

**MCKINLEY COUNTY  
PURCHASING POLICY REGULATIONS**



MCKINLEY COUNTY

**RESOLUTION # MAR-016-019**

Policy No. P-001

STATE OF NEW MEXICO  
County of McKinley

RESOLUTION OF THE MCKINLEY COUNTY COMMISSIONERS

AUTHORIZING ADOPTION OF  
PURCHASING POLICY AND REGULATIONS

Resolution MAR-16-019

**Whereas**, The Board of County Commissioners the Governing body of McKinley County has previously authorized the McKinley County Purchasing Policy and Regulations manual to govern the Procurement process in accordance with State of New Mexico Statutes; and

**Whereas**, the Procurement process is currently governed by a written policy and regulations manual but not adopted as formal Policy in the current McKinley County Policy Manual; and

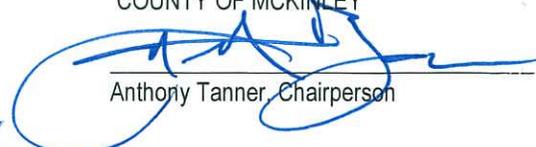
**Whereas**, a clearly defined policy requires periodic modification to reflect changing conditions and adoption by the County Commissioners' regarding the Procurement process;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MCKINLEY COUNTY COMMISSIONERS** that McKinley County Purchasing Department is authorized by this Resolution No. MAR-16-019 to modify the current procurement policy and regulations manual and to adopt Policy No. P-001 governing the McKinley County Procurement process. The effective date of this policy revision shall be March 15, 2016.

**BE IT FURTHER RESOLVED THAT** this Resolution No. MAR-16-019, and Policy No. P-001, supersedes repeals, and revises any and all similar regulations or policy regarding the same matter, particularly Resolution No. May-14-032 and May-14-032 Amended.

APPROVED BY THE McKinley Board of County Commissioners ON THIS 15<sup>th</sup> Day Of March, 2016.

BOARD OF COMMISSIONERS  
COUNTY OF MCKINLEY

  
\_\_\_\_\_  
Anthony Tanner, Chairperson

Attest:

  
\_\_\_\_\_  
Harriett Becenti, County Clerk

\_\_\_\_\_  
Carol Bowman-Muskett, Commissioner

  
\_\_\_\_\_  
Genevieve Jackson, Commissioner

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RES P: \$0.00 H. K. Becenti, McKinley County



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1. **APPLICATION OF THE CODE** (13-1-30)

- 1.1 The code applies to all expenditures by McKinley County for procurement of tangible personal property, services and construction.
- 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. Procurement Code violations are;
  - a. a fourth degree felony if the transaction involves more that \$50,000
  - b. a misdemeanor if the transaction involves \$50,000 or less
- 1.3 Per NMSA 13-1-199, to be a violation, the conduct must first be a “willful” violation of the code.
- 1.4 **PURPOSE** The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds, and to provide safeguards for maintaining a procurement system of quality and integrity.
- 1.5 **CONSISTENCY WITH STATE PROCUREMENT CODE** The provisions of these regulations/policies are subject to change as the State Procurement Code is amended. Any revision thereof that is inconsistent with the provisions of these regulations/policies shall rule.
- 1.6 **DELEGATION OF AUTHORITY** The McKinley County Commission shall delegate all procurement authority for McKinley County to the County Manager and the Purchasing Department.

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 δ13-1-111 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 **AMENDENT:** Amendment of these regulations/policies shall be executed by resolution approved by the Board of County Commissioners.

- 2.4 **ARCHITECTURAL SERVICES** (13-1-31). Architectural services shall not include work normally included within zoning, land use planning, or city or town planning.
- 2.5 **BIDDING TIME** means the period of time between publication of the invitation for bids and the date of bid opening.
- 2.6 **BID SAMPLE** means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.
- 2.7 **CAPITAL ASSET**. A purchased capital asset will be property or a material item which has an expected useful life which normally will exceed one year and has a value exceeding five thousand (\$5,000) dollars. Capital assets purchased will be reported by Purchasing to the Finance Department.
- 2.8 **CENTRAL PURCHASING DEPARTMENT (13-1-37)**. The Central Purchasing Department for McKinley County means that office responsible for the control of procurement of tangible personal property, services or construction, to enter into and administer contracts, and to make written determinations with respect thereof.
- 2.9 **CONSTRUCTION (13-1-40)**. "Construction" means building, altering, repairing, installing, or demolishing in the ordinary course of business any:
- 1) Road, highway, bridge, parking area or related project;
  - 2) Building, stadium or other structure;
  - 3) Airport, subway or similar facility;
  - 4) Park, trail, athletic field, golf course or similar facility;
  - 5) Dam, reservoir, canal, ditch or similar facility;
  - 6) Sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;
  - 7) Sewage, water, gas or other pipeline;
  - 8) Transmission line;
  - 9) Radio, television or other tower;
  - 10) Water, oil or other storage tank;
  - 11) Shaft, tunnel or other mining appurtenance;
  - 12) Electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners;
  - 13) Air conditioning unit, heating or other similar mechanical work; or similar work, structures or installations.
- Construction shall also include:**
- 1) Leveling or clearing land;
  - 2) Excavating earth;
  - 3) Drilling wells of any type, including seismographic shot holes or core drilling; and
  - 4) Similar work, structures or installations.
- Construction shall not include the in-house routine maintenance, operation or repair of existing facilities.
- 2.10 **CONTRACT** (13-1-41). "Contract" means any agreement for the procurement of items of tangible personal property, services or construction.

- 2.11 **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.
- 2.12 **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 department, local public body, or external procurement unit in accordance with an agreement entered into under the Joint Powers Agreements Act.
- 2.13 **COST ANALYSIS** (13-1-45). "Cost analysis" means the evaluation of cost data and profit for the purpose of arriving at costs actually incurred by a contractor, estimates of costs to be incurred by a contractor and a profit to be allowed to a contractor.
- 2.14 **COST DATA** (13-1-46). "Cost Data" means factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred by a contractor or which have been actually incurred by a contractor in performing the contract.
- 2.15 **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.
- 2.16 **DESIGNEE** A duly authorized representative of the Purchasing Department
- 2.17 **DETERMINATION** (13-1-52). Determination is the written documentation of a decision of the Purchasing Department. It must include those findings of fact that are necessary to support a decision. This section requires that the Purchasing Department comply with the basic mandates of due process of law in that a decision of the Purchasing Department 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.
- 2.18 **DIRECT OR INDIRECT PARTICIPATION** (13-1-53) means involvement in the decision, 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.
- 2.19 **ELECTRONIC** (13-1-53.1) "Electronic" includes electric, digital, magnetic, optical, electronic or similar medium.
- 2.20 **EMPLOYEE** (13-1-54). An employee, for purposes of this policy, 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.
- 2.21 **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 department or a local public body. A department of the United States government, for example, is an external procurement unit.

- 2.22 **IMMEDIATE FAMILY** (13-1-62). Immediate family refers only to spouse, children, parents, brothers and sisters and is not necessarily consistent with other state statutes regarding nepotism or other conflicts of interest involving relations.
- 2.23 **LOCAL PUBLIC BODY** (13-1-67). The word "County" is used in the regulation as a substitute for the term "local public body".
- 2.24 **MCKINLEY COUNTY RESIDENT BUSINESS** For purposes of applying the McKinley County Resident Business Preference, a McKinley County Resident Business is defined as a business that has applied to the County and been issued a McKinley County Business Preference Certificate by furnishing a current valid Business Registration; filed a statement that the business has maintained its primary place of business for at least one (1) year within the boundaries of McKinley County, or primarily conducts its business within McKinley County; and provided a copy of their Gross Receipts Tax return for the preceding year with their application; and paid any applicable fees. If a Corporation the corporation must be registered to do business in the State of New Mexico and be in good standing.
- 2.25 **MULTI-TERM CONTRACTS** (13-1-68). Multi-term contract means a contract having a term longer than one year.
- 2.26 **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.
- 2.27 **NOTICE OF INVITATION FOR BIDS** (13-1-70) A document issued by the Purchasing Department 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 Department deems necessary.
- 2.28 **PRACTICABLE** (13-1-111). The word "practicable" as used in §13-1-111 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.
- 2.29 **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.
- 2.30 **PRICE ANALYSIS** 13-1-72. "Price analysis" means the evaluation of pricing data without analysis of the separate cost components and profit.

- 2.31 **PRICING DATA** (13-1-73) “ Pricing data” means factual information concerning prices for items identical to or substantially similar to those being procured.
- 2.32 **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.

(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.)

- 2.33 **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, lawyers, psychologists, planners, researchers and persons or businesses providing similar services are professional services, which may be designated as such by a determination issued by the Procurement Manager or a central purchasing office.
- 2.34 **PURCHASE ORDER** (13-1-77). A Purchase Order is the document issued by the Purchasing department directing a contractor to deliver items of tangible personal property, services, or construction pursuant to an existing contract.
- 2.35 **PURCHASE REQUEST-REQUISITION** (13-1-78). These documents are submitted by a using department to request that the Purchasing department issue a contract for a specified service, construction or item of tangible personal property. An executed purchase order including all accompanying documentation is a contract.
- 2.36 **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.
- 2.37 **RESPONSIBLE BIDDER** (13-1-82). A responsible bidder is a bidder who submits a responsive bid and supplies, when required, sufficient information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery

- 2.38 **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.
- 2.39 **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. Material aspects of a bid include but are not limited to price, quality, quantity or delivery requirements.
- 2.40 **RESPONSIVE OFFER** (13-1-85). Is an offer which conforms in all material respects to requirements set forth in the request for proposals.
- 2.41 **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 include the furnishing of insurance but does not include construction or the services of employees of the County.
- 2.42 **SIGNATORY AUTHORITY**. The McKinley County Purchasing Department is the Administrator of the Purchasing office and is responsible for the control of procurement of items of of tangible personal property, services, and construction for all County Departments and Agencies of McKinley County. The County Manager shall have signatory authority for any non-budgeted procurements up to Ten Thousand (\$10,000.00) Dollars. All non-budgeted procurement requests over Ten Thousand (\$10,000.00) Dollars shall require the approval and budget resolution of the Board of County Commissioners before a purchase order is issued. The McKinley County Purchasing Department shall have signatory authority up to Thirty Thousand (\$30,000.00) Dollars for budgeted procurements of professional services. The County Manager shall have signatory authority for budgeted procurements of professional services up to Sixty Thousand (\$60,000.00) Dollars.
- 2.43 **SMALL PURCHASES** (13-1-125). A small purchase is any purchase of services, goods or construction which have a value that does not exceed the sum of Twenty Thousand (\$20,000) Dollars.
- 2.44 **UNAUTHORIZED PURCHASES**: Any purchase which is not legally and appropriately approved within the County budget or by the appropriate County Commission action, or which does not substantially comply with the provisions of the McKinley County Procurement Code and State Statutes, particularly the State Procurement Code, shall be considered an unauthorized County purchase, and thereby not subject to payment by the County. The County hereby declares and establishes that it will assume no responsibility for payment of unauthorized purchases. Furthermore, any individual initiating or otherwise executing any unauthorized purchase is solely responsible for payment and shall be subject to disciplinary action. All authorized purchases shall be legally budgeted or approved within an appropriate fund or agency account, or within an appropriate line item as approved by the McKinley County Commission. The requesting department

has the responsibility of obtaining verification of budgets, accounts and line items **before** a requisition is submitted. Purchases which are not within the authorized budget, or otherwise have not received Purchasing or Finance Department verification, are unauthorized purchases. After determination by Purchasing of an unauthorized purchase, any questions regarding that purchase may be submitted to the County Manager. The County Manager may approve any unauthorized purchase in the amount under \$10,000 and send a notice of violation to the individual. Unauthorized purchases greater than \$10,000 shall be taken to the Board of County Commissioners which, at its discretion, may approve an unauthorized purchase for payment. Payment can only be made on an unauthorized purchase after it has been reviewed and approved pursuant to this section.

**3. PURCHASING DEPARTMENT OF MCKINLEY COUNTY**

3.1 **DUTIES.** The Purchasing Department 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 Purchasing Department shall also cooperate and coordinate with the State Purchasing Department, the Purchasing Department of other local public bodies, and the Central Purchasing Department of external procurement units to maximize the benefits to the County from such joint and cooperative efforts.

**4. EXEMPTIONS FROM THE PROCUREMENT CODE**

4.1 **RELEVANT EXEMPTIONS TO COUNTIES** (13-1-98)

- a. Training materials in printed or electronic format.
- b. Printing and duplicating contracts involving materials which are required to be filed in connection with proceedings before administrative agencies or state or federal courts.
- c. Purchases of publicly provided or publicly regulated gas or city water or sewage and refuse collection services.
- d. Purchases of books and periodicals from the publishers or copyright holders thereof.
- e. Travel or shipping by common carrier or by private conveyance or for meals and lodging.
- f. Purchase of animals to be used for exhibit.
- g. Minor purchases consisting of magazine subscriptions, web-based or **electronic subscriptions**, conference registration fees and other similar purchases where pre-payments are required not exceeding \$10,000.
- h. Legal subscriptions and research services.
- i. The issuance, sale and delivery of public securities pursuant to the applicable authorizing statute with the exception of bond attorneys

and general financial consultants.

- j. Contracts entered into by the Purchasing department 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.
- k. Purchase of advertising in all media, including radio, television, print and electronic.

Note: Refer to State Procurement Code for complete listing of exemptions from the Procurement Code.

## 5. **COMPETITIVE SEALED BIDS**

- 5.1 **EXCEPTIONS** (13-1-102). All procurement shall be achieved by competitive sealed bids, except:
  - a. when competitive sealed proposals are authorized and determined to be in the best interest of the County (13-1-111 to 124; our Section 6);
  - b. for small purchases (13-1-125; our Section 15);
  - c. for sole source procurement (13-1-126; our Section 16.1);
  - d. for emergency procurements (13-1-127; our Section 16.2);
  - e. regarding existing contracts (13-1-129; our Section 17.1);
  - f. for purchases from anti-poverty program businesses (13-1-130; our Section 17.3).
- 5.2 **INVITATIONS FOR BIDS** (13-1-103). The Purchasing department 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.

No notice of an invitation for bids shall be published prior to the completion or approval of the invitation for bids by the Central Purchasing Department.

- 5.3 **BIDDERS**. Any business requesting an invitation for bids packet shall, at the time the request is made, provide to the Purchasing department its current mailing address.

5.4 **AMENDMENTS TO INVITATION FOR BID.** The Central Purchasing Department 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. furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

The amendment shall be sent to all bidders who have supplied their current mailing address, pursuant to Subsection 5.3 of these regulations, within a reasonable time to allow prospective bidders to consider them in preparing their bids.

5.5 **BID FORM.** The Purchasing department shall prepare bid forms to be used by bidders responding to invitations for bid. Such forms may be changed from time to time and shall not be inconsistent with this policy.

5.6 **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.

5.7 **BIDDING TIME.**

- a. "Bidding time" means the period of time between publication of the invitation for bids and the date of bid opening.
- b. The Purchasing Department 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.

- 5.8 **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): Gallup Independent; Albuquerque Journal. Notices shall also be posted on the County website. In addition to publication, the requirements for sending notice or invitation for bids to prospective bidders may also be satisfied by distributing the documents through electronic means.
- a. The Purchasing Department may authorize additional publication at 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 Purchasing Department 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.
- 5.9 **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.
- 5.10 **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. Oral, telephonic and telegraphic or electronically transmitted bids (fax or email), except as specifically authorized by the County, are invalid and shall not be considered.
  - 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. All bids shall only be received at the County's physical address: **McKinley County; County Manager's Office; 207 West Hill Ave. Gallup, NM 87301**. Each bid received by the Central Purchasing Department shall be stamped received and labeled with date and time of filing. All bids shall be retained by the Purchasing department in a secure place until the date and time for opening. Records relating to Competitive sealed bids or proposal procurements must be retained for three (3) years.
- 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).

#### 5.11 **CORRECTION OR WITHDRAWAL OF BIDS** (13-1-106)

General Principles: Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected

- 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 Purchasing Department.
- 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 Purchasing department 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 Purchasing department 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. sign 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, errors in extending unit prices, transposition errors, and arithmetical errors.

All corrections or withdrawals allowed by the Purchasing department shall be supported by a determination of the Purchasing department 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).

5.12 **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 nrelevant information as may be specified by the Central Purchasing Department, together with the name of each bidder, shall be recorded in the procurement file and each bid shall be opened to public inspection after the bid has been awarded.

- a. Bid Opening Schedule. All bids opening schedules will be determined by the Purchasing department.
- b. Bid Opening Committee. The Bid Opening Committee shall consist of:
  1. Purchasing Department Representative
  2. An employee of the County
- c. Preparation For Award. The Purchasing department is to review all bids and make a determination of which is the low bid meeting all specifications. The Purchasing department may be aided in this process by an employee of the using department. 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.

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

- a. Following award, a record showing the basis for the award shall be made part of the procurement file.
- b. Written notice of the award shall be sent to the successful (lowest responsive and responsible) bidder and shall be posted on the County website with reasonable promptness.
- c. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or applicable local option tax but that the County shall be required to pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax shall be shown as a separate amount on each billing or request for payment made under the contract.

5.14 **MULTI-STEP SEALED BIDDING** (13-1-109)

- a. General. When the Central Purchasing Department makes a determination that it is impractical to initially prepare specifications to support an award based on price, an invitation for bids may be issued requesting the submission of unpaid offers to be followed by an invitation for bids. Thus, multi-step sealed bidding is a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the Central Purchasing Department and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsible bidder, and at the same time obtain the benefits of the competitive sealed proposal procedure through the solicitation of technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.
- b. Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to prepare initially a definitive purchase description which will be suitable to permit an award based on price. Multi-step sealed bidding may thus be used when it is considered desirable:
  1. To invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;
  2. To conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

3. To accomplish Paragraphs “a” and “b” of this Section prior to soliciting priced bids; and
  4. To award the contract to the lowest responsible bidder in accordance with the competitive sealed bidding procedures.
- c. Pre-Bid Conferences in Multi-Step Sealed Bidding. Prior to the submission of unpriced technical offers, a pre-bid conference may be conducted by the Purchasing Department. The Purchasing Department may also hold a conference of all potential bidders at any time during the evaluation of the un-priced technical offers.
- d. **Procedure for Phase One of Multi-Step Sealed Bidding.**
1. Form. Multi-step sealed bidding shall be initiated by the issuance of an invitation for bids. In addition to the normal requirements, the multi-step invitation for bids shall state:
    - a. that un-priced technical offers/submittals are requested;
    - b. whether priced bids are to be submitted at the same time as un-priced technical submittals; if they are, such priced bids shall be submitted in a separate sealed envelope;
    - c. that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose un-priced technical submittals are found acceptable in the first phase;
    - d. that the County, to the extent the Purchasing Department finds necessary, may conduct oral or written discussions of the un-priced technical submittals;
    - e. that the item being procured shall be furnished generally in accordance with the bidder’s technical submittal as found to be finally acceptable and shall meet the requirements of the invitation for bids.
- e. Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the invitation for bids shall be distributed only to bidders who submitted unpriced technical offers or to amend those submitted. If, in the opinion of the Purchasing department, a contemplated amendment will significantly change the nature of the procurement, the invitation for bids shall be cancelled and a new invitation for bids issued.
- f. Receipt and Handling of Unpriced Technical Submittals. Unpriced technical submittals shall not be opened publicly but shall be opened in the presence of the Bid Opening Committee. Such submittals shall not be disclosed to unauthorized persons or be made available to competing offerors.
- g. Evaluation of Unpriced Technical Submittals. The unpriced

technical submittals submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bids. The unpriced technical submittals shall be categorized as:

1. acceptable;
  2. potentially acceptable, that is, reasonably susceptible of being made acceptable; or
  3. unacceptable. The Purchasing department shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.
  4. Submittals shall be evaluated by a committee selected by the Purchasing department and approved by the County Manager for each multi-step IFB. The identity of the members of that committee shall not be public record.
- h. Purchasing Department Decision. The Purchasing Department may initiate phase two of the procedure if, in the Purchasing department's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without technical discussions. If the Purchasing department finds that such is not the case, the Purchasing Department shall issue an amendment to the invitation for bids or engage in technical discussions.
- i. Discussion of Unpriced Technical Submittals. The Purchasing Department may conduct discussion with any bidder who submits an acceptable or potentially acceptable technical submittal. During the course of such discussions the Purchasing Department shall not disclose any information derived from the one unpriced technical submittal to any other bidder. Once discussions are begun, any bidder who has not been notified that its submittal has been finally found unacceptable may submit supplemental information amending its technical submittal at any time until the closing date established by the Purchasing Department. Such submission may be made at the request of the Purchasing Department or upon the bidder's own initiative.
- j. Records. The Purchasing Department shall keep written records of the date, place, attendance and purpose of meetings conducted pursuant to Subsection 5.13.i.
- k. Notice of Unacceptable Unpriced Technical Submittal. When the Purchasing Department determines a bidder's unpriced technical submittal to be unacceptable, such offeror shall not be afforded an additional opportunity to supplement its technical submittal.
- l. Mistakes During Multi-Step Bidding. Mistakes may be corrected or bids may be withdrawn during phase one at any time. During Phase two, mistakes may be corrected or withdrawal permitted in accordance with the sections for mistakes governing regular sealed

bids.

m. **Procedure for Phase Two:**

1. **Initiation.** Upon the completion of phase one, the Purchasing Department shall either:
  - a. open priced bids submitted in phase one (if priced bids were required to be submitted) from bidders whose unpriced technical submittals were found to be acceptable;  
or
  - b. if priced bids have not been submitted, technical discussions have been held, or amendments to the invitation for bids have been issued, invite each acceptable bidder to submit a priced bid.
2. **Conduct.** Phase two shall be conducted as any other competitive sealed bid procurement except:
  - a. no public notice need to be given of this invitation to submit priced bids because such notice was previously given;
  - b. unpriced technical offers of bidders who are not awarded the contract shall not be open to public inspection unless the Purchasing Department determines in writing that public inspection of such offers is essential to assure confidence in the integrity of the procurement process.

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

- a. **Definition.** Identical low bids are low responsive bids from responsible bidders which are identical in price after the application of the preferences referred to in Sections 13-1-21 to 13-1-22 NMSA 1978 and McKinley County Local Business Preference, 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 Purchasing department 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 McKinley County resident business if the identical low bids are submitted by a McKinley County resident business and a non- McKinley County resident business;
  3. Award to a resident business or resident veteran business or a resident contractor or resident veteran contractor if the identical

low bids are submitted by a resident business or resident veteran business or resident contractor or resident veteran contractor, and a nonresident business;

4. Award to a bidder offering recycled content goods if identical low bids are for recycled content goods and virgin goods, as specified in the bid.
5. Award by lottery to one of the identical low bidders; or
6. Reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property.

5.16 **BID SECURITY**

- a. Construction (13-1-146). Bidders for construction contracts procured by competitive sealed bid, RFP. or multi-step bids must provide bid security when the price estimated by the Purchasing Department to exceed \$25,000, or as may be subsequently amended by Statute. 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 or cashiers check.
- b. Other Purchases. Bidders for other purchases/contracts procured by competitive sealed bid may be required to provide bid security when the price is estimated by the Purchasing Department 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 cashiers or 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 Department 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. See small business provisions regarding reduction of security (17.4.d).

4. As to performance and payment bonds required for construction contracts, see the requirements of Section 13-4-18 NMSA 1978 and Section 22.

6. **COMPETITIVE SEALED PROPOSALS**

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

- a. Procuring professional services; or
- b. When the Central Purchasing Department 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 and multi-step bidding may be used for the procurement of construction to assess and evaluate quality, value engineering and price.
- 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.

6.2 **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 of 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/or price aspects of their proposals/technical submittals;

- c. Whether offerors may need to be afforded the opportunity to revise their proposals/technical submittals, 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; or if price is insignificant.

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

A determination may be made to use competitive sealed proposals or a multi-step bidding process 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/or
- b. If the factors listed in Paragraphs “b” through “d” of Subsection 6.2 are desirable in conducting a procurement but not necessary; then such factors may be used to support a determination that single phase competitive sealed bidding is not advantageous.

6.4 **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. The RFP may also include other requirements in addition to these requirements.

6.5 **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 Department 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, or distributed in accordance with Paragraph 5.8.
- b. A copy of the RFP shall be made available for public inspection and shall be posted at the County Department.

6.6 **RECEIPT AND REGISTRATION OF PROPOSALS**.

- a. Proposals will be received publicly 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 of the required witnesses and such other information as may be specified by the Purchasing Department.
- c. The register of proposals shall be open to public inspection.
- d. Proposals shall not be opened publicly and shall not be open to public inspection until after award of a contract.
- e. 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.
- f. Records relating to competitive sealed bids or proposal procurements must be retained for three (3) years.

6.7 **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 and/or approved by the Purchasing department for each request for proposals. The identity of the members of that committee shall **not** be public record until after award of a contract.

6.8 **NEGOTIATIONS** - Selection (13-1-115).

- a. Offerors submitting proposals may 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. Section 6.8 shall not apply to architects, engineers, landscape architects and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.
  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 estimated value of the services to be rendered and the scope, complexity and professional nature thereof.
  3. The Purchasing Department 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 may 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.)

- 6.9 **AWARD** (13-1-117). The award shall be made to the responsible Offeror whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the Request for Proposals. The Purchasing Department 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.

- 6.10 **POST NOTICE**. After a contract has been awarded, notice of award shall be given to all proposers and posted on the County website.

## 7. **PREFERENCES**

- 7.1 **RESIDENT BIDDER PREFERENCE**.  
McKinley County allows certain preferences to New Mexico Resident Businesses and New Mexico Resident Veteran businesses in accordance with 13-1-21 & 13-1-22, and to New Mexico Resident Contractors and New Mexico Resident Veteran Contractors in accordance with 13-4-2 NMSA 1978. In addition, McKinley County allows a preference to McKinley County Resident Businesses as defined in paragraph 2.24 of this policy. The McKinley County Business preference shall be in addition to the New Mexico Resident Business or New Mexico Resident Veteran business preference as allowed in 13-1-21- & 13-1-22 NMSA 1978.

## 8. **SPECIFICATIONS**

- 8.1 **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 Purchasing department determines that only the identified brand name item will satisfy the needs of the County.
  - c. The Purchasing department 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.
- 8.2 **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.

9. **MISCELLANEOUS BID AND PROPOSAL MATTERS**

9.1 **REJECTION OR 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. Budgetary constraints may be a determining factor for cancellation of bids and proposals.

- a. Prior to Opening. An Invitation For Bid or Request For Proposals may be cancelled in whole or in part prior to opening when the Central Purchasing Department 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 Department 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 9.1.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.
    4. Budgetary constraints (9.1.a.2)
  - e. Notice. When an Invitation For 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. Records relating to competitive sealed bids or proposal procurements must be retained for three (3) years.

9.2 **IRREGULARITIES IN BIDS OR PROPOSALS** (13-1-132).

The Purchasing Department 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 by making a determination.

9.3 **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 Purchasing Department. 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 but not limited to 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 19.
- 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.

9.4 **PRE-QUALIFICATION OF BIDDER** (13-1-134).

- a. Businesses may be pre-qualified by the Purchasing Department for particular types of services, construction or items of tangible personal property.
- b. Any mailing lists of potential bidders or offerors shall include but not be limited to such pre-qualified businesses. Businesses may pre-qualify with the Central Purchasing Department by completing a bidder's application form, to be obtained from the Central Purchasing Department.
- c. The fact that a business has been pre-qualified by the Purchasing Department does not represent a finding of responsibility.
- d. Businesses may also be pre-qualified by the Purchasing Department by obtaining a McKinley County Local Preference Certification.

10. **CONTRACT MATTERS**

10.1 **UNIFORM CONTRACT CLAUSES** (13-1-170).

- a. The County may require 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.

10.2 **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 Department;
- 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.

11. **TYPES OF CONTRACTS**

11.1 **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.

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

- a. Pre-requisites. Prior to the utilization of a multi-term contract, the Purchasing Department 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 departments, registrars, paying departments, 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.
  - d. Cancellation - If funds are not appropriated or otherwise made available to support continuation of the multi-term contract, the contract shall be cancelled.

## 12. **COST OR PRICING DATA**

### 12.1 **WHEN APPLICABLE** (13-1-138).

A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$25,000 and is to be awarded by a method other than competitive sealed bids and when such data is required to be provided by the Purchasing department.

### 12.2 **WHEN NOT REQUIRED** (13-1-139).

- a. Cost or Pricing data is not required when:
  1. The procurement is based on competitive sealed bid;
  2. The contract price is based on established catalog prices or market prices;
  3. The contract price is set by law regulation; or
  4. The contract is for professional services.

### 12.3 **CHANGE ORDERS OR CONTRACT MODIFICATIONS** (13-1-140 and 141).

- a. When required by the Central Purchasing Department, 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.

12.4 **CERTIFICATION** (13-1-142). The contractor, whether actual or prospective, shall submit certification of the cost or 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.

12.5 **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.

12.6 **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.

12.7 **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.

### 13. **MULTIPLE SOURCE AWARD**

13.1 **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 may be based on the lowest responsible bid or proposal received in each geographical area.

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

### 14. **STANDARD PURCHASING PROCEDURES**

14.1 **RECEIPT OF GOODS** (13-1-157).

- a. The using department is responsible for inspecting and accepting or rejecting deliveries.
- b. The using department shall determine whether the quantity and quality of the goods meet the specifications of the purchase order or contract.

- c. In the event that the using department determines that delivery is unacceptable, the using department shall immediately notify the Purchasing department.
- d. The using department shall notify the vendor of rejection and the vendor shall promptly make satisfactory replacement or supplementary delivery.
- e. In the event the vendor fails to comply, the County shall not have any obligation to pay for non-conforming items of tangible personal property.
- f. If delivery is acceptable, the using department shall certify proper delivery to the Finance Department by signing the receiving report that all goods or services have been received and accounted for. The receiving report shall be submitted to the Finance department within 2 (two) working days of accepted delivery.

14.2 **PAYMENT OF PURCHASES** (13-1-158).

- a. No payment shall be made unless the using department certifies that the services, construction or items of personal property have been received and meet specifications, or Unless prepayment is permitted under Section 4.1 (being Section 13-1-98 NMSA 1978) by exclusion of the purchase from the Procurement Code.
- b. Department Heads and authorized employees shall fully cooperate with the Finance Department to assure that a timely completion a purchasing packet is complete.
- c. A purchasing packet shall include the following: Invoice, Change order (if any), Purchase order, Requisition, Quote documentation, Receiving report, Packing slips (if any).
- d. A P-card purchasing packet shall include the following: receipts/invoices, signatures of users and department heads and liaisons, approvals for travel and agendas (if applicable), justifications for purchases, all proper coding of expenditures, and all required documentation by the McKinley County P-Card policy.

14.3 **RIGHT TO INSPECT THE PLANT** (13-1-159). A contract or solicitation therefor may include a provision allowing the County at reasonable times to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded.

14.4 **AUDITS**. (13-1-160 and 161).

- a. The County may at reasonable times and places audit the books and records of any person who has submitted cost or pricing data to the extent that such books or records relate to such cost or pricing data.
- b. Contractors supplying cost or pricing data must maintain books and

records that relate to such data for three years from the date of final payment under the contract unless a shorter period is authorized in writing.

- c. The same provisions relate in an audit of the books and records of any contractor or subcontractor under a negotiated contract or subcontract other than a firm fixed price contract.

15. **SMALL PURCHASES (13-1-125)**

15.1 **APPLICATION.** The provisions of this regulation apply to purchases of services or goods with a value not exceeding Twenty Thousand **\$20,000.00** Dollars.

15.2 **DIVISION OF REQUIREMENTS / SPLITTING PURCHASES.** Procurement requirements shall not be artificially divided so as to constitute a small purchase. Splitting purchases of the same or similar materials or services is prohibited.

15.3 **PURCHASE REQUISITION/ORDER REQUIRED.** No purchase shall be made by any County employee without a requisition and/or purchase order number. This number must appear on the vendor's invoice. Should an employee make an unauthorized purchase without a requisition and/or purchase order number, that employee will be liable for payment for that particular purchase and may be subject to disciplinary action.

15.4 **PURCHASE REQUESTS (13-1-169).** The using department'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.

- a. The head of the using department is responsible for securing specifications for needed services or items.
- b. Any employee who has prior written authorization from their department head, filed with the Purchasing Department, may sign requisition orders and pick up orders for their department.
- c. No requisition will be processed or items purchased without a requisition that is completely entered in the County's electronic purchasing system; and submitted by a County employee who has authorization from the using department head, and the authorization form filed in the Purchasing Department.
- d. **Placing Order.** Upon receiving a purchase order, the using department shall contact the vendor and place the order for goods or services to be received.
- e. **Completed Order.** Immediately upon receipt, all goods must be inventoried and receipt acknowledged by the using department in writing. The using department shall inventory and verify that the goods were received in acceptable and satisfactory condition by

signing the receiving report and submitting it to Finance.

15.5 **PURCHASE REQUISITION:**

All standard purchases under \$20,000 as authorized by these regulations require that a requisition be submitted to the Purchasing Department through the County's electronic purchasing system prior to making a purchase. An appropriate requisition shall be entered by an authorized department employee as recorded in the Purchasing Department, and shall contain all information as required by the Purchasing Department to include but not limited to:

- a. **Date**
- b. **Appropriation No.:** The appropriate budgeted line item account number must be shown on each requisition. It is the authorized employee's responsibility to assign the line item account number to the requisition.
- c. **Recommended Source:** Vendor to who the purchase order may be issued.
- d. **Item Number and Unit Quantity:** Specify unit and amount per unit being requested.
- e. **Article/Description:** Full description of the items included. Part number/catalog number or services should be sufficiently complete to identify the item being purchased and to allow processing of the requisition without requesting additional information. Common use items may be identified by brand names.
- f. **Unit Price Amount:** estimated cost per unit and a total estimated cost for line item.
- g. **Required Date of Delivery:** indicate required date of delivery for item to be purchased. Also indicate delivery method and location.
- h. **Department:** Enter department initiating the requisition.
- i. **Requisitioned By:** Enter name of authorized employee.
- j. **Quotes:** Attach written quotes obtained from vendors in compliance with the Small Purchase regulations (see sec. 14.8)
- k. Incomplete requisitions shall be returned to the requesting department for correction or additional supporting documents. Only after a requisition is deemed complete and accepted by the Purchasing Department, will a purchase order be processed.

15.6 **SMALL PURCHASES - \$5,000 OR LESS.**

- a. **Purchases up to \$5,000.00** Purchases of services, construction, or tangible personal property having a value of **\$5,000 or less**, shall be based on the best obtainable price, and shall be processed with a standard requisition and proper documentation through the Purchasing Department. The proper documentation will include an invoice or packing slip indicating the following: vendor name, address, telephone number, point of contact, date, price (including extensions and applicable taxes), and signed as received by the requestor.

15.7 **DOCUMENTATION.**

The name of the business submitting the quotation, and the telephone number, the date the quote was received and the amount, shall be attached to the requisition, which shall be maintained as a public record in

the Purchasing Department files.

- a. Prior to the award, the contents of any quotation shall not be disclosed to any other business from which a quotation was solicited.
- b. Award. Award shall be made to the businesses offering the lowest acceptable quotation.

15.8 **WRITTEN QUOTATIONS FOR SMALL PURCHASES OVER \$5,000.00 AND UP TO \$20,000.**

a. **Procedure:**

1. When a determination has been made by the requesting department, based on pricing estimations, that a purchase will or may exceed **\$5,000.00**, then a minimum of **3 (Three)** written quotations will be solicited by the requesting Department.
2. The requesting department is required to enter a requisition complete with an adequate description of quantity, quality, and type of goods or services needed.
3. Along with the requisition the requesting department shall submit written quotations showing the approximate cost of the goods or services needed.
4. The Requesting Department shall solicit written quotations from all those vendors who have requested to receive request for written quotations for such goods or services, and who are properly registered in the vendors file as maintained in the Purchasing Department.
5. In the event there are not three (3) known vendors which have goods/services available, less than three (3) quotes are permissible provided the Purchasing department has verified that the requesting department has made every reasonable attempt to obtain three (3) quotes.
6. All purchases exceeding **\$20,000** shall require formal solicitation procedures and legal advertisement as stated in Chapter 13, New Mexico State Statutes unless a County, City, State, GSA or Cooperative price agreement/contract will be utilized (see Sec.17.1). The Purchasing Department shall execute, manage and direct the formal solicitation process.

- b. Award. Award shall be made to the business offering the lowest acceptable quotation.
- c. The Purchasing Department may consolidate procurements.

15.9 **PROCUREMENT OF PROFESSIONAL SERVICES:**

All professional services having a value not exceeding **sixty thousand (\$60,000) dollars** may be procured directly and will be procured at the best negotiated price excluding applicable state and local gross receipts taxes.

**16. SOLE SOURCE OR EMERGENCY PROCUREMENT**

**16.1 SOLE SOURCE PROCUREMENT (13-1-126 through 13-1-128)**

- a. A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the Purchasing Department makes a determination, after conducting due diligence and consulting the using department, that there is only one source for the required items of tangible personal property, construction or nonprofessional services. In cases of reasonable doubt, competition should be solicited.
- b. Any request by a using department that procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need. This request shall be subject to review by the purchasing department.
- c. All sole source purchase requests shall be posted by the Purchasing Department on the County's website for thirty (30) days before a purchase order is issued.
- d. The Central Purchasing Department shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the County.

**Factors to be utilized when considering a sole source purchase:**

- 1. The subject of the contract be unique
- 2. Other services or items cannot meet the intended purposes
- 3. The use of "due diligence" as to the basis for the Sole Source rather than a "good-faith" review of available sources
- 4. Prohibits pre-selection through the drafting of narrow specifications.
- 5. Must be posted to the Sunshine Portal at least thirty (30) days before such award.
- 6. Contractor has the right to protest with fifteen (15) calendar days of the posting.

**16.2 EMERGENCY PROCUREMENTS (13-1-127 through 13-1-128)**

- a. An emergency is a situation creating a threat to public health, safety or welfare arising by reason of flood, epidemic, riot, equipment failure, or other similar events. The emergency condition must create an immediate and serious need for items of tangible personal property, services or construction that cannot be met through normal procurement methods and the lack of such services or construction seriously threaten:

1. The functioning of government;
  2. The preservation or protection of property; or
  3. The health or safety of any person.
- 
- b. Emergency procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency. Such procurement shall not include the purchase or lease-purchases of heavy road equipment.
  - c. The Purchasing Department may make or authorize others to make emergency procurements when an emergency condition arises, provided that emergency procurements shall be made with competition as is practicable under the circumstances and “due diligence” in determining the basis for the procurement and for the selection of the contractor.
  - d. The requesting department head shall submit a written determination of the basis for the emergency procurement and included with the requisition. The written justification shall be included with the procurement file.
  - e. requires posting of award information for emergency and sole source awards to the County web site. Posting of Emergency Contracts must occur within three (3) days.

16.3 **RECORDS** (13-1-128).

- a. The Purchasing Department shall maintain for a minimum of three years records of all sole source or emergency procurements.
- b. The record of each such procurement shall be public record and shall contain:
  1. The contractor’s name and address;
  2. The amount and term of the contract;
  3. A listing of the services, construction or items of tangible personal property procured under the contract; and
  4. the conditions necessitating the purchase.

16.4 **CONSTRUCTION EMERGENCY OR SOLE SOURCE PROCUREMENT**

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:

- a. Obtain a state wage rate determination pursuant to Section 13-4-11 NMSA 1978 if the construction contract is over \$60,000.

- b. 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.

17 **OTHER TYPES OF PROCUREMENTS.**

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

- a. The Purchasing Department 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 (GSA) 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 Department or a Central Purchasing Department 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 Department shall retain a copy of the State Purchasing Department contract or current price agreement relied upon for public inspection and for the use of auditors.

17.2 **COOPERATIVE PROCUREMENT** (13-1-135).

- a. The County may participate in, sponsor or administer a cooperative procurement agreement for procurement of any services, construction or items of tangible personal property with a state department, local public body, or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external procurement units involved.
- b. The Central Purchasing Department of the County may cooperate with the State Purchasing Department 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. Purchasing Department 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 Purchasing Department 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 a procurement.

17.4 **SMALL BUSINESS ASSISTANCE PURCHASES** (13-1-184)

- a. It is the policy of the state to encourage the County to do business with small businesses.
- b. The Purchasing Department shall take all reasonable action to insure the small businesses are solicited on each procurement for which they appear to be qualified.
- c. The Purchasing Department may make special provisions for progress payments to encourage procurement from small business in accordance with the regulations promulgated by the County.
- d. Bid Bonds (13-1-186). The Purchasing department may reduce bid bond, performance bond or payment bond requirements, except for construction contract performance or payment bonds, to encourage procurement from small businesses.

17.5 **PROCUREMENTS PURSUANT TO CORRECTIONS INDUSTRIES ACT** (13-1- 189).

The County may purchase items of tangible personal property and services offered pursuant to the provisions of the Corrections Industries Act (Sections 33- 8-1- to 33-8-15 NMSA 1978).

17.6 **USED ITEMS** (13-1-155).

- a. The Central Purchasing Department, 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 Department, 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 of 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 department, 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 CONDUCT**

### 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 **BRIBES, GRATUITIES, ETC.** (13-1-191).

All contracts and solicitations therefore 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 **WAIVERS** (13-1-194).

- a. The Purchasing department may grant a waiver from unlawful employee participation (13-1-190) or contemporaneous employment (13-1-193) if it determines that:
  - 1. The contemporaneous employment financial interest has been publicly disclosed;
  - 2. The employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
  - 3. The employee participation is in the best interest of the County.

18.6 **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.

## 19 **PROTESTS**

19.1 **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 Purchasing Department.
- 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 of 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.

19.2 **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 Purchasing Department.

19.3 **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.

19.4 **PROCUREMENTS AFTER PROTEST** (13-1-173).

In the event of a timely protest the Purchasing Department shall not proceed further with the procurement unless the Purchasing Department determines that the award of the contract is necessary to protect substantial interest of the County.

19.5 **AUTHORITY TO RESOLVE** (13-1-174).

The Purchasing Department and/or County Manager has the authority to take any action reasonably necessary to resolve a protest. The authority shall be exercised in accordance with these regulations and any standard operating procedure promulgated by the County Manager or Purchasing Department but shall not include the authority to award money for damages or attorney's fees.

- a. **Notice to Bidders and Offerors.** The Purchasing Department shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest or appeal is denied.
- b. **Notice to Using Department.** The Purchasing Department shall provide a copy of the protest to the using department that requested the solicitation.
- c. Timely Notice shall be given by first class mail, fax, email or interdepartmental mail.
- d. **Information Generally Available.** The Purchasing Department 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.

19.6 **WRITTEN DETERMINATION.** (13-1-175).

The Purchasing Department shall make a written determination on the merits of the protest as expeditiously as possible and shall furnish a copy of determination to the protestant, other bidders or Offerors and the using department. 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 judicial review of the final determination pursuant to Section 13-1-183 NMSA 1978.

19.7 **NOTICE OF DETERMINATION** (13-1-176). A copy of the determination shall be sent immediately to the protestant, the using department that requested the procurement and other bidders or Offerors involved in the procurement.

19.8 **RELIEF PRIOR TO AWARD** (13-1-181). If, prior to award, the Purchasing Department or County Manager 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.

19.9 **RELIEF AFTER AWARD** ( 13-1-182)

- a. **No Fraud or Bad Faith** If, after an award, the Purchasing Department or County Manager 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 Purchasing department 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 **DEBARMENT OR SUSPENSION** (13-1-177 through 13-1-180.1)

20.1 **AUTHORITY**

- a. The Central Purchasing office, after consultation with the using department, may suspend a person from consideration for award of contracts if the Central Purchasing Office, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to Section 13-1-178 NMSA 1978. The term of suspension pursuant to this paragraph shall not exceed three months; however, if a person, including a bidder, offeror or contractor, has been charged with a criminal offense that would be cause for debarment, the suspension shall remain in effect until the criminal charge is resolved and the person is debarred or the reason for suspension no longer exists.
- b. The Central Purchasing Department, after reasonable notice to the business involved, has the authority to recommend to the governing authority of the County the suspension or debarment of a business for cause in consideration for award of contracts other than contracts for professional services. The Purchasing department may continue contracts or subcontracts in existence at the time of suspension/ debarment.
- c. Debarment by the Purchasing department shall not exceed a period of three (3) years and suspension shall not exceed three (3) months if determination made that a person has engaged in conduct that constitutes cause for debarment.
- d. If criminal offense is the cause for a debarment, then suspension shall remain in effect until criminal charge is resolved and debarment occurs or the reason for suspension no longer exists.

20.2 **CAUSES** (13-1-178). The causes for debarment are set forth in Section 13-1- 178 NMSA 1978.

- a. Provides for suspension/debarment if criminal conviction or civil judgment for offense relates to honesty, integrity or business ethics.
- b. A civil judgement against a bidder , Offeror or contractor for a civil violation related to honesty, integrity or business ethics.

20.3 The Purchasing Department shall provide the business involved a copy of its recommendation for suspension or debarment\_The recommendation shall be mailed by certified mail, return receipt requested.

20.4 The business involved shall have ten (10) calendar days from the date of receipt of the recommendation of the Central Purchasing Department in

which to respond to the issues raised by the recommendation of the Purchasing Department.

20.5 The Purchasing department shall schedule a hearing at the next regularly scheduled County Commission meeting following receipt of the response of the effected business or expiration of the ten-day time limit, at which Purchasing department meeting a hearing shall be held to determine what action should be taken as a result of the recommendation and response thereto.

20.6 **DETERMINATION** (13-1-179). The Purchasing department shall issue a written determination which shall:

- a. State the reasons for the actions taken; and
- b. Inform the business involved of its right to judicial review.

20.7 **NOTICE** (13-1-180). A copy of the determination shall be immediately sent to the debarred or suspended business by certified mail, return receipt requested, and may also be sent electronically.

## 21 **JUDICIAL REVIEW**

21.1 **TIME LIMIT** (13-1-183). All actions for judicial review must be filed within thirty (30) days of receipt of notice of the final determination from the Purchasing Department.

21.2 **VENUE**. Venue is in the 11<sup>th</sup> Judicial District Court within and for the County of McKinley.

21.3 **STANDARD OF REVIEW**. All determinations made by the County shall be sustained unless arbitrary, capricious, contrary to law, clearly erroneous or not based upon substantial evidence.

## 22 **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.

22.1 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.

22.2 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 Purchasing department, 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 Department 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.

- 22.3 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 Department 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.

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

**23 MINIMUM WAGE RATES (CONSTRUCTION) (13-4-11).**

23.1 Every proposed construction contract in excess of \$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.

**24 CONSTRUCTION CONTRACT PROMPT PAYMENT 57-28-1 to 57-28-11.**

- 24.1 Section 57-28-1 through 57-28-11 NMSA 1978 Compilation, as amended now regulates payments due and owing to a contractor:
- a. Payments for amounts due shall be paid within twenty-one days after the owner receives an undisputed request for payment. Unless good cause exists, if the owner fails to pay the contractor within twenty-one days of the undisputed pay request, the owner shall pay interest to the contractor beginning on the twenty-second day after payment was due at the rate of one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued.
  - b. If an owner receives an improperly completed invoice, the owner shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed. The owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.
  - c. An owner shall not retain, withhold, hold back, or in any other manner not pay amounts for work performed.

- d. Ten days after certification of completion, any amounts remaining due the contractor or subcontractor due under the contract shall be paid upon presentation of a properly executed release and duly certified voucher and; a release if required, of all claims and liens against the owner arising under the contract other than such claims of the contractor, if any, as may be specifically excepted by the contractor or subcontractor from the operation of the release in stated amounts set forth in the release; and proof of completion.

24.2 “Good cause” issues can include, but not be limited to:

- a. defective work not remedied;
- b. third party claims filed or reasonable evidence indicating probable filing of such claims;
- c. failure of the contractor to make payments properly to subcontractors or for labor, materials or equipment;