



# **City of Santa Fe New Mexico**

# **Procurement Manual 2020**

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## I. Mission Statement and Goals

The mission of the Central Purchasing Office is to provide for the acquisition of property, tangible personal property (goods), services and construction consistent with law and ordinances adopted by the State of New Mexico and the Governing Body of the City of Santa Fe, 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.

The purposes of the Procurement Manual to provide safeguards for maintaining a procurement system of quality and integrity.

The Goals of the Central Purchasing Office are the following:

- Use the appropriate procurement methods when obtaining goods, services and construction;
- Purchase only the goods, services and construction that are needed, avoiding excess and waste;
- Obtain the best value for the money expended;
- Promote competition and allow a fair opportunity to compete for City business, through quotes, bids, and proposals;
- Ensure purchases are within budgeted limits;
- Conduct procurements in a manner to allow minority, women, and veteran-owned businesses and small businesses a fair opportunity in the solicitation and contract award process; and stimulate the local economy and local job market by providing local businesses the opportunity to compete for City business.

## II. Definitions

**“Addendum”** means a document or information added to clarify, modify or support the information in the original document.

**“Amendment”** means to revise, delete, add, update, correct or improve a solicitation or contract.

**“Approved”** means the Chief Procurement Officer has reviewed and accepted.

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

**“Artificially Dividing”** means using several, small procurements to avoid the requirement for a formal solicitation or to avoid committee approval.

**“Best Obtainable Price”** means the price at which goods, services and construction can be purchased which is most advantageous to the City; best obtainable price may be found by obtaining quotes or by other appropriate

methods; where there is only one vendor available for such a purchase utilizing a direct purchase order, the price would be the best obtainable price since it is the only price for that particular procurement.

**“Bidding Time”** means the period of time between the date the invitation to bid notice is published and the date and time set for receipt of bids.

**“Bidder”** means one who submits a bid in response to an invitation for bid or submits a quote in response to a call for formal or informal quotes.

**“Capital Improvement”** means facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality or county: (1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities; (2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways; (3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars (\$10,000) or more and having a life expectancy of ten years or more; and (4) parks, recreational areas, open space trails and related areas and facilities.

**“Central Purchasing Office”** means the office responsible for the control of procurement of items of tangible personal property, services or construction.

**“Change Order”** means a written order signed and issued by a procurement officer directing a contractor to make changes which changes the clause of the contract authorizes the procurement officer to order with or without the consent of the contractor.

**“Chief Procurement Officer”** means that person within the central purchasing office who is responsible for the control of procurement of items of tangible personal property, services or construction.

**“City”** means the City of Santa Fe, New Mexico which in the procurement context may act through the Finance Director, City Manager, or Governing Body.

**“City Employee”** means a person hired by the City who receives payment on an hourly or salaried basis through the payroll division of the Finance Department.

**“City Manager”** means the person appointed by the Mayor with the consent of the Governing Body to the role of City Manager.

**“Confidential Information”** means any information which is available to an employee because of their status as an employee with the City and which is not a matter of public knowledge or available to the public on request and may include all trade secrets, proprietary information, business and financial information, that is disclosed or made available during the procurement process and must not be available for public inspection of records.

**“Construction”** means the building, altering, repairing, installing or demolishing in the ordinary course of business any of the following: (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 conduit, heating or other similar mechanical work; or (14) similar work, structures or installations. "Construction" also includes the following activities: (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.

**“Contract”** means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable by law; in the context of this manual, a contract refers to an agreement between two or more parties for the procurement of items of tangible personal property, services, or construction.

**“Contract Modification”** means any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.

**“Contract Assignment”** means the transfer of rights and obligations arising under a contract from one party to a contract to another entity with the approval of the Chief Procurement Officer and the Requesting Department.

**“Contractor”** means a person or company that undertakes a contract or agreement to provide goods, services and construction to the City.

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

**“Definite Quantity Contract”** means a contract which requires the contractor to furnish a specified quantity of goods, services and construction at or within a specified time.

**“External Procurement Unit”** means any procurement organization not located in New Mexico which, if in New Mexico, would qualify as a state agency or a local public body. An agency of the United States government is an external procurement unit.

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

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

**"Finance Director"** means the Department head of the Finance Department, selected by the City Manager.

**"General Services"** or **"Services"** means the furnishing of labor, time, or effort by a contractor (excluding professional services) and not involving the delivery of a specific end product other than reports and other materials that are merely incidental to the required performance. "General Services" includes the furnishing of insurance but does not include construction or the services of employees of the City.

**"Governing Body"** means the City Council and the Mayor, when acting together as a decision-making body.

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

**"Invitations to Bid (ITB)"** means all documents utilized for soliciting sealed bids, including those attached or incorporated by reference.

**"Local Public Works Project"** means a project of the City that uses architectural or engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more, or landscape architectural or surveying services requiring professional services costing ten thousand dollars (\$10,000) or more, excluding applicable state and local gross receipts taxes.

**"Multi-Term Contract"** means a contract having a term longer than one year.

**"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.

**"Offeror"** means one who submits a proposal in response to a request for proposals.

**“Price Agreement”** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services, or construction to the City when the City issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

**“Procurement”** means purchasing, renting, leasing, or otherwise acquiring items of tangible personal property, services or construction and procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration. An agreement for the use or control of the City’s real property, such as a lease or license, which requires the provision of services for the benefit of the City may involve procurement; in that case, the City Attorney’s Office should make a determination regarding whether the procurement code applies to the transaction.

**“Procurement File”** means the official collection of records maintained by the Central Purchasing Office that are related to a particular procurement, including those records identifying the procurement method used and, if applicable, Invitation to Bid or Request for Proposal records related to the procurement, determinations of emergency or sole source, etc.

**“Professional Services”** means the service of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar services that require the application of specialized training or skills to a specific project.

**“Purchase Order”** means the document issued by the Central Purchasing Office that directs a vendor to deliver items of tangible personal property, services, or construction. A purchase order is used to encumber funds from department budget in order for the City to pay vendors that provide goods, services, or construction.

**“Purchase Request” or “Purchase Requisition”** means the document that requests the purchase of a specified service, construction or item of tangible personal property and may include but is not limited to the technical description of the requested item, delivery schedule, transportation requirements, suggested sources of supply, and supporting information.

**“Request for Proposals (RFP)”** means a solicitation for vendors and includes all documents, including those attached or incorporated by reference, used for the solicitation.

**“Request for Qualifications (RFQ)”** means a solicitation for information from vendors of a particular type of service about their respective abilities to perform a service and all documents, including those attached or incorporated by reference, used for the solicitation.

**“Requesting Department”** means the City Department responsible for overseeing the work or delivery of tangible personal property by a contractor.

**“Responsible Bidder or Offeror”** means a Bidder or Offeror who submits a responsive bid or 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, construction or items of tangible personal property described in the solicitations.

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

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

**“Small Purchase”** means the purchase of goods, services, or construction obtained through an exchange of value not exceeding sixty thousand dollars (\$60,000), excluding applicable state and local gross receipts taxes.

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

**“Software”** means the software, including code and processes that address specific business needs; separate from the operating system software. The City considers software tangible personal property.

**“Sole Source”** means tangible personal property, services or construction for which there is only one source and that source is unique and no other similar items of tangible personal property, services, or construction can meet the intended purpose of the procurement.

**“State Use Act”** means the law that requires the City to consult with a non-profit agency to facilitate purchases of the services of qualified individuals and community rehabilitation programs operated in the interest of persons with disabilities.

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



“Vendor” means a person or company who provides goods, services and construction to the City, see also “contractor”.

### **III. Central Purchasing Office**

Responsibilities of the Central Purchasing Office

- A. Perform all procurement functions for the City, except when otherwise expressly authorized by statute or ordinance or regulation of the City.
- B. Collaborate with the purchasing departments of other local public bodies and the State of New Mexico for cooperative procurements to maximize the benefits to the City.

### **IV. Compliance with Federal Funding**

Procurement expending federal funds shall comply with applicable federal laws and regulations. Such laws and regulations supersede the Procurement Code when federal funds are used and when the Procurement Code is inconsistent with those federal laws and regulations.

### **V. Preferences**

The City recognizes the value of revenue derived from local businesses and shall procure goods and/or services locally when possible, pursuant to Ordinance and this Manual, except for purchases using state and federal grant funds. Applicable state and federal law and regulations govern procurements using state or federal funds.

#### **A. Local Preference Qualification**

To qualify for a local preference, a vendor must attach a state of New Mexico Taxation and Revenue Department-issued, Resident Business certification of eligibility to its bid or proposal, showing that the business is located within the Santa Fe municipal limits. If an offer is received without a copy of the appropriate State of New Mexico Taxation and Revenue Department issued Business Registration Certificate, the preference will not be applied. A valid resident business certificate is issued by the taxation and revenue department pursuant to NMSA 1978 §13-1-22.

1. When the City makes a purchase using a formal bid process, it shall deem a bid submitted by a local resident business to be 3% lower than the bid submitted. In addition, if the bid includes subcontractors who are also local resident businesses, the City shall deem a bid submitted by a local resident business to be 6% lower than the bid submitted. If a non-local resident business hires all local resident business subcontractors, the City shall deem the bid to be 3% percent lower than the bid submitted.
2. When the City makes a purchase using a formal request for proposals process, not including contracts awarded on a point-based system, the

City shall award additional 6% of the total weight of all the factors used in evaluating the proposal to a local resident business. The City shall award an additional 3% of the total weight of all the factors used in evaluating the proposal to a non-local resident business who has hired all local resident business subcontractors.

3. When the City makes a purchase using a formal request for proposal process and the contract is awarded based on a point-based system, the City shall award additional point's equivalent to 6% of the total possible points to a local resident business. The City shall award an additional 3% of the total possible points to a business who has hired all local resident business subcontractors.

The maximum available local preference shall be 6%.

#### **B. Solicitations above One Million Dollars (\$1,000,000)**

1. The City shall deem a bid or proposal submitted by a resident business to be six percent (6%) lower than the bid actually submitted, if and only if at least fifty percent (50%) of the subcontracted services go to subcontractors who are resident businesses.
2. The City shall deem the bid or proposal submitted by a non-local resident business to be three percent (3%) lower than the bid actually submitted, if and only if at least fifty percent (50%) of the sub- contracted services go to subcontractors who are resident businesses.

### **VI. Exemptions from the Procurement Code**

All purchases are subject to the City's Procurement Manual with the exception of the items and services listed below. Although they are exempt from the terms of this manual, exempt purchases still require a written determination describing the exemption, the transaction and expectations of the parties. Approval from the Chief Procurement Officer for use of the exemption must be received by the requesting Department or Division and attached to the requisition.

1. Procurement of items of tangible personal property or services by the City from a state agency, a local public body or external procurement unit except as otherwise provided in NMSA 1978, §13-1-135 to §13- 1-137;
2. Purchases made under the State Use Act (NMSA 1978 §13-1C-1 through §13-1C-7);
3. Printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

4. Purchases of publicly provided or publicly regulated gas, electricity, water, sewer, telecommunication, cable television and refuse collection services;
5. Purchases of books, periodicals and training materials in printed or electronic format from the publishers or copyright holders thereof and purchases of print, digital or electronic format library materials by public libraries for access by the public;
6. Travel or shipping by common carrier or by private conveyance or to meals and lodging;
7. Purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;
8. Contracts with businesses for public school transportation services;
9. Purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;
10. The issuance, sale, and delivery of public securities pursuant to the applicable authorizing statute, with the exception of general financial consultants;
11. Contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;
12. Contracts for retirement and other benefits pursuant to NMSA 1978, §22-11-47 to §22-11-52;
13. Contracts with professional entertainers;
14. Contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers, and witness fees;
15. Contracts for service relating to the design, engineering, financing, construction, and acquisition of public improvements undertaken in improvement districts pursuant to Subsection J of NMSA 1978 §3-33-14.1 and in county improvement districts pursuant to NMSA 1978, Subsection J of §4-55A-12.1;
16. Works of art for museums or for display in public buildings or places;
17. Contracts entered into by the City for the operation and maintenance of a hospital pursuant to NMSA 1978, Chapter 3, Article 44, lease or operation of a county hospital pursuant to the Hospital Funding Act, or

operation and maintenance of a hospital pursuant to the Special Hospital District Act;

18. Purchases of advertising in all media, including radio, television, print and electronic;
19. Bond attorneys, if approved by the City council as part of the underwriting team involved in the issuance, sale, and delivery of public securities for City bonds or City-issued bonds;
20. Legal services for advice, consultation, and representation of the City;
21. Hospital and health care exemption. The provisions of the Procurement Code [NMSA 1978 §13-1-98.B] shall not apply to procurement of items of tangible personal property or services by the City through:
  - A. an agreement with any other state agency, local public body or external procurement unit or any other person, corporation, organization or association that provides that the parties to the agreement shall join together for the purpose of making some or all purchases necessary if the Central Purchasing Office makes a determination that the arrangement will or is likely to reduce health care costs; or
  - B. an agreement with any other state agency, local public body or external procurement unit or any other person, corporation, organization or association for the purpose of creating a network of health care providers or jointly operating a common health care service, if the purchasing officer makes a determination that the arrangement will or is likely to reduce health care costs, improve quality of care or improve access to care pursuant to NMSA 1978 §13-1-98.1.

and;

22. Purchases of materials grown, processed or manufactured in New Mexico by small businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by New Mexico or federal antipoverty programs or through private philanthropy.

## **VII. General Verses Professional Services**

A written determination on whether a service is professional or general must be obtained by the Chief Procurement Officer. Determinations may impact the method best suited for the procurement and the process that should be considered in the selection of a vendor. In addition, the type of contract determines the term limitations and insurance requirements.

## VIII. State Use Act

The State Use Act applies to the City intending to procure a general services contract (there is no dollar limit) only, if services are not provided in NM State Price Agreements.

**Departments will work with Horizons after the Scope of Work (SOW) has been approved for legal sufficiency by the City Attorney, and a determination of services has been deemed by the City's Chief Procurement Officer (CPO).**

If the CPO's determination has been deemed general services and there is not a NM State Price Agreement provided, the Requesting Department shall submit a copy of the legally sufficient Scope of Work via email to the non-profit agency selected by the State to facilitate the State Use Act, at the time of the adoption of this manual. (The non-profit agency the State selected is: **Horizons of New Mexico**, email address: [Asoliz@horizonsofnewmexico.org](mailto:Asoliz@horizonsofnewmexico.org), requesting review and response).

- A. If four (4) business days pass without a response from Horizons, the City shall deem the request of services denied. The Requesting Department shall submit to the Central Purchasing Office, the email sent to Horizons including a memo referencing the date the request was submitted to Horizons and indicating that there was no response within the four (4) day timeframe for inclusion in the procurement file. If Horizons responds, denying the opportunity to provide services, the Requesting Department shall attach a copy of the denial letter to its procurement submission for inclusion in the procurement file.
- B. If Horizons responds determining one of its service providers can provide the services, the Requesting Department shall coordinate an interview with Horizons of New Mexico to verify services can be provided as needed. If Horizons can provide the services, the Requesting Department must procure the services from Horizons.
- C. Alternatively to emailing, Requesting Departments may determine if Horizons provides the desired services by checking its website's listing of services available. If the services are not listed, the Requesting Department may print out the listing and submit it as a form of denial to the procurement. If the services are listed, the Requesting Department must email Horizons with the scope of work.

## IX. Procurement Method Based on Dollar Amount

### A. General – Artificial Division

1. Procurements shall not be artificially divided so as to constitute a small purchase to avoid a formal solicitation or to avoid committee approval. For example, services from a contractor anticipated to take a year and cost seventy-thousand dollars may not be divided into two, smaller contracts of less than sixty thousand dollars.

2. Likewise, a scope of work that would otherwise be accomplished by one contract or contractor may not be divided into two smaller scopes of work in order to avoid using a formal procurement method or to avoid committee approval.
3. City employees shall not disclose the contents of the written or oral offer of one business to another business until an award is made. An “award” in this context occurs when the City obtains all signatures on the contract(s) resulting from the procurement.

**B. Procurements up to \$20,000**

1. For purchases up to \$20,000, excluding applicable state and local gross receipts taxes, the Requesting Department shall submit one (1) valid written quote (best obtainable) for issuance of a direct purchase order (or prepare a small contract when terms and conditions are more detailed) for purchases of goods services, or construction based on the best obtainable price.
2. The Requesting Department shall attach documentation of the best obtainable price (quote) to the requisition as well as enter detailed information that specifies deliverables and any other expectations that were used in acquiring the best obtainable quote.

**C. Procurements above \$20,000 and up to \$60,000**

For purchases of goods, services, professional service or construction above \$20,000 and up to \$60,000, not including gross receipts taxes, the Requesting Department shall obtain at least three (3) valid written quotes. If the Requesting Department is unable to obtain quotes, a justification from the vendors will be required. If the apparent low is not chosen, a justification memo is required to be attached to the requisition.

**D. Procurements over \$60,000**

For purchases of goods, services, professional service or construction over \$60,000 the Requesting Department, upon determination from the Central Purchasing Office, shall solicit a formal request for proposal before entering into a contract. The contract shall be signed by the City Manager or the Governing Body, as appropriate.

**E. Competitive Sealed Bids- Invitation to Bid (ITB)**

All procurement shall be achieved by competitive sealed bids except for the following:

1. Competitive sealed proposals;
2. Small purchases;
3. Sole source procurements;
4. Emergency procurements;
5. Existing contracts; and
6. Purchases from antipoverty program businesses.

**a) ITB Requirements:**

i. An ITB shall include the following:

1. Specifications for the goods, services or construction to be procured;
2. Contractual terms and conditions applicable to the procurement;
3. Instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening;
4. The term of the contract and conditions of renewal or extension, if any;
5. A notice that the ITB may be cancelled and that any and all bids may be rejected in whole or in part when it is in the best interest of the City; and
6. A notice that reads substantially as follows: The Procurement Code, NMSA §13-1-28 through §13-1-199, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

ii. Incorporation by reference:

The ITB may incorporate documents by reference, provided that the ITB specifies where such documents can be obtained.

iii. Evaluation criteria:

The ITB shall set forth the evaluation criteria that will be used to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable. No criteria may be used in bid evaluation that are not set forth in the ITB.

iv. Bid submission:

Oral, telephonic and telegraphic bids are invalid and shall not be considered. Telegraphic or bids sent via FAX to a third party and delivered in a sealed envelope to the location where bids are to be received by the date and time shown in the bid, will be accepted for consideration.

v. Bid samples and descriptive literature:

1. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item.
2. "Bid sample" means a sample furnished by a bidder that shows the

characteristics of an item offered in the bid.

3. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the item bid.
4. Bid samples, when required, shall be furnished free of expense to the City 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.

vi. Bidding time:

Bidding time is the period of time between the date of distribution of the ITB and the time and date set for receipt of bids. In each case bidding time shall be set to provide bidders a reasonable time to prepare their bids. In no case shall the bidding time be shorter than the time required for publication under this Procurement Manual.

vii. Negotiation on an ITB:

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 Requesting Department 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 the budgeted project funds. Such negotiation is not permitted if the lowest bid was more than ten percent over the budgeted project funds.

**b) Correction or Withdrawal of Bids**

A bid containing a mistake discovered before bid opening may be modified or withdrawn by a bidder.

After bid opening, no modifications in the bid prices or other provisions of bids shall be permitted.

**c) Late Bid, Late Withdrawals and Late Modifications**

Any bid, withdrawal, or modification received after the established due date at the place designated for receipt of bids is late. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of City personnel directly serving the procurement activity.

**d) Bid opening**

- i. Upon its receipt by the Central Purchasing Office, each sealed bid and modification shall be time-stamped and must be stored in a secure place until the time and date of the bid opening.



- ii. If no bids are received or if all bids received are rejected a new ITB shall be issued. If upon re-bidding with no change in specifications from the first ITB, the bids received are unacceptable, or if no bids are secured, the Central Purchasing Office may purchase (i.e., as opposed to procure) the items of tangible personal property, construction or services in the open market at the best obtainable price.
- iii. Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time and place designated in the ITB. The name of each bidder, the amount of each bid and each bid item, if appropriate, the names and addresses of the required witnesses, and such other relevant information as may be specified by the Central Purchasing Office shall be recorded. The record shall be open for public inspection.
- iv. Each bid, except those portions for which a bidder has made a written request for confidentiality, shall also be open to public inspection. Any data, which a bidder believes should be kept confidential shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.
- v. After bids are opened, the Central Purchasing Office shall forward a copy of the bids received and bid tabulation to the Requesting Department.
- vi. The Requesting Department shall review the bid documents and bid tabulation sheet. If the award amount is \$60,000 or less, then the Requesting Department may enter a requisition. If the award exceeds \$60,000, then a memo of recommendation of award to the Central Purchasing Office, the Finance Committee and other committees of the Governing Body shall be submitted for approval.

**e) Identical Bids**

When two or more bids submitted are identical in price and are the low bid, the Central Procurement Office may:

- i. Award multiple vendors pursuant to NMSA 1978 §13-1-153 and §13-1-154;
- ii. Award to a resident business if the identical low bids are submitted by a resident business and a nonresident business;
- iii. Award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a resident business;

- iv. Award by lottery to one of the identical low bidders; or
- v. Reject all bids and resolicit bids or proposals for the required goods, services or construction.

**f) ITBs Developed by Contracted Professional**

In order to act as an agent for the City, the architect and/or engineer must be authorized pursuant to their contract with the City to act as the agent for the City. They may be responsible for the distribution of bid documents and plans, conducting pre-bid conferences, corresponding with bidders, writing any necessary addenda, reviewing contractor bids for accuracy as well as review for proper licensing of the prime as well as sub-contractors.

Contracts with such agents shall make clear that the agent may make recommendation to the City staff of the acceptability of the low bid for award or rejection, but the City retains the right of final approval or rejection of any and all bids pending approval of the central purchasing office.

**g) Steps to procure using an ITB**

- i. The Requesting Department shall develop specifications for the purchase that ensures the maximum possible practical competition, while still fulfilling the needs of the City.
- ii. Based on the specifications, the Requesting Department shall prepare a memo approved by the department director or designee approving the procurement of goods, services and construction and budget availability.
- iii. The Requesting Department shall forward the memo along with the ITB solicitation, contracts, and PO numbers for advertisements and an approved goods and/or services agreement to the Central Purchasing Office as an "ITB packet."

When a change or correction is needed on an ITB, the Central Purchasing Office will post the amendment/addendum to the City of Santa Fe's website and if prior to bid opening, email amendment/addendum to the registered vendors for that solicitation.

- iv. If the Central Purchasing Office cancels an invitation to bid, it shall make a determination containing the reasons for cancellation as part of the procurement file. If no bids or proposals are received or if all bids or proposals received are rejected and if the ITB or RFP was for any tangible personal property, construction or service, then the Requesting Department may then request a new solicitation be issued. If upon resoliciting the ITB or RFP, the bids or proposals received are unacceptable, or if no bids or proposals are secured, the City may purchase the tangible personal property, construction or services in the open market at the best obtainable

price. The best obtainable (quote) documentation shall be attached to the requisition.

## **F. Request for Proposals (RFP)**

### **a) RFP Requirements**

- i. Competitive sealed proposals, including competitive sealed qualifications-based proposals, shall be solicited and issued through a Request for Proposal (RFP) that shall include:
  1. The specifications for the services or items of tangible personal property to be procured;
  2. all contractual terms and conditions applicable to the procurement;
  3. the form for disclosure of campaign contributions given by prospective contractors to applicable public officials pursuant to NMSA 1978 §13-1-191.1;
  4. the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed;
  5. the requirements for complying with any applicable preference provisions as provided by law;
  6. all of the evaluation factors, and the relative weights to be given to the factors in evaluating proposals;
  7. a statement that discussions may be conducted with Offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions;
  8. a notice that the RFP may be canceled and that any and all proposals may be rejected in whole or in part when it is in the best interest of the City;
  9. a statement of how proposed costs should be submitted; and
  10. a notice that reads substantially as follows:

The Procurement Code, NMSA 1978 §13-1-28 through §13-1-199, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.
- ii. The RFP may incorporate documents by reference, provided that the RFP specifies where such documents can be obtained.
- iii. The manner in which proposals are to be submitted, including any forms for that purpose, should be designated in the RFP.

- iv. 30 calendar days between the date of issue and the proposal due date is the recommended minimum proposal preparation time. A longer preparation time may be required for complex procurements or for procurements that require substantial Offeror resources to prepare an acceptable proposal.

**b) RFP; Public Notice**

- i. The Central Purchasing Office shall issue public notice of the RFP to be published not less than twenty (20) days prior to the date set for receipt of proposals, unless a shorter time frame is requested (shall give public notice of the RFP in the same manner as provided in Section X) upon approval by the Central Purchasing Office.
- ii. The Requesting Department shall deliver to the Central Purchasing Office the following listed items no later than fifteen (15) calendar days prior to the proposed issuance date:
  - 1. A one-page notice suitable for distribution and advertisement that contains the procurement title, purpose statement, the issue date, the name of the Requesting Department conducting the procurement, the place where a copy of the RFP document may be obtained, the date and location of the pre-proposal conference, if one is held, the name, address and phone number of the procurement manager and the deadline for submission of proposals;
  - 2. A memo to the Central Purchasing Office that provides funding availability.
  - 3. A copy of the complete RFP document; for large or complex procurements, the draft RFP document shall be delivered to the Central Purchasing Office for review at least (15) fifteen days prior to the proposed issue date.

**c) Pre-Proposal Conferences**

Pre-proposal conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective Offerors known to have received the RFP. The conference should be held long enough after the RFP has been issued to allow Offerors to become familiar with it, but sufficiently before proposal due date to allow consideration of the conference results in preparing their proposals. Nothing stated at the pre-proposal conference shall change the RFP unless a change is made by written amendment as provided in this manual.

**d) Amendments to the RFP**

- i. Prior to submission of proposals, amendments to the RFP may be made in the best interest of the City.

- ii. After receipt of proposals established due date and time, the RFP and proposals shall not be modified and amended. The RFP shall be canceled in the best interest of the City, and a new RFP issued.

**e) Modification or Withdrawal of Proposals**

Proposals may be modified or withdrawn prior to the established due date. The established due date is both the time and date announced for receipt of proposals.

**f) Late Proposals, Late Withdrawals and Late Modifications**

Any proposal, withdrawal, or modification received after the established due date at the Central Purchasing Office for receipt of proposals is late. No late proposal, late modification, or late withdrawal will be considered unless the late proposal is due to the inaction of City personnel directly serving the procurement activity.

**g) Receipt and Opening Proposals**

- i. Receipt of Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date.
- ii. Opening. Proposals shall not be opened publicly and shall not be open to public inspection until after award of a contract. **Award in this context means the final required City signature on the contract(s) resulting from the procurement.**
- iii. An Offeror may request in writing nondisclosure of confidential data. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

**h) Evaluation of Proposals**

- i. Evaluation factors: The evaluation shall be based on the evaluation criteria set forth in the RFP. Numerical rating systems are required for requests for proposals-based procurements.
- ii. Evaluation committee: The Requesting Department shall appoint an evaluation committee prior to the due date for receipt of proposals. The size of the committee should be manageable and include both user and technical support representatives.
- iii. Proposals: For the purpose of conducting discussions under this manual, proposals shall be initially:
  - 1. responsive;
  - 2. non-responsive.
- iv. Disqualification: Non-responsive proposals are disqualified and eliminated from further consideration. A written determination from

the City's Chief Procurement Officer (CPO) in the form of a letter must be sent promptly to the disqualified non-responsive offeror setting forth the grounds for the disqualification and made a part of procurement file.

**i) Proposal Discussions and Negotiations**

- i. Discussions authorized: Discussions may be conducted with Responsible Offerors who submit responsive proposals.
- ii. Purposes of discussions: Discussions are held to clarify technical or other aspects of the proposals.
- iii. Conduct of discussions: If during discussions there is a need for any substantial clarification in the request for proposals, any substantial oral clarification of a proposal shall be reduced to writing by the offeror. Proposals may be accepted and evaluated without such discussion.
- iv. The City may employ a short list if it is in the best interest of the City.
- v. Conduct of competitive negotiations:  
Offerors shall be accorded fair and equal treatment with respect to any negotiations and revisions of proposals. The procurement should establish procedures and schedules for conducting negotiations. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the short-listed Offeror.

**j) Non-Disclosure**

The contents of any proposal shall not be disclosed so as to be available to competing Offerors during the negotiation process and prior to award.

**Award in this context means the final required City signature on the contract(s) resulting from the procurement.**

**k) Mistakes in Proposals**

- i. Modification or withdrawal of proposals: Proposals may be modified or withdrawn prior to submission date and time.
- ii. Technical irregularities: Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Chief Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the City. Examples include, but are not limited to, the

failure of an Offeror to:

1. return the number of signed proposals required by the RFP;
2. sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or
3. acknowledge receipt of an amendment to the RFP, but only if:
  - a) it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or
  - b) the amendment involved had no effect on price, quality or quantity.

**l) Steps for the Request for Proposals process**

- i. For all procurements using an RFP method, the Requesting Department shall provide a memo, the draft RFP, copy of email providing Legal sufficiency and procurement determination from the Chief Procurement Officer to include a payment method for advertisement as an "RFP packet."
- ii. The Chief Procurement Officer or designee shall approve the RFP for advertising.
- iii. The Central Purchasing Office shall submit the legal advertisement to the local newspapers, post the RFP to the City of Santa Fe website, and email a finalized copy of the RFP to the Requesting Department for its files.
- iv. The Central Purchasing Office may require a contractor to submit cost or pricing data when the contract is expected to exceed twenty-five thousand dollars (\$25,000) and is to be awarded by a method other than competitive sealed bids.
- v. Prior to the time and date for submission of proposals, only the Requesting Department or Chief Procurement Officer may communicate with the Offerors. The Requesting Department fields all questions and consults if needed with City staff with technical expertise. The Requesting Department prepares the addendum and forwards it to the Central Purchasing Office. Only the Central Purchasing Office may issue a notice of addendum.
- vi. After the deadline for submission, the Central Purchasing Office shall open the proposals and distribute them to the Requesting Department. There is not a public opening for an RFP.

**m) Evaluation Committee**

- i. The Requesting Department shall designate an evaluation committee of at least three members which City employees must be majority and shall

include City employees and committee members as deemed necessary to provide adequate expertise in a given area.

- ii. The evaluation committee shall review and evaluate the proposals, taking into consideration the evaluation criteria set forth in the RFP.
- iii. The evaluation committee shall determine the proposal that is most advantageous to the City.
- iv. The Requesting Department shall review the evaluation sheets for accuracy, compile the scores into an evaluation summary, and submit to the Central Purchasing Office. Purchasing staff shall review evaluation and tabulation score sheets for accuracy.
- v. Negotiations may be conducted with responsible Offerors who submit proposals. This section should not apply to architects, engineers, landscape architect and surveyor who submit proposals.
- vi. Until procurement is finalized by the Governing Body (or other final approval authority, if applicable), proposals shall remain confidential. When the Governing Body gives final approval, all proposals shall then become public information.
- vii. A request for proposal or any other solicitation may be canceled and proposals may be rejected in whole or in part when it is in the best interest of the City. The Chief Procurement Officer shall make a determination containing the reasons for cancellation part of the procurement file. (See Section IX. E. g. iv.)

## **X. Public Notice**

- A. The Central Purchasing Office shall publish an ITB, proposal or a notice thereof not less than ten (10) calendar days prior to the date set forth for the opening of bids or due date of the proposal.
- B. Copies of the notice or the ITB involving expenditures of more than twenty thousand dollars (\$20,000) shall be sent by email to those businesses that have signified in writing an interest in submitting bids for particular categories of goods, service or construction unless otherwise agreed upon.
- C. A deposit fee may be set for construction ITB's as long as the deposit equals the full cost of reproduction and delivery of the documents for bid. The deposit fee, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents of the bid but not less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the applicable City department.



## **XI. Multi Source Awards**

- A. The City may make a multiple source award when two or more Bidders or Offerors are necessary for adequate delivery or service. Multiple source awards shall not be made when a single award will meet the needs of the City without sacrifice of economy or service. Awards shall be limited to the least number of suppliers in one geographical area necessary to meet the requirements of the City. A multiple source award shall be based upon the lowest responsible bid or proposal received in each geographical area unless the award is made in response to a qualifications-based proposal.
- B. The Requesting Department shall make a request setting forth the reasons for a multiple source award and include the request with documentation for approval from the Central Purchasing Office.
- C. There are statutory limitations on permissible individual or cumulative multisource engineering and architecture contracts. If a Requesting Department seeks to use a multisource award for these services, it should consult with the Central Purchasing Office. See NMSA 1978, §13-1-154.1

## **XII. Emergency Procurement**

- A. The Requesting Department shall complete the emergency procurement form which includes the approval by the department director.
- B. The Chief Procurement Officer shall make a determination for emergency procurements when the service, construction or item of tangible personal property procured:
  - 1. is needed immediately to:
    - a. control a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, and riot, act of terrorism, equipment failure or similar event;
    - b. or to plan for such reasons requiring procurement under emergency conditions;
  - 2. cannot be acquired through normal procurement methods.
- C. Once the Chief Procurement Officer makes the authorization, the Requesting Department shall:
  - 1. employ a competitive process to the extent practicable under the circumstances; and
  - 2. use due diligence in determining the basis for the procurement and in selecting a contractor.
- D. A completed written determination of the basis for the emergency procurement and for the selection of the particular contractor or vendor approved by the

Central Purchasing Office, the City Attorney and the City Manager must be included in the procurement file.

The Department making a purchase shall also submit all information pertaining to the emergency procurement to the Central Purchasing Office, including any applicable quotes for pricing, qualifications, and invoicing, etc., for inclusion in the file.

- E. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.
- F. Approval Authorities: After the Requesting Department develops the request, the Finance Director and City Manager may approve up to the amount of the emergency procurement they are authorized by the Governing Body. Any amount exceeding the purchase amount permitted for the City Manager's approval must be approved by the Governing Body at next Governing Body meeting.
- G. After signatures have been obtained for approval of the emergency, the requesting Department will forward the emergency determination form along with the procurement method and contract if required to the Central Purchasing Office.
- H. Planning and Preparation for Emergency Response: Money expended pursuant to an emergency procurement for planning and preparing for emergency response shall be accounted for and reported to the Central Purchasing Office within 60 days after the end of each fiscal year.
- I. Procurements over \$20,000: Prior to approval, the Chief Procurement Officer shall use due diligence to confirm that the basis for and selection of a particular contractor meet the requirements for an emergency procurement.
- J. Retention of Records: The Central Purchasing Office shall maintain, for a minimum of three years, records of emergency procurements. The record of each such procurement shall be public record and shall contain:
  - 1. the contractor's name and address;
  - 2. the amount and term of the contract;
  - 3. a listing of the services, construction or items of tangible personal property procured under the contract; and
  - 4. the justification for the procurement method.
- G. Public Posting: Within three business days of awarding, the Central Purchasing Office shall post all emergency procurements publicly on the City of Santa Fe website and shall transmit the notice to the State Purchasing Agent for posting on the state Purchasing Agent's website. The posting of the notice shall not halt the procurement, but only serves as notice that the procurement was made under emergency conditions.

### **XIII. Sole Source Procurement**

#### **A. Conditions for use:**

A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the Chief Procurement Officer, employing due diligence, determines, in writing, that the following factors are met:

1. after a good faith review of available resources in consultation with the Requesting Department, that there is only one source for the required service, construction or item of tangible personal property;
2. the service, construction or item of tangible personal property is unique, and this uniqueness is substantially related to the intended purpose of the contract; and
3. other similar services, construction or items of tangible personal property cannot meet the intended term or purpose of the contract.

#### **B. Steps to procure by sole source:**

- (1) Requesting Department: Any request by a department that procurement be restricted to one potential contractor shall be accompanied by a written memo approved by the department director explaining as to why no other will be suitable or acceptable to meet the need. The written explanation shall be made upon a form Exhibit E.
- (2) Posting: At least thirty days before an award of a sole source contract, the Central Purchasing Office shall post notice of its intent to award the contract on the City's website and shall transmit the notice to the State Purchasing Agent for posting on the State Purchasing Agent's website. Notice shall identify , at a minimum:
  - i. the parties to the proposed contract;
  - ii. the nature and quantity of the service, construction or item of tangible personal property being contracted for; and
  - iii. the contract amount.
- (3) Negotiations: The Central Purchasing Office shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the City as assisting with negotiations with the Requesting Department.
- (4) Protest: Any qualified potential contractor who was not selected for a sole source purchase may protest to the Central Purchasing Office. The

protest shall be submitted: (1) in writing; and (2) within 15 calendar days of the notice of intent to award a contract being posted by the Central Purchasing Office. The Central Purchasing Office shall then reconsider its selection.

- (5) Limitations: The City shall not circumvent the sole source request and posting and award process by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.

#### **XIV. Procurement under Existing Contracts**

The City may contract for goods, services or construction using existing contracts as follows with the exception of professional services:

- A. Using federal supply contracts (GSAs). If the item, services or construction meeting the same standards and specifications as the items to be procured are listed in a current federal supply contract (GSA), and if the offered price is equal to or less than the contractor's current GSA, and the contractor has indicated in writing a willingness to extend such contractor pricing, terms, and conditions to the City through a purchase order, then the City may procure using the GSA if the following conditions are met:
  - (1) The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and
  - (2) The purchase order adequately identifies the price agreement relied upon.
- B. Through the use of a New Mexico State Price Agreement (SPA) or other approved agreement. If the item, services, or construction meeting the same standards and specifications as the items to be purchased has are included in a current price agreement and the vendor has indicated in writing a willingness to extend those terms to the City, the SPA or other agreement may be used to purchase those products, if the following conditions are met:
  - (1) The purchase order adequately identifies the price agreement relied upon; and
  - (2) The agreement either specifically covers local governments in New Mexico or the vendor indicates a willingness to extend the contract's pricing, terms, and conditions to the City.

#### **XV. Cooperative Agreements**

The City may either participate in, sponsor, or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body, or external procurement unit in accordance with an agreement entered

into and approved by the Governing Body and the governing authority of the City or external procurement unit involved.

The cooperative procurement agreement shall specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative procurement agreement entered into pursuant to this section shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the contracting parties may be located outside New Mexico. An approved and signed copy of all cooperative procurement agreements entered into shall be filed with the Chief Procurement Officer. A cooperative procurement agreement entered into is limited to the procurement of items of tangible personal property, services or construction.

Steps to procure using a Cooperative Agreement:

1. The Requesting Department shall identify a contract that includes the goods and/or services desired.
2. The Requesting Department must obtain a cooperative agreement from the vendor that identifies an agreement between the vendor and the City of Santa Fe and forward it to the Chief Procurement Officer for review and approval.
3. The Requesting Department must forward the cooperative agreement to the Governing Body for approval.

## **XVI. Contract Administration Procedures**

The Requesting Department shall administer all aspects of each contract. "Contract administration" includes but is not limited to the following duties:

- a) Obtain and retain for audit purposes any and all documentation relating to services performed including invoices, payments, and work products relating to services rendered.
- b) Request review by the City Attorney's Office to ensure that all contracts entered into contain all required City, state and federally mandated clauses and all City, state and federal laws are complied with.
- c) Ensure contractors perform in accordance with the terms, conditions and specifications of the contract.
- d) Verify in writing that all City, state and federal requirements have been adhered to in cooperative procurements and retain verification in procurement file.
- e) Obtain and retain in the procurement file any and all applicable bonds and insurance certificates relating to the contract.
- f) Ensure all services are performed and payments are made under a currently valid purchase order or contract / contract amendment. Departments shall not make payments until goods and/or services are received or services have been

rendered.

## **XVII. Approval Procedures for Contracts and Modification/Amendment/Change Orders to Contracts**

1. Department review: After the Requesting Department completes the selection of a vendor pursuant to one of the procurement methods described in Section IX, the Department Director or Designee shall approve the scope of work, proposed budget, and any modifications to the City's standard contract template that are requested by the vendor.
2. City Attorney's Office Review: The Requesting Department shall submit proposed contract, including any changes to the template requested by the vendor, to the City Attorney's Office for review.
3. Central Purchasing Office Review: The Requesting Department shall submit proposed contract along with a summary of contract, to the Central Purchasing Office for review of procurement.
4. Budget Office Review: The Requesting Department shall submit proposed contract with a summary of contract, to the Budget Office for review for sufficient budget.
5. Vendor signature: After City Attorney's Office, Central Purchasing Office and Finance Department review, the Requesting Department shall obtain the vendor's signature on the contract. A contract may be submitted for Committee review prior to obtaining the vendor's signature, but the final approval authority shall not sign until the vendor signs.
6. Committee Review is obtained when the Governing Body is the final approval authority. To obtain Governing Body approval, refer to the Governing Body Rules on how to obtain approval. (this subsection is subject to changes in the Governing Body's procedures)

## **XVIII. Changes to Contracts.**

If allowed in the contemplated scope of work of a contract, a change order or other contract amendment may modify a purchase price. When required by the Chief Purchasing Officer, the Requesting Department will receive from the contractor cost or pricing data prior to the execution of any change order or contract modification, whether or not cost or pricing data was required in connection with the initial award of the contract, when the change order or modification involves aggregated increased or aggregate decreases that are expected to exceed twenty-five thousand dollars (\$25,000).

A contractor required to submit cost or pricing data shall certify that to the best of its knowledge and belief the cost or pricing data submitted was accurate, complete

and current as of a specified date.

All changes to contracts procured pursuant to a competitive, sole source, or emergency procurement must be within the originally contemplated scope of work.

## **XIX. Authority to Enter and Amend Contracts**

At the time of this manual adoption, the City Code establishes the following:

- A. For purchases of up to the amount the Finance Director is authorized to make without City Manager or Governing Body involvement is \$5,000 cumulatively including all amendments and excluding taxes. During the term of a contract, any modification/amendment/change order that results in compensation up to \$5,000, cumulatively, may be approved pursuant to signature by the Requesting Department Director and the Finance Department Director, the City Attorney's Office, the Chief Procurement Officer and the City Clerk.
- B. For purchases of up to the amount the City Manager is authorized to make without Governing Body involvement is \$60,000 excluding taxes cumulatively, including all amendments. During the term of the contract, any modification/amendment/change order that results in compensation up to \$60,000, cumulatively, shall require review and approval by the Requesting Department Director, the Finance Department Director, the City Attorney's Office, the Chief Procurement Officer, the City Clerk, and the City Manager.
- C. For purchases that exceed the approval authority for the City Manager, above \$60,000, excluding taxes, cumulatively, including all amendments. During the term of the contract, any modification/amendment/change order that results in compensation over \$60,000.00 requires review and approval by, the Requesting Department Director, Finance Department Director, the City Attorney's Office, the Chief Procurement Officer, the City Clerk and the Governing Body.

## **XX. Retroactive Approval for a Contract or Contract Amendment**

The Procurement Code requires that all non-exempt procurement by the City shall be achieved by competitive sealed bids or competitive sealed proposals except for small purchases, sole source procurements, emergency procurements, and existing contracts.

Failure of retroactive approval for contracts and contract amendments that fulfill all of the requirements of this manual and the Procurement Code, the City will approve the date requested in writing by the Requesting Department on the memo accompanying the request as long as the requested approval date is within thirty (30) days of the expiration of the contract.

For retroactive approval of contracts and contract amendments apart from the approval given pursuant to the provisions of this manual, the City may grant additional retroactive approval to a contract or contract amendment, based upon exceptional circumstances, where all the following conditions are met:

- A. the services performed without the City's prior approval of the contract did not occur as the result of repeated mistakes or willful misconduct of the Requesting Department;
- B. the failure to obtain the City's retroactive approval will prevent the Requesting Department from fulfilling its obligations;
- C. the Requesting Department provides to the City Manager a written, factual, explanation of the matters described in Paragraphs (1) and (2) signed by the department director;
- D. the Requesting Department requested, through a public officer or employee with authority to make such a request, the contractor to perform services that were then actually performed by the contractor in good faith reliance that it would be paid for those services;

The Procurement Code, NMSA 1978 §13-1-182, as amended, governs situations in which the City has denied a request for retroactive approval of a contract or contract amendment due to the department's failure to meet the requirements of this rule.

## **XXI. No indemnification or Insurance**

- A. Tort liability: Except as provided for in the Tort Claims Act, NMSA 1978, §41-4-1 to - 27, no contract shall contain any provision whereby the City agrees to indemnify or provide tort liability insurance for any contractor.
- B. Other risks: No contract shall contain any provision whereby the City agrees to indemnify or provide a contractor with insurance for non-tort risks, unless the provision has been approved in writing by the City's risk management division.
- C. Contract provisions void: Any indemnification or insurance provision in any contract executed in violation of this section shall be void and of no effect.

## **XXII. Multi-term Contracts**

- A. A multi-term contract for items of tangible personal property, construction, or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time deemed to be in the best interests of City, not to exceed four (4) years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting.
- B. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed ten (10) years, including all extensions and renewals, except that for a contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978], the term shall not exceed twenty-five (25) years, including all extensions and renewals.



- C. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
- D. A contract for professional services, of any amount, may not exceed four (4) years, including all extensions and renewals except for the following:
  - 1. a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding;
  - 2. Services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act.

The Chief Procurement Officer shall make a determination that:

- 1. the estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- 2. the contract will serve the best interest of the City.

When funds are not appropriated or otherwise made available to support continuation of performance of a multi-term contract in a subsequent fiscal period, the Central Purchasing Office, in consultation with the City Attorney's Office, shall cancel the contract by providing the contractor notice that the funds were not appropriated.

### **XXIII. Gross Receipts Tax**

The City pays Gross Receipts Tax only as required by law and enforced by the State of New Mexico Taxation and Revenue Department. In general, the City pays taxes on professional services, non-professional services, labor, construction, and construction materials. The City is exempt from gross receipts tax on tangible items. If there is a question concerning the tax application for a specific purchase or project, the Requesting Department should contact the Central Purchasing Office for clarification. The City shall not be responsible for paying gross receipts tax above the required state compensating tax rate, due to failure to charge and collect tax on the part of the vendor.

### **XXIV. Certificates of Insurance**

Prior to any purchase that includes labor and in accordance with the contract, vendors must provide a Certificate of Insurance to the City of Santa Fe or have a certificate on file with the City. The Certificate of Insurance shall include all General Liability, Auto Liability, and Worker's Compensation coverage as required. Minimum coverage requirements are General Liability at \$1,050,000; Auto Liability at \$1,050,000; and Worker's Compensation at \$1,000,000.

Certificates of Insurance are required for services only.

## **XXV. Protest Rights and Procedures**

Any Bidder or Offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the City's Central Purchasing Office.

The protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise thereto.

## **XXVI. Payments for Purchases**

- A. No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the Requesting Department certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under NMSA 1978 §13-1-98 by exclusion of the purchase from the Procurement Code [NMSA 1978 §13-1-28 through §13-1-199].
- B. Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the Central Purchasing Office or Requesting Department receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the Central Purchasing Office or Requesting Department shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.
- C. Except as provided in Subsection D of this section, upon certification by the Central Purchasing Office or the Requesting Department that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency.
- D. If the Central Purchasing office or the Requesting Department finds that the services, construction or items of tangible personal property are not

acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action.

- E. Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission [public regulation commission].

## **XXVII. Campaign Contribution Disclosure and Prohibition**

- A. This section applies to prospective contractors with the City of Santa Fe Governing Body. The prospective contractor shall disclose all campaign contributions given to an applicable public official of the City of Santa Fe during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period.
- B. The disclosure shall indicate the date, the amount, the nature and the purpose of the contribution. The disclosure statement shall be in a form developed and made available electronically. The City of Santa Fe that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor for each competitive sealed proposal, sole source or small purchase contract. The form shall be filed with the City of Santa Fe as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.
- C. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family member have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.
- D. A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.
- E. A solicitation or proposed award for a proposed contract may be canceled pursuant to NMSA 1978 §13-1-181 or a contract that is executed may be ratified

or terminated pursuant to NMSA 1978 §13-1-182.

## **XXVIII. Contingent Fees Prohibited**

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

## **XXIX. Employee Conduct**

- A. It is unlawful for any City employee to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.
- B. An employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest with regard to matters pertaining to that trust.

## **XXX. Contemporaneous Employment Prohibited, Waivers**

It is unlawful for any City employee who is participating directly or indirectly in the procurement process to become or to be, while a City employee, the employee of any person or business contracting with the City.

### **Waivers**

The City Manager may grant a waiver upon making a determination that:

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

## **XXXI. Use of Confidential Information Prohibited**

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

## **XXXII. Penalties**

City employees found to be in violation of the City Procurement Policy and/or State of New Mexico Procurement Code may be subject to disciplinary action in

accordance with the City personnel policy and/or collective bargaining agreement, up to and including discharge. Violation of the Procurement Code may result in suspension of purchasing privileges, revocation of purchasing privileges and possible civil and criminal penalties.

City employees found to be in violation of the City Procurement Policy or State of New Mexico Procurement Code will be notified in writing by the Central Purchasing Office of the violation. A copy of the violation notice will be sent to the Department Director and Human Resources Department.

**a) Civil Penalty**

Any person, firm or corporation that knowingly violates any provision of the Procurement Code [NMSA 1978, §13-1- 28 through §13-1-199] is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code. The district attorney with jurisdiction in the City is empowered to bring a civil action for the enforcement of any provision of the Procurement Code. Any penalty collected under the provisions of this section shall be credited to the general fund of the City.