followed to ensure that State Law and regulations and proper accounting procedures are followed to appropriately close out the end of the fiscal year. Provisions are as follows: The Purchasing Office will announce in writing during the Month of April, what the close out days for all the purchases for the years end.

SECTION IV EMERGENCY PURCHASING PROCEDURES PUBLICATION OF AWARD TO AGENCY WEB SITE OR SUNSHNE PORTAL (13-1-127)

WITHIN THREE BUSINESS DAYS OF AWARDING AN EMERGENCY PROCUREMENT CONTRACT, THE PURCHASING DEPARTMENT SHALL:

(1) Provide the information listed below on the sunshine portal and county web site

- A. The contractor's name and address
- B. The amount and term of the contract
- C. A listing of the service, construction, or items of tangible personal property procured under the contract; the justification for the procurement method; and names of other vendors contracted.
- D. Whether the contract was a sole source or emergency procurement contract and the justification of the procurement method.

4.1 Emergency Procedures: General Provisions. The provisions of this section apply to all purchases except those purchases subject to the standard procedures specified in Section II of this Policy. Generally, this section includes all purchases which are justifiably urgent, are emergencies, due to insufficient time required for standard processing, or involve other non-standard procedures. It is the responsibility of the authorized user to ensure that all purchases made under provisions of this section is immediate and unforeseen. Questionable purchase shall be reported to the County Manager. Purchases that could have been reasonably per-planned or anticipated shall not be considered as an emergency or urgent purchase.

4.2 Emergency Purchase. Emergency purchases are permissible provided they are in accordance with the following provisions:

- A. Emergency Purchase.** The Purchasing Office may make emergency procurements when there exists a threat to public health, welfare, safety or property requiring

procurement under emergency conditions; provided that the emergency procurements shall be made with completion as is practicable under the circumstances.

B. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, fires, epidemics, riots, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response. The existence of the emergency response. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) The functioning of government;
- (2) The preservation of protection of property; or
- (3) The health of safety of any person

PROVIDE THE INFORMATION LISTED BELOW ON THE SUNSHINE PORTAL (13-1-128) OR COUNTY WEB SITE

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. The justification for the procurement method on the back of a requisition. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the procurement file.

C. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.

D. The purchasing agent shall use due diligence in determining the basis for the emergency procurement and or the selection of the particular contractor. The determination shall be in writing and include in the procurement file.

E. Money expended for planning and preparing for an emergency response shall be accounted for and reported to the legislative finance committee and the department of finance and administration within sixty days after the end of each fiscal year.

4.3 **Emergency Purchase Order.** All emergency purchase orders shall have the words "Urgent" or "Emergency" documented on the Purchase Order as in applicable, and shall be accompanied by a receipt or invoice for the purchase.

F. Justification. All emergency and urgent purchases shall be justifiable and the top-level departments or office head shall be responsible for filling out the back of the requisition with the justification.

SECTION V: FIXED ASSETS – ADMINISTRATION & RESPONSIBILITY

5.1 **General Purpose.** The purpose of this Policy is to establish order, system, and process for the administration, processing, recording, and accountability of County fixed assets.

5.2 **Definition of Fixed Asset-** Capitalized Property, and Non-Capitalized Property. For the purpose of this Policy, a fixed asset is any property or material that has been classified as a valuable and pilferable item. There are two separate and distinct categories of fixed assets:

- A. Capitalized Fixed Asset is any property or material item that has a value over \$5,000; and an expected useful life which exceeds one year and which will not lose its identity ever if installed in other equipment. Capitalized property will be placed in the permanent fixed asset inventory control records and recorded.
- B. Non-Capitalized Fixed Asset is any property or material item that has a value under \$5,000. Non-capitalized Fixed Assets will be placed in the non-capitalized (sensitive items) inventory control records. A listing of non-capitalized equipment classified as sensitive is provided in Section V., 5.12.
- C. Fixed assets require tagging for control purposes.

5.3 Administrative Responsibility. The Purchasing Department is assigned the general responsibility for the administration, processing, recording and accountability procedures and provisions for fixed assets in accordance with this Policy and in accordance with the most current generally accepted management techniques; all provisions of law; all applicable Federal, State and County policies and procedures; and as otherwise deemed appropriate by the County Manager shall be authorized to issue any supplement consistent with this Policy deemed necessary to administer, manage, or clarify this Policy.

5.4 Annual Fixed Asset.

- A. Physical Inventory.** Each Elected Official and department director must submit a certified statement, which includes a complete list of inventory and location of assigned fixed assets, verifying that a complete, on-site inventory of all fixed assets under their supervision has been completed in the follow manner:
 1. A physical check that each item in their possession is included on the departmental inventory list; and
 2. All items on the departmental inventory list are present and accounted for.
- B. Review and Approval of Fixed Assets Inventory.** The Purchasing Department shall reconcile the certified physical; inventory, specifying any changes or differences in the fixed assets. The fixed asset form shall include all fixed assets disposed of during the previous fiscal year, all transfers of fixed assets from one office or department to another, all items as missing, stolen (if stolen must have a police report attached to fixed asset sheet), all changes in custodians. In addition, the Elected Official or department head of each office or department assigned the custodial responsibility over all fixed assets, listed under their supervision as stated in the certified inventory sheet are responsible for said inventory. Such custodial responsibility shall be retained except as approved by official transfer or fixed assets or of custodians in accordance with provisions of this Policy

5.5 Custodian Responsibility. It shall be the responsibility of the Elected Official or department head designated as Custodian of any County fixed assets to ensure the appropriate care, safeguard, location or otherwise under their responsibility are purchased, received, processed, and otherwise managed in accordance with this Policy

and supplements thereof. Custodians shall assume full responsibility of all fixed assets assigned.

Change in Custodian Responsibility. At the time of a change of Elected Official or department head this person shall conduct a physical inventory of fixed assets assigned to that custodian to ensure that all fixed assets are present and accounted for, and shall sign a Fixed Asset Certification form and returned it to the Purchasing Office.

The incoming Elected Official or department head shall then be responsible to complete a physical inventory for the fixed assets assigned to his/her department and certify that is has been reconciled to the physical inventory performed by the Purchasing Office, and sign a Fixed Asset Certification form.

5.6 Knowledge of Provisions. A copy of this Policy and all supplements shall be given to each designated custodian who shall sign for and be require to be knowledgeable about, understand, and comply with the provisions of this Policy.

5.7 Enforcement. Actions that appear to be a violation of this Policy shall be reviewed by the County Manager and if deemed necessary shall be submitted to the County Commission.

SECTION VI: FIXED ASSETS- PROCESSING PROCEDURES

6.1 Purchasing Fixed Assets. Fixed assets shall be purchased in accordance with the provisions of section II. All fixed assets purchases shall be noted on the purchase requisition.

6.2 Fixed Assets Requiring Commission Approval and Exceptions. All fixed asset purchase shall be either specifically approved in the budget or by special approval of the County Commission prior to purchase, except in and emergency that such a purchase must be made prior to Commission approval. All emergency purchase of fixed assets shall be approved by the County Manager, or the Finance Director.

6.3 Verification. The Purchasing Office shall determine if it is a fixed asset, it shall be verified that it is a budgeted item.

6.4 Initial Processing and Notice. After appropriate verification and approval, the fixed asset shall be processed as a purchase and, in addition the fixed asset tag sheet shall be assigned to the item and given to the department when item has been received.

6.5 Receiving of Fixed Asset. It shall be the responsibility of the purchasing department to notify the department upon receipt of a fixed asset. The following actions shall be implemented.

A. Condition Verification. Immediately upon receipt and prior to processing for payment, the item shall be completely checked by the purchaser to verify that it has been received in acceptable and satisfactory condition.

B. Fixed Asset Record Form (Tag Sheet) Required. Upon processing a fixed asset purchase, a Fixed Asset Record (Tag Sheet) shall be signed and put in the Fixed Asset File. Upon receipt of the invoice and verification of acceptability by the receiving office the

invoice purchase order will be processed for payment. The Tag Sheet shall include but not limited to:

1. Descriptive information identifying the item as required by the Tag Sheet
2. Certification by custodian that the item is in the custody and possession of the office or department and that the Custodian accepts full custodial responsibility for the item;
3. Specific location of the item, or if mobile, the base location and
4. Serial numbers, estimated life, vendor name, and all other information on the form (Tag Sheet).

6.6 Recording of Fixed Asset. The fixed asset shall be entered by the Purchasing Office into the computer fixed asset data file to include all pertinent information and data required and as otherwise deemed appropriate by the Purchasing Department. In addition, it shall be the responsibility of the Purchasing Department to appropriately update and maintain a permanent Fixed Asset Record File to include the following for each fixed asset after the effective date of this Policy:

A. Original of the Fixed Asset Tag Sheet with all information filled in and signed by department head.

6.7 Transfer of Fixed Assets and Custodian. A Fixed Asset Disposal Form shall be completed and approved by the Purchasing Department prior to transfer of any fixed asset from the location.

A. **Permanent Transfers.** Custodians shall assume full responsibility for all permanent transfers of fixed assets to their location and shall be held fully accountable for the fixed asset while in their possession. All permanent transfers shall be recorded on a Fixed Asset Disposal Form. The original transfer form shall be filed in the Fixed Asset Record File.

6.8 Disposal of Fixed Assets or County Property. Disposal of fixed assets and/or County property shall be in accordance with all applicable laws and there shall be a Fixed Asset disposal Form approved by the Purchasing Office prior to disposal of any item. Normally, disposal of fixed assets and County property require the item to be auctioned or as otherwise required by New Mexico State Statutes. However, it shall be the responsibility of the Purchasing department to ensure that all fixed assets and County property are disposed of appropriately and legally upon notice of intent to dispose by an office or department. It is the responsibility of the office or department custodian to notify the Purchasing Office of intent to dispose of any item.

6.9 Property-Missing, Lost or Stolen. It shall be the responsibility of each custodian to report to the Sheriff's Department immediately any item that has been discovered to be stolen. A disposal form shall then be completed and forwarded to the Purchasing Department along with a copy of the Sheriff's incident Report. Missing or lost a disposal form shall be filled out indicating all items known to be missing or lost. The items will then go before the County Commission for approval to remove.

6.10 Inventory Control Annual Inspection. It shall be the responsibility of each custodian to appoint an inventory officer to inspect and oversee the office or department inventory and to ensure that the inventory is appropriately protected, safeguarded, maintained, and repaired, and is physically inspected, present, and accounted for and certified annually as required in section 5.4 of this Policy. The Purchasing Office may conduct random physical inventory of certain items to verify that the computerized fixed asset file contains accurate information.

6.11 Inventory Location Code and Index. It shall be the responsibility of the Purchasing Department to update and maintain an Inventory Location Code Index that shall include but not limited to:

- A.** Listing of all County-owned buildings and County-owned properties
- B.** Location of each of the properties
- C.** Legal description, and general location of all real property

The Updated Inventory Location Code Index shall be attached to and include as a part of the Annual Fixed Asset Resolution

6.12 Sensitive Item Listing. Certain equipment may be classified as sensitive and controlled on inventory as no-expendable items if determined advantageous by the County. Following is a list of items that may be considered controlled inventory items, but is not limited. Items not listed may be required to be controlled on inventory at the discretion of the County at any time.

Communications Radios	GPS units
Television Sets	Cameras
Pagers	AED
Computers	SCBA
Cellular Telephones	

6.13 Appreciation/Depreciation of Fixed Assets

Assets shall be determined as follows for each category:

- A. Land**-There is no requirements to allocate depreciation expense on capital assets in this category.
- B. Buildings**-Depreciation in this category will be a straight line. Depreciation is based on a life expectancy of forty (40) years.
- C. Improvements**- Depreciation in this category will be a straight line. Depreciation is based on the appropriate life expectancy depending on the category of the improvement.
- D. Machines and Equipment**- Depreciation in this category will be straight line. Depreciation determined by the following schedule;
Vehicles (1 ton and under) 6years
Vehicles (over 1 ton)-15 years
Off road equipment-15 years

Fire Department Pumpers-15 years
Fire Department tanker- 15 years

E. Equipment - Depreciation in this category will be straight line. Depreciation based on a life expectancy of 10 years.

F. Infrastructure- As long as infrastructure assets are maintained within their assigned subcategories, roads, bridges and other assets shall be adjusted based on the most current annual costs calculations.

SECTION VII ++ PURCHASING OFFICE OF OTERO COUNTY

7.1 DUTIES. The Central Purchasing Office shall be responsible for the control of procurement for the County and shall perform all duties required by the Procurement Code and all other relevant statutes. The Central Purchasing Office shall also cooperate and coordinate with the State Purchasing Agent, the Central Purchasing Office of other local public bodies, and the Central Purchasing Office of external procurement units to maximize the benefits to the County from such joint and cooperative efforts.

- a. The Board of County Commissioners may expressly retain the power to exercise the power of the Central Purchasing Office regarding the procurement of professional services or other procurement as the Board of County Commissioners sees fit; or
- b. When otherwise expressly authorized by statute or ordinance or regulation of the County.

SECTION VIII EXEMPTIONS FROM THE PROCUREMENT CODE

8.1 RELEVANT EXEMPTIONS TO COUNTIES (13-1-98)

- a. Printing and duplicating contracts involving materials which are required to be filed in connection with proceedings before administrative agencies or state or federal courts.
- b. Purchases of publicly provided or publicly regulated gas or city water or sewage.
- c. Purchases of books, periodicals and training materials in printed or electronic format from publishers or copyright holders, purchases not exceeding ten thousand dollars (\$10,000.00) consisting of magazine subscriptions web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required. Contracts entered into by the crime victim's 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.
- d. Travel or shipping by common carrier or by private conveyance or for meals and lodging.

- e. Purchase of animals to be used for exhibit.
- f. Minor purchases consisting of magazine subscriptions, conference registration fees and other similar purchases where pre-payments are required.
- g. The issuance, sale and delivery of public securities pursuant to the applicable authorizing statute with the exception of bond attorneys and general financial consultants.
- h. Contracts entered into by the Board of County Commissioners 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.

SECTION IX COMPETITIVE SEALED BIDS

9.1 EXCEPTIONS (13-1-102). All procurement shall be achieved by competitive sealed bids, except:

- a. when competitive sealed proposals are authorized (13-1-111 to 124; us Section 2);
- b. for small purchases (13-1-125; our Section 3.7);
- c. for sole source procurement (13-1-126; our Section 3.8);
- d. for emergency procurements (13-1-127; our Section 4.2);
- e. regarding existing contracts (13-1-129; our Section 16.1);

9.2 INVITATIONS FOR BIDS (13-1-1-03). The Central Purchasing Office shall prepare or review and approve all invitations for bid, which shall contain:

- a. the specifications for the services, construction, or items of tangible personal property to be procured;
- b. all contractual terms and conditions applicable to the procurement;
- c. the location where bids are to be received;
- d. date, time, and place of the bid opening; and
- e. a notice that states: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978 imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

9.3 BIDDERS. Any business requesting an invitation for bids shall, at the time the request is made, provide to the Central Purchasing Office

9.4 **AMENDMENTS TO INVITATION FOR BID.** The Central Purchasing Office may amend the invitation for bid in compliance with the Procurement Code and County Regulations to:

- a. make any changes in the invitation for bids such as changes in quantity, purchase descriptions, specifications, delivery schedules, and opening dates;
- b. correct defects or ambiguities; or,
- c. furnishes to other bidder's information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

The amendment shall be faxed or emailed to all bidders who have supplied their current mailing address, not less than five (5) days prior to the scheduled bid opening.

9.5 **BID FORM.** The Central Purchasing Office shall prepare bid forms to be used by bidders responding to invitations for bid.

9.6 **BID SAMPLES AND DESCRIPTIVE LITERATURE.**

- a. "Descriptive literature" means information available in the ordinary course of business which shows the characteristics, construction, or operation of an item which enables the County to consider whether the item meets its needs.
- b. "Bid sample" means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.
- c. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.
- d. Bid samples, when required, shall be furnished free of expense to the County and prior to the time set for the opening of bids. Samples not destroyed or mutilated in testing will be returned upon request by mail, express or freight, collect. Each sample must be labeled to clearly show the bid number and the bidder's name.

9.7 **BIDDING TIME.**

- a. "Bidding time" means the period of time between publication of the invitation for bids and the date of bid opening.
- c. The Central Purchasing Office shall allow a reasonable bidding time for preparation of bids, except when a shorter time is determined to be in the best interests of the County. In no event shall the bidding time be less than ten (10) calendar days.

9.8 **PUBLIC NOTICE**

(13-1-104) Publications of invitations for bid or a notice thereof shall be made in one or more of the following newspaper(s): Alamogordo Daily News.

- a. The Central Purchasing Office may authorize additional publication in its discretion.
- b. Additional Notices:
 - 1. In addition to a publication of the invitation for bids or the notice of invitation for bids, the County shall send copies of the notice or invitation for bids when an expenditure involves more than \$20,000 to any businesses which have stated in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services.
 - 2. The County may establish registration fees for different categories of services, construction or items of tangible personal properties.
 - 3. Such fees must be related to actual direct cost of furnishing copies of the notice or invitation for bids to prospective bidders. The fees shall be used exclusively for the purpose of furnishing such copies.

9.9 **PRE-BID CONFERENCES**. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation for bids. The conference should be held long enough after the invitation for bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the invitation for bids unless a change is made by written amendment as provided in these regulations.

9.10 **RECEIPT AND ACCEPTANCE OF BIDS (13-1-105)**

- a. Bids must be accepted for consideration without alteration or correction except as authorized in the Procurement Code.
- b. Bids are to be evaluated on the requirements set forth on the invitation for bids. Any criteria which will affect the bid price, such as discounts, transportation costs, total or life cycle costs, must be objectively measurable and defined by regulation. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.
- c. Bid Filing. Each bid received by the Central Purchasing Office shall be stamped received and labeled with date and time of filing. All bids shall be retained by the Central Purchasing Office in a secure place until the date and time for opening.

d. Negotiations. 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 negotiations shall not be allowed if the lowest bid was more than ten percent over budget project funds (13-1-105 NMSA 1978 as amended).

9.11 CORRECTION OR WITHDRAWAL OF BIDS (13-1-106)

- a. A bid containing a mistake discovered before bid opening may be modified or withdrawn by a bidder prior to the opening by delivering a written or telegraphic notice to the Central Purchasing Office.
- b. After bid opening, no modifications in prices or other provisions of bids are permitted. However, a low bidder alleging a material mistake of fact which makes his bid non-responsive may be permitted to withdraw his bid if:
 1. The mistake is clearly evident on the face of the bid; or
 2. The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. The decision to permit or deny withdrawal of a bid on the basis of mistake is a decision to be made by the Board of County Commissioners and shall be supported by a determination setting forth the grounds of the decision.
- c. After the bid opening and prior to the award the following provisions apply in addition to those in the Procurement Code:
 1. Technical Irregularities. Technical irregularities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, when there is no effect on the price, quantity, quality, delivery or contractual conditions. The Board of County Commissioners may waive such irregularities or allow the low bidder to correct them if either is in the best interest of the County. Examples include but are not limited to the failure of a low bidder to:
 - a. return the number of signed bids required by the invitation for bids; or
 - b. signs the bid, but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound.
 2. Mistakes where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident

on the face of the bid document, the low bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors in extending unit prices, transposition errors, and arithmetical errors.

All corrections or withdrawals allowed by the Board of County Commissioners shall be supported by a determination of the Board of County Commissioner and must be documented in writing and placed with the specific bid file.

- d. If a bid is withdrawn in accordance with the Procurement Code and these regulations, the bid security, if any shall be returned to the bidder (13-1-147B).

9.12 **BID OPENING** (13-1-107). Bids are to 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 other relevant information as may be specified by the Central Purchasing Office, together with the name of each bidder, shall be recorded in the procurement file and each bid shall be opened to public inspection.

- a. **Bid Opening Schedule**. All bids opening schedules will be determined by the Purchasing agent.
- b. **Bid Opening Committee**. The Bid Opening Committee shall consist of:
 1. Purchasing Agent
 2. Purchasing Clerk;
 3. Representative(s) of the using department.
- c. **Preparation for Award**. The Bid Opening Committee is to review all bids and make a determination of which is the low bid meeting all specifications. A Tabulation Sheet shall be compiled which will include all bid amounts, exceptions to the specifications and comments. This report shall be submitted to the Commission to review prior to bid award, together with a list of all persons present at the bid opening.

9.13 **BID AWARD** (13-1-108)

- a. Following award, a record showing the basis for the award shall be made part of the procurement file.

9.14 **IDENTICAL LOW BIDS** (13-1-110)

- a. **Definition**. Identical low bids are low responsive bids for responsible bidders which are identical in price after the application of the preferences

referred to in Sections 13-1-21 to 13-1-22 NMSA 1978, and which meet all the requirements and criteria set forth in the invitation for bids.

b. Award. When two or more identical low bids are received, the Board of Commissioners may:

1. Award pursuant to the multiple source award provisions of the Procurement Code (see Sections 13-1-69, 13-1-153 and 13-1-154);
2. Award to a resident business if the identical low bids are submitted by a resident business and a nonresident business;
3. Award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a resident business;
4. Award by lottery to one of the identical low bidders; or
5. Reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property.

9.15 BID SECURITY

- a. Construction (13-1-146). Bidders for construction contracts procured by competitive sealed bid must provide bid security when the price estimated by the Purchasing Agent to exceed \$25,000. The bid security shall be equal to at least five (5%) percent of the amount of the bid and shall be a bond provided by a surety company authorized to do business in this state or by certified check.
- b. Other Purchases. Bidders for other purchases/contracts procured by competitive sealed bid must provide bid security when the price is estimated by the Purchasing Agent to exceed \$25,000. The bid security shall be equal to at least five (5%) percent of the amount of the bid and shall be a bond provided by a surety company authorized to do business in this state or by certified check.
- c. Rejection of Bids (13-1-147).
 1. When the invitation for bids requires bid security, failure to provide such security is grounds for rejection;
 2. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or its surety.
- d. Bid and Performance Bonds and Other Security (13-1-148).

1. Bid security, performance bonds or other security may be required for contract for items of tangible personal property or services as the Central Purchasing Office deems necessary to protect the County.
2. Any such bonding requirements shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.
3. As to performance and payment bonds required for construction contracts, see the requirements of Section 13-4-18 NMSA 1978 and Section 22.

10. COMPETITIVE SEALED PROPOSALS

10.1 CONDITIONS FOR USE (13-1-111). Competitive sealed proposals may be used when:

- a. Procuring professional services; or
- b. When the Central Purchasing Office or designee makes a determination that the use of competitive sealed bidding is either not practicable or advantageous to the County.
- c. Competitive sealed proposals shall not be used for the procurement of construction.
- d. Definitions. The words “practicable” and “advantageous” as used in 13-1-111 NMSA 1978 are to be given ordinary dictionary meanings. The term “practicable” denotes what may be accomplished or put into practical application. “Advantageous” denotes a judgmental assessment of what is in the County’s best interest. Competitive sealed bidding may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the County’s best interest. The key element in determining advantageousness is the need for flexibility. The competitive sealed proposals method differs from competitive sealed bidding in two important ways:
 1. The proposal may or may not include price; and
 2. It permits discussions with competing offerors and changes in their proposals including price; and
 3. It allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of the contract.

10.2 WHEN COMPETITIVE SEALED BIDDING IS NOT PRACTICABLE

Competitive sealed bidding is not practicable unless the nature of the procurement permits award to a low bidder who agrees by its bid to perform

without condition or reservation in with accordance the purchase description, delivery or performance schedule, and all other terms and conditions of the invitation for bids. Factors to be considered in determining whether competitive sealed bidding is not practicable include:

- a. Whether the contract needs to be other than a fixed-price type;
- b. Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- c. Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
- d. Whether award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality and contractual factors in order to determine the most advantageous offering to the County. Quality factors include technical and performance capability, and the content of the technical proposal; and
- e. Whether the primary consideration in determining award may not be price.

10.3 **WHEN COMPETITIVE SEALED BIDDING IS NOT ADVANTAGEOUS.**

A determination may be made to use competitive sealed proposals if it is determined that it is not advantageous to the County, even though practicable to use competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- a. If prior procurements indicate that competitive sealed proposals may result in a more beneficial contract; and

10.4 **REQUEST FOR PROPOSALS** (13-1-112). Competitive sealed proposals are solicited through a request for proposals and shall include the same material that an invitation for bids includes; the request should include the following:

- a. The specifications for the services or items of tangible property to be procured;
- b. All contractual terms and conditions applicable to the procurement;
- c. Instructions and information to offerors, including the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed;
- d. All of the evaluation factors, including price, if any, when applicable;
- e. A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably assured of being selected for award, but that proposals may be accepted without such discussions;

- f. A statement of when and how price should be submitted; and
- g. A notice that states: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

The Request for Proposals may incorporate documents by reference, provided that the request specifies where such documents can be obtained. The Request for Proposals shall require written acknowledgment of the receipt of all amendments issued. The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

10.5 **PUBLIC NOTICE** (13-1-113). THE Request for Proposals shall be published not less than ten (10) calendar days prior to the date set for the receipt of the proposals. The Request for Proposals must be published once in a newspaper of general circulation in the County.

- a. The Purchasing Agent shall send copies of the RFP to those businesses which have signified in writing an interest in submitting proposals and which have paid any required fees.
- b. A copy of the RFP shall be made available for public inspection and shall be posted at the County Office.

10.6 **RECEIPT AND REGISTRATION OF PROPOSALS**.

- a. Proposals may be opened publicly and may be opened in the presence of one or more witnesses. Proposals and modifications should be time-stamped upon receipt and held in a secure place until the established due date.
- b. After the date established for receipt of proposals, a register of proposals will be prepared which includes the name of each offeror, a description sufficient to identify the service or items of tangible personal property offered, the names and addresses of the required witnesses and such other information as may be specified by the Purchasing Agent.
- c. Neither the register of proposals nor the proposals themselves shall be open to public inspection until after the award of the contract.
- d. Offerors may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.

10.7 **EVALUATION OF PROPOSALS** (13-1-114). Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of professional service required, and shall be based on the evaluation factors set forth in the Request for

Proposals. Numerical rating systems may be used but are not required. For the purpose of conducting discussions, proposals shall be initially classified as:

- a. Acceptable;
- b. Potentially acceptable, that is, reasonably assured of being made acceptable; or
- c. Unacceptable (offerors whose proposals are unacceptable shall be so notified promptly).
- d. Proposals shall be evaluated by a committee selected by the Board of County Commissioners for each request for proposals. The identity of the members of that committee shall be public record.
- e. The specific scores as scored by each individual on the Evaluation Committee shall be public record; however, the identity of the individuals on the committee shall not be released in a form so as to connect that identity with any specific score.

10.8 NEGOTIATIONS - Selection (13-1-115).

- a. Offerors submitting proposals can be afforded an opportunity for discussion and revision of proposals.
- b. Revision may be permitted after submissions of proposals but prior to award and for the purpose of obtaining the best and final offers in response to a Request for Proposals. Negotiations may be conducted with responsible offerors.
- c. When the County is procuring professional services, negotiations shall be conducted with the highest qualified business at compensation determined in writing to be fair and reasonable to both parties.
 1. Discussions are held to promote understanding of the County's requirements and offerors' proposals and to facilitate arriving at a contract that will be most advantageous to the County, taking into consideration price, if any, and the other evaluation factors set forth in the Request for Proposals.
 2. In making this decision, the County shall take into account the account the estimated value of the services to be rendered and the scope, complexity and professional nature thereof.
 3. The Purchasing Agent shall keep a record of the date, place and purpose of meetings, and those attending.
 4. Should the County be unable to negotiate a satisfactory contract with the business to be the first and most qualified, at a price determined to be fair and reasonable to both parties, negotiations with that business shall be terminated. The County shall then undertake negotiations

with the second most qualified business. Failing accord with the second most qualified business, negotiations with the third most qualified business shall commence. Should negotiations fail with the first, second or third most qualified business, additional businesses, if any, shall be ranked in order of qualifications.

5. Negotiations shall continue until a contract is signed with a qualified business or the procurement process is terminated and a new Request for Proposals is initiated.

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

10.9 Award (13-1-117). The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the Request for Proposals. The Purchasing Agent shall make a written determination showing the basis on which the award was found to be most advantageous to the County based on the factors set forth in the Request for Proposals.

10.10 POST NOTICE. After a contract is entered into, notice of award shall be posted at the County offices and the business selected notified of the award.

X1. SPECIFICATIONS

11.1 REQUIREMENT (13-1-164, 165 and 166)

- a. All specifications shall be drafted to insure maximum practicable competition.
- b. Brand name specification may be used only when the Central Purchasing Office determines that only the identified brand name item will satisfy the needs of the County.
- c. The Central Purchasing Office shall attempt to identify as many sources as possible from which the designated brand name items can be obtained and shall achieve whatever price competition is practicable. A sole source procurement may be made.

11.2 BRAND NAME OR EQUAL SPECIFICATIONS (13-1-167 and 168).

- a. Normally, brand names or equal specifications shall include a description of the particular design, function or performance characteristics required. However, if the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, such a detailed description is not necessary.
- b. Where brand name or equal specifications is used in a solicitation, the solicitation shall contain explanatory language that the use of the brand name is for the purpose of describing a standard of quality, performance and characteristics desired and not intended to limit or restrict competition.

11.3 PURCHASE REQUESTS (13-1-169).

- a. The using agency's request for procurement must contain a statement of need, the general characteristics of the item of tangible personal property, construction of service desired, and a statement of the quantity desired and quality desired.
 1. Any employee who has prior written authorization from their department head, filed with the Purchasing Office, may sign requisition orders and pick up orders for their department.
 2. The department head may require their initials to appear on all requisitions charged to their department.
 3. The head of the using department is responsible for securing specifications for needed services or items.
 4. No requisition will be processed or items purchased without a requisition that is completely filled out and signed by a county employee who has authorization from the department head, filed in the Central Purchasing Office.
 5. Completed Order. Immediately upon receipt, all goods must be inventoried and receipt acknowledged by the Central Purchasing Office in writing. The using department shall inventory and acknowledge that the goods were received in good condition by signing the receipt

B. The Central Purchasing Office may consolidate procurements.

12. MISCELLANEOUS BID AND PROPOSAL MATTERS

12.1 REJECTION OF CANCELLATION OF BIDS OR REQUEST FOR PROPOSALS (13-1-131). An invitation for bids, a Request for Proposals, or any other solicitations may be cancelled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the County. A determination containing the reasons therefor shall be made part of the procurement file.

- a. Prior to Opening. An invitation to bid or request for Proposals may be cancelled in whole or in part prior to opening when the Central Purchasing Office makes a written determination that such action is in the County's best interests for reasons including but not limited to:
 1. The County no longer requires the services, construction or items of tangible personal property;
 2. The County no longer can reasonably expect to fund the procurement; or

3. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- b. After Opening. After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Central Purchasing Office makes a written determination that such action is in the County's best interest for reasons including but not limited to:
 1. All of the bids and proposals are non-responsive;
 2. The services, construction or items of tangible personal property being procured are no longer required;
 3. Ambiguous or otherwise inadequate specifications are part of the solicitation;
 4. The solicitation does not provide for consideration of all factors of significance to the County;
 5. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 6. There is a reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- c. Rejection of Individual Bids. Bids submitted pursuant to competitive sealed bidding or in the second phase of multi-step sealed bidding may be rejected pursuant to the Procurement Code and these regulations for reasons which include but are not limited to:
 1. The business that submitted the bid is non-responsible;
 2. The bid is not responsive; or
 3. 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 invitation for bids.
- d. Rejection of Individual Proposals. "Proposal" means any offer submitted in response to any solicitation, including an offer under the Procurement Code and these regulations for a small purchase, but not including a bid as defined in Section 8.1.c. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the County'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:

1. The business that submitted the proposal is non-responsible;
2. The proposal is not responsive; or
3. The proposed price is clearly unreasonable.

e. Notice. When an invitation to bid or Request for Proposal is cancelled, or when a bid or response is rejected in whole or in part, notice shall be sent to all businesses solicited and the notice shall:

1. Identify the solicitation;
2. Briefly explain the reason for cancellation; and
3. When appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar services, construction or items of tangible personal property.

F. Records. When bids or proposals are rejected, or a solicitation cancelled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file. Unopened bids or proposals shall be returned to the bidders or offerors upon request, or, if no such request is made, such bids or proposals may be destroyed after the time for filing a protest has passed.

12.2 IRREGULARITIES IN BIDS OR PROPOSALS (13-1-132). The Central Purchasing Office may waive technical irregularities in the form of the bid or proposal of the low bidder or offeror which do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offered.

12.3 RESPONSIBILITY OF BIDDERS AND OFFERORS (13-1-133).

- a. 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 Central Purchasing Office. The failure of a bidder or offeror to promptly supply information connected with inquires with respect to responsibilities is grounds for a determination of non-responsibility.
- b. Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder or offeror has:
 1. Submitted a responsive bid;
 2. Adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory

delivery of the services, construction or items of tangible personal property described in the invitation for bids;

3. A satisfactory record of performance;
4. A satisfactory record of integrity;
5. Qualified legally to contract with the County;
6. Supplied all necessary information and data in connection with the inquiry concerning responsibility;
7. Suspension or debarment under Section

c. Ability to Meet Standards. The bidder or offeror may demonstrate the availability of adequate financial resources, production or services facilities, personnel and experience by submitting upon request:

1. Evidence that such contractor possesses such necessary items;
2. Acceptable plans to subcontract for such necessary items; or
3. A documented commitment from or explicit arrangement with, a satisfactory source to provide the necessary items.

13 CONTRACT MATTERS

13.1 UNIFORM CONTRACT CLAUSES (13-1-170).

A County may require by regulation that contracts include uniform clauses providing for termination, price adjustment, adjustment in time or performance, etc. The following are specifically allowed to be included as uniform contract clauses by statute:

1. Unilateral right of the County to order in writing changes in the work within the scope of the contract and temporary stoppage of the work or delay or performance;
2. Variations occurring between estimated quantities of work in a contract and actual quantities;
3. Liquidated damages;
4. Permissible excuses for delay or non-performance;
5. Termination for default;
6. Termination in whole or in part for convenience of the County;
7. Assignment clauses providing assignment by the contractor to the County of causes of action of state or federal anti-trust statutes;
8. Indemnification of subcontractors;

9. Uniform subcontract clauses.

13.2 PRICE ADJUSTMENTS (13-1-171). 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 is practicable;
- b. By unit price as specified in the contract or subsequently agreed upon;
- c. By the cost attributable to the events or conditions as specified in the contract or subsequently agreed upon;
- 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 Central Purchasing Office;
- e. In any other manner agreed upon by the parties.
- f. In the absence of agreement of parties by unilateral determination, reasonably computed by the County of the costs attributed to the events or conditions.

13.3 TYPES OF CONTRACTS

13.4 IN GENERAL (13-1-149).

- a. Except as provided in the procurement code, any type of contract, including but not limited to definite quantity and infinite quantity contracts and price agreements are allowed which will promote the best interests of the County.
- b. However, a cost plus a percentage of cost contract is prohibited except for the purchase of insurance.
- c. 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.

13.4 MULTI-TERM CONTRACTS (13-1-150,151 and 152)

- a. Pre-requisites. Prior to the utilization of a multi-term contract, the Central Purchasing Office shall determine that:
 1. The estimated requirements over the period of a contract are reasonably firm and continuing; and

2. The contract will serve the best interests of the County.
- b. A multi-term contract may be entered into for any period of time not to exceed:
 1. Four (4) years for items of tangible personal property, construction or services (except for professional services) if the contract amount is under \$25,000;
 2. Eight (8) years including all extensions and renewals for items of tangible personal property, construction or services (except for professional services) if the contract amount is over \$25,000; and
 3. A contract for professional services may not exceed a term of four (4) years, including all extensions and renewals except that 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.
 - c. Availability of funds - Payment and performance of obligations for any succeeding fiscal periods are subject to the availability and appropriation for funds therefor.

Cancellation - If funds are not appropriated or otherwise made available to support continuation of the multi-term contract, the contract shall be cancelled.

14. CHANGE ORDERS OR CONTRACT MODIFICATIONS (13-1-140 and 141).

- a. When required by the Purchasing Office, a contractor shall submit cost or pricing data prior to the execution of any change order or contract modification regardless of whether or not the pricing data was required in connection with the initial award of the contract if the change order or modification involves aggregate increases or decreases that are expected to exceed \$25,000;
- b. However, the submission of cost or pricing data relating to change orders or contract modifications shall not be required when unrelated change orders or contract modifications for which cost of pricing data would not be required or consolidated for administrative convenience.

14.1 CERTIFICATION (13-1-142). The contractor, whether actual or prospective, shall submit certification of the cost of pricing data that at to the best of its knowledge and belief that cost or pricing data submitted was accurate, complete and current as of a specified date.

14.2 PRICE ADJUSTMENT PROVISION (13-1-143). Whenever cost or pricing data are required the certification shall contain a provision stating that the price to the County

(including profit or fee) shall be adjusted to exclude any significant sums by which the County reasonably finds that such a price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date specified.

14.3 COST OR PRICE ANALYSIS (13-1-144). A cost or price analysis 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 part of the procurement file.

14.4 COST PRINCIPLES (13-1-145). The County may negotiate the principles for determining the allowability of incurred costs for the purpose of reimbursing costs to a contractor.

15. MULTIPLE SOURCE AWARD

15.1 LIMITATIONS ON USE (13-1-153).

- a. A multiple source award may be made when awards to two or more bidders or offerors are necessary for adequate delivery of goods or services;
- b. Multiple source awards shall not be made when a single award will meet the needs of the County without sacrifice of economy or service. A multiple source award shall be based on the lowest responsible bid or proposal received in each geographical area.

15.2 DETERMINATION REQUIRED (13-1-154). The Central Purchasing Office shall make a determination setting forth the reasons for multiple source awards.

16 MISCELLANEOUS PROCUREMENT MATTERS

16.1 PAYMENT OF PURCHASES (13-1-158).

- a. No payment shall be made unless the purchasing department certifies that the services, construction or items of personal property have been received and meet specifications, or
- b. Unless prepayment is permitted (being Section 13-1-98 NMSA 1978) by exclusion of the purchase from the Procurement Code.

17. OTHER TYPES OF PROCUREMENTS.

17.1 PROCUREMENT UNDER EXISTING CONTRACTS (13-1-129)

- a. The Central Purchasing Office may contract for services, construction or items of tangible personal property without use of competitive sealed bids or competitive sealed proposals, as follows:
 1. When procuring at a price equal to or less than the federal supply contract price or catalog price, whichever is lower, and the purchaser adequately identifies the contract relied upon; or

2. With a business which has a current contract or price agreement with the State Purchasing Agent or Central Purchasing Office for the items, services or construction meeting the same standard of specifications as the items that are 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 contract; and
 - b. The purchase order adequately identifies the contract relied upon by number, if applicable, or by other appropriate reference.
 - c. The Central Purchasing Office shall retain a copy of the State Purchasing Department contract or current price agreement relied upon the public inspection and for the use of auditors.

17.2 COOPERATIVE PROCUREMENT (13-1-135).

- a. The County may participate and sponsor or administer a cooperative procurement agreement for procurement of any services, construction or items of tangible personal property with a state agency, local public body, or external procurement unit in accordance with a joint power's agreement.
- b. The Central Purchasing Office of the County may cooperate with the State Purchasing Agent in obtaining contracts or pricing agreements and such contracts or price agreements shall apply to purchase orders issued subsequently under the agreement.

17.3 PURCHASES FROM ANTI-POVERTY PROGRAM BUSINESSES (13-1-130).

- a. Central Purchasing Office may negotiate a contract for materials grown, processed or manufactured in this state by small businesses, cooperatives, communities, self-determination corporations, or such other enterprises designed and operated to alleviate anti-poverty conditions and aided by state or federal anti-poverty programs or private philanthropy.
- b. Prior to negotiating a contract under this section, the Central Purchasing Office shall make a determination of the reasonableness of the price and the quality of the materials and that the public interest will best be served by such procurement.

17.4 USED ITEMS (13-1-155).

- a. The 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:
 1. Requiring a written warranty for at least ninety (90) days after date of delivery, and
 2. An independent "certificate of working order" by a qualified mechanic or appraiser.

- b. Trade-in or exchange of used items (13-1-156)
 - 1. The 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:
 - a. Have an independent appraisal made of the items to be traded in or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged, and the location where the items to be traded in or exchanged may be inspected; or
 - b. Have two written quotes for purchase of the property at a specified price.
 - 2. 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.
 - a. If an amount offered in trade is less than the appraised value or the highest quote but is found to be a fair reflection of the current market, representative of the condition of the items of tangible personal property and in the best interest of the agency, the bid or offer may be accepted
 - b. 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.

18 ETHICAL CONDUCTS

- 18.1 EMPLOYEE PARTICIPATION (13-1-190).
 - a. No employee of the County (as defined in the Procurement Code, 13-1-54) can participate directly or indirectly in 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. This prohibition does not apply if the financial interest is held in a blind trust.
- 18.2 BRIES, GRATUITIES, ETC. (13-1-191). All contracts and solicitations therefor shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.
- 18.3 CONTINGENT FEES (13-1-192)

- a. No person or business may be retained nor may a business retained nor may a business retain a person or business to solicit or secure contracts upon an agreement or understanding that the compensation is contingent upon the award of the contract.
- b. The only exception is obtaining professional services in anticipation of the receipt of federal or state grants or loans.

18.4 **CONTEMPORANEOUS EMPLOYMENT** (13-1-193). No employee of the county who is participating directly or indirectly in the procurement process can become or be while employed by the County an employee of any person or business contracting with the County.

18.5 **USE OF CONFIDENTIAL INFORMATION** (13-1-195). No employee of the County or former employee may knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

20. **PROTESTS**

20.1 **RIGHTS** (13-1-172)

- a. Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the Central Purchasing Office.
- b. The protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise thereto.
- c. **What may be protested?** Protestants may file a protest on any phase or a solicitation or award, including but not limited to, specification preparation, bid solicitation, award, cancellation of solicitation, bid rejection, or other matters arising from a solicitation or award of a contract.

20.2 **CONTENTS**. The protest shall:

- a. Include the name and address of the protestant;
- b. Identify the contracting activity and the number of the solicitation, if any, and, if a contract has been awarded, the contract number, if any;
- c. Contain a statement of the grounds for protest;
- d. Include supporting exhibits, evidence affidavits, or documents to substantiate any claim unless not available within the filing time, in which case the expected availability date shall be indicated; and

- e. Specify the ruling requested from the Central Purchasing Office.

20.3 **PLEADINGS**. No formal briefs or other technical forms of pleading or motion are required, but protests and other submissions should be concise, logically arranged, and direct.

20.4 **PROCUREMENTS AFTER PROTEST** (13-1-173). In the event of a timely protest the Central Purchasing Office shall not proceed further with the procurement unless the Central Purchasing Office determines that the award of the contract is necessary to protest substantial interest of the County.

20.5 **AUTHORITY TO RESOLVE** (13-1-174). The Central Purchasing Office or designee has the authority to take any action reasonably necessary to resolve a protest. The authority shall be exercised in accordance with these regulations promulgated by the County or Central Purchasing Office but shall not include the authority to award money for damages or attorney's fees.

- a. **Notice to Bidders and Offerors**. The Central Purchasing Office shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable protest or appeal is denied.
- b. **Notice to Using Agency**. The Central Purchasing Office shall provide a copy of the protest to any using agency that requested the solicitation.
- c. Notice shall be given by first class mail within five (5) days of the filing of the protest.
- d. **Responses**. Any interested party, and the using agency, may file a response to the protest within fifteen (15) days after notice of protest is mailed by the Central Purchasing Office. All responses shall be filed with the Central Purchasing Office and a copy shall be mailed to the protestant by the interested party or using agency filing a response. The protestant may file a rebuttal to any response within ten (10) days of filing of a response. All responses and rebuttals shall include supporting evidence, documents, exhibits, and affidavits, unless not available within the filing time, in which case the expected availability date shall be indicated.
- e. **Conference or Hearing**. The protestant, an interested party, or the using agency may request a hearing before the Central Purchasing Office within ten (10) days after the deadline for filing the last permissible response or rebuttal. The Central Purchasing Office may schedule a conference or hearing at its discretion if no request has been filed. Notice of hearings shall be mailed to the protestant, all interested parties and the using agency not less than fifteen (15) days before the scheduled hearing.
- f. **Comments of Conference or Hearing**. Any written comments to be submitted as a result of the conference or hearing must be received by the Central Purchasing Office within five (5) days of the date on which the conference or hearing was held, unless the Central Purchasing Office provides otherwise.

g. Information Generally Available. The Purchasing Agent shall, upon written request, make available to any party information bearing on the substance of the protest which has been submitted by the parties, except to the extent that withholding of information is permitted or required by law or regulation.

20.6 WRITTEN DETERMINATION. (13-1-175). The Central Purchasing Office shall make a written determination on the merits of the protest as expeditiously as possible or, in any event, within thirty (30) days of the receipt of all information or the date of any conference or hearing held on the matter, whichever is later, and shall furnish a copy of determination to the protestant, other interested parties and the using agency. Such determination should include:

- a. A copy of the protest;
- b. A copy of the bid or offer submitted by the protestant and a copy of the bid or offer that is being considered for award or whose bid or offer is being protested;
- c. A copy of the solicitation, including the specifications or portions thereof, relevant to the protest;
- d. A copy of the abstract of bids or offers or relevant portions thereof;
- e. Any other documents which are relevant to the protest, including the contract, if one has been awarded.
- f. Statement setting forth findings and conclusions in the matter, together with any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegations of the protest;
- g. A statement of the relief granted; and
- h. A statement to inform all parties of the right to appeal to the Board of County Commissioners and to judicial review of the final determination pursuant to Section 13-1-183 NMSA 1978.

20.7 NOTICE OF DETERMINATION (13-1-176).

A copy of the determination shall be mailed immediately to the protestant, the using agency that requested the procurement and other interested parties involved in the procurement.

20.8 APPEAL TO BOARD OF COUNTY COMMISSIONERS

- a. Within fifteen (15) days of the filing of a determination of a protest by the Central Purchasing Office, any aggrieved party may appeal to the Board of County Commissioners by filing an appeal with the County Administrative Assistant and the Central Purchasing Office.

- b. Notice of the appeal shall be mailed to all interested parties and the using agency by the Central Purchasing Office by first class mail.
- c. The Board of County Commissioners shall within fourteen (14) days, decide to hear or not hear the appeal. If the Board decides not to hear the appeal, or fails to make a decision within fourteen (14) days, then any aggrieved party shall have the right to judicial review, per 13-1-183, with the 30-day time period beginning to run on the date the Board decides not to hear the appeal or on the expiration of the 14-day period.
- d. If the Board of County Commissioners decides to hear the appeal, the Administrative Assistant shall set the matter for hearing at a meeting of the Board, but not later than thirty (30) days after the Board decides to hear the appeal.
- e. The Board of County Commissioners may receive additional evidence and may affirm, reject or modify the decision of the Central Purchasing Office. The Board of County Commissioners shall issue a written decision within ten (10) days of the hearing which shall be entered by the Clerk into the minutes book of the County and which shall be mailed to all interested parties by the County Administrative Assistant.
- f. Any aggrieved person may appeal, per Section 13-1-183 NMSA 1978, the decision of the Board of County Commissioners by filing an action in District Court within thirty (30) days of the entry of the decision by the County Clerk. On appeal, the record of the proceedings before the Central Purchasing Office and the Board of County Commissioners shall constitute the record of the County actions regarding the procurement in issue.

20.9 RELIEF PRIOR TO AWARD (13-1-181). If, prior to award, the Central Purchasing Office or Board of County Commissioners 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.

20.10 RELIEF AFTER AWARD (13-1-182)

- a. No Fraud or Bad Faith If, after an award, the Central Purchasing Office or Board of County Commissioners make a determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith, then:
 - 1. 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 interest of the County; or

2. The contract may be terminated and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.
- b. Fraud or Bad Faith. If, after an award, the Board of County Commissioners 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 cancelled.

20.11 RELIEF FOR PROTESTANT. The Board of County Commissioners may award the protestant the reasonable costs incurred in connection with the solicitation, including bid preparation costs, when a protest is sustained and the protestant should have been awarded the contract but was not. No award of money damages or attorney's fees shall be allowed.

21. PUBLIC WORKS (CONSTRUCTION) PERFORMANCE AND PAYMENT BONDS (13-4-18).

When a construction contract is awarded in excess of \$25,000, performance and payment bonds shall be delivered by the contractor upon the execution of the contract.

- 21.1 If a contractor fails to deliver the required bonds, the contractor's bid shall be rejected and its bid security shall be enforced to the extent of actual damages.
- 21.2 The performance bond shall be satisfactory to the County, executed by a surety company authorized to do business in New Mexico and the surety to be approved by either the Board of County Commissioners, the State Board of Finance or in Federal Circular 570 as published by the United States Treasury Department.
 - a. The bond shall be in an amount equal to 100% of the contract price.
 - b. Prior to bidding, the Central Purchasing Office may reduce the amount of the performance bond to not less than 50% of the contract price if it is determined to be less costly or more advantageous to the County to self-insure a part of the performance of the contractor.
- 21.3 The payment bond shall be satisfactory to the County, executed by a surety company authorized to do business in New Mexico and the surety company to be approved by either the Board of County Commissioners, the State Board of Finance or in Federal Circular 570.
 - a. The bond shall be in an amount equal to 100% of the contract price, for the protection of all persons supplying labor and material to the contractor or its subcontractor or its subcontractors for the performance of the work provided for in the contract.

- b. Prior to bidding, the Central Purchasing Office may reduce the amount of the payment bond to not less than 50% of the contract price if it is determined that is in the best interest of the County to do so. Factors to be considered in order to make such a determination include, but are not limited to, the value and number of subcontracts to be awarded by the contractor and value of the contractor.
- c. Notwithstanding the requirements of Sections 13-1-126 and 13-1-127 NMSA 1978, Sole Source and Emergency Procurement, other sections of statute apply when acquiring construction contracts. To declare a sole source or emergency construction contract the Purchasing Department must:
 - d. Obtain a state wage rate determination pursuant to Section 13-4-11 NMSA 1978 if the construction contract is over \$20,000.
 - e. Obtain performance and labor/material payments bonds pursuant to Section 13-4-18 NMSA 1978 if the construction contract is over \$25,000. You may require those bonds if a project is under \$25,000, at your discretion.

21.4 **PROJECTS UNDER \$25,000.** For contracts under \$25,000 the County may require the bonds in this section at its sole and complete discretion.

22. **MINIMUM WAGE RATES (CONSTRUCTION)** (13-4-11). Every proposed construction contract in excess of sixty thousand dollars (\$60,000) shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics. Contact the State Labor Commissioner for a wage rate determination.

23. **FUEL CARD PROGRAM** This section establishes proper procedures for use of the *fuel cards. Fuel allows authorized County employees to obtain unleaded, or diesel fuel, oil, carwashes, lubrication, and emergency repairs not to exceed (\$100.00 in total for County vehicles at numerous locations throughout the county, state and nation.*

Department Head, Elective Official and Fire Chief Responsibilities will include but are not limited to:

1. *Verify receipt and accuracy of all cards and driver identification numbers (PIN)*
2. Assign a card to each vehicle, excluding all equipment cards.
3. Assign driver identification numbers to each driver, obtained through the Purchasing Department.
4. Ensure that the driver identification numbers are kept confidential and the PIN are four digits.
5. Provide periodic fraud awareness sessions to drivers as needed.
6. If replacements cards are necessary (due to damaged or worn magnetic strips), ensure collection of original cards and that they are turned in to the Purchasing Department, at time of picking up new card (s).
7. If a driver identification number is compromised for any reason, call the Purchasing Department to cancel it immediately.
8. Cancel lost or stolen cards immediately through the Purchasing Department.

9. Cancel driver identification number upon notification of employee being demised or retiring.
10. Do random audit checks on vehicles to ensure that cards match the vehicles.
11. If vehicle is sold, transferred, or retired, immediately notify the Purchasing Department to cancel or move the vehicle information to the new custodian.
12. The fuel cards are issued to County vehicles, not individuals, and must remain with the vehicles. Cards will be secured in the glove compartment, center console, or other areas out of sight.

24.1 PROPER CARD USE

1. Insert the fuel card into the card reader at the fuel gas pump, or have a station attendant swipe the card inside the station. If the card will not swipe, the station attendant must contact Fuel Services. The 800 number for Fuel Services is located on the back of the card. Fuel Services can be reached 24 hours a day, 7days a week.
2. Enter the driver's identification number (PIN) assigned to you, this will authorize the sale and identify the purchaser.
3. Do not give the identification number to anyone except station attendant (only when required to complete sale). Do not store identification number and card together.
4. Enter the exact odometer reading excluding tenths of miles in the odometer reading.

24.2 RESTRICTIONS

1. Do not use the fuel card assigned to the vehicle to fuel any other vehicle.
2. Under no circumstances is the fuel card to be utilized to purchase fuel or fuel related Products for personal-use vehicles or to purchase or obtain no-fuel products such as sodas, cigarettes, candy, etc. All abuses and or unauthorized fueling activities will be reported to the Department Head or designated representative for appropriate disciplinary action.