PURCHASING MANUAL

SECTION I. PURCHASING PROCEDURES

SECTION II. FEDERAL TRANSIT ADMINISTRATION BEST PRACTICES PROCUREMENT MANUAL

SECTION I.

PURCHASING PROCEDURES

SECTION II.

FEDERAL TRANSIT ADMINISTRATION BEST PRACTICES PROCUREMENT MANUAL

Preface and Table of Contents Only

(Best Practices Procurement Manual Available upon Request)

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1. GENERAL POLICIES

1.1 PURCHASING DUTIES AND FUNCTIONS

1.1.1 The Purchasing Division is created within the Finance Department and subject to the authority of the Finance Department Director. The Purchasing Director shall be the administrator of the Purchasing Division. The purpose of the Purchasing Division is to:

- provide fair and equitable treatment of all persons involved in public procurement;
- maximize the purchasing value of public funds; and
- provide safeguards for maintaining a procurement system of quality and integrity.

1.1.2 All regulations may be liberally interpreted and applied to promote these purposes and policies.

1.1.3 The duties, functions and responsibilities of the Purchasing Director and the Division personnel are to:

a. observe and enforce the procedures outlined in the City Purchasing Manual;
b. encourage competitive procurement at all times;
c. conduct the Purchasing Division in such a way that vendors will (a) be aware of the fairness of the awards, (b) be encouraged to continue bidding and (c) furnish competition to assure the City the highest quality materials at the lowest possible cost;
d. investigate and report any possibility of collusion among bidders and/or parties;
e. purchase or contract for all materials, tangible personal property, services and professional services for the City;
f. keep abreast of current developments in the field of procurement, prices, market conditions and new products and investigate, research and analyze new developments in the field of procurement for the benefit of the City;
g. explore the possibilities of quantity buying to take full advantage of discounts;
h. join with other governmental agencies in cooperative purchasing plans when it is for the best interest of the City;

i. advise and assist in the formulation of policies and procedures relative to procurement activities of the City and to keep the City Manager, elected officials and departments advised of such policies and procedures;

j. be responsible for the Central Warehouse, Auto Parts and Fuel inventories;

k. ensure proper inspection of materials upon delivery, although the responsibility for such inspection may be delegated to the using department and subject purchased articles to such tests as deemed necessary to determine their compliance with specifications;

l. properly store and dispose of surplus and obsolete property and materials;

m. ensure use of City property or equipment is restricted for use in the best interest of the City and the public;

n. when appropriate, sign and issue Non-Taxable Transaction Certificates as requested in writing by vendors;

o. adequately maintain fixed assets records, recommend capital outlay replacement policies and dispose of fixed assets to obtain the greatest value to the City and to comply with applicable statutes;

p. issue vehicles and monitor City motor pool operations and maintenance. Review and monitor City vehicle regulations and distribute fuel usage reports to using departments; and

q. be responsible for the Fleet Management Section and the repair and preventive maintenance of City owned vehicles and heavy equipment.

1.1.4 The Purchasing Division Director has the authority to interpret the meaning of provisions within the Purchasing Manual.

1.2 CITY EMPLOYEE RESTRICTIONS

The following provisions apply to all City employees:

1.2.1 UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED

1. It is unlawful for any City employee to participate directly or indirectly in a procurement when the employee knows or has reason to know that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.

2. 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, unless the employee or member of the employee's immediate family knows or has reason to know the contents of the blind trust.

1.2.2 CONTEMPORANEOUS EMPLOYMENT

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 governmental body by whom the employee is employed.

1.2.3 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.

1.2.4 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.

1.2.5 BRIBES, GRATUITIES, KICK-BACKS

Criminal laws will apply prohibiting bribes, gratuities and kickbacks received by a City employee.

1.2.6 CIVIL PENALTY

Any person, or business that willfully violates any provision of the City Purchasing Manual is guilty of:

a. A misdemeanor if the transaction involves fifty thousand dollars ($50,000.00) or less: or

b. A fourth degree felony if the transaction involves more than fifty thousand dollars ($50,000.00).

1.2.6.1 In addition, an amount equal to the value of any goods or services received or transferred in violation of the City Purchasing Manual may be imposed as a civil penalty.

1.2.6.2 Any business or person that violates the Purchasing Manual may be guilty of a misdemeanor.

1.3 PURCHASING CODE OF ETHICS

The Purchasing Division and its employees, in accord with professional principles, will:

- **a.** serve under these principles to the advantage of the City of Santa Fe;
- **b.** acknowledge the dignity and worth of the services rendered to the City and the social responsibilities assumed as a trusted public servant;
- **c.** be governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the City and the public being served;
- **d.** acknowledge that personal aggrandizement or personal profit obtained through the misuse of public or personal relationships is dishonest and not tolerable and may be subject to civil or criminal penalties;
- **e.** identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved;
- **f.** acknowledge that the Purchasing Division staff should at no time or under any circumstances, accept directly or indirectly, gifts, gratuities, entertainment or other things of value from a vendor (other than of minimal value, i.e., less than $50 on an annual basis;)
- **g.** keep the City administration informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts, but personally remain in the background;
- **h.** resist encroachment on control of personnel in order to preserve integrity as a professional and handle all personnel matters on a merit basis to ensure appropriate qualifications are possessed to meet position requirements. Political, religious, racial, ethnic, gender and age considerations shall not be considered in personnel administration of the Purchasing Division;
- **i.** not seek or dispense personal favors and handle each administration problem objectively and empathetically on the basis of principles and justice without discrimination; and
- **j.** subscribe to and support the professional aims and objectives of the recognized purchasing institutions and associations.

1.4 GENERAL PROVISIONS

1.4.1 APPLICABILITY OF PURCHASING MANUAL

Except as otherwise noted, these regulations apply to every expenditure by the City for the procurement of items of tangible property, services, construction and professional services. In situations determined to be applicable by the City Manager, the regulations may be applied for selection of use of City assets, properties or other non–expenditure situations.

1.4.2 Other sections of state statutes, federal law or City ordinances, and rules and regulations of authorities having jurisdiction over applicable item(s) shall also apply and deemed to be included in this manual.

1.4.3 In accordance with the Charter of the City of Santa Fe, these regulations replace the State Procurement Code and other State purchasing requirements unless the applicable statute specifically states that the statute applies to home rule municipalities.

1.4.4 APPLICABILITY OF THESE REGULATIONS
Except as otherwise provided, these regulations apply to the City of Santa Fe and its using departments and to every transaction to which these regulations apply. The City regulations are adopted pursuant to the Home Rule Charter Section 9.02 of the City of Santa Fe. The City regulations are intended to give detail specifically applicable to City operations.

1.4.5 SEVERABILITY
If any provision or application of these regulations is held invalid, such invalidity shall not effect any other provision or application of these regulations which can be given effect without the invalid provision or application.

1.4.6 UP-DATE OF MANUAL
This Purchasing Manual will be reviewed and up-dated through amendments periodically. Amendments to the Purchasing Manual shall be made in accordance with Section 11-13 SFCC 1987.

1.5 SUBMISSION OF FRAUDULENT INFORMATION

If a vendor (including potential vendor, bidders, proponents, quoters, etc.) submits information that appears to be fraudulent as a result of the best efforts of investigation by City staff, a letter shall be sent to that vendor from the Purchasing Office, explaining the apparent fraudulent information and informing the vendor the submittal is being disqualified from consideration and is determined to be non-responsive, pending clarification of the apparent fraudulent information by the vendor within a time period so specified in the letter. Upon receipt of further information from the vendor, the new information shall be investigated and a final determination made by the Purchasing Office. The vendor shall be notified by letter of the final determination. If no further information is provided within the time period specified, the submittal is deemed to be non-responsive.

2. SUMMARY OF USING DEPARTMENT RESPONSIBILITIES

2.1 Plan Procurement Needs. The using department should plan ahead so that "rush orders" and emergencies are held to a minimum.

2.2 Quotes. The using department shall obtain quotes when applicable. The Purchasing Division may be consulted for additional vendors. The Purchasing Division maintains a list of vendors classified according to materials, equipment, supplies and services which is used for bids and proposals, as well as other catalogues, which may be referenced by using departments as a resource to possible products and vendors.

2.3 Specifications. Using departments are responsible for preparing specifications. The specifications should provide for as much competition as possible. Brand names, catalogue numbers, etc., may be submitted as a guide to the vendor as to the type and quantity of materials desired; however, the wording "or equal" should be added in order not to discriminate against any vendor's merchandise. If specific criteria are necessary to fulfill the needs, detail these requirements.

2.4 Receipt. The using department is responsible for the final verification of goods, materials, and services delivered. The receiving person shall sign and forward to the Accounts Payable Office the verification copy of the purchase order and the invoice and indicate receipt on-line. Receipt by the using department shall be deemed receipt by the Purchasing Division. If there is a problem with the delivery that may warrant nonpayment, the using department should immediately notify the vendor in writing.

2.5 Vendor Order. To expedite purchasing, the using department is responsible for providing a copy of the purchase order to the vendor. This may be done via mail, fax, physically carrying the purchase order or by communicating purchase order information to expedite delivery of goods and services.

2.6 Payment Discounts. Many businesses allow a purchase discount if payment is made within a specified time period, i.e., 2% discount if paid 10 days after delivery. The using department is required to secure the largest available discount by ensuring prompt, timely payments to vendors.

2.7 Consolidated Procurements. At the beginning of each fiscal year, staff from Purchasing Division will contact the using departments to review budget and expenditures, particularly furniture, fixtures, equipment, vehicles and machinery to consolidate City procurement in order to standardize and combine City procurement to obtain the most favorable pricing. The departments should anticipate their needs and inform the Purchasing Division of required bids or price agreements for the coming year. Annual price agreements are an effective way to make regular purchases throughout the year without having to take the time to obtain quotes several times a year.

2.8 Central Warehouse. Departments are required to order from the inventory if such items are carried in the Central Warehouse, unless otherwise approved. A valid reason will be required to be submitted in writing as to why the brand or type of supply carried will not meet the operational needs of the requesting department. It is the City's responsibility to provide functional, good quality supplies, but not to provide special order supplies to meet personal preferences.

2.9 Authorized Payments. No payment shall be authorized unless the services, construction or items of tangible personal property have been received and accepted as meeting specifications. No prepayments, advances, deposits or other payments for goods or services not yet received are allowed unless specifically provided for.

2.10 Unordered Goods. If unordered goods are received, do not accept. Refuse delivery. If in doubt about an order, immediately call the Purchasing Division.

2.11 Contract Administration. Departments are responsible for administration of all aspects of each contract, including professional service agreements, they have submitted to the City Manager or the City Council for approval and which have subsequently been executed. Responsibilities include but are not limited to the following duties:

- **a**. obtain and retain for audit purposes any and all procurement history documentation relating to services performed including invoices, payments and work products relating to services rendered;
- **b**. timely 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.** insure 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 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 contract.

No payments will be made unless the goods have been received or the services have been rendered.

3. DEFINITIONS

3.1 ACCOUNT EXPENDITURE CODE. Account classification necessary to accurately charge and distribute the cost of the items purchased (Business Unit and Object Code).

3.2 ADDENDA. Written information prior to the submittal deadline which modify, interpret, clarify or correct the bidding or proposal documents, which will become part of the contract documents when the contract is executed. Plural -ADDENDA.

3.3 ADDITIVE OR DEDUCTIVE ALTERNATE BID. Amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in project scope or alternate materials and/or methods of construction is accepted.

3.4 ADMINISTERING DEPARTMENT. Any City department that is authorized to perform contract and construction management of capitalized construction projects on behalf of a using department.

3.5 ADVERTISING (FORMAL). Giving notice at least 10 calendar days prior to bid opening in a newspaper of general City-wide circulation that sealed bids or proposals will be received at a set time and place.

3.6 ADVERTISING (INFORMAL). Giving notice by any means of communication that written or oral quotes will be received.

3.7 ALTERNATES. Substitutes offered by vendors (specifications of material different than specifications set forth in the request) which the City may accept at its option after review.

3.8 ARCHITECTURAL SERVICES. Services related to designing structures, landscaping or other improvements including planning, preliminary studies, designs, specifications, working drawings and general administration of construction contracts.

3.9 AUTHORIZED PERSONNEL. The Purchasing Director or designated alternates, who have been approved by the department director to approve requisitions, call for an emergency purchase order number or other functions requiring prior authorization.

3.10 BASE BID. Amount of money stated in the bid as the sum for which the bidder offers to perform the work, not including that work for which alternate bids are also submitted or applicable gross receipts tax.

3.11 BID. A complete and properly signed offer to do the work designated or a portion of, for sums stipulated, supported by all other information required by the bid documents.

3.12 BIDDER. One who submits a bid for a prime contract with the City (as distinguished from a sub-contractor who submits a bid to a bidder). Technically, a bidder is not a contractor on a specific project until a contract exists between the bidder and the City. Submittal of a “no bid” does not constitute a “bidder”.

3.13 BIDDERS LIST. A current file maintained by the Purchasing Division of vendors who have indicated a desire to supply goods, services or materials for City use which is kept by category of material or services.

3.14 BID DOCUMENTS. Documents that include the invitation to bid, instruction to bidder, the bid form, certifications, other bidding and contract forms, and the proposed contract documents, including any addenda issued prior to receipt of bids. The contract documents proposed for the work include, if applicable, the contract, the conditions of the contract (general, supplementary, and other conditions) the drawings, the specifications and all addenda issued as well as modifications agreed upon after execution of the contract.

3.15 BID LOT. A major item of work for which a separate quote, bid or proposal is requested.

3.16 BID OR PROPOSAL CLOSING. Day and time set for termination of accepting bids or proposals. No bids or proposals will be accepted after this date and time.

3.17 BRAND-NAME SPECIFICATION. A specification describing one or more items by manufacturer’s name or catalogue number to indicate the standard of quality, performance or other pertinent characteristics, which usually provides for the substitution of equivalent items.

3.18 BUSINESS. Any corporation, partnership, individual, joint venture, association or any other legal entity.

3.19 CATALOGUE PRICE. The price of items of tangible personal property in the most current catalogue, price list, schedule or other forms that are regularly maintained by the manufacturer or vendor of an item and is either published or otherwise available for inspection by a customer.

3.20 CHANGE ORDERS. A written order to the contractor for extra work and for changes in the plans or quantities, or both, and establishing the basis of payment and time adjustments, if any, for the work ordered. The change order can consist of either a contract amendment or a field sheet.

3.21 CONFIDENTIAL INFORMATION. Any information which is available to an employee because of the employee's status as an employee of the City and which is not a matter of public knowledge or available to the public on request.

3.22 CONSTRUCTION. Building, altering, repairing, installing or demolishing any:

- road, highway, bridge parking area or related project;
- building, stadium or other structure;
- airport, subway or similar facility;
- park, trail, athletic field, golf course or similar facility;
- dam, reservoir, canal, ditch or similar facility;
- sewage or water treatment facility, power-generating plant, pump station, natural gas compressing station or similar facility;
- sewage, water, gas or other pipeline;
- transmission line;
- radio, television or other tower;
- water, oil or other storage tank;
- shaft, tunnel or other mining appurtenance;
- electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditions;
- air conditioning conduit, heating or other similar mechanical work;
- leveling or clearing land;
- excavating earth;
- drilling wells or any type, including seismographic shot holes or core drilling; and
- similar work, structures or installations.

3.23 CONSTRUCTION SERVICES. The furnishing of labor, time or effort by a contractor not involving the delivery of specific tangible property or end product other than reports and other materials which are merely incidental to the required performance. “Services” is a broad term that includes but is not limited to “professional services”.

3.24 CONTRACT. A written agreement for the procurement of tangible personal property, services or construction; including but not limited to professional services agreements.

3.25 CONTRACTOR. Any person or other legal entity entering into a contract with the City.

3.26 CONTRACT MODIFICATION. Any written alteration in the provisions of a contract accomplished by mutual agreement through change orders or contract amendments.

3.27 COOPERATIVE PROCUREMENT. Procurement conducted by governmental entity that allows another government entity to also use for procurement (external procurement unit).

3.28 COST ANALYSIS. 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.

3.29 COST DATA. Factual information concerning the cost of labor materials, overhead and other cost elements which are expected to be incurred by a contractor in performing the contract.

3.30 COST REIMBURSEMENT CONTRACT. A contract which provides for a fee in which a contractor is reimbursed for direct costs which are allowable and allocable in accordance with the contract terms, such as printing, testing, etc.

3.31 DATA. Recorded information, regardless of form or characteristics.

3.32 DAYS. Calendar days including week ends and holidays unless otherwise specifically stated. In computing any period of time prescribed by these regulations, the first day shall not be included, but the last day of the period shall be included. “Working days” refers to Monday through Friday, excluding legal holidays unless otherwise specifically stated.

3.33 DEFINITE QUANTITY CONTRACT. A contract that requires the contractor to furnish a specified quantity of services, items of tangible personal property, or construction at or within a specific time.

3.34 DEFINITIONS. All definitions set forth in the general conditions of the contract for construction or other contract documents are applicable to the bid documents.

3.35 DELIVER TO. Specific address where delivery can be made. If necessary, it should be clarified as to whom pays freight, who pays insurance and is responsible if goods are destroyed, inside delivery, and other delivery information.

3.36 DELIVERY DATE. Time called for in the contract for delivery. May be firm date if stated and delivery after stated date voids need of goods/services. Also refers to date of delivery through a bid after which liquidated damages may be applied.

3.37 DESCRIPTION. The description of the items should be sufficiently complete to enable the Purchasing Office to process the requisition without requesting supplementary information.

3.38 DESIGNATED ALTERNATE. A representative of a person holding a superior position.

3.39 DESIGN-BUILD PROJECT. A procurement process in which the City contracts with one firm who has responsibility for the design, construction and delivery of a project under a single contract with the City.

3.40 DESIGN-BUILD TEAM. The team of City engineers, using departments, and administration, in addition to outside consultants established to determine the advisability of a design-build project; plan the project requirements and criteria; formulate Request for Proposals requirements; and, administer the project contract to ensure goals of design-build are met.

3.41 DETERMINATION. The written documentation of a decision of a procurement officer including findings of facts required to support a decision. A determination becomes part of the procurement file to which it pertains.

3.42 DIRECT OR INDIRECT PARTICIPATION. Involvement through decision, approval, disapproval, recommendation, formulation, of any part of purchase request, influencing the content of any specification investigation, auditing or the rendering of advice.

3.43 DISCOUNTS:

1. TERM OR CASH. Discounts allowed if payment is to be made by a specific date.

2. TRADE DISCOUNT. Discounts allowed with no restrictions as to date of payment, but allowed on the basis of quantities purchased and those allowed to governmental agencies.

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

3.44 ENGINEERING SERVICES. "Engineering services" means any service for which adequate performance requires engineering education, training and experience in the application of special knowledge of engineering sciences, for consultation, investigation, planning, design studies or review of construction projects in connection with utilities, structures, buildings, machines, equipment, processes, or projects.

3.46 ESCALATION. A means of effecting increases and decreases in prices of material purchased under contract.

3.47 EVALUATION FACTORS. Those factors set forth in the request for proposal that define or identify the basis for selection of a proposal.

3.48 EXTERNAL PROCUREMENT UNIT. Any procurement organization not located in this state which, if in this state, would qualify as a governmental entity. An agency of the United States government is an external procurement unit.

3.49 FINANCIAL INTEREST. Holding a position in a business as an officer, director, trustee or partner, or holding any position in management; or ownership of more than five percent (5%) interest in a business.

3.50 FIRM FIXED PRICE CONTRACT. A contract which has a fixed total price or fixed unit price.

3.51 FIRM PRICING. Price that will not fluctuate.

3.52 F.O.B. (FREE ON BOARD). Designates where the freight charges begin and indicates whether vendor or purchaser is to pay freight charges.

3.53 FORMAL BIDS. Written bids taken by established City rules and regulations.

3.54 GRATUITY. A payment, loan, subscription, advance, deposit of money, service or anything of more than nominal value, received or promised, without exchange of consideration of substantially equal or greater value.

3.55 GROSS PRICE. Total price without deductions, such as discounts etc.

3.56 IDENTICAL BIDS. Two or more bids received for the same item that are exactly equal as to price, terms, delivery, etc.

3.57 IMMEDIATE FAMILY. A spouse, children, parents, step-parents, siblings, and step-siblings.

3.58 INDEFINITE QUANTITY CONTRACT. A contract which required 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 price.

3.59 INFORMAL BIDS. Requests for cost information without having to meet requirements for a formal bid. Generally requests for written quotes for items of tangible personal property under $10,000.

3.60 INVENTORIED NEEDS. All office, janitorial, medical and safety supplies, and auto parts, and other supply categories that may, at the discretion of the Purchasing Director, be designated as “inventoried needs”.

3.61 INVITATION FOR BIDS. All documents, including those attached or incorporated by references, utilized for soliciting formal sealed bids.

3.62 INVOICE. Itemized record of merchandise sold and shipped by vendor.

3.63 LOCAL PUBLIC BODY. Every political subdivision of the state and agencies, instrumentalities and institutions thereof.

3.64 LOWEST RESPONSIVE BID. Lowest bid meeting all requirements such as specifications, quality, delivery and other services necessary on items bid.

3.65 MATERIALS. Goods, wares, merchandise, supplies, furniture, equipment and items of tangible personal property purchased for the benefit of the City.

3.66 MULTIPLE SOURCE AWARD. An award of an indefinite quantity contact for one or more similar services, items of tangible personal property, or construction to more than one bidder or offeror.

3.67 MULTI-TERM CONTRACT. A contract having a term longer than one year.

3.68 NEGOTIATIONS. Person to person agreement over contract terms or coming to mutual agreement for a contract as a result of the proposal process.

3.69 NET PRICE. Price after all discounts, etc., are deducted.

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

3.71 OWNER. The City of Santa Fe (also referred to as “the City”,) in particular, in reference to the Purchasing Division or using department.

3.72 PERFORMANCE CONTRACT. A contract for construction or construction services that focuses on the progress, quality and product of service provision and that ties at least a portion of the contractor’s payment or any contract extension or renewal to the acceptance of the product.

3.73 PRICE AGREEMENT. A definite quantity contract or indefinite quantity contract which requires or allows the contractor to furnish items of tangible personal property, services or construction to a governmental entity which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

3.74 PRICE ANALYSIS. The evaluation of pricing data.

3.75 PRICING DATA. Factual information concerning prices for items identical to or substantially similar to those being procured.

3.76 PROCUREMENT. Purchasing, renting, leasing, or otherwise acquiring items of tangible personal property, services or construction, and all procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration.

3.77 PROCUREMENT OFFICER. The Purchasing Director.

3.78 PROFESSIONAL SERVICES. The services of architects, archeologists, engineers, surveyors, landscape architects, health care practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by the Central Purchasing Office.

3.79 PROPERTY. Tangible items of furniture, machinery, vehicles and equipment.

3.80 PUBLIC WORKS CAPITAL PROJECT. A construction project of the City, costing $10,000 or more, to construct improve repair, alter or extend an improvement on real property owned, used or leased by the City costing $50,000 or more.

3.81 PURCHASING DIRECTOR. The person or designee authorized by the City to authorize procurements on behalf of the City and make written determinations with regards to procurement. The Purchasing Director is the Director of the Purchasing Division of the Finance Department.

3.82 PURCHASING DIVISION. That division of the Finance Department which, under the direction of the Purchasing Director, is responsible for the control and authority of procurement of items of personal tangible property, services or construction and for ensuring compliance with all applicable laws and City policies and procedures.

3.83 PURCHASE ORDER. The document issued by the Purchasing Division which directs and authorizes a contractor to deliver items of personal tangible property, services or construction.

3.84 PURCHASE ORDER NUMBER. Number given to purchase order for means of identity.

3.85 PURCHASE REQUISITION. The document by which a using department requests that a purchase order be issued for a specified service, construction or item of tangible personal property and may include but is not limited to the technical description of the requested item, delivery schedule, transportation requirements, suggested sources of supply and supporting information.

3.86 QUALIFYING BID. Information or samples of product proving bid meets required specifications or information showing exceptions to the specifications.

3.87 QUALIFIED PRODUCTS LIST. A list of items of tangible personal property described by model or catalogue number which, prior to solicitation of competitive sealed bids or competitive sealed proposals, are items determined to have meet the applicable specifications.

3.88 QUANTITY. Number of units (each, box, case, etc.) needed, considering day to day use, the quantity on-hand the rate of prospective consumption and the anticipated “lead time” of items requisitioned.

3.89 REGULATION. Any rule, order or statement of policy, including amendments and repeals issued by the City to affect operations and procedures of the City.

3.90 REQUISITION NUMBER. Number given to purchase requisition for means of identity.

3.91 REQUISITIONING DEPARTMENT. Name of department, division, section or unit, which is originating the requisition.

3.92 REQUEST FOR PROPOSALS. All documents, including those attached or incorporated by reference, used for soliciting proposals.

3.93 RESOLUTION. A formal written expression of opinion or will of the City Council, adopted by vote.

3.94 RESPONSIVE BID. Bid which conforms in all material respects to the requirements set forth in the invitation for bids or requests for proposals.

3.95 RESPONSIBLE BIDDER OR OFFEROR. A bidder or offeror who submits a responsive bid and who has furnished, when required, information and data to prove that 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 property described in the invitation for bids.

3.96 RETAINAGE. Money payable to the contractor or subcontractor that has been withheld conditioned upon substantial completion of all work in connection with a construction contract.

3.97 SMALL BUSINESS. A business, not a subsidiary or division of another business, having an average annual volume for the proceeding three fiscal years which does not exceed one million five hundred thousand dollars ($1,500,000.)

3.98 SMALL PURCHASE. Procurement of any item of tangible personal property, services or construction under five thousand dollars ($5,000) or Professional Services under $50,000.

3.99 SOLE SOURCE. Materials or services that have only one source of supply.

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

3.101 SUBCONTRACTOR. Person or other legal entity that contracts with a contractor to provide services or otherwise contributes to the completion of a project.

3.102 SUCCESSFUL BIDDER. Responsive bidder awarded the contract.

3.102.1 SWEAT –FREE. As it relates to purchasing, the term sweat-free refers to purchasing policies that protect against slavery, forced overtime, child labor, excessive hours, below subsistence wages, discrimination, abuse, harassment and similar work place violations and/or conditions and promotes purchasing policies that promote and protect freedom and worker health and safety.

3.103 TABULATION. Summary of prices bid in table form (abstract.)

3.104 TANGIBLE PERSONAL PROPERTY. Tangible property other than real property having a physical existence, including, but not limited to supplies, equipment, materials, furniture, machinery, vehicles, etc.

3.105 TERMS. Provisions stated for determining agreement for payment, delivery, etc. to be determined before purchase is complete.

3.106 UNIT. Unit of measure; unit may be “each”, “box”, “ream”, “feet”, “pounds” etc.

3.107 UNIT PRICE. Price of a distinct part of a whole (such as each, dozen, gross, etc.)

3.108 USING DEPARTMENT. Any City department requiring purchase of specific services, construction or items of tangible personal property.

3.109 VENDOR. The seller of tangible personal property, real property, or services.

3.110 VETERAN. For purposes of the Veteran Preference in Section 15, Veteran has the same meaning as defined in 38 U.S.C. 101(2) quoted as follows: “2) The term “veteran” means a person who served in the active military, naval or air service and who was discharged or released there from under conditions other than dishonorable.

4. GENERAL INSTRUCTIONS AND PROCEDURES

4.1 PURCHASING FUNCTIONS

Department procurement needs are generally fulfilled by the completion of one or more of the following purchasing functions:

4.1.1 Material Requisition. To be submitted to central warehouse or auto parts stockroom for all inventoried needs.

4.1.2 Purchase Requisition. Required for most purchases, to be originated by the using department on line to be reviewed by the Purchasing Director.

4.1.3 Purchase Order. Required as the final document to begin most purchases, to be completed and signed by the Purchasing Director.

4.1.4 Blanket Purchase Order ("BPO"). Issued for a specific dollar amount and a specific period of time that is usually one month. Blanket purchase orders are utilized for small purchases that are made on a regular basis from one vendor using one account number.

4.1.5 Blanket Order Release ("BOR"). Used to charge purchases against the Blanket Purchase Order with a limit of up to $250. Abuse of this form or use by non-authorized personnel will result in cancellation of the Blanket Purchase Order or Requests for Requirements for varying types and levels of procurement.

4.1.6 Procurement Requirements. Purchases of tangible personal property and services, including services that exceed $5,000 up to $49,999 or that exceed $50,000. Purchases of tangible personal property and services, including professional services that exceed $5,000 require at least three verbal quotes. Purchases of tangible personal property and services, including professional services, that exceed $5,000 but not more than $50,000 require at least three written quotes. Purchases of tangible personal property exceeding $50,000 require bids. Purchases of services, including professional services that exceed $50,000 in one fiscal year, not including applicable tax, require requests for proposals.

4.1.7 Petty Cash Purchases. Petty cash purchases are limited to $75.00 Amounts over $50.00 but less than $75.00 must receive written approval by the Finance Director or designated alternate. An invoice and signed petty cash reimbursement form should be submitted to the cashier's office.

4.1.8 Special Payment Purchase Voucher. Approved at the discretion of the Finance Director or designated officer for emergency payments, claim settlements, property closings, travel and per diem, or other disbursements as may be required.

4.2 TYPES OF PURCHASES

Each function applies to specific types of purchase as detailed in this section.

4.2.1 Routine. Purchases which can be processed by the Purchasing Division within its normal working capacity.

4.2.2 Non-routine. Purchases which fall outside the normal daily operations of the Purchasing Division, including requests to purchase (by bid) items valued at over $10,000, requests to purchase non-budgeted materials or tangible personal property, and capital outlay purchases.

4.2.3 Emergency Purchases. As defined in Section 17 EMERGENCY PROCUREMENTS.

4.2.4 Public Works. See Section 28 PUBLIC WORKS (CONSTRUCTION) CONTRACTS.

4.2.5 Professional Services. See Section 23 COMPETITIVE SEALED PROPOSALS FOR PROCUREMENT OF PROFESSIONAL SERVICES OVER $25,000 or Section 24 PROCUREMENT OF PROFESSIONAL SERVICES UNDER $25,000.

4.3 TRADE-INS

Used or obsolete property may be traded in for a discount on the purchase of new property using one of the following three methods.

a. The using department obtains an independent written appraisal of the property to be traded in. This appraisal is used as the basis for a discounted price in the purchase of the new property. If the trade-in amount offered is less than the appraisal, a written determination must be made by the Purchasing Director that the trade-in amount is fair, representative of the condition of the item(s), and is in the best interest of the City.

b. The using department obtains two written quotes for purchase of the new property under $10,000, taking into account the value of the property to be traded in. The purchase price of the new property shall be the net of the new property cost less the trade-in value. If the trade-in amount offered is less than the highest quote, a written determination must be made by the Purchasing Director that the trade-in amount is fair, representative of the condition of the item(s), and is in the best interest of the City.

c. The Purchasing Division shall conduct a procurement by competitive sealed bid for new property valued at $10,000 or over. The competitive sealed bid procurement will be conducted in accordance with Section 22, COMPETITIVE SEALED BIDS FOR PROCUREMENT OF TANGIBLE PERSONAL PROPERTY AND CONSTRUCTION SERVICES. The bid price must clearly indicate the amount of the discount offered for the trade-in. Bid documents shall state that the intent of the City is to make a trade-in, however, the City reserves the option to retain the property offered for trade-in. If no trade-in is made, the bid award shall be made based on the lowest bid. If the trade-in is made, the bid award shall be based on the net of the new property cost less the trade-in value.

5. MATERIAL REQUISITIONS

5.1 Routine Material Requisitions. Material requisitions are required for all stocked and inventoried materials, specifically office, safety, janitorial, and clothing supplies, auto parts and tires.

Each department is required to submit a memo designating a limited number of supervisory personnel who are authorized to approve materials requisitions. Approval routing will be established on line as requested. Other personnel may pick up the supplies, but will be required to sign for the items received.

Material requisitions are done on line for items stocked in the warehouse. The J.D. Edwards Inventory Material Requisition Entry Procedures provides detailed instructions on entering material requisitions. Central Warehouse staff will process the material requisition by filling the order as completely as possible. Prices, quantities and description of all items issued will be noted on the pick up slip and will include the total cost of supplies issued.

Supplies that are purchased with regularity may be added to the catalogue of inventoried needs. A using department, may request items be added to the inventory by submitting a memo to the Central Warehouse.

5.2 Special Orders. Departments are required to order from the inventory, if such items are carried in the Central Warehouse, unless otherwise approved. A valid reason why the brand or type of supply carried will not meet the operational needs of the requesting department must be submitted in writing. It is up to the City to provide functional, good quality supplies, but not to provide special order supplies to meet personal tastes or wants.

Any item that is not regularly stocked in inventory must be special ordered by submitting a written material requisition complete with the account number, supervisor approval and detailed information pertaining to the item being requested.

6. SMALL PURCHASES: PURCHASES OF TANGIBLE PERSONAL PROPERTY UNDER $50,000

6.1 CRITERIA

The provisions of this regulation apply to the procurement of items of tangible personal property having a value not exceeding ten thousand dollars ($10,000.) Costs may not be artificially divided so as to constitute a small purchase under this regulation.

6.2 QUOTE REQUIREMENTS

6.2.1 For purchases up to $5,000. Except for capital outlay, the using department may obtain the goods from the best obtainable source, considering cost, service, delivery factors, prior use of similar goods, etc., unless carried as an inventory. (See Section 5 MATERIAL REQUISITIONS.)

6.2.2 For purchases of $5,000.01 to $50,000. Written quotes are required from the vendor, unless otherwise exempted by the Purchasing Director.

Written quotes may be obtained on “Request for Quote” forms issued to the vendor or on vendor’s printed letterhead or quote sheet after a verbal or written request from the City. Three vendors shall be requested to submit written quotes, which shall be recorded in the quote section of the requisition and submitted to the Purchasing Division with the requisition number noted on the upper right hand corner. Quotes telephoned by the vendor and recorded by City personnel do not qualify as written quotes.

6.3 PROCEDURES FOR QUOTES

6.3.1 Departments must submit a requisition to the Purchasing Division with an adequate description (specifications) of the item(s) to be procured. It is the responsibility of the using department to provide the specifications. The Purchasing Division will work closely with the using department to determine its needs and to help develop the specifications, if necessary. The using department may submit brand names or catalog numbers as a guide to its needs, but the request may not be specifically limited to one vendor, unless the Purchasing Division determines that it is a sole source procurement.

6.3.2 The using department may suggest names of vendors and the Purchasing Division may contact additional vendors. The Purchasing Division has compiled a bidders list, vendor catalogues and manufacturer's information that is available to using departments for reference. The Purchasing Division will maintain a history of vendors who have not provided responsive and adequate service for future reference.

6.3.3 After quotes are obtained the using department shall enter the quotes in the quotes section of the requisition and when applicable submit the written quotes to the Purchasing Division with the requisition number on the top right hand corner of the requisition. The J.D. Edwards Purchasing System Training Handbook provides detailed information on entering requisitions. The using department should allow adequate time for vendors to respond, with longer time required for more complex, technical items and for higher dollar value items.

6.3.4 A purchase order will be issued after review by using department personnel assigned to review and process requisitions and after review and approval by the Purchasing Division. Copies of the purchase order will be sent to the using department. Requisitions without quotes when applicable or incorrectly completed will be rejected with the request to provide the necessary information or make the necessary corrections.

6.4 PROCEDURES WITH VENDOR

6.4.1 All quotes must be for the same item. If possible the description of the goods should be in writing to ensure there is no difference in the scope of goods requested from each vendor. All prices should include any discounts applied (i.e., a retail price of one vendor should not be compared to a discounted government price of another vendor.)

6.4.2 A reasonable date and place for receipt of quotes should be set and communicated to all vendors involved, in writing, if possible. Since the procedure is not a bid, this date shall be set and may be enforced equitably, but the date may be extended if necessary.

6.4.3 If a written quote is submitted that is unclear or significantly ambiguous, the vendor may be called for clarification. Any change in the quote should be documented. If a significant change in the quote is required or if the change will affect award of the low quote, a new quote should be submitted by the vendor.

6.4.4 If the specifications issued were incomplete or unclear, new quotes should be obtained from all vendors upon issuance of new specifications.

6.4.5 If vendors do not submit a quote by the date communicated to them as the deadline or otherwise indicate a lack of cooperation in complying with the quote requirements, another vendor may be contacted.

6.4.6 The contents of any quote shall not be disclosed to any other vendor from which a quote is requested. No indication shall be made to any vendors as to whether they are “higher” or “lower.” Vendors may be informed of the budget amount available, but if one is so informed, all must be informed.

6.4.7 The Purchasing Division or the using departments may request quotes. The Purchasing Division may request additional quotes or verify quotes submitted. The quote process should be fair to all vendors involved and allow the City to efficiently obtain competitive prices in the best interest of the City.

6.4.8 Award shall be made to the vendor offering the lowest acceptable quote, unless otherwise documented in writing indicating unacceptable delivery, specifications, quality, etc.

6.4.9 The names of the vendors submitting quotes and the date and the amount of each quote shall be recorded and maintained as a public record.

7 PURCHASE REQUISITIONS

7.1 A purchase requisition is required for most purchases. Exceptions include:

-Blanket Purchase Orders
-Petty Cash Expenditures
-Voucher Payments

7.2 Purchase requisitions must be entered and a purchase order number obtained **prior** to actual purchase or ordering of materials, construction services or professional services. Departments must plan in advance for needs as much as is reasonably possible. If circumstances arise which require immediate attention and allow no lead-time for purchases, the using department shall initiate an emergency purchase requisition (EM) on line. If a request for an immediate purchase order number is approved, an emergency purchase order (EO) number will be issued. The J.D. Edwards Purchasing System Training Handbook provides complete detailed instructions for obtaining emergency purchase orders.

7.3 Initiation and preparation of a purchase requisition may be delegated to certain department personnel. The approval routing for each department/division has been set up in the system as requested by each department. Any changes must be in writing and sent to the Purchasing Division. Supervisory personnel or an authorized designated alternate may approve requisitions under $1,000. All requisitions over $1,000 must be approved by the department director or designated alternate.

7.4 Requisitions should be entered far enough in advance of the date materials are needed to enable the Purchasing Division to review and process the requisition and to allow for delivery by the vendor. If the using department is in doubt concerning the length of time normally required for delivery, the Purchasing Division should be consulted.

7.5 The requisition is to be completed on line by the using department. It must contain complete information and specifications since only the using departments know exactly what is needed. Include size, weights and any pertinent information available and indicate a specific delivery date as to when the material is needed.

7.6 A requisition will not be processed unless it is properly entered. Improperly entered requisitions will be rejected and will be returned to the originator. A properly prepared requisition must be detailed and contain the pertinent information needed to make the purchase.

7.6.1 Authorized Approval. The using department director or designated alternate must approve requisitions over $1,000 on line. The using department director or designated alternate must certify the items requested are necessary for the operation of the activity; the proposed purchase meets all requirements of this manual; the items requested are authorized in the budget; and an unencumbered balance in the appropriate account is sufficient to defray the cost.

7.6.2 Extended Cost. Requisitions must have an extended cost in order to be processed. Requisitions without extended costs will not be processed. All discounts should be applied to unit prices. If the discount is applied to the total order it must be entered as a negative amount. The J.D. Edwards Purchasing System Training Handbook provides detailed instructions.

7.6.3 Name of Vendor. The selected vendor number must be entered in the supplier field. If the vendor name is known, but not the vendor number, the number must be looked up from the Address Book within the J.D. Edwards Purchasing System. The quotes must be entered in the Quote Section (F 9), when the amount of the purchase requires verbal or written quotes. Requisitions that require quotes and do not have them will be rejected and will be returned to the originator. The J.D. Edwards Purchasing System Training Handbook provides detailed instructions.

7.6.4 Date. The date will default and show the date the requisition is entered in the system.

7.6.5 Promise Date. The promise date will default if no promise date is entered. If in doubt concerning the length of time normally required for delivery consult the Purchasing Division.

7.6.6 Ship To. The business unit requesting the items to be purchased may be entered here. If delivery is to be made to an address other than that assigned to the business unit being used, enter the address in the "O"(ption) column of the requisition. The J.D. Edwards Purchasing System Training Handbook provides more detailed information.

7.6.7 Order Number. The requisition number will be automatically assigned by the Purchasing System once the requisition is completed and the originator has entered a "Y"(es) to accept the order.

7.6.8 Quantity. If the item required is in day to day use and if a working stock is maintained, the quantity on hand, the rate of prospective consumption and the anticipated "lead time," should be considered and evaluated in determining the quantity to be requisitioned. Unnecessary stockpiling is expensive and wasteful for the City.

7.6.9 Unit. Unit may be "each," "box," "ream," "feet," "pounds," etc. If in doubt about the unit, contact the Purchasing Office.

7.6.10 Description. The description of the items should be sufficiently complete to enable the Purchasing Division to process the requisition without requesting supplementary information. Items may be described by their popular names, supplemented by number, size, style or other identifying data. Include complete details on the purchase, including Bid or Proposal number, City Council date of approval, CIP project number, the method and charge for shipping, state or federal contract number, warranty information, FOB instruction, applicable vehicle unit number, etc. All information to bind the vendor as to quality, delivery, warranty, etc. should be mentioned or referenced here.

7.6.11 Line Item Expenditure Code. The account classification is necessary so the fund, expenditure line and budget may be accurately charged for the cost of the items purchased. It is the responsibility of the using department to assign the proper line item classification. More than one account may be charged per requisition.

7.6.12 Department Requisitioning. The "Route Code" at the top right hand corner of the screen, which is assigned to the originator of the requisition, will default and identifies the name of department and division, which are initiating the requisition.

7.6.13 Requested By. The name of the person originating the requisition will be identified automatically by the system.

7.7 The Purchasing Director has the authority to revise or correct a requisition, such as estimates of quantity, quality, cost or suggested vendor. If the Purchasing Director deems it necessary to revise a requisition, the requisition will be changed. If a critical change is made, the requisition will be returned to the originator for correction and then re-routed to appropriate personnel.

7.8 Requisitions are done on line and if a copy of the requisition is needed the users may do a screen print to obtain a copy. Once a requisition is entered it will automatically route to personnel assigned to review and approve requisitions.

8. PURCHASE ORDERS

No procurement transaction should begin until the transaction has been approved by means of a completed purchase order or otherwise approved by the Purchasing Director.

8.1 PURCHASE ORDER AS A CONTRACT

The purchase order is the document which creates a contract between the City and a vendor for purchases of goods or services over $1000. If the purchase order is issued based on a written quote, bid or proposal, upon receipt of the purchase order by the vendor, a contract is executed because the City has notified the vendor that the vendor's offer has been accepted.

If the purchase order is not based on a written quote, bid or proposal, the purchase order is not a contract until the vendor acknowledges receipt of purchase order, delivery of goods, or begins performance of services. This is because the City has made an offer to buy and the offer must be accepted by the vendor.

When a vendor accepts an order by purchase order, then unless the City is notified otherwise, the vendor accepts it under the terms and conditions stated on the order and is bound by this contract through completion of the transaction.

When the City issues a purchase order the City is bound also by the same terms and conditions.

Purchase orders may be canceled by the Purchasing Director upon written request by the using department, but must meet any additional termination clauses in the contract.

8.2 VOID OR CANCELED PURCHASE ORDERS

Written notification to Purchasing to void purchase order. Purchasing will mark copy “void” and keep in Purchasing file.

8.3 RECEIPT OF PARTIAL ORDER

8.4.1 If a partial order is received or a partial payment is to be made (i.e. monthly payments, partial delivery) the using department should attach the invoice to a copy of the purchase order, sign off as a partial payment with amount to be paid and submit to Accounts Payable. ITEMS OR SERVICES CAN ONLY BE PAID FOR AFTER RECEIPT OF GOODS OR SERVICES**,** unless specific exemptions are approved.

Upon final receipt of all goods or services for final payment, the using department shall sign off on copy of purchase order as to amount of final payment, indicate final payment on purchase order and submit with invoice to Accounts Payable.

8.4.2 If shipment is damaged, it should be returned to the vendor and the remarks section of the shipping form should be filled in stating the condition of the shipment. The form should be signed by the person who received the shipment.

9. BLANKET PURCHASE ORDER (B.P.O.)

Blanket Purchase Orders are issued for an estimated dollar amount and specific time period for items purchased by a using department with regularity. They are issued to vendors for automotive repair parts, maintenance supplies and services and other items as may be deemed necessary by the Purchasing Director. At the beginning of each fiscal year, departments utilizing Blanket Purchase Orders shall request them in memo form from the Purchasing Division.

Each Blanket Purchase Order has a number which will be referred to on each and every transaction relating to the purchase order on the Blanket Order Release (B.O.R.) form which is utilized to process Blanket Purchase Orders for payment.

At the end of each period covered by Blanket Purchase Order, the using department will complete the Blanket Order Release and route to Accounts Payable. The Purchasing Office will automatically generate a new Blanket Purchase Order for the next month for the same amount during the fiscal year.

A using department or the Purchasing Director may request that certain materials, services, or vendors be converted to the Blanket Purchase Order System. The request will be reviewed and authorized by the Purchasing Director prior to issuance of a new Blanket Purchase Order.

Abuse of the Blanket Purchase Order system by using departments or vendors will result in cancellation of the Blanket Purchase Order for that department or vendor. (i.e., inappropriate items bought, exceeding amount of Blanket Purchase Order, unauthorized people picking up goods and signing for items, forms not completely filled out for purchase, purchase orders not finaled at month-end, etc.)

9.1 BLANKET ORDER RELEASE (B.O.R)

These forms are used to process payments for purchases covered by Blanket Purchase Orders.

Each department using this procedure will designate in writing a limited number of personnel allowed to sign Blanket Order Releases (B.O.R.'s) and will submit a sample of the designee's signature to Accounts Payable.

9.2 PROCEDURE FOR PURCHASING BY B.O.R.

9.2.1 B.O.R.s are not valid for single purchases over $1000.

9.2.2 A B.O.R. must be completed for each transaction. No “running orders” will be allowed.

9.2.3 B.O.R. may be used only with the vendor for services and only for the account covered by the Blanket Purchase Order.

9.2.4 The person approved to purchase by B.O.R. will take a form to the vendor, fill in all required information i.e., vendor name, Blanket Purchase Order number currently in effect, department/division/section ordering, date transaction items purchased, item price and total amount of purchase.

9.2.5 After signing the form for receipt of merchandise, the White copy of the form will be given to the vendor.

9.2.6 The remaining copies of the B.O.R. are distributed as follows:

Canary: Sent to Accounts Payable immediately with the vendor invoice attached.
Pink: Sent to department for which materials were purchased.
Green: Retained as permanent copy in department using B.O.R.

9.2.7 Vendor Invoices Each vendor must be for one B.O.R. number only and one invoice may be attached to each B.O.R. Any invoices received for which there is no reference to B.O.R. number and Blanket Purchase Order number will be returned for clarification.

9.2.8 Vendor Statement Each vendor is requested to submit a statement prior to the 10th day of the month following completion of each Blanket Purchase Order. While the Accounts Payable section will assist in balancing accounts, discrepancies must be resolved with the using department involved.

10. PETTY CASH PURCHASES

10.1 Purchases for $75.00 and under may be paid from petty cash with proper approvals. The Finance Department Director must approve disbursement from petty cash over $50.00. Supervisory personnel are responsible for petty cash purchases and should authorize only selected personnel to make purchases from petty cash funds. Employees who are authorized to make petty cash purchases are responsible for preparing vouchers and other documentation required for these purchases.

10.2 Change Funds. Change funds are established or closed by the Finance Department for use by certain departments that have customers and must provide change. Change funds are not to be used for petty cash purchases.

10.3 Petty Cash Voucher:

a. a petty cash voucher shall be completed in ink for each disbursement from the petty cash fund;

b. an invoice shall be secured from each purchase showing exact items purchased. If only a cash register tape is available, items purchased should be described on the voucher;

c. splitting of invoices by making two cash disbursements for purchases totaling over $75.00 shall not be permitted.

11. COOPERATIVE PROCUREMENT

These regulations apply to all contracts, price agreements and cooperative procurement agreements entered into by the City. Any procurement made from a cooperative agreement or price must include documentation that the contracting entity has followed applicable laws.

11.1 CONTRACTS WITHOUT COMPETITIVE SEALED BIDS OR PROPOSALS

The Purchasing Director may contract for services, construction or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals, as follows:

A. From any vendor at a price equal to or less than a current contract price or catalogue price from state or federal price agreement, and the purchase order adequately identifies the contract relied upon; or

B. From any vendor with a current contract or price agreement with the City that was previously bid for the services or items of tangible personal property meeting the same standards and specifications as to the items to be procured, if the following conditions are met:

1. the quantity purchased does not exceed the quantity which may be purchased under the applicable contract;

2. the purchase order adequately identifies the contract relied upon; and

3. from any vendor at a price equal to or less than a current contact price or from an external procurements unit, if documented by the Purchasing Director, that the external procurement unit completed a competitive bid process comparable to the City's requirements.

11.1.1 Council Approval. Any procurement transacted through a state or federal price agreement exceeding $50,000 shall be submitted to the appropriate committee and the City Council for its approval.

11.1.2 Copies of Current Contracts and Current Price Agreements. The Purchasing Division or City Clerk shall retain for public inspection and for the use of auditors, a copy of each contract or current price agreement relied upon to make purchases.

11.2 MAINTENANCE AGREEMENTS

11.2.1 Sole Source. Software or equipment that requires maintenance by the manufacturer shall be considered a sole source procurement. Alternate vendors may be solicited, but it is not required.

11.2.2 Maintenance Agreements. Maintenance agreements under $50,000 with a vendor other than the manufacturer must follow the procurement procedures set out in Section 24, PROCUREMENT OF PROFESSIONAL SERVICES UNDER $50,000. Maintenance agreements over $50,000 with a vendor other than the manufacturer must follow the procurement procedures set out in Section 23, COMPETITIVE SEALED PROPOSALS FOR PROCUREMENT OF PROFESSIONAL SERVICES OVER $50,000.

Depending on the contract, machines or equipment that require removal from an office to the repair location may be replaced by a loaner until servicing is complete. The using department director or designee shall sign an authorized repair or services invoice to accept the work.

The City annually enters into various maintenance agreements for machines and equipment. This generally covers general maintenance unless a machine is damaged due to negligence or abuse. If under a maintenance agreement, each repair does not require a purchase requisition. Repairs not covered by a maintenance agreement will require a purchase order.

Using departments should verify if equipment is subject to a maintenance agreement, and if so, with which vendor. Other maintenance agreements may be monitored and administered by the using departments.

11.2.3 Vehicle/Heavy Equipment Maintenance. Procurement of vehicle/heavy equipment parts and auto related services and maintenance shall be as follows:

1. Procurement of vehicle/heavy equipment maintenance, goods or services of one cent to $5,000 dollars may be made without quotation and at the best price and quality available.

2. Procurement of vehicle/heavy equipment maintenance, goods or services with a cost in excess of $5,000.01, but not in excess of $50,000, shall be processed by obtaining a minimum of three verbal quotes.

3. Procurement of vehicle/heavy equipment maintenance, goods or related services in excess of $5,000.01, shall require a minimum of three written quotes or justification for single or sole source procurement.

4. Vehicles/heavy equipment under warranty should be monitored by the responsible department to ensure repairs are not paid for by the City when the repairs should be covered by the warranty of the vendor or manufacturer.

12. PROCUREMENT BY THE CITY ON BEHALF OF OTHER GOVERNMENTAL ENTITIES

The Purchasing Director may, upon the request of the central purchasing office of a state agency or other governmental entity, include the governmental entity's request when procuring a price agreement for the requested services, construction or items of tangible personal property.

12.1 TERMS AND CONDITIONS

Any agreement between the Purchasing Director and a central purchasing office of the state or other governmental entity shall be subject to the following terms and conditions:

a. all procurements shall be in compliance with this Purchasing Manual;

b. the using department procuring the goods against the appropriate price agreement shall be responsible to verify specification requirements in accordance with the terms and conditions of such contract or price agreement and shall place the purchase order with the vendor, unless arranged otherwise;

c. payment for services, construction or items of tangible personal property ordered through cooperative contracts or price agreements, shall be the exclusive obligation of the using department placing the order;

d. inspection and acceptance of services, construction or items of tangible personal property ordered through cooperative contracts or price agreements shall be the exclusive obligation of the using department placing the order;

e. the agreement with another central purchasing office may be terminated for failure of that central purchasing office to comply with the terms of the agreement or to pay a contractor to whom the state or Purchasing Director has awarded a contract or price agreement;

f. the exercise of any warranty rights relating to services, construction or items of tangible personal property received by the central purchasing office under state or Purchasing Director contracts or price agreements shall be the exclusive obligation of the central purchasing office placing the order; and

g. failure of a central purchasing office which is procuring services, construction or items of tangible personal property under a state or City contract or price agreement to secure performance from the contractor in accordance with the terms and conditions of its purchase order will not require the state or Purchasing Director or any other central purchasing office to consider the default or to discontinue procuring under the contract.

13. RECEIVING, INSPECTING, TESTING AND INVOICES

The purpose of established receiving, inspecting and testing procedures is to insure that the proper quantity and quality of materials or services are delivered.

13.1 RECEIVING AND INSPECTION

The Central Warehouse staff will receive and inspect all equipment and material received directly by them. The using department should inspect all equipment and materials received directly by the department.

The using department will be responsible for monitoring vendor performance as to service or delivery of goods. If a problem develops, the department should contact the vendor to resolve the problem. If this fails or the department is not sure of the course of action required, the Purchasing Division should be contacted.

Vehicles with applicable paperwork will be delivered to the Purchasing Division. The units will be inspected for compliance to the required specifications. The Purchasing Division will then have the unit tagged, numbered, decaled, titled and licensed. The Fleet Management Section will maintain warranty cards and vehicle manufacturer's information.

13.1.1 Receiving staff should count, weigh, or otherwise determine whether the quantity of the delivery is as specified on the purchase order. It also should determine whether the quality of the delivery conforms to the specifications referred to or included on the purchase order. Such quality determination is made by checking the brand delivered against the brand specified, comparing the delivered item with the sample on which the purchase was based, or taking a sample for chemical or physical test. In a large order of like goods, testing should be conducted randomly throughout the entire order to ensure all goods delivered are conforming goods.

A sample of an item purchased may be put through a chemical or physical test. For such test the facilities of any City department may be utilized or the services of a governmental laboratory or reputable commercial laboratory may be engaged. All requests for testing of merchandise or equipment or potential non-conforming goods should be brought to the attention of the Purchasing Director.

13.2 REJECTION

If inspection reveals that the delivery does not conform to the quantity, quality, or terms of the purchase order, the using department must notify the vendor in writing that the delivery has been rejected and ask the vendor to promptly make a satisfactory replacement or supplementary delivery. If the vendor fails to comply, or if their deliveries are repeatedly unsatisfactory, the Purchasing Director shall be informed. The Purchasing Director will try to have the vendor comply with the purchasing agreement, terminate the contract, or otherwise work out a satisfactory settlement. The City Attorney shall be consulted upon determination to terminate a contract. City staff shall retain a signed receipt for items rejected and returned to a vendor for documentation of items that were returned.

13.3 ACCEPTANCE

If inspection shows that the delivery conforms with the quality and quantity specified in the purchase order, and if it is a single, complete delivery, the voucher copy of the purchase order will be immediately signed, and sent to the Accounts Payable Office so payment may be made. The receiving of the goods or services on line certifies that shipment complies with the specifications and terms of the purchase order.

Payment may be submitted for satisfactorily partial deliveries, by the using department director or designee signing a copy of the purchase order and sending it to Accounts Payable with the invoice. (See Section 8.4 Receipt Of Partial Order.)

13.4 INVOICE

13.4.1 An invoice is an itemized record of material shipped and is used in settling financial obligations incurred by the City. Timely processing may affect the rights of the City to obtain discounts and to pay invoices in time to gain discounts. City departments are obligated to process payments so as to secure discounts offered by vendors for early payment.

This does not imply unsatisfactory goods should be paid for. Once payment is made, a significant amount of leverage with the vendor is lost to resolve any problems or issues. To the greatest extent practical the City will make payment within 30 days.

No check or other payment shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the using department certifies that the services, construction or items of tangible personal property have been received and meet specifications.

13.4.2 Information contained on an invoice is based upon purchase orders given to the vendor when the purchase is made. Any difference in the amount between the invoice and the voucher copy of the purchase order shall be brought to the attention of the vendor. If the vendor does not correct the difference, then the using department should notify the Purchasing Division of the discrepancy.

In general, a using department may authorize payment of up to 5% more than the amount of the purchase order due to unexpected cost. If in excess of this, the using department should notify the Purchasing Division to determine the necessary action. If a contract has been executed, any increase over the amount requires a contract amendment.

13.4.3 Invoices should contain at least the following information:

a. purchase order number;

b. invoice number;

c. vendor's name and address;

d. listing of materials delivered.

e. prices , terms, quantity;

f. total amount due on invoice; and

g. applicable taxes and freight charges separately from material price.

The City is exempt from payment of gross receipts tax on tangible goods and a using department should not include this tax in any payment. If such an amount is charged, the vendor should be informed that a Non-taxable Transaction Certificate may be issued upon receipt of a written request from the vendor. The City is liable for gross receipts tax on services and construction. The City is also liable for state excise tax on gasoline.

13.4.4 All invoices should be sent to the Accounts Payable Office as soon as they are received. When the using department makes a purchase from Petty Cash an invoice must be obtained from the vendor at the time of the purchase. In the case of a Petty Cash purchase, one copy of the invoice is attached to the Petty Cash Voucher.

13.4.5 A receiving ticket is similar to an invoice, but does not contain as much information. Receiving ticket terminology is not standard among vendors. A packing slip, shipping ticket or some other name suffices as a receiving ticket. The receiving ticket is presented to the department at the time delivery is made. It should at least show the vendor's name, quantity listing of materials, and delivery date. A receiving ticket cannot be used as an invoice to make payment. Such a form will usually not show prices.

14. FILE REQUIREMENTS AND RECORD RETENTION

14.1 Prior to the award of a sole source procurement contract, the Purchasing Director shall post the information described in Subsection 14.4 of this section on the City web site.

14.2 Within three business days of awarding an emergency procurement contract Purchasing Director shall post the information described in Subsection 14.3 of this section on the City web site.

14.3 The Purchasing Director shall maintain, for a minimum of three years, records of all emergency and sole source procurements over $10,000 for tangible personal property and over $25,000 for professional services. The record of each such procurement shall be a public record and shall contain:

a. the contractor's name and address;
b. the amount and term of the contract;
c. a listing of the services, construction or items of tangible personal property procured under the contract;
d. whether the contract was a sole source or emergency procurement contract; and
e. the justification for the procurement method.

14.4 Purchase Orders and Blanket Purchase Orders shall be on record for three years.

14.5 Files for bids and proposals are public record to the extent permitted and required by the Inspection of Public Records Act, and shall contain:

a. the bid or proposal packet issued;
b. the advertisement;
c. bid tabulation;
d. recommendation of award memo;
e. copies of proposals or bids submitted;
f. documentation of protests, damages, late deliveries etc.;
g. evaluation forms for proposals; and
h. any other applicable information.

14.6 The Purchasing Director shall maintain, for a minimum of three years, all records relating to the award of a contract through a competitive sealed bid or competitive sealed proposal process.

15. PROCUREMENT ASSISTANCE, PREFERENCES AND REQUIREMENTS

15.1 PROCUREMENT ASSISTANCE TO SMALL BUSINESS

15.1.1 General Policy. It is the policy of the City to encourage small businesses, as defined in Section 3.97 of this Manual, to do business with the City.

15.1.2 Vendor Manual. The Purchasing Director shall issue a publication on how to do business with the City and how to be put on the bidders list in addition to any other reasonable action to ensure small businesses are invited to bid.

15.1.3 Bonding Requirements. The Purchasing Director may reduce bid bond, performance bond, or payment bond requirements to encourage procurement from small businesses. If determined to be in the best interest of the City, the reduced bond requirement must be so stated in the invitation for bid information. No reduction in bonding may be applied if not stated in the invitation for bid.

Small businesses are defined as businesses which are not a subsidiary or division of another business and which have an average annual volume for the proceeding three fiscal years not exceeding $1,500,000. If a bidder qualifies as a small business, the bond requirement may be reduced. In order to qualify for the reduced bond the firm must submit signed copies of the business tax returns for the last three years to indicate that the gross volume receipts qualify. Performance bonds and payment bonds for construction contracts may not be reduced to less than 50%. (See Section 28 PUBLIC WORKS (CONSTRUCTION) CONTRACTS.)

15.2 BUY AMERICAN REQUIREMENT

The City shall only require goods, motor vehicles or items of tangible personal property manufactured or assembled in North America except for gas-electric hybrid vehicles until these vehicles are assembled in North America; provided that this section shall not apply to motor vehicles used for law enforcement purposes. Bids shall certify compliance with “Buy American” requirements in bid documents. The City may waive this requirement if it is in the best interest of the City’s finances to do so or if no such good, item of tangible personal property, or uniforms exist for purchase. For the purposes of this section “motor vehicle” means a light duty vehicle under eight thousand five hundred pounds (8.500 lb.)

15.3 MINORITY BUSINESS PREFERENCE

In order to attempt to increase the opportunity for the purchase of goods and services from minority owned businesses, the Purchasing Division shall deem certified minority businesses as those listed in the minority business directory to be on the City's bidders list.

15.4 BUY SWEAT FREE REQUIREMENT

The City shall purchase its uniforms that are manufactured or assembled in sweat-free businesses. Bids shall certify compliance with "Buy sweat-free" requirements in bid documents. The City may waive this requirement if it is in the best interest of the City's finances to do so or if no such good, item of tangible personal property, or uniforms exist for purchase.

15.4.1 INTENT AND POLICY

a. For the purposes of Section 15, the terms "resident business" and "resident manufacturer" shall be defined as in N.M. Stat. Ann. Section 13-1-21 (1978).

b. The preference factor for resident preference applied to bids that qualify as a resident business and/or resident manufacturer shall be a five percent (5%) downward adjustment of the bid.

c. The preference factor for local preference applied to bids that qualify as a local business and/or local manufacturer shall be a ten percent (10%) downward adjustment of the bid.

d. Limitation. No bidder/proponent shall receive more than a 5% resident preference or 10% local preference, as applicable preference pursuant to Section 15 on any one offer submitted. A bidder/proponent may not claim cumulative preferences.

e. Intent. The City recognizes that the intent of the New Mexico Procurement Code's, Section 13-1-1 etseq. NMSA 1978, State resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, manufacturers and contractors from outside the State of New Mexico. The underlying policy is to give a preference to those persons and companies who contribute to the economy of the State of New

Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Attorney Gen. No. 69-42.) The City also has adopted a policy to include a local preference for those persons and companies who contribute to the economy of the City and/or County of Santa Fe by maintaining businesses and other facilities within the City and/or county and giving employment to residents of the City and/or County.

15.4.2 HOW TO SUBMIT AN APPLICATION FOR AN: IN-STATE OF NEW MEXICO BIDDER PREFERENCE

The intent and policy of this preference is to apply the preference only when bids are received from in-state businesses, manufacturers and contractors that are within five percent (5%) of low bids received from out-of-state businesses, manufacturers and contractors (13-1-21 (A)-1-21 (F) and 13-4-2 (C) NMSA 1978.)

a. To qualify for this preference and to be considered a New Mexico in-state resident for application of the in-state preference, the in-state bidder must have included with its bid or proposal:

(1) A valid State of New Mexico purchasing certification number evidencing State Purchasing Agent approval as an in-state resident in accordance with Section 13-1-22 NMSA 1978

(2) A valid resident business certificate or resident contractor certificate issued by the New Mexico State Taxation and Revenue Department starting January 1, 2012.

b. For information on obtaining a State of New Mexico in-state purchasing Certification number, the prospective bidder should contact the Taxation and Revenue Department at 1-505-827-0951 or log onto the web site: http://www.tax.newmexico.gov/Businesses/Pages/In-StatePreferenceCertification.aspx:

c. As of January 1, 2012, the City of Santa Fe will only accept the new State Preference Certification Forms.

d. The in-State preference does not apply to contracts that use federal funding.

e. If the bidder has met the above criteria, the low responsive in-state resident bid shall be multiplied by .95. If that amount is then lower that the low responsive bid on an out-of-state, non-resident bidder, the award will be based taking into consideration the in-state, preference of the five percent (5%).

15.4.3 REQUIREMENT TO BE CURRENT ON ALL STATE OF NEW MEXICO RELATED BUSINESS TAXES

To be considered for the in-state resident preference during the bid and request For proposal process, the submitter of the bid and/or proposal shall be current on all State of New Mexico related business taxes, including but not limited to, GRT, Property, and Payroll taxes and submit proof thereof. The City Purchasing Officer May grant an exception to this requirement if the submitter has worked out a payment plan with the State of New Mexico Taxation and Revenue Department. A copy of the payment agreement will need to be included with all of the other submittal requirements.

15.4.4 NO IN STATE RESIDENT PREFERENCE APPLIED IN CASE OF COMPETING IN-STATE BIDDERS

If the lowest responsive bid and the next lowest responsive bids within five percent (5%) of the lowest bid are all from the state of New Mexico, then the in-state resident preference will not be applied and the state purchasing certification number will not be considered. To be considered an in-state bidder in this situation, the bidders must meet the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978. After examining the information included in the bid submitted, the Purchasing Director may seek additional information of proof to verify that the business is a valid New Mexico business. If it is determined by the Purchasing Director that the information is not factual and the low responsive bid is actually an out-of-state bidder and not a New Mexico business, then the procedures in the previous section may be applied.

15.4.5 HOW TO SUBMIT AN APPLICATION AND QUALIFY FOR LOCAL PREFERENCE

a. Local Preference. The term “local” for purposes of the “local preference” in Section 15.4.4 shall mean:

1. The bidders principal place of business of the enterprise must be physically located within the Santa Fe County Geographic Boundries.
2. The business location inserted on the Application form must be a Physical location, street address or such. DO NOT use a post office box or other postal address.
3. Principal place of business must have been established no less than six months preceding Application for Local preference.

b. Bids for Goods and Services. When bids for the purchase of goods or services pursuant to Section 22 are received, the lowest responsive bid received from those bidders in the local preference category one shall be multiplied by the Local Preference Factor. The Preference Factor for local preferences applied to bids shall be .90 and the local preference for proposals shall be 1.10. If the resulting price of that bid receiving the preference is lower than or equal to the lowest bid of all bids received, the contract shall be awarded to that bidder receiving the preference. If no bids are received from bidders in the Local Preference category one, or if the bid receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to Resident preference category two of bidders listed to determine if the bid qualifies for award. The priority of categories of bidders is:

Category (1)	Local business.
Category (2)	Resident business.

c. Proposals for Goods and Services. When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of the proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to the proponent receiving the preference. If no proposals are received from proponents in the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category or proposals listed to determine if a proponent qualifies for award.

d. Qualifications for Local Preference. The Purchasing Division shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the bidder/proponent must be submitted by the bidder/proponent with the bid or proposal to qualify for this preference.

e. Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

f. Exception. The City Council at their discretion may approve waiving the Local preference requirements for specific projects or on a case by case basis if it is the City's best interest to do so.

15.4.6 LOCAL SUBCONTRACTOR PREFERENCE

a. Preference for Non-Local Primary contractors using local subcontractors. Non-Local contractors that do not qualify for the local preference as stated In section 15.4.5 are eligible to receive a percent preference if qualified local subcontractors are identified and used as subcontractors for the non local primary contractor on City Bids and request for proposals.

b. Local subcontractors identified and used as subcontractors for the non-local primary contractor must be registered and licensed with the City of Santa Fe.

c. Local subcontractors identified and used as subcontractors for the non-local primary contractor must be registered with the State of New Mexico as stated in section 15.4.2.

d. All local subcontractor documentation must be received at the time of submittal of the request for Bid or Request of Proposals.

e. The local subcontractor must have been registered with the City of Santa Fe and the State of New Mexico for a period of one calendar year before the Bid or Request for Proposal is publicly advertised.

f. The percentage for local subcontractor preference shall be based on the amount of work to be performed by the various subcontractors. The maximum allowable percentage for local subcontractor preference is 10%. Example: on a construction project of $100,000, the stated dollar amount of work to be completed by the local subcontractor is $40,000 or 40%. The percentage for local subcontractor preference in this Example would be 4%.

g. The primary non-local contractor must not replace the local subcontractor without authorized approval from the City project Manager or the Purchasing Officer.

15.5 VETERANS PREFERENCE

When a contract for supplies or services is to be awarded though competitive sealed bidding pursuant to Section 22 or through request for proposals Section 23, an amount equal to five percent (5%) of the bid price shall be subtracted from the bid of each bidder that Is either a contractor that is at least fifty-one percent (51%) veteran-owned or a contractor with a workforce that is a least fifty-one percent (51%) comprised of veterans. When a contract for supplies, services, or professional services is to be awarded through a request for competitive sealed proposals pursuant to Section 23, one of the evaluation factors stated in the request shall be whether the offeror is either a contractor that is at least fifty-one percent (51%) veteran-owned or a contractor with a workforce that is at least fifty-one percent (51%) comprised of veterans. The relative weight assigned to the offeror's status as a veteran or as having a workforce that is at least fifty-one percent (51%) comprised of veterans shall be five percent (5%). Any contractor that claims the veterans' preference pursuant to this section when submitting a bid or offer shall submit, along with the bid or offer, certification of the contractor's status as either at least fifty-one percent (51%) veteran owned or as having a workforce that is at least fifty-one percent (51%) comprised of veterans. The procurement officer shall create a certification process to be used by contractors to satisfy the requirements of this subsection and that may be relied upon by the City in giving a preference pursuant to this section.

16. SOLE SOURCE PROCUREMENTS

Conditions for use. A contract may be awarded without competitive sealed bids or proposals regardless of the estimated cost when the Purchasing Director may be made without competitive sealed bids or proposals when the Purchasing Director determines, in writing, that:

a. that there is only one source for the required service construction or item of tangible personal property.
b. 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
c. other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

In cases of reasonable doubt, competition should be solicited. A written determination by the Purchasing Director is required detailing how the review and determination was made.

16.1 Request by Using Department. The using department shall use due diligence in determining the basis for the sole source procurement, including reviewing available sources and consulting the using agency, and shall include its written determination in the procurement file. If the Purchasing Director determines that the sole source conditions are not met or if there is cause for reasonable doubt, the using department should be informed and regular procurement procedures should be followed.

16.2 Negotiations. The Purchasing Director shall conduct negotiations as appropriate as to price, quantity, delivery and terms, in order to obtain the price most advantageous to the City.

16.3 Annual Payments. Annual payments of procurements from prior years are not deemed to be automatically authorized each year. Annual sole source determination shall be requested and if a sole source declaration is made, the purchase will require annual Committee and City Council approval if over the required approval amounts. The procurement method shall be noted on the requisition.

16.4 Tangible Personal Property and Manufacturers Maintenance Agreements. Procurements of tangible personal property and maintenance agreements over $50,000 determined to be sole source shall be submitted to the Finance Committee and City Council for its approval.

16.5 Utility Contracts. There is no requirement to issue requests for proposals for utility services, if the City continues to purchase utility services from the previous sole source provider. If a request for proposal is issued, price is not required to be the only criteria for award. Utility services that are considered to be sole source procurements require approval by the City Manager and do not require a contract or City Council approval.

Deregulated utility services for which requests for proposals have been issued require a contract and City Council approval.

If a utility company with which the City has a current contract provides extended service such as additional lines, it will be considered a sole source procurement.

16.6 RECORDS

A file shall be maintained for each sole source procurement over $50,000 for tangible personal property and professional services and shall include the request by the using department, the determination of the Purchasing Director and all other applicable details.

16.7 A contract for the purchase of research consultant services by institutions of higher learning constitutes a sole source procurement.

16.8 The Purchasing Director shall not circumvent this section by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.

16.9 At least thirty days before a sole source contract is awarded, the Purchasing Director or a designee of him or her shall post notice of the intent to award a sole source contract on the City body web site. The notice shall identify at a minimum:

a) the parties to the proposed contract;
b) the nature and quantity of the service, construction or item of tangible personal property being contracted for; and
c) the contract amount.

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

16.11 For file requirement and record retention requirements in sole source procurements, see Section 14.

17. EMERGENCY PROCUREMENTS

17.1 Application. The provisions of this regulation apply to procurements made under emergency conditions that will not permit regular procurement processes to be used.

17.2 Definition of Emergency Conditions. An emergency condition is a situation which creates a threat to public health, welfare, safety or property. The existence of such condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

a. the functioning of the government;
b. the preservation or protection of property; or
c. the health and safety of any person.

17.3 Scope of Emergency Procurements. Emergency procurements shall be limited to those services, construction or items of personal tangible property necessary to meet the emergency.

17.4 Authority to Make Emergency Procurements. The Purchasing Director may authorize an emergency procurement when an emergency condition arises, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. If such an emergency occurs after normal working hours, the using department must obtain the emergency purchase order as soon as possible the next working day, and document all necessary information concerning the emergency procurement.

17.5 Procedure. The procedure used shall be selected to assure that the required services, construction or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practical under the circumstances shall be obtained. If at all practical, emergency procurements over $50,000 should be submitted to the City Council for its approval before the transaction. If not practical, the City Council shall be informed of the procurement over $50,000 at the next scheduled meeting.

17.6 Written Determination Required. A written determination of the basis for the emergency procurement shall be included in the procurement file.

18. EXEMPTIONS

18.1 All procurement shall be achieved by competitive sealed bids or formal proposals, except as follows:

1. Section 6, SMALL PURCHASES: PURCHASES OF TANGIBLE PERSONAL PROPERTY UNDER $50,000.
2. Section 11, COOPERATIVE PROCUREMENT.
3. Section 12, PROCUREMENT BY THE CITY ON BEHALF OF OTHER GOVERNMENTAL ENTITIES.
4. Section 16, SOLE SOURCE PROCUREMENTS.
5. Section 17, EMERGENCY PROCUREMENTS.
6. Section 24, PROCUREMENT OF PROFESSIONAL SERVICES UNDER $50,000.
7. Procurements exempted from competitive procurement are as follows:

   a. printing and duplicating contracts required in connection with court proceedings;
   b. purchases of publicly provided utilities such as: gas, electricity, water, telephone, cable TV;
   c. purchases of books, periodicals, films, training materials, subscriptions, on line information services or advertising from the publishers and distributors or agents thereof;
   d. travel, shipping, meals and lodging (Per Diem and Mileage Act applies to employee travel;)
   e. purchases of magazine subscriptions, conference registration, membership dues, or any other similar issues which are administrative in nature and are determined to be non-competitive by the City Purchasing Officer.
   f. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute with the exception of bond attorneys and general financial consultants;
   g. contracts entered into with a private independent contractor for the operation of a jail;
   h. 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;
   and
   i. legal services for advice, consultation, and representation of the City.
   j. Purchase of parts and labor for equipment or machinery where a breakdown of this equipment or machinery could cause an emergency

or costly condition to exist and where the machinery or equipment is in immediate danger of failure;

k. Purchase of parts and labor or maintenance agreements to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop.

l. purchases of computer software including ancillary services, where such is required to match other software in use or where a unique or novel application (available from only one provider) is required to be used in the public interest. This will include applicable initial and subsequent licensing fees and services to modify or maintain proprietary software, if such services are available from only a single provider.

m. Purchase, lease, rental or any other financial arrangement for the acquisition or are, artifacts, or other items for the purpose of exhibition in a public facility or area

n. purchases, rentals, leases (personal and real property) and professional/technical services contracts necessary for the investigation or criminal activities. The Police Department may purchase such materials and services without quotations, requests for proposals or bids if such would compromise a criminal investigation as determined by the Chief of Police in writing. All funds expended for this type of activity will be properly receipted and accounted for with supporting documentation. All documentations will be maintained by the Police Department and shall be subject to internal audit. Rentals, leases and professional/technical services will be limited to the term of an investigation;

o. purchases of chemicals, drugs and other controlled substances, the distribution and use or which is controlled by law or requires licensing. Departments such as the Fire Department expending for this type of activity will be properly receipted and accounted for with supporting documentation. All documentation will be maintained by the expending departments shall be subject to internal audit.

All amounts refer to contracts or other procurements excluding applicable gross receipts tax. If an award is made by a method other than competitive sealed bid or established contract prices the prospective contractor may be required to submit and certify cost or pricing data.

8. Procurement by City Contractors.

If the City contracts with an entity to manage, operate, administer or otherwise run an operation or project on behalf of the City, the contract with that entity is subject to the City Purchasing Manual through a Request for Proposals, formal bid, sole source determination, emergency determination and/or other allowable procurement process with the applicable approval process and contracts.

Unless otherwise specified, the contractor's procurement is not required to follow in detail the City Purchasing Manual, however, as much as possible the contractor should follow a form of public competitive procurement to ensure the best value to the City. Specific details of this procurement requirement should be included in the contract and the contractor may be required to maintain this documentation. If a grant is involved in the contract award, the contractor must comply with all grant requirements.

19. PUBLIC NOTICE

19.1 ADVERTISEMENT

All invitations to bid and requests for proposals for goods and services must be advertised once in a local paper, at least ten days before the bid or proposal opening date. If advertised more than once in the local paper, the last publication date must be at least ten days before the bid or proposal opening date. The using department shall consult the Purchasing Division regarding publication dates and other requirements. The Purchasing Division or the using department will complete a requisition. The Purchasing Division will submit the approved advertisements for publication. Advertisements must be submitted to the Purchasing Division not less than four days before the intended publication date.

Any other advertising place or extended time of advertisement may be used as determined to be advantageous by the using department or the Purchasing Division. The advertisement shall be in the standard form as established by the Purchasing Division. The Purchasing Division shall maintain a proof of publication file.

19.2 MAILING LIST

The using department should also submit to the Purchasing Division a list of prospective vendors to whom a bid or proposal packet may be sent. The Purchasing Division will also send a notice of invitation to bid or request for proposal to all businesses included on the City's bidders list and to any other prospective bidders.

A fee may be charged for bid or proposal packets. The fee shall be not more than the actual cost of furnishing copies.

19.3 ISSUANCE OF BID OR REQUEST FOR PROPOSALS PACKETS

Invitation for bid or request for proposal packets should not be delivered until the first date of publication. Packets to be mailed may be submitted to the post office up to three days prior to publication for out-of-town firms and two days prior for firms within the City. Packets shall not be hand-delivered or issued to vendors from the Purchasing Division or other City offices until the first date of publication. The Purchasing Division or other designated office shall maintain a list of all names and addresses to which packets were sent or picked up, for future reference.

20. BIDDERS LIST AND VENDORS CATALOGUE FILE

The Purchasing Division shall maintain a vendors catalogue file and a bidders list. The bidders list is filed in alphabetical order according to commodities offered by a vendor. Vendors shall notify the Purchasing Division of their interest in doing business with the City by submitting a cover letter indicating the particular categories of tangible property, construction, or services they can provide, as well as other information or catalogues they can provide.

The bidders list shall be referred to for each bid or proposal to be issued, generally for expenditures over $50,000. From time to time, the list may be purged of vendors that have not done business with the City for the previous 5 years.

For purchases under $50,000 the bidders list may be referenced to obtain further information or to obtain quotes.

All City departments are urged to use this information.

21. DETERMINATION OF BIDDERS AND PROPONENTS RESPONSIBILITY/NON-RESPONSIBILITY

21.1 Application. A determination of responsibility or non-responsibility shall be governed by this regulation.

21.2 Standards of Responsibility. Factors to be considered in determining whether the standard of responsibility has been met include whether the bidder or proponent has:

a. submitted a responsive bid/proposal;

b. adequate financial resources, production or services facilities, personnel, service reputation and experience to make satisfactory delivery of the services, construction items of tangible personal property described in the invitation of bids/request for proposals;

c. a satisfactory record of performance;

d. a satisfactory record of integrity;

e. qualified legally to contract with the City;

f. supplied all necessary information and data requested in connection with the inquiry concerning responsibility.

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

a. evidence that such bidder or proponent possesses such necessary items;

b. acceptable plans to subcontract for such necessary items; or

c. a documented commitment from or an explicit arrangement with a satisfactory source to provide the necessary items.

All bids and proposals shall include a form for bidder or proponent to certify or provide an explanation for any of the following events within the last 5 years:

1. No debarment, disqualification, default, or early termination from contract.
2. No commercial bankruptcy.
3. Information on all settled adverse claims, disputes or lawsuits with an owner of a project.
4. Description of OSHA violations, workers' compensation claims, or safety claims.
5. Description of any state licensing violations.

21.4 Inquiry by Purchasing Director. Before awarding a contract, the Purchasing Director must be satisfied that the bidder or proponent is responsible, therefore, the bidder or proponent shall supply information and data requested by the Purchasing Director. A reasonable deadline may be set for submittal of requested information. The unreasonable failure of a bidder or proponent to promptly supply information by this date is grounds for a determination that the bidder or proponent is not responsible.

21.5 Determination Required. If a bidder or proponent who otherwise would have been awarded a contract is found not to be a responsible bidder or proponent, a written determination, setting forth the basis of the finding, shall be prepared by the Purchasing Director. Such determination shall be included in the recommendation to the City Council and shall become part of the bid record on file.

22. COMPETITIVE SEALED BIDDING FOR PROCUREMENT OF TANGIBLE PERSONAL PROPERTY AND CONSTRUCTION SERVICES

Recommendation of Award. Unless otherwise exempted by the Purchasing Director, the using department shall submit a written recommendation of award to the Purchasing Division.

If the recommendation of award is over $30,000 the recommendation shall be reviewed by the Purchasing Director and a written recommendation to the City Finance Committee or other applicable committee fro review and submittal t the City Council for its consideration. The memo should include a tabulation of all bids submitted, budget and funding information, including other pertinent information concerning the bid.

This memo and other applicable information used as the basis for determining the successful bidder shall be made a part of the procurement file.

If the recommendation of award is under $50,000 the department should execute a contract (if applicable) for City manager's signature and forward a copy to the Purchasing Office with the requisition number in the upper right hand corner. If a contract is not applicable, the department should enter the requisition citing the bid number.

22.1 INVITATION FOR BID PACKET

The invitation for bids is used to initiate competitive sealed bid procurement. The invitation for bid packets shall include the following:

a. The specifications for bids issued for the construction services, or items of tangible personal property to be procured;
b. Sample contract with all contractual terms and conditions applicable to the procurement, if in addition to a purchase order referencing the bid documents;
c. Statement whether the contract will have a mutli-year term, and if so the length of the term.
d. Instruction and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening;
e. Copy of advertisement inviting submission of bids;
f. Bid schedule (tentative dates); and
g. Defined statements of basis of award.

The invitation to bid packet shall also include the following items discussed as applicable.

22.1.1 Incorporation by Reference. The invitation for bids may incorporate documents by reference provided that the invitation for bids specifies where such documents can be obtained.

22.1.2 Acknowledgement of Amendments. The invitation for bids shall require the acknowledgement of the receipt of all amendments issued.

22.1.3 Evaluation Criteria. The invitation for bids shall set forth any additional evaluation criteria other than price 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 which are not set forth in the invitation for bids. (See Section 22.13.4 Determination of Lowest Bidder.)

22.1.4 Bid Form. The invitation for bids shall provide a form that shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions. Verbal or telephone bids are invalid and shall not be considered. Signed faxed bids other than construction bids will be acceptable if all other requirements of the bid submittal are met. Faxed bids will not be accepted for construction projects.

22.1.5 Specifications. Specifications shall be the responsibility of the using department, subject to the review of the Purchasing Division. Specifications shall be written to ensure maximum practical competition and yet fulfill the requirements of the using department.

Brand names may be referred to but the specification shall include the essential design, function, or performance characteristics of the product which are required and shall include a reference to “or equal” indicating the brand name is for the purpose of describing the quality of performance and other characteristics and not to limit or restrict competition.

If only one source can supply the required goods, the procurement shall be made as a sole source procurement (See Section 16 SOLE SOURCE PROCUREMENTS.) The procurement shall be bid if reasonable question exists as to other sources. The item shall also be bid if only one brand will meet the needs of the City, but there is more than one vendor that could provide the goods or service.

22.1.6 Bid Samples and Descriptive Literature**.** Descriptive literature refers to information available in the ordinary course of business, usually standard information printed by the manufacturer, which shows the characteristics, construction, or operation of an item which enables the City to consider whether the item meets its needs.

Bid sample means a sample of the actual product or service to be furnished by a bidder to show the characteristics of the items offered in the bid.
Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the item bid or to ensure the product bid complies with the specification.

Bid samples, when required, shall be furnished at no expense to the City prior to the time set for the bids. If samples are not submitted prior to the bid when requested, that bid may be determined to be non-responsive and rejected. Samples not destroyed or mutilated in testing will be returned upon written request within fifteen (15) calendar days from the date of the bid opening, by mail, express or freight, collect. Each sample must be labeled to clearly show the bid number and the bidder's name. The sample submitted by the bidder awarded the contract shall be retained until the termination of the contract to ensure that the product delivered conforms to the sample bid.

Bid samples or descriptive literature shall not be required unless expressly requested. If a bidder does submit unsolicited bid samples or descriptive literature, they are submitted at the bidder's risk and need not be examined or tested.

22.1.7 Alternate Bids. Alternate bids are defined as bids not exactly meeting specifications, but with the possibility of being determined to be equal or equivalent in performance or design. Unless otherwise stated, all items determined to be equal or equivalent to the specifications as stated may be considered by the City. The final determination as to whether the alternate bid is equal or equivalent will be made by the Purchasing Director. The bid may state that certain alternates will not be considered, if maximum practical competition is still maintained.

The bid may state that all alternates must be reviewed and approved in advance or the alternate will not be considered. If the bid so states, the bid shall allow adequate time for submittal of the alternate by the vendor and for review by the City. If an alternate is approved, all other vendors who obtained bid packets should be notified by addendum that such item has been approved as an alternate. A bidder that does not have its alternate reviewed and approved in accordance with the procedures stated in the bid documents may be determined to be non-responsive and rejected.

22.1.8 Bidding Time. Bidding time is the period of time between the date of distribution of the invitation for bids and the time and date set for receipt of bids. Bidding time shall be set to provide bidders a reasonable time to prepare their bids and meet the needs of the City, as determined by the Purchasing Director. In no case shall the bidding time be shorter than the time required for publication of notice under this section.

Bidding time and date will not be re-scheduled except by means of a formal addendum that meets requirements established in the bid documents, including the minimum number of calendar days required prior to the originally scheduled bid opening time and date.

22.1.9 Bid documents. Bidders may obtain complete sets of the bid documents from the issuing office designated in the invitation for bid and for the deposit sum, if required. Unless otherwise stated, the deposit will be refunded to bidders who submit a bona fide bid and return the bid documents in good condition fifteen (15) calendar days after receipt of bids. The cost of replacement of any missing or damaged documents will be deducted from the deposit.

Bidder shall use complete sets of bid documents in preparing bids. The City does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of bid documents.

22.2 PUBLIC NOTICE

The notice of invitation for bids shall be published not less than ten calendar days prior to the date set for the opening of bids, at least once in a newspaper of general circulation in Santa Fe. (See Section 19 PUBLIC NOTICE.)

The publication requirement is in addition to any other procedures which may be adopted by the City's Purchasing Division to notify bidders that bids will be received, including but not limited to publication in trade journals, if available, and distribution of vendors included on the bidders list. (See Section 20 BIDDERS LIST AND VENDORS CATALOGUE FILE.)

A copy of the invitation for bids shall be made available for public inspection at the City Purchasing Division.

22.3 BID SECURITY

Bid security will be required for construction contracts over $50,000. Other bid and/or performance bonds may be required as determined by the Purchasing Division to be necessary to protect the interest of the City. Such bond requirements shall not be substituted for a determination of responsibility of a bidder or offeror. It is generally the policy of the City to require bid bonds for all construction projects.

When required and so stated in the bid, each bid shall be accompanied by a bid bond executed by a company authorized to do business in the State of New Mexico or cashier's check in the amount of five per cent (5%) of the bid amount, pledging that the bidder will enter into a contract with the City on the terms stated in their bid, and will furnish payment on performance if required covering the faithful performance of the contract and payment of all obligations arising thereunder. Should the bidder refuse to enter into such contract or fail to furnish required subsequent bonds, the amount of the bid security shall be forfeited to the City as liquidated damages, not as penalty.

22.3.1 The City will have the right to retain the bid security of bidders to whom an award is considered until either (a) the contract has been executed and any required performance or payment bonds have been furnished, or (b) the specified time for award has elapsed, or (c) all bids have been rejected.

22.3.2 The bid security may be in the form of a cashier's or certified check, cash, or a bid bond, submitted from a firm approved to do business in the State of New Mexico or otherwise supplied in a form satisfactory to the City. This may be verified through contact with the State Corporation Commission Insurance Division. If the surety company is not authorized, the bid may be rejected. In no case will a personal or business check fulfill the bond requirements.

22.4 PRE-BID CONFERENCES

22.4.1 Pre-Bid Conferences. Such conferences may be conducted to explain the procurement requirements and shall be announced to all prospective bidders known to have received an invitation for bids. The conference shall be held long enough after the invitation for bids has been issued to allow prospective bidders to become familiar with it, and sufficiently before bid opening to allow consideration of the addenda issued as a result of the conference in preparing their bids. Nothing stated in the pre-bid conference shall change the bid documents issued unless a change is made by written addendum as provided in this section, and the invitation for bid shall so state. No verbal communication is binding.

Prospective bidders, subcontractors, and vendors are encouraged to attend and should be prepared to ask questions relative to substitutions and/or request clarification of the bid documents. The failure of a bidder, subcontractor, or vendor to attend shall be interpreted to mean that the bid documents are clear and acceptable to all non-participants of the pre-bid conference. Such clarity and acceptability shall be presumed with respect to all bidders. For some projects that are significantly large and/or complex, attendance at the pre-bid conference may be mandatory. The bid documents must state that the pre-bid conference is mandatory and failure to attend will result in disqualification of the bid.

22.4.2 Interpretation or Correction of Bid Documents. Bidders or subcontractors shall promptly notify the City of any ambiguity, inconsistency, or error that they may discover upon examination of the bid documents or of the site and local conditions.

Bidders and subcontractors requiring clarification or interpretation of the bid documents shall make a written request following procedures and deadlines as stated in bid.

Any interpretation, correction, or change of the bid documents will be made by addendum. Interpretation, correction, or changes of the bid documents made in any other manner will not be binding and bidders shall not rely upon such interpretations, corrections or changes.

22.5 AMENDMENTS TO INVITATION FOR BIDS

22.5.1 Amendments to invitation for bids shall be identified as such and shall require that the bidder acknowledge receipt of all amendments issued. The amendment shall refer to the portion of the invitation for bids that it amends. Failure of a bidder to receive an addendum does not relieve the bidder of compliance with the addendum. Section 22.12.5 may apply if bidder has not acknowledged receipt of addendum.

22.5.2 Distribution. Amendments shall be sent to all prospective bidders known to have received an invitation for bids by certified mail or hand delivery with receipt requested. The vendors may be notified by telephone or by fax and the written addendum distributed at a later date.

22.5.3 Use of Amendments. Written amendments should be used to make any changes in the invitation for bids such as changes in quantity, purchase description, delivery schedules, and opening dates; correct defects or ambiguities; or 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.

22.6 FORM AND STYLE OF BIDS

22.6.1 Bids shall be submitted on forms identical to the form included with the bid documents. All blanks on the bid form shall be filled in by typewriter or manually in ink. Where so indicated on the bid form, sums shall be expressed in both words and figures, and, in case of discrepancy between the two, the amount in written words shall govern. Any interlineation, alteration, or erasure should be initialed by the signer of the bid.

22.6.2 All required additive or deductive alternate bids shall be bid. If no change in the base bid is required, enter “No change”.

Where there are two or more major items of work (identified as “Bid Lots”) for which separate bids are requested, the bidders may, at their discretion, submit bids for any or all items, unless otherwise stated in the bid documents.

It is the responsibility of the bidder to ensure all requirements of the bid form are met. If the bid form is erroneously completed or submitted incomplete, the bid may be rejected.

22.6.3 Each copy of the bid shall include the legal name of the bidder. Each copy shall be signed by the person or persons legally authorized to bind the bidder to a contract. If requested, a bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind the bidder.

Non-Collusion. In signing the bid form, the bidders certify that they have not, either directly or indirectly, entered into an action in restraint of free competitive bidding in connection with this bid submitted to the City. A separate certification may be required in the bid documents.

22.7 RESIDENT AND LOCAL PREFERENCE

22.7.1 The resident preference must be applied to bids if the bidder has submitted a valid certificate or certificate number.

22.7.2 It shall be the responsibility of the bidder requesting consideration for resident preference to apply to the state Purchasing Division of the General Services Department prior to the bid opening deadline for certification and to receive approval and a certification number, which must be included in the bid form. Unless stated otherwise, request for qualification for resident preference certification after the bid-opening deadline will not be considered. (See Section 15.4 Resident And Local Preference.)

22.7.3 It shall be the responsibility of the bidder requesting consideration for local preference to complete a local preference application with each bid submitted. (See Section 15.4.4 Application For Local Preference.)

22.8 SUBCONTRACTORS

If applicable, the bidder shall list the subcontractors or material suppliers they propose to use for all trades or items on the subcontractor listing form attached to the bid documents. If awarded the contract the bidder shall use the firm listed, or themselves if "General Contractor" has been listed, unless a request for a change or substitution is approved by the City.

22.9 SUBMISSION OF BIDS

22.9.1 All copies of the bid and required documents, including the bid form, the bid securities, subcontractors listing, certificate forms, and other documents, if any, are required to be submitted in writing with an original signature by a person authorized to bind the bidder, enclosed in a sealed opaque envelope. The envelope shall be addressed to the City of Santa Fe Purchasing Division, 2651 Siringo Road, Building H, Santa Fe, New Mexico 87505, and shall be identified with the project name, the bidder's name and address, the designated portion of the work for which the bid is submitted, the invitation to bid number, date of opening, and time of opening. The sealed envelope shall be indicated as a "SEALED BID ENCLOSED". The City shall not be liable for premature opening of bids submitted with no indication that the envelope contained a bid.

22.9.2 All bids, regardless of method of delivery, must be received in the Purchasing Division at or prior to the date and time specified in the request for bids. Any bid, withdrawal or modification of bid received after the time and date of opening for bids is late. No late bid will be accepted, unless the bid, modification, or withdrawal would have been timely but for the action or inaction of City personnel. No bid will be accepted if the bidder has not complied with submittal procedures stated in the bid information as to the time and place of the bid submittal. Bidders assume full responsibility for timely delivery of bids, regardless of method of delivery.

22.9.3 Bids shall be deposited and recorded at the Purchasing Division, City of Santa Fe, 2651 Siringo Road, Building H, Santa Fe, New Mexico 87505, prior to the time and date for receipt of bids indicated in the invitation for bid or any extension made by addendum. Upon receipt, each bid and any modification shall be date- and time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening.

22.9.4 A late bid may be considered for award if it is the only bid received.

22.9.5 Bidders submitting late bids that will not be considered for award shall be notified as soon as practical. If requested the unopened bid may be returned to the bidder.

22.9.6 Bids may be submitted by facsimile (fax) or e-mail. If the bid is faxed, all submittal requirements must be met by the bid deadline. If faxed, the cover transmittal must clearly state that the fax is a bid with the bid number and title. The Purchasing Division staff should then put the fax in a bid envelope and seal the envelope. The City is not liable for bids submitted as a fax. A faxed bid is solely an option by the bidder and the bidder assumes all risks of improper transmissions and handling of faxed bids by the City. Faxed and e-mail bids are not acceptable for construction projects. If the bid is submitted by e-mail, the bidder must notify the Purchasing Division of the submittal by some means other than e-mail. It is the bidder's responsibility to verify that bids submitted by fax or e-mail are received timely.

All documents relating to late bids, late modifications, or late withdrawals shall be made a part of the appropriate procurement file.

22.9.7 Verbal or telephone bids are invalid and will not be considered. Signed faxed bids will be accepted if all other requirements of the bid submittal are met.

22.10 MODIFICATION OR WITHDRAWAL OF BIDS

22.10.1 Prior to Bid Deadline. A bid may be modified or withdrawn by a bidder prior to the time set for bid opening by delivery of notice of modification or withdrawal in writing to the Purchasing Division. Modification or withdrawals submitted up to the time designated for the receipt of bids may be accepted provided they are fully in conformance with the bid documents.

If a bid is withdrawn in accordance with this section, no action shall be taken against the bid security. All documents pertaining to the modification or withdrawal of bid shall be made a part of the appropriate procurement file.

22.10.2 After Bid Deadline. A bid may not be modified, withdrawn, or canceled by the bidder after the time and date designated for the receipt of bids.

22.11 BID OPENING

22.11.1 Opening and Recording. Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. 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 City Purchasing Director shall be recorded. This record shall be open to public inspection, except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in Section 22.11.3.

22.11.3 Confidential Data. Bids are public records as defined by the Inspection of Public Records Act, N. M. Stat. Ann. Section 14-2-1 et seq. (1978) ("the Act"). Confidentiality of information submitted in a bid is determined by that Act. The Purchasing Director shall examine the bids to determine whether any request for non-disclosure of trade secrets and other proprietary data identified in writing is allowed under the Act. Requests for non-disclosure of certain information in a bid must be accompanied by a citation to the statutory provision that would allow such non-disclosure. Prices, makes, models or catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of the bid opening regardless of any designation to the contrary. The Purchasing Director shall inform the bidders in writing which portions, if any, of the bid will not be disclosed. The bids shall be open to public inspection subject to any valid prohibition on the disclosure of confidential data.

22.12 MISTAKES IN BID

22.12.1 Consideration for Award. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in this regulation.

22.12.2 General Principles. Correction or withdrawal of a bid because of an inadvertent 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. The Purchasing Director may allow correction or withdrawal of a bid because of mistake only to the extent authorized in this section.

22.12.3 Mistakes Discovered Before Bid Deadline. A bidder may correct mistakes discovered before bid deadline by withdrawing or correcting the bid as provided in Section 22.10 Modification Or Withdrawal Of Bids.

22.12.4 Confirmation of Bid. When the Purchasing Director knows or has reason to conclude that a mistake has been made in the apparent low bid, the Purchasing Director should request the apparent low bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the facts for the low bid or a bid unreasonably lower than the other bids submitted. If the apparent low bidder alleges mistakes, the bid may be corrected or withdrawn if the conditions set forth in Section 22.12.5 - 7 are met.

22.12.5 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 Director may waive such irregularities or allow the apparent low bidder to correct them if it is to the best interest of the City. Examples include the failure of an apparent low bidder to:

a. return the number of signed bids required by the invitation for bids;
b. sign the bid, if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound; or
c. acknowledge receipt of an amendment to the invitation for bids, but only if it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms or if the amendment involved had no effect on price, quantity, quality, or delivery.

22.12.6 Mistakes Where Intended Correction is Evident. If the mistakes 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 documents are typographical errors in extending unit prices, transposition errors, and arithmetical errors.

22.12.7 Mistakes Where Intended Correct Bid Is Not Evident. A low bidder alleging a material mistake of a fact, which makes the bid non-responsive, may be permitted to withdraw the bid if:

a. a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
b. the low bidder submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

22.12.8 Written Determination. When a low bid is corrected or withdrawn, or a correction or withdrawal is denied, the Purchasing Director shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

22.12.9 Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the City Purchasing Director makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

22.13 BID EVALUATION AND AWARD

22.13.1 General. A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. The invitation for bids shall clearly set forth the requirements and criteria which will be used to determine the lowest responsible bidder. No bid shall be evaluated based on any other requirements or criteria.

22.13.2 Product Acceptability. The invitation for bids shall set forth any evaluation criteria to be used in determining product acceptability and may require technical data or other material. It may also provide for accomplishing any of the following prior to award:

- Inspection or testing of a product prior to award for such characteristics as quality or workmanship;
- Examination of such elements as appearance, finish, taste or feel; or
- Other examinations to determine whether it conforms with other purchase description requirements.

22.13.3 Purpose of Acceptability Evaluation. The acceptability evaluation is conducted for the purpose of determining whether one bidder's bid is acceptable as set forth in the invitation for bids. Any bidder's bid that does not meet the acceptability requirements shall be rejected as non-responsive.

22.13.4 Determination of Lowest Bidder. Following determination of product acceptability as set forth in Section 22.13.2 and 22.13.3, if any is required, bids will be evaluated to determine which bidder offers the lowest base bid, excluding New Mexico Gross Receipts Tax, in accordance with additional evaluation criteria set forth in the invitation for bids to determine low bid. Only objectively measurable criteria, which are set forth in the invitation for bids, shall be applied in determining the lowest bidder. Examples of such criteria include but are not limited to, discounts, transportation costs, or life cycle formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall be reasonable estimates based upon information the City has available concerning future use and all bids shall be treated equitably.

The following factors may be a consideration in determining the lowest bidder, if so stated in the bid documents issued:

1. Discounts.

a. Prompt payment discounts Payment within a set number of days shall be considered in computing the low bid. The discount time shall be considered in computing the low bid. The discount time shall not begin until completion of the tests or receipt of the invoice, whichever is later.

b. Trade discounts shall be considered in computing the low bid. Such discounts may be shown separately, but must be deducted by the bidder in calculating the unit price quoted.

c. Quantity discounts should be included in the price of the item. Such discounts may not be considered where set out separately unless the invitation for bids so specifies.

2. Transportation Costs. Transportation costs shall be considered in computing the low bid. Such costs may be included in the bid price or be listed as a separate item.

3. Total of Life Cycle Costs. Award may be determined by total or life cycle cost if so indicated in the invitation for bids. Life cycle cost evaluation may take into account operative, maintenance, time value of money costs, other costs of workmanship and usage and resale, of contracts on the basis of lowest bid cost over the period the item will be used.

4. Evaluation for Energy Efficiency. Award may be determined by an evaluation consisting of the acquisition price, plus the cost of energy consumed over a projected period of use, calculated for each competitive product.

5. Delivery Time. Determination of low bid may be determined by adding, for evaluation and comparison purposes only, a dollar amount for each day over a stated delivery date. This method can only be used if so stated in the bid documents issued.

If time is a critical factor and can be justified as such, the bid may state delivery times after a certain date will not be acceptable and bidders not able to meet this delivery deadline may be disqualified. This deadline may not be arbitrarily determined.

6. Restrictions. Nothing in Section 22.13, Bid Evaluation And Award, shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the specifications in the invitation for bids if such bidder is not also the lowest bidder. If upon consideration of the higher quality item, it is determined to be in the best interest of the City to procure these type of goods, the procurement should be bid with new specifications.

7. State Gross Receipts Tax. The City is exempt from payment of state gross receipts tax on tangible personal property; however, the City is required to pay state gross receipts tax on labor, construction, rental of equipment, and professional services.

If state gross receipts tax is applicable on a contract solicited by competitive sealed bid, the base bid shall exclude the state or local tax in determining the award. The City shall be required to pay the applicable tax, including any increases in the applicable tax effective after the date the contract is entered into. The applicable gross receipts tax shall be shown as a separate amount on the bid form and each billing or request for payment made under the contract.

8. Preferences to be Applied in Determining Low Bidder. The City provides certain preferences to resident and local businesses and resident and local manufacturers and to resident and local construction contractor which must be applied in determining the lowest bidder. A requirement for application of the resident or local preferences must be complied with in accordance with Section 15.4 Resident Preference.

9. Identical low bids. If low responsive bids are identical in price after the application of the preferences, the Purchasing Director may:

a. award pursuant to the multiple source award provisions (See Section 22.13.8;)
b. award to a resident local business if the identical low bids are submitted by a resident or local business and non-resident business (See Section 15.4;)
c. award to a resident or local manufacturer if the identical low bids are submitted by a resident or local manufacturer and non-resident manufacturer (See Section 15.4;)
d. award by lottery to one of the identical low bidders; or
e. reject all bids and re-solicit bids for the required services, construction or items of tangible personal property.

22.13.5 Negotiations. Negotiations are not permitted with any bidder except as follows:

If an otherwise qualified and responsible low bid that is over the budget amount but within 10% of the budgeted funds, and if there is no change in the original terms and conditions, the City may negotiate with the low bidder for a lower total bid in order to avoid rejection of all bids. Such negotiation is not allowed if the low bid is more than 10% over the budgeted funds.

The original terms and conditions, including the scope of the project, may not significantly change to negotiate a lower price.

22.13.5.A Exceptions. The Project Manager with the consent of the Purchasing Officer can approve the ability to negotiate with the two lowest bidders simultaneously for specific projects if it is the City's best interest. This option must be stated in the Bid Packet or by addenda.

22.13.6 Recommendation of Award. Unless otherwise exempted by the Purchasing Director, the using department shall submit a written recommendation of award to the Purchasing Division.

The procedure used shall be selected to assure that the required services, construction or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practical under the circumstances shall be obtained. If at all practical, emergency procurements over $50,000 should be submitted to the City Council for its approval before the transaction. If not practical, the City Council shall be informed of the procurement over $50,000 at the next scheduled meeting.

This memo and other applicable information used as the basis for determining the successful bidder shall be made a part of the procurement file.

If the recommendation of award is under $50,000 the department should execute a contract (if applicable) for City Manager's signature and forward a copy to the Purchasing Office with the requisition number in the upper right hand corner, If a contract is not applicable, the department should enter the requisition citing the bid number.

22.13.7 No Responsive Bids Received. If all bids received are determined to be non-responsive and rejected, a new invitation for bids shall be re-issued and re-advertised. Upon re-bidding, if the bids received are unacceptable or if no bids are received, the Purchasing Division or administering department may negotiate the procurement in the open market at the best obtainable price.

No significant change in scope of services, terms or conditions is permitted. If it is determined a change in the scope of services, terms, or conditions is required, new invitations for bids shall be re-issued and must be re-advertised. The Purchasing Director shall make a determination that negotiations may be undertaken and shall monitor the negotiation procedures.

22.13.8 Multiple Source Award. A multiple source award may be made when two or more bidders 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 bids received in each geographical area.

The Purchasing Director shall make a written determination setting forth the reasons for a multiple source award.

22.14 MULTI-STEP SEALED BIDDING

22.14.1 General. When the Purchasing Director 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 un-priced offers to be followed by an invitation for bids. Thus, multi-step sealed bidding is a two-phase process consisting of a first phase composed of one or more steps in which those offerors whose technical offers are determined to be acceptable submit priced bids. The process allows for the benefits of the competitive sealed proposal procedure with the solicitation of technical offers and discussions to evaluate to determine the acceptability of technical offers as well as the benefits of competitive sealed bids.

22.14.2 Conditions for Use. The multi-step sealed bidding method may be used when it is not practical to permit an award based on price. Multi-step sealed bidding may thus be used when it is considered desirable to:

- **a.** invite and evaluate technical offers to determine their acceptability to fulfill the departmental requirements;
- **b.** conduct discussions to facilitate understanding of the technical offer and City requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the City of Santa Fe specifications;
- **c.** accomplish the above paragraphs (a) and (b) of this section prior to soliciting bids; and
- **d.** ultimately award the contract to the lowest responsible bidder in accordance with the competitive sealed bidding procedures.

22.14.3 Pre-Bid Conferences in Multi-Step Sealed Bidding. Prior to the submission of unpriced technical offers, a pre-bid conference (See Section 22.4, Pre-Bid Conferences,) may be conducted by the Purchasing Director. The Purchasing Director may also hold a conference of evaluation of the unpriced technical offers.

22.14.4 Forms. Multi-step sealed bidding shall be initiated by the issuance of an invitation for bids in the form required by this Section, except as hereinafter provided. In addition to the requirements set forth in this Section, the multi-step invitation for bid shall state:

- **a.** that unpriced technical offers are requested;
- **b.** whether priced bids are to be submitted at the same time as technical offers; 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 bidders whose technical offers are found acceptable in the first phase;
- **d.** the criteria to be used in the evaluation of the unpriced technical offers;
- **e**. that the City, to the extent the Purchasing Director finds necessary, shall conduct verbal or written discussion of technical offers;
- **f.** that bidders may designate those portions of the technical offers which contain trade secrets or other proprietary data which are requested to remain confidential, in accordance with the Inspection of Public Records Act, if the request is accompanied by a citation to statutory authority for= non-disclosure; and
- **g.** that the item procured shall be furnished in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the invitation for bids.

22.14.5 Amendments to the Invitation for Bids. After receipt of technical offers, amendments to the invitation for bids shall be distributed only to bidders who submitted technical offers, and they shall be permitted to submit new technical offers or to amend those submitted. If, in the opinion of the Purchasing Director, a contemplated amendment will significantly change the nature of the procurement, the invitation for bids shall be cancelled in accordance with Section 25 CANCELLATION/REJECTION OF BIDS OR PROPOSALS, and a new invitation for bids issued.

22.14.6 Evaluation of Technical Offers. The technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bid. The technical offers shall be categorized by the Purchasing Director as:

a. acceptable;

b. potentially acceptable, or reasonably susceptible to being made acceptable; or

c. unacceptable. Offers not addressing or inadequately addressing all submittal requirements or instruction procedures may be considered non-responsive and may be rejected. The Purchasing Director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file. Offerors whose offers are unacceptable shall be notified promptly.

22.14.7 Purchasing Director Decision. The Purchasing Director may initiate phase two of the procedure if, in the Purchasing Director's opinion, there are sufficient acceptable technical offers to assure effective price competition in the second phase. If the Purchasing Director finds that such is not the case, the Purchasing Director shall issue an amendment to the invitation for bids or engage in technical discussions as set forth in the next paragraph.

22.14.8 Discussion of Technical Offers. The Purchasing Director may conduct discussions with any offeror who submits an acceptable technical offer. During the course of such discussions the Purchasing Director shall not disclose any information derived from one unpriced technical offer to any other offeror. Once discussions are begun, any offeror who has not been notified that its offer has been finally found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the Purchasing Director. Such submission may be made at the request of the Purchasing Director or upon the offeror's own initiative.

22.14.9 Notice of Unacceptable Technical Offer. When the Purchasing Director determines a offeror's technical offer to be unacceptable, such offeror shall not have an additional opportunity to supplement its technical offer.

22.14.10 Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or offers may be withdrawn during phase one at any time. During phase two, mistakes may be corrected or withdrawal permitted in accordance with Section 22.12 Mistakes In Bid.

22.14.11 Procedure for Phase Two. Upon the completion of phase one, Purchasing Director shall either:

a. open bids submitted in phase one (if bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; or

b. if bids have not been submitted and technical discussions have been held and amendments to the invitation for bids have been issued, invite each acceptable offeror to submit a bid.

Phase two shall be conducted as any other competitive sealed bid procurement except:

- as specifically set forth in other sections;
- no public notice need be given of this invitation to submit bids because such notice was previously given; and
- after award, bids are open to public inspection subject to any valid prohibition on the disclosure of confidential data.

23. COMPETITIVE SEALED PROPOSALS FOR PROCUREMENT OF PROFESSIONAL SERVICES OVER $25,000

23.A.1 APPLICATION

Competitive sealed proposals is the required method for the procurement of professional services over $30,000 excluding applicable gross receipts tax except or professional services that are otherwise exempted. (See Section 18 EXEMPTIONS.) Competitive sealed proposals may be used for procurement of a combination of tangible personal property and associated professional services, if determined to be in the best interests of the City by the Purchasing Director.

These procedures may also be used for any other procurement with a cost under $50,000, excluding applicable gross receipts tax if determined to be advantageous to or in the best interest of the City, by the using department or the Purchasing Director.

23.A.1.1 Practical or Advantageous. When a City department procures professional services over $50,000, or when the Purchasing Director determines that competitive sealed bidding is either not practical or not advantageous to the City, the procurement shall be effected by competitive sealed proposals.

Competitive sealed proposals may also be used to solicit other contracts using City facilities or land providing revenue to the City, as being the most objective and expedient procedure to ensure the best and most advantageous use of City property.

Competitive sealed proposals shall not be used for the procurement of construction services, however a combination of design/build services may be solicited through the proposal process. Projects that are primarily “art” in scope are considered professional services unless determined to be otherwise.

23.A.1.2 Proposals and Bid Differences. The key element in determining advantageousness is the need for flexibility. The competitive sealed proposal method differs from the competitive sealed bid method in three important ways:

- whichever may be in the best interest of the City.
- It permits discussions and negotiation with competing proponents and changes in their proposals including price: and
- It allows comparative evaluations of a number of factors to be made of acceptable proposals for award of the contract.

23.A.1.3. Determinations. Before a contract, other than a professional service agreement, may be entered into by the use of competitive sealed proposals, the Purchasing Director shall determine in writing that competitive sealed bidding is either not practical or not advantageous to the City.

An important difference between competitive sealed proposals and competitive sealed bids is the finality of initial offers. Under competitive sealed proposals, alterations in the nature of a proposal and prices may be made after the proposals are opened. Such changes are not allowed, however, under competitive sealed bidding except to the extent allowed in the first half of multi-step sealed bidding in Section 22.14. or other allowable modifications.

Therefore, unless it is anticipated that a contract can be awarded primarily on the basis of the bid cost and other minimal information submitted by bidders at the time of opening, competitive sealed bidding may not be practical or advantageous. The Purchasing Director may make determinations by category of service that it is either not practical or not advantageous to procure specific types of services by competitive sealed proposals. The Purchasing Director may modify or revoke such determination at any time, and such determination should be reviewed for current applicability from time to time.

23.A.2 REQUEST FOR PROPOSALS

23.A.2.1 Initiation. The request for proposals is used to initiate a competitive sealed proposal procurement. The request for proposals packet shall include the following:

- **a.** the specifications for the services or items of tangible personal property to be procured;
- **b.** all contractual terms and conditions applicable to the procurement, including whether the contract will be have a multi-year term and if so, the length of the term;
- **c.** instructions and information to proponents, 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 when applicable, and the relative weights to be given to the factors in evaluating proposals;
- **e.** a statement of when and how price should be submitted; and
- **f.** a notice that states that civil and criminal penalties may be imposed for violation of City policies. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

23.A.2.2 Incorporated by Reference. The request for proposals may incorporate documents by reference provided that the request for proposals specifies where such documents can be obtained.

23.A.2.3 Acknowledgement of Amendments. The request for proposals shall require the acknowledgement of the receipt of all amendments issued.

23.A.2.4 Form of Proposal. The manner in which proposals are to be submitted, including any form for that purpose, may be designated as part of the request for proposal.

23.A.2.5 Proposal Preparation Time. Proposal preparation time is the period of time between the date of distribution of the request for proposals and the time and date set for receipt of proposals. Proposal preparation time shall be set to provide proponents a reasonable time to prepare their proposals and meet the needs of the City, as determined by the Purchasing Director. In no case shall the proposal preparation time be shorter than the time required for publication of notice under this section.

Proposal preparation time and date will not be re-scheduled except by means of a formal addendum that meets requirements established in the request for proposals, including the minimum number of calendar days required prior to the originally scheduled proposal opening time and date.

23.A.2.6 Confidential Information. Proposals are public records as defined by the Inspection of Public Records Act, N. M. Stat. Ann. Section 14-2-1 et seq. (1978) ("the Act"). Confidentiality of information submitted in a proposal is determined by that Act. The Purchasing Director shall examine the proposals to determine whether any request for non-disclosure of trade secrets and other proprietary data identified in writing is allowed under the Act. Requests for non-disclosure of certain information in a proposal must be accompanied by a citation to the statutory provision that would allow such non-disclosure. The Purchasing Director shall inform the proponents in writing which portions, if any, of the proposal will not be disclosed. The proposal shall be open to public inspection subject to any valid prohibition on the disclosure of confidential data.

23.A.3 PUBLIC NOTICE

The notice of requests for proposals shall be published not less than ten calendar days prior to the date set for the opening of proposals, at least once in a newspaper of general circulation in Santa Fe. (See Section 19, PUBLIC NOTICE.)

The publication requirement is in addition to any other procedures which may be adopted by the City's Purchasing Division to notify proponents that proposals will be received, including but not limited to publication in trade journals, if available.

A copy of the request for proposals shall be made available for public inspection at the City Purchasing Division.

23.A.4 PRE-PROPOSAL CONFERENCES

Pre-proposal conferences may be conducted to explain the procurement requirements and shall be announced to all prospective proponents known to have obtained a request for proposals. The conference shall be held long enough after the request for proposals has been issued to allow proponents to become familiar with it, and sufficiently before proposal opening to allow consideration of the addenda issued as a result of the conference in preparing their proposals. Nothing stated in the pre-proposal conference shall change the request for proposals issued unless a change is made by written addendum as provided in this section, and the request for proposals shall so state. No verbal communication is binding.

Prospective proponents are encouraged to attend and should be prepared to ask questions relative to substitutions and/or request clarification of the request for proposals. The failure of a prospective proponent to attend shall be interpreted to mean that the request for proposals is clear and acceptable to all non-participants of the pre-proposal conference. Such clarity and acceptability shall be presumed with respect to all proponents. For some projects that are significantly large and/or complex, attendance at the pre-proposal conference may be mandatory. The request for proposals must state that the pre-proposal conference is mandatory and failure to attend will result in disqualification of the proposal.

23.A.5 AMENDMENTS TO REQUEST FOR PROPOSALS

23.A.5.1 Amendments to requests for proposals prior to submission of proposals. Amendments to requests for proposals shall be identified as such and shall require that the prospective proponent acknowledge receipt of all amendments issued. The amendment shall refer to the portion of the request for proposals that it amends. Failure of a prospective proponent to receive an addendum does not relieve the prospective proponent of compliance with the addendum. Section 23.13.3 may apply if a prospective proponent has not acknowledged receipt of addendum.

23.A.5.2 Amendments to requests for proposals after submission of proposals. Amendments to requests for proposals after submission of proposals may be issued in accordance with Section 23.10 Proposal Discussions With Individual Proponents.

23.A.6 MODIFICATION OR WITHDRAWAL OF PROPOSALS

23.A.6.1 Established due date. The established due date is either the time and date announced for receipt of proposals or, if discussions have begun, it is the time and date by which best and final offers must be submitted. This includes proponents who submitted proposals by the time announced for the initial receipt of proposals.

23.A.6.2 Prior to established due date. A proposal may be modified or withdrawn by a proponent prior to the time set for proposal opening by delivery of notice of modification or withdrawal in writing to the Purchasing Division. Modification or withdrawals submitted up to the time designated for the receipt of proposals may be accepted provided they are fully in conformance with the request for proposals.

All documents pertaining to the modification or withdrawal of a proposal shall be made a part of the appropriate procurement file.

23.A.6.3 After established due date. A proposal may not be modified, withdrawn, or canceled by the proponent after the time and date designated for the receipt of proposals.

23.A.7 LATE PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS

Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is late, and shall be determined to be non-responsive. They may only be considered in accordance with Section 23.6 Modification Or Withdrawal Of Proposals.

23.A.7.1 A late proposal may be considered for award if it is the only proposal received.

23.A.8 RECEIPT AND REGISTRATION OF PROPOSALS

Proposals shall not be opened publicly but shall be opened in the presence of the Purchasing Director or his/her designee and a representative from the using department. Proposals and modifications shall be date and time-stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a register of proposals shall be prepared which shall include for all proposals, the name of each proponent, the number of modifications received, if any, and a description sufficient to identify the service offered. The register of the proposals shall list only those proposals received by the established due date.

23.A.9 EVALUATION OF PROPOSALS

23.A.9.1 Initial Classification. Proposals shall be evaluated solely in accordance with the criteria set forth in the request for proposals and initially classified by the Purchasing Director as:
- acceptable;
- potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- unacceptable.

Proposals not addressing or inadequately addressing all submittal requirements or instruction procedures may be considered non-responsive and may be rejected. The Purchasing Director shall record in writing the basis for finding a proposal unacceptable and make it part of the procurement file. Proponents whose proposals are unacceptable shall be notified promptly.

23.A.9.2 Proposal Discussions. If the request for proposals stated negotiations are to be pursued for best and final offers, procedures are detailed in Section 23.10 Proposal Discussion With Individual Proponents.

23.A.9.3 Interviews. If the request for proposals provided for interviews, such interviews must be conducted as stated in the request for proposals. The proposals may be preliminarily evaluated in writing in accordance with the evaluation criteria to determine the top ranked proponents who qualify for interviews (i.e., the top three ranked proponents), or all proponents may be interviewed. The request for proposals shall state the procedure to be followed in making the final selection.

23.A.9.4 Evaluations. The evaluation shall be based on the evaluation factors and the relative weights set forth in the request for proposals. Numerical rating systems should be used to be as objective as possible, but other evaluations systems may be considered. Cost shall be included as evaluation criteria and shall have a weighted value of at least 20% unless the expenditure is for procurement using federal or state funding which may prohibit cost as an evaluation factor. Generally requests for proposals for art commissions, art activities, children & youth and human services programs would not include cost as an evaluation criteria. Factors not specified in the request for proposals shall not be considered as a basis of evaluation.

23.A.9.5 Selection Committee. Unless otherwise approved by the Purchasing Director, a selection committee shall be formed for each proposal to be evaluated. The committee shall be composed of at least three members, including representatives from the Purchasing Division, using department, and using division or other associated representative.

If a City committee or board oversees or directs the operations for which the proposal is required, the selection committee may be composed of board members. If deemed by the Purchasing Director to be in the best interest of the City a member(s) of the public or other governmental entity may be included on the selection committee. The request for proposals should state the composition of the selection committee, however, the members may be changed if determined necessary by the Purchasing Director. The Purchasing Director shall monitor the selection committee and ensure procurement procedures are met. The City reserves the right to alter the size and membership of the selection committee.

23.A.10 PROPOSAL DISCUSSIONS WITH INDIVIDUAL PROPONENTS

23.A.10.1 Discussions Authorized. Discussions or negotiations may be conducted with responsible proponents who submit acceptable or potentially acceptable proposals and are, therefore, reasonably likely to be selected for award.

23.A.10.2 Purpose of Discussions. Discussions are held to:

- promote understanding of the City's requirements and the proponents' proposals;
- facilitate negotiation of a contract that will be most advantageous to the City, taking into consideration price and the other evaluation factors set forth in the request for proposals; and,
- obtain the best and final offer from proponents.

23.A.10.3 Conduct of Discussions. Proponents selected for discussion shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The Purchasing Director shall establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification of or change in the request for proposals, the request shall be amended to incorporate such clarification of a proposal and the response shall be submitted in writing by the proponent.

23.A.10.4 Record. The Purchasing Director shall keep a record of the date, place and purpose of meetings and those attending.

23.A.11 DISCLOSURE

Proposals are public records that are available for inspection in accordance with the Inspection of Public Records Act. However, the contents of any proposal shall not be disclosed until the award is announced so as not to be available to competing proponents during the negotiation process and to ensure a fair and equitable procurement process.

23.A.12 BEST AND FINAL OFFERS

The Purchasing Director may determine that it is the best interest of the City to have the proponents submit a best and final offer in addition to the initial proposal submitted.

The Purchasing Director shall establish a common date and time for the submission of best and final offers from proponents whose proposals were determined to be finally acceptable. Best and final offers should be submitted only once; however, the Purchasing Division may make a written determination that it is in the City's best interest to conduct additional discussions or change the City's requirements and require another submission of best and final offers. Proponents shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

The best and final offers shall be evaluated in writing by the selection committee based on the evaluation criteria stated in the request for proposals. There may be more than one set of evaluation criteria if the proposal selection is conducted in phases or steps; however, the process must be stated in the request for proposals and all evaluations must be in writing and become a part of the proposal file. If a different set of evaluation criteria was not provided for in the request for proposals, the initial set of evaluation criteria must continue to be used as initially set forth.

23.A.13 MISTAKES IN PROPOSALS

23.A.13.1 Modification or Withdrawal of Proposals. Proposals may be modified or withdrawn as provided in Section 23.6, Modification Or Withdrawal Of Proposals of this section.

23.A.13.2 Confirmation of Proposal. When the Purchasing Director knows or has reason to conclude before award that a mistake has been made, the Purchasing Director should request the proponent to confirm the proposal. If the proponent acknowledges the mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in Section 23.13.3 are met.

23.A.13.3 Mistakes Discovered After Receipt of Proposals but Before Award.

During discussions; prior to best and final offers. Once discussions are commenced with any proponent or after best and final offers are requested, any proponent may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

Technical Irregularities. Technical irregularities, unless otherwise corrected by an proponent as provided in this section, shall be treated as they are under competitive sealed bidding. (See Section 22.12.5, Technical Irregularities.)
Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:

a. the mistakes on the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may be corrected and may not be withdrawn; or
b. the proponent submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or
c. the proponent submits evidence which clearly and convincingly demonstrate the intended correct offer, and to allow correction would not be contrary to the fair and equal treatment of other proponents.

Determination. When a proposal is corrected or withdrawn, or correction or withdrawal is denied under this section, the Purchasing Director shall prepare a written determination showing the request to correct or withdraw was granted or denied in accordance with this section.

Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the Purchasing Director makes a written determination that it would be unconscionable not to allow the mistake to be corrected.

23.A.14 RECOMMENDATION OF AWARD

23.A.14.1 Procedure. The award shall be made to the responsible proponent whose proposal is most advantageous to the City, based on the final totals of the evaluation factors set forth in the request for proposals. The Purchasing Director shall make a written determination showing the basis on which the award was found to be most advantageous to the City taking into consideration the factors set forth in the request for proposals. No criteria may be used in proposal evaluations that are not set forth in the request for proposal.

23.A.14.2 Negotiations. Contract negotiations shall be undertaken with the top-ranked proponent, based on the scope of work requested, the proposal submitted by the proponent and the sample contract, if included in the request for proposals. If price was not a factor in the evaluation, the negotiation process shall include costs.

Contract terms and conditions may change during contract negotiations without considering it to be a significant change in the scope of work.

As an alternative procedure, the recommendation of the proponent may be submitted to the appropriate Committee and City Council for approval of proponent. Then contract negotiations may be completed and the contract submitted to the Committee and City Council for review and approval.

23.A.14.3 Recommendation of Award. Unless otherwise exempted by the Purchasing Director, the using department shall submit a written recommendation of award to the Purchasing Director.

The recommendation shall be reviewed by the Purchasing Director. The Purchasing Director's written recommendation shall be submitted to the City Finance Committee or other applicable committee for review. The Purchasing Director's recommendation should include a list of all proponents, the evaluation criteria and weight, the budget and accounts for funding, the names of the members of the selection committee, the proposed contract for the top-rated proponent, plus other pertinent information concerning the proposal.

23.A.14.4 Committee and City Council Review. The appropriate City Committee and the City Council, upon review of the proposals submitted and the recommendation of award may approve the recommendations. If the committee or Council determines that the proponent recommended for award would not be the most advantageous to the City, the committee or the City Council may take the following actions:

- **a.** table the recommendation pending further information concerning proponents, the proposals, the project, the contract or other aspect of the request for proposals;
- **b.** make a determination that the selection committee was not appropriate and order the selection committee be dissolved and appoint a new selection committee. The new committee will evaluate the same proposals submitted using the same evaluation criteria;
- **c.** make a determination that the recommended contract is inadequate and that negotiations should be conducted again with the recommended proponent;
- **d.** make known information not available or not considered by the selection committee, but within the evaluation criteria, which would disqualify the top-rated proponent. Award may then be to the next-rated proponent, in descending order;
- **e.** rejects all proposals and order the request for proposal be re-issued and one or more of the following changes be incorporated into the request for proposals:

    1. change in the scope of services;
    2. change in the evaluation criteria;
    3. change in the selection process;
    4. change in submittal requirements;
    5. change of any other factor in the request for proposals; or
    6. reject all proposals and cancel the proposed project.

23.A.14.5 Record of Award. A record of award shall be maintained at the City Purchasing Division. The Purchasing Director's recommendation, the evaluations of the selection committee and other applicable information used as the basis for determining the successful proponent, and the recommendation of award to the Finance Committee or other applicable committee and the City Council shall be made a part of the procurement file.

23.A.14.6 Public Inspection. Following evaluation of the proposals and recommendation of award, the proposals are open for public inspection unless previously indicated that certain sections are confidential in accordance with the New Mexico Inspection of Public Records Act.

23.A.15 CONTRACT REVIEW

A contract is required for professional services. All contracts for professional services with the City shall be reviewed as to form and legal sufficiency by the City Attorney.

Budget sufficiency and other pertinent elements shall be reviewed by the Committee designated by the City Council to conduct the review.

23.A.16 DESIGNS, DRAWINGS, SPECIFICATIONS

All contracts between the City and an architect for construction of new buildings or for the remodeling or renovation of existing buildings shall contain the provisions that all designs, drawings, specifications, notes and other worked developed in the performance of the contract are the sole property of the City.
The Capital Improvements Program Division shall maintain all designs, drawings and other materials which are the property of the City referred to above, indexed and filed, available for use of other City departments as needed.

23.B DESIGN BUILD PROJECTS

23.B.1 APPLICATION

An alternative for construction of projects over $50,000 is available through the design-build of projects. (For projects under $50,000 see the section on quote requirements). The objective of design-build contracting is to complete construction projects more efficiently, faster, and/or cheaper than conventional design-bid-build, however, a benefit-oriented evaluation should be used to assess if design-build is appropriate.

23.B.1.1 Practical or Advantageous. When a City department(s) and the Purchasing Director determine that design-build is either practical or advantageous to the City, the procurement shall be effected by competitive design-build proposals. The process is intended to be fair, uniform, clear and effective for the delivery of a quality project on time and within budget.

23.B.1.2 Written Determination. The City department(s) shall submit a written recommendation to the Purchasing Director for review. The primary factors that should be addressed in the memo include:

1. Summary of project:

- **a.** Description of project, goals and requirements.
- **b.** Estimated design/engineering costs.
- **c.** Estimated construction costs.
- **d.** Estimated project schedule.
- **e.** City staff on the design-build team to formulate, evaluate, and administer Request for Proposals.
- **f.** Funding source and amount.

2. The funding for the design and construction must be fully in place or reasonably expected to be in place for the immediate completion of the design-build project. If not in place or reasonable expected to be in place to complete the design-build project without an interim delay, the design should be procured separately under Section 23 and bid when funds are bid when funds are in place under Section 22.

3. Summary of why would it be in the best interest of the City to use design-build and the reasons for the potential benefits, such as:

- **a.** Significant time savings.
- **b.** Higher quality realized through designs tailored to contractor capability, design and builder work together to enhance each capabilities and methods, and/or combined expertise of contractor with designer to maximize potential benefits.
- **c.** Less impact on the public with the use of expedited construction processes.
- **d.** Unusual or unique requirements that could be effectively addressed by design-build.
- **e.** Specialty skills needed for design or construction.
- **f.** Reduction of total costs.
- **g.** Best value solution with value engineering

4. Summary of potential risks or problems due to using design-build for specific project and mitigation solutions.

5. Capability of City staff (with consultant, as applicable) to effectively administer and manage the design-build project. Statement as to who will ultimately be responsible.

6. If approved by the Purchasing Director, the recommendation shall be reviewed by the City Manager. If approved by the City Manager, the proposed use of design-build shall be submitted to the appropriate City committee(s) and the City Council for concept approval to proceed with the procurement process under design-build.

23.B.2 BASIC PROCESS

The following is recommended as a basic process in initiating and planning a design build project. Often it can be expected that there is more upfront time and effort required to clearly define the project expectations than in a design-bid-build process, although time savings may be seen in the overall project.

1. Identify the goal
2. Assign the City project manager
3. Assemble project team, including consultant if advisable
4. Develop project requirements:
    a. Project scope
    b. Project goals
    c. Quality expectations
    d. Final project expectations
    e. Technical requirements
    f. Contract development
    g. Decision making process
5. Plan the project schedule
6. Determine clear and complete definition of project and technical areas
7. Provide equal platform of information for proponents to be able to prepare competitive proposals

23.B.3 DETERMINATIONS PRIOR TO REQUESTS FOR PROPOSALS

The City project team shall clearly determine what will be done by City staff and what tasks are included in the Requests for Proposals, including but not limited to the following:

1. Environmental studies
2. Public participations through public hearings and other input
3. Interagency agreements
4. Utility agreements/relocations
5. Right-of-way acquisition
6. Handling and resolution of hazardous materials
7. Cultural and archeological resource site investigation
8. Endangered species investigations
9. Permit requirements
10. Determine risks and clarify mitigation and responsibility
11. Surveys
12. Mapping
13. Hydraulic analysis
14. Geotechnical investigations

Other areas and expectations that should be addressed in the Request for Proposals may include the following:

1. Legal description of site
2. Maximum Available Construction Costs (MACC)
3. Aesthetic considerations and compatibility with existing facilities
4. Site development requirements
5. Special codes, regulations, ordinances or statutes
6. Utilities, parking and landscaping requirements
7. Future expansion requirements
8. Future expansion requirements
9. Special materials
10. Space requirements
11. Special equipment and systems requirements
12. Construction administration
13. Labor disputes
14. Weather conditions
15. Inflation
16. Schedule requirements
17. Incremental acceptance of work
18. Performance guarantees/warranties
19. Design reviews/approvals
20. Liability for design
21. Site conditions
22. Contract changes
23. Liquidated damages
24. Ownership during phases
25. Payment methodology
26. Incentives and disincentives
27. Bonding requirements
28. Errors and omissions insurance
29. Guaranteed completion date
30. Warranties
31. Determination of criteria for completion of contract

23.B.4 PROJECTS OVER $500,000 – REQUEST FOR PROPOSALS

The City project team shall prepare a Request for Proposals setting forth the scope of the project that should include, but is not limited to:

a. The size, type and desired design requirements of the building and site.

b. Performance specifications covering the quality of materials, equipment, and workmanship, durability, life cycle costs, preliminary plans or building layouts, or any other information deemed necessary to adequately and clearly describe the City's needs.

c. The performance specifications and plans shall be reviewed and approved by a registered engineer or architect professional licensed by the State of New Mexico, which may be a City employee or outside provider. It is intended for this review to ensure the validity of technical areas and that the information in the Request for Proposals will provide for a fair and complete Request for Proposals process. If an outside provider contracts for these review services, the design/engineering professional or the related firm cannot later participate in submitting a proposal in any capacity to the Request for Proposals.

23.B.4.1 Applicable Section for Request for Proposals. Section 23 Competitive Sealed Proposals for Procurement of Professional Services over $50,000 shall apply to design-build, unless clearly not applicable to the design –build process or unless procedures specifically detailed in Section 23.B Design-Build establishes different or more detailed procedures for the design-build process. For design-build procurements, Section 23.A supercedes the general requirements in Section 23.

23.B.4.2 Step One of Request for Proposals. The Request for Proposals issued shall include:

- **a.** the project scope and requirements
- **b.** submittal requirements from proponents
- **c.** composition of selection committee, with statement that the City retains the option to change committee members, if necessary
- **d.** description of step two and/or interviews in process
- **e.** evaluation criteria for each step of the process (step on, step two, interviews, and best and final offers, as applicable)
- **f.** pre-proposal meeting (optional)
- **g.** number of firms that will be short listed (a minimum of 3)
- **h.** estimated procurement and approval schedule
- **i.** any and all further steps in the selection process
- **j.** an independent outside consultant or other qualified outside representative(s) may serve on the selection committee.
- **k.** step one may include programming and schematic design including recommended or required building systems, elevations, areas, floor plans and cross sections in limited detail for further development by proponents.

23.B.4.2.1 Submittal Requirements. The submittal requirements shall include:

- **a.** request for information on the qualifications of proponent as to capability
- **b.** capacity, availability, and experience
- **c.** description of similar contracts with municipalities
- **d.** key staff and their professional licenses who will be assigned to this project
- **e.** proposed contractor and similar information and qualifications
- **f.** certification to meet all insurance and bonding requirements/certification of no debarment, disqualification, default, or early termination from contract in the last 5 year
- **g.** certification of no commercial bankruptcy in the last f years of any member or entity
- **h.** information on all settled adverse claims, disputes or lawsuits with an owner or a project
- **i.** description of OSHA violations, worker's compensation claims, or safety claims
- **j.** description of any state licensing violations
- **k.** additional information requirements may be included at the discretion of the City

23.B.4.2.2 Receipt of Step One Proposals. The proposals are received as a formal sealed proposals at the Purchasing Office.

23.B.4.2.3 Evaluation Under Step One of Request for Proposals. All responsive submittals are evaluated based on the evaluation criteria. This step evaluates experience, technical competence, capability to perform, past performance and preliminary project plans. The top rated firms shall be short listed based on the totals of the ratings of the committee.

23.B.4.2.4 Step Two of Request for Proposals.

- **a.** The short-listed firms are invited to submit detailed specific technical concepts or solutions, costs and scheduling as a formal sealed proposal to the Purchasing Office. If at least 3 firms do not submit responsive proposals, the short list may be composed of the number of responsive proposals received.
- **b.** Cost shall be at least 60% of the evaluation criteria. Cost may include life cycle cost, if so stated and explained in the Requests for Proposals for over a period of time not to exceed 10 years. Other criteria may include technical expertise, skilled labor force availability, safety record, time schedule. Additional information requirements may be included at the discretion of the City.
- **c.** For a complex project or a project in which more detailed proposals are requested, a stipend may be paid to cover costs of the preparation of this phase. The amount shall be determined in advance, although a stipend is not required and is at the sole option of the City.
- **d.** Interviews may be conducted, but are not required and are at the sole option of the City.
- **e.** Based on evaluation of step two proposals, new information may be issued by the City and Best and Final Offers may be submitted. The Best and Final Offers shall be evaluated based on the evaluation criteria for step two, unless specified in writing to the top listed proponents otherwise.
- **f.** All information is deemed to be confidential to the evaluation committee and City administration until a recommendation is made to the first review committee prior to City Council consideration.

23.B.4.3.1 Evaluation Under Step Two of Request for Proposals. The submittals are evaluated unless determined to be non-responsive. This step evaluates qualifications, quality of proposed design and technical submittals, quality of construction approach, demonstrated response to program requirements, management plan for constructing the project, cost, and schedule. Final contract negotiations shall proceed with the top rated firm. There is a single contract for design services and construction services. If negations are successful, the top rated firm based on the totals of the ratings of the committee shall be recommended to the applicable committees and City Council.

23.B.5 PROJECTS UNDER $500,000 OR PRE-ENGINEERED PROJECTS

For projects under $500,000 or projects of any cost that are limited to site improvements or a pre-engineered building or system, the procurement process may use a one step bid process under a competitive sealed bid combining design, engineering and construction (Section 22).

23.B.6 CONSTRUCTION INSPECTION

A separate contract with a fully independent licensed architect or engineer to provide construction inspection services is advisable, but not required.

23.B.7 OTHER SERVICES.

Finance services, maintenance services, operations services, and other relate services may be included, but must be clearly stated in the Request for Proposals. Such services could be included as an optional component, such that a basic design-build contract could be awarded or a contract including other services. The Request for Proposal must be very clear as to the evaluation process and criteria and how optional services would be evaluated and considered as part of the contract awarded.

24. PROCUREMENT OF PROFESSIONAL SERVICES UNDER $50,000

The intent of these regulations is to provide for a more simplified and less costly process in terms of time and financial expense for the prospective vendor and for the City and still select a vendor best qualified to provide the services. In accordance with SECTION 18, EXEMPTIONS, and SECTION 23, COMPETITIVE SEALED PROPOSALS FOR PROFESSIONAL SERVICES OVER $50,000, procurement of professional services under $50,000 may be but is not required to be, conducted by competitive sealed proposal.

24.1 **Personnel Training Services.** When City employees attend regularly scheduled classes at a community college or university, a professional service agreement between the City and the community college or university is not required. Professional service agreements are required for all other training when a contractor is hired to do specific training for the governing body or City employees. Procurements for professional services over $5,000 require a professional services agreement. City Manager approval is required for all professional service agreements between $5,000.01 and $50,000 excluding applicable gross receipts tax. Committee and City Council approval is required for all professional service agreements over $50,000.

24.2 **Professional Services up to $5,000, exclusive of applicable gross receipts tax.** The using department may determine available sources and negotiate directly with the prospective vendors. Competitive informal proposals or quotes are recommended in order to obtain the services in the best interest of the City, but are not required.

24.2.1 The purchase order may serve as the contract with the vendor although if further details and agreement clauses are required, a professional services agreement may be used.

24.2.2 The Purchasing Director may approve purchases of professional services up to $5,000 that are procured by a purchase order only. Professional services agreements for purchases of professional services over $5,000 must be approved by the City Manager.

24.3 **Professional Services from $5,000.01 exclusive of applicable gross receipts tax.** The using department may determine available sources and negotiate directly with prospective vendors. Informal proposals or quotes are recommended in order to obtain the services in the best interest of the City, but are not required. Informal proposals obtained by a request for qualifications shall follow the procedure described in Section 24.3.1 below.

24.3.1 The using department shall select the recommended vendor based on qualifications, price and other factors that entered into the selection process. A summary memo explaining the process followed in making the selection is recommended to be prepared, including a justification if three vendors were not contacted to perform the work.

24.3.2 City Manager approval is required for all contracts between $5,000.01 and $50,000 excluding applicable gross receipts tax. Contracts signed by the City Manager between $5,000.01 and $50,000 shall be reported to the Finance Committee monthly. If approved, the contract signed by the City Manger must be submitted to the Purchasing Office with the requisition number on the top right hand corner and related memo, if applicable.

24.4 **Professional Services between $5,000.01 and $50,000, exclusive of applicable gross receipts tax.**

24.4.1 Procedure. The using department shall prepare a request for qualifications that includes but is not limited to the following:

a. a proposed professional services agreement in a form approved by the City Attorney's office, including a defined scope of services if possible under the circumstances, and

b. a list and description of evaluation factors.

24.4.2 Notifications. A letter of notification shall be prepared and sent to all prospective vendors, including those who have indicated an interest in doing business with the City and are on the bidders list and those who have indicated interest to the using department. At the minimum, three vendors shall be contacted, or documentation provided that three prospective vendors do not exist.

Public notice or other advertisements may be placed, but are not required. The letter of notification shall include a summary of project objectives, the general scope of services, the evaluation factors and the sample professional services agreement, plus any other pertinent information. The letter of notification shall require the vendor to submit a written response, including a statement of qualifications, resume, work plan, cost, and/or any other information necessary to serve as a basis of evaluation and award.

24.4.3 Deadline. A submittal deadline shall be set and any submittals received after this deadline shall not be accepted.

24.4.4 Pre-opening Discussion. Discussions may be held prior to the submittal deadline to promote understanding of the City's requirements and the scope of the proposed contract and to facilitate arriving at a contract that will be most advantageous to the City.

24.4.5 Evaluation. The using department shall evaluate the submittals received based on the evaluation criteria.

24.4.5.1 Interviews. Interviews may be conducted with those vendors reasonably susceptible of award of the contract. Interviews, if required, should be informal. Interviews may be substituted for written work plans, time schedules, and experience. At the minimum, a written response, previously referred to, from all vendors who wish to be considered is required. If an interview is determined to be advantageous, requirements for the written response should be less comprehensive than if interviews are not required, in order to not require the vendor to furnish unnecessary or redundant information.

24.4.7 Award. Based on the evaluation criteria, the top ranked vendor shall be determined. Price, as well as other contract terms, may be negotiated. If the City is unable to negotiate a satisfactory contract, negotiations shall be terminated. The City may then undertake negotiations with the second most qualified vendor.

If particular circumstances exist that indicate one vendor can provide the required services to the best interest of the City, the department director or City Manager may recommend that vendor be awarded the contract.

City Council approval is required for all professional service and construction contracts over $50,000 excluding applicable gross receipts tax. A memo of recommendation shall be submitted to the applicable City Committee for consideration and forwarded to the City Council for its consideration. The Committee or the City Council may determine it is in the best interest of the City to approve the award based on the recommendation by staff or may approve award of another vendor.

25. CANCELLATION/REJECTION OF BIDS AND PROPOSALS

The provisions of this section shall govern the cancellation of any solicitation when issued by the City under competitive sealed bidding or competitive sealed proposals, and the rejection of bids or proposals in whole or in part.

25.1 POLICY

An invitation for bids, a request for proposals or any other solicitation may be cancelled or any and all bids or proposals may be rejected in whole or in part when it is in the best interest of the City. A solicitation does not obligate the City in any way.

Each solicitation issued by the City shall state that the solicitation may be canceled and that any and all bids or proposals may be rejected in whole or in part as provided in this section.

25.2 PROCEDURE

25.2.1 Prior to Opening. As used in this section, "opening" means that date set for opening of bids, receipt of unpriced technical offers in multi-step sealed bidding, or receipt of proposals in competitive sealed proposals.

Prior to opening, a solicitation may be canceled or rejected in whole or in part when the Purchasing Director makes a written determination that such action is in the City's best interest for reasons including, but not limited to:

- **a.** the City no longer requires the services, construction or items of tangible personal property;
- **b.** the City no longer can reasonably expect to fund the procurement; or
- **c.** proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all bidders or proponents, or, in the case of cancellation prior to receipt of bids or proposals, to all persons who have obtained bidder's packets or requests for proposals
The notice of cancellation shall:

- **a.** identify the solicitation;
- **b.** briefly explain the reason for cancellation; and
- **c.** where appropriate, explain that opportunity will be given to compete on any re-solicitation or any future procurements of similar services, contracts or items of personal tangible property.

25.2.2 After opening. After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Purchasing Director makes a written determination that such action is in the City's best interest for reasons including, but not limited to:

a. all of the bids and proposals are non-responsive;
b. the services, construction or items of tangible personal property being procured are no longer required;
c. ambiguous or otherwise inadequate specifications were part of the solicitation;
d. the solicitation did not provide for consideration of all factors of significance to the City;
e. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
f. all otherwise acceptable bids or proposals received are at prices determined by the Purchasing Director or using department to be unreasonable;
g. all otherwise acceptable bid or proposals received are at prices exceeding prices available through existing contracts; or
h. there is 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.

A notice of rejection stating the reason for rejection shall be sent to all bidders or proponent.

25.3 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS

25.3.1 Bids. Reasons for rejecting a bid include but are not limited to:

a. the bidder is non-responsible as determined under Section 21, DETERMINATION OF BIDDERS AND PROPONENT RESPONSIBILITY/ NON-RESPONSIBILITY;

b. the bid is not responsive due to failure of bidder to include bid surety, bid form, required certifications or other submittal requirements or to properly follow procedures or instructions included in the invitation for bids packet, or the construction service, or item of personal tangible property offered in the bid is unacceptable by reason of its failure to meet the requirement of the specifications or failure to meet the requirements for permissible alternates or other acceptability criteria set forth in the invitation for bids.

25.3.2 Proposals. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction, and the City's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

a. the proponent is non-responsible as determined under Section 21, DETERMINATION OF BIDDERS AND PROPONENTS RESPONSIBILITY/NON-RESPONSIBILITY;

b. the proposal is not responsive due to failure of proponent to address or adequately address submittal requirements or to properly follow procedures or instruction included in request for proposals packet; or

c. the proposed price is clearly unreasonable.

25.3.3 Written Determination Required. A written determination that contains the reasons for the rejection of an individual bid or proposal shall be prepared by the Purchasing Director and made a part of the procurement file.

A notice of rejection stating the reason for rejection shall be sent to the bidder or proponent.

25.4 “ALL OR NONE” BIDS OR PROPOSALS

Only when stated in the solicitation information distributed by the City may a bid or proposal limit acceptance to the entire bid or proposal. Bids or proposals submitted and requiring acceptance of entire bid or proposal shall be deemed to be non-responsive. The City retains the option to reject part of bids or proposals and award the remainder.

25.5 DISPOSITION OF BIDS OR PROPOSALS

When bids or proposals are rejected or solicitation is canceled 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 proponents 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.

26. PROTESTS AND RESOLUTIONS OF PROTESTS

26.1 RIGHT TO PROTEST

26.1.1 Who May File. Any bidder or proponent who believes in good faith that the proper procurement process has not been followed may protest to the Purchasing Director. A “no bid” submittal does not make a business a “bidder” and eligible to protest.

26.1.2 What May Be Protested. Protestants may file a protest on any phase of a competitive sealed bid or proposal or award, including but not limited to, specification preparation, solicitation, award, cancellation of solicitation, rejection or other matters arising from a solicitation or award. Protests must allege specific violations of applicable state statutes, City ordinances or bid packets or requests for proposals. General differences of opinion concerning these areas will not be considered grounds for protest.

26.1.3 Authority to Resolve Protests. The Purchasing Director has the authority to take any action reasonably necessary to resolve a protest. This authority shall be exercised in accordance with this section.

26.2 FILING PROTEST

26.2.1 Protest Must Be Written. Protests must be in writing and addressed to the Purchasing Director.

26.2.2 Contents. The protest shall include:

a. the name and address of the protestant;

b. identification of bid or proposal name and number and the number of the solicitation;

c. a statement of the grounds for protest;

d. support in exhibits, evidence 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. specific ruling requested from the Purchasing Director.

26.2.3 Pleadings. No briefs or other technical forms of pleading or motion are required, but the protest and other submissions should be concise, logically arranged and direct.

26.2.4 Time Limit. Protest shall be filed within fifteen (15) days after the knowledge of the facts or occurrences giving rise to the protest, but in any case protests may not be filed later than seven (7) days after the City Council approves award of the contract.

26.2.6 Additional Information. If the Purchasing Director requires additional information from the protestant, from the using department, or from interested parties, such information shall be submitted within the time period established by the Purchasing Director. Failure to timely comply may result in consideration and resolution of the protest without the untimely filed information.

26.3 PROCUREMENT AFTER PROTEST

In the event of a timely protest, the Purchasing Director shall not proceed further with the procurement unless the Purchasing Director makes a written determination that the award of the contract is necessary to protect substantial interests of the City. Such written determination should set forth the basis for the determination

26.4 NOTICE OF PROTEST

26.4.1 Notice to Bidders and Proponents. The Purchasing Director 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 proponents who appear to have a substantial and reasonable prospect of receiving an award if the protest or appeal is denied.

26.4.2 Notice to Using Department. The Purchasing Director shall provide a copy of the protest to the using department that requested the solicitation.

26.5 FURNISHING OF INFORMATION ON PROTESTS

26.5.1 Confidentiality of Information. Protests are public records as defined by the Inspection of Public Records Act ("the Act"). Confidentiality of information submitted in a protest is determined by that Act. The Purchasing Director shall examine the protests to determine whether any request for non-disclosure of any information contained in the protest is allowed under the Act. Requests for non-disclosure of certain information in a protest must be accompanied by a citation to the statutory provision that would allow such non-disclosure. The Purchasing Director shall inform the protestant in writing which portions, if any, of the protest will not be disclosed. The protest shall be open to public inspection subject to any valid prohibition on the disclosure of confidential data.

26.5.2 Comments on Information. Any interested person may file comments on the information, provided such comments are filed within ten (10) days of receipt of the information.

26.6 HEARING

26.6.1 When Held. A hearing on the merits of the protest may be held at the discretion of the Purchasing Director, with or without the request of the protestant, interested parties or using department. The Purchasing Director shall establish the necessary procedures for a hearing. Requests for hearings should be made at the time of the filing of the protest or at the request for reconsideration.

26.6.2 Comments on Hearing. Written comments on the hearing may be submitted by any interested party. Any written comments must be received by the Purchasing Director within five (5) days of the date on which the hearing was held, unless provided otherwise.

26.6.3 Termination of Contracts. Proposed contract termination shall be reviewed by the City Attorney and, if determined to be required, notice of termination shall be issued by that office.

26.7 RESOLUTION

26.7.1 Written Determination. The Purchasing Director shall make a written determination on the merits of the protest as expeditiously as possible or within thirty (30) days of receipt of all information or the date of any hearing held on the matter, whichever is later, and shall furnish a copy of the determination to the protestant, the City Attorney's Office and other interested parties who have requested a copy in writing.

The record for the determination shall include:

a. a copy of the protest;

b. a copy of the bid or proposal submitted by the protestant and copy of the bid or proposal that is being protested;
c. a copy of solicitation, including the specifications or portions, relevant to the protest;
d. a copy of the abstract of bids or proposals or relevant portions thereof;
e. any other documents which are relevant to the protest, including the contract, if one has been awarded;
f. findings and conclusions in the matter together with copies of supporting documentation. If the award was made after receipt of the protest, the statement shall include the determination required under Section 26.3, Procurement After Protest;
g. a statement of the resolution of the protest.

26.7.2 Determination of no procedural violation. If the determination is that the proper procurement procedures were followed, when the written determination is sent to the protestant, the procurement procedure may resume.

26.7.3 Determination of procedural violation.

26.7.3.1 Prior to Award. If, prior to award, the Purchasing Director determines that a solicitation or proposed award is in violation of proper procurement procedures, then the solicitation or proposed award shall be canceled.

26.7.3.2 After Award.

No Fraud or Bad Faith. If after an award, the Purchasing Director determines that a solicitation or award is in violation of proper procurement procedures and that the successful bidder or proponent has not acted fraudulently or in bad faith, the Purchasing Director, after consultation with the City Attorney, shall determine whether:

a. The award may be revised to comply with proper procurement procedures, if possible, provided that a determination is made that doing so is in the best interest of the City; or
b. The award should be terminated.

Fraud or Bad Faith. If, after an award, the Purchasing Director determines that a solicitation or award is in violation of proper procurement procedures and that the successful bidder or proponent has acted fraudulently or in bad faith, the award shall be canceled.

26.7.4 Reimbursement of Costs. The City may pay the protestant reasonable costs incurred in connection with the solicitation, including bid preparation costs, when a protest is sustained and the protestant should have received the award but was not. The protestant must request reimbursement in writing, stating the reasons and amount, for the reimbursement to be considered. The City Manager will consider the reimbursement request and make the final determination.

26.8 REQUEST FOR RECONSIDERATION

26.8.1. Request. Reconsideration of a decision resolving a protest may be requested by the protestant, any interested party who submitted comments during the proceeding, and any using department involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law or fact.

26.8.2 When To File. Request for reconsideration of a decision resolving a protest shall be filed not later than fifteen (15) days after issuance of such decision.

26.8.3 The final written determination of the Purchasing Director shall be issued within fifteen (15) days of receipt of request for reconsideration.

26.9 REVIEW BY CITY MANAGER

26.9.1 The protestant may also request a meeting to review the protest with the City Manager or a written determination from the City Manager indicating concurrence or non-concurrence with the determination issued by the Purchasing Office.

26.9.2 The request for review by the City Manager must be filed within (5) days after the written determination of the Purchasing Director.

26.9.3 The City Manager's decision is the final determination for purposes of judicial review.

26.10 EX PARTE COMMUNICATION

The Purchasing Director and the City Manager shall not receive, nor shall any person directly or indirectly involved in a protest receive any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest, without notice to all known parties with a direct interest in the proceedings.

27. DEBARMENT OR SUSPENSION OF VENDOR

27.1 GENERAL

The Purchasing Director, after consultation with the using agency, may suspend a vendor from consideration for award of contracts if Purchasing Director, after reasonable investigation, finds that a vendor has engaged in conduct that constitutes cause for debarment pursuant to Section 13-1-178 NMSA 1978.

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

The Purchasing Director, after reasonable notice to the vendor involved, shall have authority to recommend to the governing authority of the City the debarment of a vendor for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three (3) years . The authority to debar shall be exercised by the governing authority of the City in accordance with rules that shall provide for reasonable notice and a fair hearing prior to debarment.

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

27.2 CAUSES

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

a. Criminal conviction of a bidder, proponent, offeror or contractor for commission of a criminal offense related to obtaining or attempting unlawfully or attempting to obtain public or private contractor or subcontract, or related to the unlawful the performance of such contract or subcontract;

b. civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

c. conviction of a bidder, proponent, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, falsification or destruction of records making false statements or receiving stolen property or for violation of federal or state tax laws:

d. conviction of a bidder, proponent, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;

e. criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;

f. civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;

g. civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act;

h. violation by a bidder, proponent, offeror or contractor of contract provisions as set forth in this paragraph of a character that is reasonably regarded by the Purchasing Director to be so serious as to justify suspension or debarment including:

1. Willful Failure to perform in accordance with one or more contracts; or

2. A history of failure to perform or of unsatisfactory performance of one or more city contracts, including failure to pay subcontractors; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

i. Debarment by another governmental entity (with written documentation);

j. Violation of ethical standards or fraud;

k. any other cause that the Purchasing Director determines to be so serious and compelling as to affect responsibility as a contractor; or

l. for a willful violation by a bidder, proponent, offeror or contractor of the provisions of the City Purchasing Manual.

27.3 PROCEDURE

A copy of the determination made pursuant to Section 13-1-179 NMSA 1978 shall be:

a. mailed to the last known address on file with the Purchasing Director by first class mail within three business days after issuance of the written determination; or

b. transmitted electronically within three business days after issuance of the written determination.

The causes of consideration of the action shall be stated. The vendor may protest the debarment or suspension by following the procedures set out in Section 26, PROTEST AND RESOLUTIONS OF PROTESTS.

Formal debarment or suspension is not required to reject an individual bid or proposal submitted by a vendor deemed to be non-responsible under Section 21 DETERMINATION OF BIDDERS AND PROPONENTS RESPONSIBILITY/NON-RESPONSIBILITY.

27.4 CONTINUATION OF CURRENT CONTRACTS/RESTRICTIONS ON SUBCONTRACTING

1. Notwithstanding the debarment, suspension or proposed debarment of a person, the City may continue contracts or subcontracts in existence at the time that the person is debarred, suspended or proposed for debarment unless the governing authority of City directs otherwise.
2. Unless the governing authority of the City issues a written determination based on compelling reasons holding otherwise, a person that has been debarred or suspended or whose debarment has been proposed shall not, after the date that the person is debarred, suspended or proposed for debarment:

    a. incur financial obligations, including those for materials, services and facilities, unless the person is specifically authorized to do so under the terms and conditions of the person's contract; or
    b. extend the duration of the person's contract by adding new work, by exercising options or by taking other action.

3. Unless pursuant to written authorization based on the compelling reasons of the governing authority of the City, the Purchasing Director shall not consent to enter a subcontract subject to the Purchasing Manual with a person that has been debarred, suspended or proposed for debarment.
4. A person that has entered into a contract subject to the Purchasing Manual shall not subcontract with another person that has been debarred, suspended or proposed for debarment without the written authorization of the Purchasing Director. A person that wishes to subcontract with another person that has been debarred, suspended or proposed for debarment shall make a request to the City that includes the following:

    a. the name of the proposed subcontractor;
    b. information about the proposed subcontractor's debarment, suspension or proposed debarment;
    c. the requester's compelling reasons for seeking a subcontract with the proposed subcontractor; and
    d. a statement of how the person will protect the interests of the City considering the proposed subcontractor's debarment, suspension or proposed debarment

28. PUBLIC WORKS (CONSTRUCTION) CONTRACTS

Construction contracts shall be awarded in accordance with the provisions of Section 22, COMPETITIVE SEALED BIDDING FOR PROCUREMENT OF TANGIBLE PERSONAL PROPERTY AND CONSTRUCITON SERVICES. In addition, the following provisions apply.

28.1 MINIMUM WAGE

Bid packets for contracts in excess of $25,000 shall include a requirement that the minimum wage as determined by the State Labor Commission shall be paid to all employees of the contractor and subcontractors if any. Verification of pay scales may be required.

28.2 BONDS

28.2.1 Contracts Over $50,000. When a construction contract in excess of $50,000 is to be awarded, the bidder must include with the bid submittal bid security in an amount of at least 5% of the amount bid. Bid security shall be in the form of a bond executed by a surety company authorized to do business in New Mexico or the equivalent in cash, cashier's check or otherwise supplied in a form satisfactory to the City. In no case will a check drawn on a personal or business account be accepted.

Noncompliance will result in rejection of the bid.

When a construction contract in excess of $50,000 is awarded, the contractor must deliver the following bonds upon execution of the contract within the time set forth in the bid documents or the bid will be rejected:

a. Performance bond of 100% executed by a surety company authorized to do business in New Mexico.
b. Payment bond of 100% executed by a surety company authorized to do business in New Mexico for protection of persons supplying labor and materials to the contractor or its subcontractor.

The Purchasing Director may reduce the performance or payment bond or both bonds to 50% of the contract price if the Purchasing Director determined it to be less costly or more advantageous to the City to self-insure a part of the performance or payment bond. The bond requirement must be established in the bid documents and cannot be reduced after bid opening

Personal sureties of cash or property do not qualify for performance or payment bonding requirements. At the time of submittal, the bonds shall be verified, as to being issued by a surety company approved and authorized to do business in New Mexico. If the bond is not valid, the Purchasing Director may prescribe a certain time in which the contractor may deliver valid bonds or the bid shall be rejected.

28.2.2 Contracts under $50,000. When a construction contract is awarded in an amount less than $50,000, the administering department, with the consent of the Purchasing Director, may determine whether payment or performance bonds, or both, shall be required.

Factors to be considered include:

a. the value /number of subcontracts to be awarded by the contractor, and
b. the value of the contract.

28.2.3 Contracts - "Small Business". In accordance with Section 15.1, if the vendor qualifies as a "small business", the Purchasing Director may determine whether payment or performance bonds, or both, shall be required.

All bond requirements, including whether small business are subject to bond requirements, must be stated within the bid documents. Bond requirements may not be changed after issuance of the invitations to bid packet except through addendum. No change is allowed after bid opening. Bidders must comply with all bond-requirements or have the bid rejected.

28.2.4 Rights of Subcontractors and Suppliers. The provisions of the Subcontractors Fair Practices Act, Sections 13-4-31 to 13-4-42 NMSA 1978, apply to all public works (construction) contracts.

28.3 PAYMENTS

The City shall make all payments promptly, after appropriate review of payment request. To the greatest extent as is practical the City will make payment within 30 days after receipt of request for payment. No prepayments, advances, deposits or other payments for goods or services not yet received are allowed unless specifically provided for.
The contract shall provide that the contractor and subcontractor make payment to their subcontractors and suppliers for amounts due and owing within seven days after receipt of payment from the City. If the contractor or subcontractor fails to pay their subcontractors and suppliers within seven days of receipt of payment from the City, the contractor or subcontractor shall pay to the subcontractor or supplier an interest penalty beginning on the eighth day after payment was due. Interest penalties shall be computed at one and one-half percent of the undisputed request for payment per month or fraction thereof until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers.

28.4 **RETAINAGE:** Any contract provisions regarding retainage shall comply with the New Mexico Retainage Act.

28.5 **PERFORMANCE CONTRACTS:**

28.5.1 All construction and construction services contracts shall be performance contracts.

28.5.2 The following elements shall be included in a performance contract:

1. performance measures, including a time frame for performance, to be used by the administering department to evaluate and provide a basis for payment for the services provided to the City and the product resulting from those services;

2. accountability procedures that link payment to actual performance in accordance with the performance measures;

3. monitoring requirements that outline the administering department's evaluation of the contractor's performance, including progress reports, activity data, site visits and inspections.

28.5.3 Supporting documentation shall be maintained in the administering departments project file.

28.6.1 Change Orders. Change orders for a construction project are a type of contract amendment, which reflects any addition or deletion in the work required and subsequent payment to the contractor. Change orders generally shall reflect a change in the project that cannot be reasonably anticipated prior to initiation of the contract or an omission by error from the original plans.

a. Change orders up to $50,000 or 10% of the total contract price, whichever is less, requires review and approval by the using department director, the Finance Department Director and the City Manager. The City Council shall receive summary reports for all change orders authorized on a project. Change orders over $50,000 or 10% of the total contract, whichever is less, requires Public Works/CIP and Finance Committee(s) and City Council review and approval.

b. The change order shall include the original amount of the contract, the amount of previous amendments, the amount of the proposed amendment and the new total contract amount.

28.7 SOLID WASTE SERVICES

All bids, contracts or other procurement for City public works (construction) projects over $50,000 shall include language that requires the contractor to use City provided solid waste services and containers for the construction project. A waiver may be given in writing to the contractor if the City cannot provide the required services.

29. CONTRACTS MODIFICATION/AMENDMENT

Modification/Amendment of terms and conditions and contract renewal may be Allowed within a written agreement of both parties

The following is a list of what is included in the term "contract modification/amendment" and is covered by this section 29.

a. A change order in a construction contract
b. A term extension or decrease in length of the term
c. A scope of work and compensation modification including, an increase or decrease of compensation or any type of change in the scope of work. Note that amendments to contracts procured by the competitive sealed proposals process must not substantially deviate from the specifications of the original competitive sealed bid or request for proposal upon which the contract was awarded an amendment to the original contract inconsistent with the intent of the RFP is not appropriate. See 29:9.1
d. An update a "name change" of the same vendor (not a "new vendor"):or

All contract modifications must be accomplished by amendment of the contract in writing, signed by all the parties.

All contract Amendments/Modifications require City Attorney, City Clerk and City Finance Director approval plus, depending on the rules set forth below, appropriate committee(s) and City Council approval or City Manager.

The contract amendment must include references to the provisions to be modified, and contain the entire provision as modified.

29.1 Types of Contracts. Forms of contracts may include professional services agreements, construction contracts, maintenance agreements, contracts in connection with public securities, as well as purchase agreements for various goods.

Any type of contract (i.e., definite quantity contracts, indefinite quantity contract, price agreements) which promotes the best interest of the City may be used, except cost-plus-a-percentage-of-cost contracts which are prohibited unless for the purchase of insurance. A cost-reimbursement contract may be used when less costly or when it is impractical to otherwise obtain the services or tangible personal property.

29.2 Contingency Fee Contracts Authorized. No person or business may be 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. The only exception is obtaining professional services in anticipation of the receipt of federal or state grant. A written and approved grant agreement must be executed before any commitment of funds.

a. In addition to other forms of payment of contractors provided for in this manual, the City is authorized to enter into contracts, on a contingency fee basis, including but not limited to:

1. Contracts with outside private attorneys; or
2. Contracts with collection agencies to undertake recovery efforts for delinquent utility charges or unpaid taxes by legal proceedings and otherwise;
3. Contracts to perform audits of the City to increase efficiency and save money

b. In matters for which a contractor has been retained by the City on a contingency fee basis, the contingency fee paid to the contractor shall not exceed thirty percent (30%) of either:

1. The amount awarded and collected by the City pursuant by a court; or
2. The amount collected by the City pursuant to a settlement agreement;
3. The amount collected by the City for a delinquent utility charge or unpaid taxes;
4. The amount of demonstrated, direct savings and/or efficiencies achieved directly from an audit performed by the contractor.

c. The City may obtain professional services contingent upon receipt of a federal or state grant. A written and approved grant agreement must be executed before any commitment of funds.

d. The Purchasing Director shall have authority to determine whether a contract shall be eligible for a contingency fee.

e. In addition, the contingency fee contract may provide for payment of the contractors reasonable out-of-pocket charges, costs ant expenses.

29.3 Terms of Contracts. Terms of contract and renewal conditions must be stated in the contract. In general, contracts will be for a term of not more than one year. Contracts may be for a period of more than one year, renewable up to a total of four (4) years, as described below. Such contracts may be referred to as multi-term contracts.

29.3.1 Contracts Over $50,000. Contracts over $50,000 except for professional services may not exceed eight years including all extensions and renewals.

29.3.2 Construction Contracts. Contracts for construction may not exceed eight years including all extensions and renewals.

29.3.3 Construction Design. Contracts for construction design services may not exceed eight years including all extensions and renewals.

29.3.4 Contracts in Connection with Public Securities. Contracts connected with the issuance, sale and delivery of public securities (i.e., trustees, escrow agents, registrars, paying agents, and letter of credit issuers) may be for the life of the outstanding securities, and any renewals and extensions may be approved administratively by the City Manager so long as there is no change in scope of work or compensation.

29.4 Funding. Funds must be available for the first fiscal period when executing the contract. For succeeding fiscal periods, the contract shall be subject to availability and appropriation of funds. When funds are not appropriated to continue the multi-term contract in a subsequent fiscal period the contract shall be terminated by its own terms. Prior to the utilization of a multi-term contract, the Purchasing Director shall make a determination that the requirements of the contract are reasonably firm and continuing and the contract is in the best interest of the City.

29.5 Approval of Contracts. The Purchasing Director shall approve purchase orders for amounts less than $5,000. All contracts for amounts less than $50,000 excluding applicable gross receipts tax require City Manager approval. All contracts over $50,000 excluding applicable gross receipts except renewal maintenance agreements require appropriate committee(s) and City Council approval.

The City Manager may sign grant agreements or grant awards if in compliance with applicable ordinance specifying the grant approval process.

The City Manager may sign a contract related to or other wise approve an emergency purchase in any amount if work must begin immediately due to the

protection of the health, safety, or welfare of the City and the contractor will not start without a signed contract. If over $50,000 the contract should be brought to applicable committees and the next City Council meeting for ratification.

29.6 Joint Powers Agreements. Appropriate committee and City Council approval is required for all Joint Powers Agreements. All amendments require appropriate committee(s) and City Council approval. If the Joint Powers Agreement has no fiscal impact it may be submitted directly to the City Council for approval.

29.7 Audit of Contracts. The City reserves the right to audit at reasonable times and places the books and records or inspect the plant of any person or business receiving a contract, change order or contract modification. Books and records relating to the contractor's performance shall be maintained by the contractor for a period of three years from the date of final payment.

29.8 Kickbacks: Additional Civil Penalty. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher-tier subcontractor in connection with the award of subcontract or order, it is conclusively presumed that the amount was included in the price of the subcontractor making such kickbacks, in addition to other civil charges that may be applied.

29.9 Contract Modification. Modification of terms and conditions and contract renewal may be allowed with the agreement of both parties. Contract modification must be accomplished by amendment of the contract in writing, signed by all the parties. Contract amendments and contract renewals require appropriate committee(s) and City Council approval if either the scope of work or the compensation is amended. The contract amendment must include references to the provisions to be modified, and must contain the entire provision as modified.

29.9.1 Modification/Amendment of Scope of Work. As stated above a change in the scope of the work may require a new competitive sealed bid or proposal, if it substantially deviates from the original competitive sealed bid or request for proposal, based on the determination of the Purchasing Director. It is realized that what constitutes a change in the scope of the work is a judgement call. There is no maximum contract amendment level however, the intent of the City to encourage competitive procurement should always be a significant factor. Bids, requests for proposals and contracts should be carefully planned, reviewed and executed to cover the anticipated scope of the project. If the amendment is verging on a change in the scope of the work, the Purchasing Director should be contacted by the using department.

29.9.2 Approval Procedure for Modifications/Amendments/Change Orders

During the term of the contract, any modification/amendment/change order that results in additional compensation up to an additional cumulative total of all prior amendments of $50,000 shall require review and only approval by the using department director, the Finance Department Director, the City Attorney's Office, the City Clerk and the City Manager.

During the term of the contract any modification/amendment/change order that results in additional compensation over a cumulative total of all prior amendments to $50,000.00 shall requires appropriate committee(s) and City Council, the Finance Department Director, the City Attorney's Office and the City Clerk's approval.

The only exception to the above is that at any time during the term of the contract, if the cumulative total of all prior modifications reach or exceed the $50,000 threshold and the City Manager determines that a change order/modification/amendment is immediately necessary and in the best interest of the City, the City Manager can approve a change order/modification/amendment and then seek City Council ratification within three months.

a. The FIR for the contract amendment shall include the original amount of the contract, the amount of the previous amendments, the amount of the proposed amendment and the new total contract amount.

b. If a contract was executed for under $50,000 without formal requests for proposals, the contract cannot be amended to bring the amount over $50,000 unless it is either an exempt procurement and emergency procurement or there is significant justification for a sole source procurement in accordance with this Purchasing Manual. The Purchasing Director should be contacted by the using department for determination.

29.10 Modification of Term. Unless the contract provides otherwise, any contract may be amended to extend the term. However, the City Attorney's Office shall not approve any contract modification/amendment/change orders that would renew or extend the term of a professional service contract beyond four (4) years including all term extensions and term renewals as provided in Section 13-1-158 NMSA1978 and shall not approve contract modification/amendment/change orders that would renew or extend construction and design build contracts beyond eight (8) years including all term extensions and term renewals. Subject to the four (4) year limit on professional services contracts and eight (8) year limit on construction and design build contracts as long as If the scope of work and/or compensation do not change, the term extension or renewal amendment requires only the approval of the City Attorney, Finance Director,City Clerk and the City Manager.

29.11 Termination of Contracts. Contemplated termination of a contract shall be reviewed by the City Attorney and, if determined to be required, a notice of termination shall be issued from that office.

If a contract that is terminated was awarded on the basis of a bid or proposal, the contract may be subsequently awarded to the next low bidder or the next-rated proponent, if within the period of time the bidder or proponent is required to hold firm the bid or proposal price. The bidder or proponent may agree to hold their bid or proposal price if termination of the contract occurs after this period of time and be awarded the contract. If termination occurs after this period of time and the bidder or proponent will not hold the bid or proposal price, the competitive sealed bidding or proposal process must be repeated, unless otherwise provided for in another manner.

30. DISPOSITION OF OBSOLETE OR UNUSABLE PERSONAL PROPERTY

Unused, obsolete, or surplus tangible personal property shall be turned over to the Purchasing Division for disposal as provided herein. Private sales, sale to employees without public notice or donations to private individuals or organizations, including non-profit organizations, are not permitted. Donations to other governmental entities may be permitted as provided herein.

30.1 Property Under $5,000. If the value of the property is under $5,000, the using department shall notify the Fixed Assets Accountant in the Purchasing Division. Unless it is determined by the Purchasing Director that other City departments have use for the property, the property may be disposed of through a public auction, or other advertised sale requiring sealed bids, trade-in on other equipment, or negotiated sale to other governmental entities. For major pieces of equipment, such as ambulances, fire engines etc., other northern New Mexico governmental entities should be notified of the availability and price of the unit.

30.2 Property Over $5,000. If the value of the property is over $5,000, the City Council must approve any disposal other than through a public auction, including trade-in, bid sale, donation or sale to other governmental entity.

30.2.1 Trade-In. Property may be traded in for a discount on the purchase of new property. See Section 4.3, Trade In.

30.2.2 Bid sale. Property may be sold by competitive sealed bid as follows.

a. Notice of the bid sale shall be published at least twice, no less than seven (7) days apart, in a newspaper of general circulation in Santa Fe County, with the last publication not less than fourteen (14) days prior to the bid deadline.

. The notice shall:

1. describe with reasonable particularity the property available for sale, and shall state the circumstances under which it may be viewed;
2. state that the City reserves the option to retain the property offered for sale and use it for trade-in instead;
3. state the minimum price, if any, that is acceptable;
4. state the deadline for acceptance of the bids;
5. state the date, time and place of the opening of the bids;
6. state any other conditions of sale.

b. The sealed bids shall be opened at the date, time and place appointed.

c. Unless the property is used for trade-in, the property shall be sold to the highest bidder.

30.3 Donation to Other Governmental Entity. Any donation to another governmental entity requires approval from the Finance Committee and City Council.

30.4 Private Sale. If the Purchasing Director and the department director of the department to which the property is assigned determine that it is in the best interest of the City for property to be sold before a public auction is held, such property shall be sold though competitive sealed bids in accordance with this section.

30.5 Public Auctions. Property may be sold by public auction as follows.

a. Prior to the auction a list of all property to be auctioned shall be distributed to all departments. Departments must immediately request transfer of the property to their department via a fixed asset transfer form. Requests for heavy equipment and vehicles must be approved by the City Manager in writing and attached to the transfer form.

b. The Purchasing Division will arrange for items to be auctioned at public auctions conducted by other governmental entities, for example, New Mexico State Police, New Mexico Highway and Transportation Department. The Purchasing Division will provide the auctioneer a copy of the list of items to be auctioned.

c. The property shall be sold to the highest bidder.

31. PROCUREMENT OF USED ITEMS

31.1 Procurement of Items Over $50,000. When procuring used items of tangible personal property with an estimated property cost of greater than $10,000 the Purchasing Director shall request bids as though the item were new. Specifications shall include a written warranty for at least ninety (90) days after date of delivery, and an independent "certificate of working order" by a qualified mechanic or appraiser, if applicable.

The bid of the lowest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the City, in which case the next lowest bid which does meet the terms and conditions may be accepted. The City may reject all bids.

31.2 Procurement of Items Over $50,000.Procurement of used items over $50,000 requires City Council approval prior to purchase.

31.3 Cooperative Procurement/Public Auctions. The City may participate in, sponsor or administer cooperative procurement agreement for the procurement of any services, professional 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 City if over $50,000. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative procurement agreement entered into pursuant to this section shall be limited to the central purchasing authority common to the contracting parties even thou8gh one or more of the contracting parties may be located outside this state. An approved and signed copy of all cooperative procurement agreements entered into pursuant to this section shall be filed with the Purchasing Director. A cooperative procurement agreement entered into pursuant to this subsection is limited to the procurement of items of tangible personal property, services, professional services or construction

32. LEASE AGREEMENTS WHERE CITY IS LESSEE (City is paying lease amounts for other owner's property)

32.1 Tangible Personal Property Under $50,000. Lease agreements for tangible personal property under $50,000 excluding gross receipts tax in total for the term of the lease require 3 written quotes and a lease agreement in a form approved by the City Attorney's office. Leases under $5,000 excluding gross receipts tax may be approved by the City Manager. Appropriate committee and City Council approval are required for lease agreements over $50,000 excluding gross receipts tax.

32.1.1 Tangible Personal Property Between $5,000 and $50,000. Lease agreements for tangible personal property between $5,000 and $50,000 excluding gross receipts tax in total for the term of the lease require Requests for Qualifications and a lease agreement in a form approved by the City Attorney's office. Appropriate committee and City Council approval are required for lease agreements between $10,000 and $25,000 excluding gross receipts tax.

32.1.2 Tangible Personal Property Over $50,000. Lease agreements for tangible personal property exceeding $50,000 excluding gross receipts tax in total for the term of the lease require Requests for Proposals and a lease agreement in a form approved by the City Attorney's office. Appropriate committee and City Council approval are required for lease agreements over $50,000 excluding gross receipts tax.

32.2 REAL PROPERTY

32.2.1 Real Property Under $50,000. Lease agreements for real property under $50,000 excluding gross receipts tax in total for the term of the lease require 3 written quotes and a lease agreement in a form approved by the City Attorney's office. Leases under $50,000 excluding gross receipts tax and including all extensions and renewals, may be approved by the City Manager. Appropriate committee and City Council approval are required for lease agreements over $50,000 excluding gross receipts tax and including all extensions and renewals. Any extensions or renewals that would bring the total compensation over $50,000 excluding gross receipts tax, and any leases of real property with an initial compensation over $50,000 require appropriate committee and City Council approval.

32.2.2 Real Property Between $5,000 and $50,000. Lease agreements for real property between $5,000 and $50,000 excluding gross receipts tax in total for the term of the lease require Requests for Qualifications and a lease agreement in a form approved by the City Attorney's office. Appropriate committee and City Council approval are required for lease agreements between $5,000 and $50,000 excluding gross receipts tax.

32.2.3 Real Property Over $50,000. Lease agreements exceeding $50,000 excluding gross receipts tax in total for the term of the lease require Requests for Proposals and a lease agreement in a form approved by the City Attorney's office. Appropriate committee and City Council approval are required for lease agreements over $50,000 excluding gross receipts tax.

32.3 LEASE AGREEMENTS WHERE CITY IS LESSOR (City is receiving lease amounts for other owner's property).

32.3.1 Tangible Personal Property or Real Property with Current Value or Lease Agreement over Term Under $50,000. Lease agreements for City tangible personal property or real property with a current value and the lease agreement over the term of the lease is under $50,000 may be approved by the City Manager. Lease agreements must provide for market value lease payments or specific services to benefit the City and its citizen's equal to or greater than the value of the property. In general, the lessee would be a non-profit or other governmental entity. The lease agreement must be in a form approved by the City Attorney's office.

32.3.2 Tangible Personal Property or Real Property with Current Value or Lease Agreement Term of Lease Over $50,000. Lease agreements for tangible personal property or real property with a current value or lease agreement over the term of the lease over $50,000 requires a Request for Proposal and a lease agreement in a form approved by the City Attorney's office. NMSA 3-54-1 also must be incorporated into the process. Appropriate committee and City Council approval are required.

32.3.2.1 Exceptions to the Request for Proposals requirement may include cases where the city property is being administered as a development project or a master lease purveyor, either by the city or by a management group contracted by the city. In situations where the property has been typically leased or will be leased for a specific purpose with limited qualified potential leassees (i.e., FBO's at the Municipal Airport), the leases may be proposed to the governing body if a qualified interest is expressed by potential leassee. Consideration should be given to the specific need for the leassee services at the location and the best value to the City all factors considered. If several potentially qualified leassees express an interest in the same properties, a Request for Proposal should be issued unless other extenuating circumstances can be documented.

32.3.3 Tangible Personal Property or Real Property with Current Value or Lease Agreement Over Term of Lease Over $50,000. Lease agreements for tangible personal property or real property with a current value or lease agreement over the term of the lease over $50,000 require a Request for Proposal and a lease agreement in a form approved by the City Attorney's office. NMSA 3-54-1 also must be incorporated into the process. Appropriate committee and City Council approval are required.4

32.3.3.1 In general, the procedures under Section 23 COMPETITIVE SEALED PROPOSALS FOR PROCUREMENT OF PROFESSIONAL SERVICES OVER $50,000 should be followed if a Request for Proposals is issued; however, this section's reference to Request for Proposals is not procurement since the leassee would be paying the City, and the procedures may be adapted accordingly with approval by the Purchasing Director and City Attorney.

32.4 SOLE SOURCE

32.4.1 Sole Source Provisions. The provisions of Section 16, SOLE SOURCE PROCUREMENTS, apply to leases of tangible personal and real property.

CITY OF SANTA FE

Best Practices

Policies & Procedures for FTA Related Procurement

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Policies & Procedures for FTA Related Procurement

This document has been prepared in accordance with the Federal Transit Administration's (FTA) procurement policies. Please reference the FTA's Master Agreement for changes, assistance, and clarification. The Master Agreement contains standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported through a loan, loan guarantee, or line of credit provided by FTA. Also, please refer to The FTA's Best Practices Procurement Manual for procurement assistance, contract clauses and provisions.

Written Record of Procurement History

The City of Santa Fe Transit Division Office shall maintain records detailing the history of each FTA associated procurement. These records shall be placed in the master file and include:

- The rationale for the method of procurement (See - Decision Matrix);
- Selection of contract type;
- Reasons for contractor selection or rejection; and
- The basis for the contract price.

Procurement documentation files

Where appropriate, the file contains:

- Purchase request, acquisition planning information, and other pre-solicitation documents
- Evidence of availability of funds
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- Description of work/scope of services
- Copies of published notices of proposed contract action
- Copy of the solicitation, all addenda, and all amendments
- Liquidated damages determination
- An abstract of each offer or quote
- Contractor's contingent fee representation and other certifications and representations
- Source selection documentation if applicable
- Contracting Officer's determination of contractor responsiveness and responsibility
- Cost or pricing data
- Determination that price is fair and reasonable including an analysis of the cost and price data, required internal approvals for award

- Purchase Requisition indicating availability of funding
- Notice of award
- Notice to unsuccessful bidders or offerors and record of any debriefing,
- Record of any protest
- Bid, Performance, Payment, or other bond documents, and notices to sureties
- Required insurance documents, and
- Notice to proceed

Contract Administration File

Where appropriate, the file contains:

- Purchasing Department Tracking Sheet
- Executed contract and notice of award
- Bond-related documents
- Insurance documentation
- Post-award correspondence
- Notice to proceed
- Approvals or disapprovals of waivers and deviations
- Modifications and changes in the terms or conditions of the contract, including a rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases.

In order to ensure a sound and complete agreement, the Purchasing Officer will ensure the *Contract/Purchase Order File Index* is accurate, complete, and included in the master file. (Attachment 1.)

Awards to Responsible Contractors

The City shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The debarred and suspended list will also be checked.

Departments must submit the attached *Responsibility Determination Form* to the Purchasing Officer prior to the issuance of an award. (Attachment 2.)

Methods of solicitation and selection

The methods of solicitation and selection allowed within the Federal contractual sphere**1** are listed in § 9 of FTA Circular 4420.1E You may choose:

- micro purchases only for contract amounts less than $1,000;
- small purchase procedures only for contract amounts less than the simplified acquisition threshold (currently $10,000);

- sealed bids where
  - you have a complete, adequate, and realistic specification or purchase description
  - two or more responsible bidders are willing and able to compete
  - the procurement lends itself to a firm fixed price contract and the selection can be made primarily on the basis of price
  - no discussion with bidders is needed after receipt of offers;
- competitive proposals; or
- noncompetitive proposals (sole source) procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4420.1E §9f.
- best value for contracts which indicate that the best value or the proposal which offers the greatest business value based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposals represents the "best value" to the City's procurement.

[1] - *See* Section Best Practices Procurement Manual § 1.3.2, "Federal Contractual Sphere."

[2] - FTA Circular 4220.1E §9, 49 CFR

[3] - Geographic preference is permitted in certain narrow situations, including principally where part of a legal licensing requirement and for architects and engineers; FTA Circular 4220.1E, §8.b.

[4] - While the IFB requirements of § 9.c.(2) are good practices for both IFBs and RFPs, the evaluation criteria requirement of § 9.d.(1) is relevant only to RFPs and is discussed in Section 4.5.1, "Solicitation & Receipt of Proposals."

Departments must submit the attached *Method of Procurement Decision Matrix Form* to the Purchasing Officer to begin new procurement actions. The Decision Matrix will be placed in the master file. (Attachment 3)

Micro-Purchases

Procurement by micro-purchases are those purchases under $1,000.00. Purchases below that threshold may be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers, and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts over $2,000.

Minimum documentation required: A determination that the price is fair and reasonable

and how this determination was derived must be submitted to the Purchasing Officer prior to the issuance of an award. This determination shall be placed in the master file. Please use the *Price and Cost Analysis Form* (Attachment 7).

Small Purchases

Small purchase procedures are to be used if the services, supplies, or other property cost between $1,000 and $10,000. If small purchases procedures are used, price or rate quotations shall be obtained from at least three qualified sources and submitted to the Purchasing Officer prior to the issuance of an award. These price or rate quotations shall be placed in the master file. Please use the *Price / Rate Quotation Form* (Attachment 13).

Sealed Bids/Invitation For Bid (IFB)

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
Note: Sealed bids are evaluated by the procuring department for compliance with bid specifications, responsible and responsive bidders, verification of pricing, fund availability, etc. The procuring department transmits an award recommendation to the Purchasing Department, which conditionally awards a contract.

In order for sealed bidding to be feasible, the following conditions should be present:
a. A complete, adequate, and realistic specification or purchase description is available;
b. Two or more responsible bidders are willing and able to compete effectively for the business;
c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
d. No discussion with bidders is needed.

(2) If this procurement method is used, the following requirements apply:
a. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
b. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
c. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
d. The *Bid Summary* Sheet, *Bid Checklist*, and *Bid Cost Factors Forms* (Attachments 11, 4 & 5) will be completed by the procuring department and forwarded to the Purchasing Department for review - to be placed in the master file;
e. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts,

transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

(3) Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(4) The Purchasing Officer may reject any or all bids, or the procuring department requesting the procurement action, if there is a sound documented business reason. The Purchasing Officer or procuring department rejecting lower bids than the bid being accepted for award must provide a detailed written Determination of Findings outlining the reasons for rejection to the Purchasing Department for inclusion in the master file.

(5) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph (1) above apply.

In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value” to the Procuring Agency as defined in Section 6, Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a “best value” basis.

Competitive Proposal/Request for Proposals (RFP)

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids (i.e. when descriptions of experience, education, expertise, availability of services, etc, are necessary for evaluation). If this procurement method is used the following requirements apply:

(1) Requests for proposals will be publicized.

(2) All evaluation factors will be identified and included along with their relative importance in the RFP. If scores are based on a uniform scale (i.e. 1-10, or 1-100), it is best to define in advance levels of compliance, skills, or proximity to the ideal that each step of the scale represents. (i.e. a bachelor’s degree is worth 25 points, a master’s degree is worth 50 points, and a doctorate is worth 100 points)

(2) Proposals will be solicited from an adequate number of qualified sources.

(3) Departments must have a written method in place for conducting technical evaluations of the proposals received and for selecting awardees. This documentation must be submitted to the Purchasing Officer for approval and inclusion in the master file.

(3) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered. Other factors may include labor rates, specifications, labor hours, and delivery schedule. Documentation of the award justification should clearly identify key determination factors. Please use the Award Justification Form (Attachment 12)

Architectural and Engineering Services (A&E)

Departments shall use competitive proposal procedures based on the Brooks Act, paragraph 9-5e, when contracting for A&E services as defined in 40 U.S.C. §541 and 40 U.S.C. §5325(d).. The Brooks Act is federal policy relating to the selection of firms individuals to perform architectural, engineering, and related services. Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer.

The Brooks Act requires that:

(1) An offeror's qualifications are evaluated;

(2) Price must be **excluded** as an evaluation factor;

(3) Negotiations be conducted with only the most qualified offeror; and

(4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee. This "qualifications based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

National Intelligent Transportation Systems Architecture and Standards. When requesting services for transportation system architecture, the City must ensure all offerors/bidders agree to conform, to the extent applicable, to the Intelligent Transportation System Architecture and Standards under the FHWA final rule, and with FTA Notice, "FTA National (ITS) Architecture Policy on Transit Projects and other subsequent Federal directives that may be issued.

Noncompetitive Proposals (Sole Source).

Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive

proposals and **at least one** of the following circumstances applies:

(a) The item is available only from a single source;

(b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(c) FTA authorizes noncompetitive negotiations;

(d) After solicitation of a number of sources, competition determined inadequate; or

(e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

(2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

Best Value

Best Value is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and /or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous and of the greatest value to the City.

The Traditional Construction Process - Design/Bid/Build

It has been traditional in the construction industry to employ an *architect/engineer (A/E)* to complete a detailed design of the entire project before soliciting bids from construction contractors. This traditional approach is known as *sequential design and construction*. This sequential design/construction approach requires that a detailed design package of the entire project be complete before bids are solicited from construction contractors. Following award of the construction contract, the A/E is often retained by the owner for the construction phase, and acts as the owner's agent, to inspect the construction work to ensure that the structures are built according to the designs and specifications.

Advantages - A major advantage of the sequential design and construction approach is that complex or one- of- a- kind projects can be thoroughly planned and thought through before construction begins. The traditional approach thus produces, in the design phase of the project, the most accurate estimate of final project costs, and this is an advantage of the traditional technique. If problems are encountered with design aspects for the latter stages of the project, the earlier design features or phases can be modified before any construction work has been done, thus avoiding construction contractor claims and delays. Another

advantage is that the Agency is given a fixed price for completion of the entire project before construction begins. There may also be advantages in obtaining the necessary financing and project approvals. Overall management of the project should also be simplified by this approach.

Disadvantages - *Sequential design and construction* requires a longer time to complete the project than *phased design and construction ("fast tracking").* And since time pressures are often the most intense issues confronting the Agency, the sequential method may not be feasible. Alternative contracting approaches have arisen to shorten the project completion time. These include *phased design and construction ("fast tracking")*, which often involves the use of a *construction manager*, and *turnkey (design-build)* contracting.

The *Noncompetitive Procurement Justification Form* and the *Sole Source Cost Analysis Form* (Attachments 6 & 10) must be completed submitted to the Purchasing Officer prior to proceeding with this type of procurement.

Protest Procedures

1. The procedures established hereunder shall be available to contractors for the purpose of handling and resolving disputes relating to procurements hereunder. A protestor must exhaust all administrative remedies hereunder before pursuing a protest in any court of law. Where applicable, any information received under such procedures shall be disclosed to the Federal Transit Authority ("FTA") and a protestor must exhaust all administrative remedies before pursuing a protest with the FTA.

2. The term "contractor" means any person, firm, or corporation, which has contracted or seeks to contract (bidder or proposer) with the City of Farmington.

3. The term "hearing officer" shall mean a person, appointed by the Mayor, to hear and decide allegations made by any contractor relating to procurements hereunder.

Hearing Procedure

1. Any contractor may file a written protest of the procurement procedures involved herein, with the City's Purchasing Officer, within ten (10) days of the date of the City's Decision regarding a selection of a contractor with respect to a Bid/RFP/RFQ.

2. A hearing shall be conducted in accordance with C.G.S. Section 4-176e through 4-18a, as amended, which are incorporated herein. The hearing officer shall issue a written decision within ninety (90) days of the last date of such hearing and state in the

decision the reasons for the action taken.

3. Where applicable, review of protests by FTA will be limited to the City's failure to have or follow its procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation.

Include the language contained in Appendix 1 in all Bids/RFP/RFQ.

Costing and Pricing

Ensuring Most Efficient and Economic Purchase

Departments, during their annual budget process, should determine the procurement actions necessary to sustain their operations through the fiscal year. A list of these procurement actions should be forwarded to the Purchasing Officer annually.

Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase and to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The City considers various procurement sources to ensure economical purchases including, but not limited to GSA, State of New Mexico, and municipal cooperatives.

Independent Cost Estimates

Departments must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation (FTA Circular 4420.1E Sec.10). Departments must make independent estimates before receiving bids or proposals. These estimates may be obtained from published competitive prices, results of competitive procurements, historical prices and trends, or by Purchasing Department estimates or outside estimators.

The *Cost and Price Analysis Form* must be submitted to the Purchasing Officer prior to issuing any solicitation. (Attachment 7)

1. Cost Analysis

a. A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and architectural and engineering services contracts.

b. A cost analysis will be necessary when adequate price competition is lacking and for sole

source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

2. Price Analysis

a. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

3. Profit

a. Departments will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.

b. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Federal Cost Principles

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. The Purchasing Officer may reference their own cost principles that comply with applicable Federal cost principles.

Cost Plus Percentage of Cost Prohibited

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Full and Open Competition

The principle of full and open competition has one primary and two secondary purposes. The primary purpose is to obtain the best quality and service at minimum cost. In other words, to get the best buy. The secondary purposes are to guard against favoritism and profiteering at public expense and to provide equal opportunities to participate in public business to every potential offeror.

Departments must conduct all procurement in a manner providing full and open competition. This policy assures that all responsible bidders are permitted to compete for the procurement. In the case of sole or single source procurement, justification for use of the source must be documented on the *Noncompetitive Procurement Justification Form* (Attachment 6). Also see Sole Source Contracting Section.

Contracts with a value of more than $100,000 shall be awarded by sealed bid or by the competitive and noncompetitive proposal process unless there is an explicit exception. Departments must refrain from the following practices, which are deemed restrictive of

competition:

a. Unreasonable requirements placed on firms in order for them to qualify to do business;
b. Unnecessary experience and excessive bonding requirements;
c. Noncompetitive pricing practices between firms or between affiliated companies;
d. Noncompetitive awards to any person or firm on retainer contracts;
e. Organizational conflicts of interest;
f. Restrictive use of brand names;
g. Any arbitrary action in the procurement process; and
h. Geographic preferences.**3**

All departments must submit all required forms to the Purchasing Officer prior to issuance of an award letter.

Bonding Requirements

For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest. Please refer to the FTA Bonding Requirements paragraph 11 , as cited below.

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and

c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

(1) Fifty percent of the contract price if the contract price is not more than $1 million;

(2) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(3) Two and a half million dollars if the contract price is more than $5 million.

d. A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

Brand Name or Equals

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features unduly restricting competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used.

Departments shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a department wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

Conflicts of Interest

Employees, officers, board members, or agents of the City of Santa Fe are prohibited from participating in the selection, award, or administration of contracts or sub-agreements supported by federal funds if a real or apparent conflict of interest exists.

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

> "In order to prevent real or apparent conflicts of interest, the City prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work"

Geographic Preferences

Departments shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or

encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Written Selection Procedures

To ensure all procurements are awarded in a fair and equitable manner, all solicitations shall:

a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

b. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Evaluators and reviewers must follow the established criteria when rating the proposals.

Prequalification of Bidders

The procuring department shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, the City shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

Advertising and Publicizing Solicitation

IFBs and RFPs must be publicly advertised and publicized (respectively) at least fourteen (14) days prior to the solicitation's due date. A longer time period is suggested for larger, more complex procurements. Outreach efforts must be made using diverse resources such as the Internet and mailing lists coupled with widely circulated publications.

IFBs must be issued with sufficient time to prepare bids prior to the date set for opening the bids. Further, the invitation for bids will include any specifications and pertinent attachments and shall properly define the items or services sought in order for the bidder to properly respond. RFPs must identify all evaluation factors along with their relative importance.**4** The Purchasing Officer shall place copies of all advertising and publicized solicitation material in the related master file.

Pre-Bid and Pre-Proposal Conferences

Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective offerors and explaining complicated specifications and requirements to

them as early as possible after the solicitation has been issued and before offers are received. This is also an open forum for potential respondents to address ambiguities in the solicitation documents that may require clarification. Notice of the conference is included in the solicitation at the time of issuance.

Evaluations of Bid Alternates

When bid alternates are included in a bid or proposal document, these alternates must be evaluated as part of the overall bid. This evaluation must be in a written narrative detailing the contract award and takes the alternate into account in reaching a procurement decision. This evaluation must be submitted to the Purchasing Department prior to proceeding with the procurement.

Exercise of Bid Alternates

Bid Alternates may not be exercised unless it is in accordance with the terms and conditions stated in the initial contract. In addition, the requesting department must have made a determination that the alternate price is better than the market price or that the option price is more advantageous. Full written documentation supporting this determination must be submitted to the Purchasing Department.

Types of Contracts

General

All FTA related procurements must use the *Contract/Purchase Order File Index Forms* as provided in the appendix. These checklists will be used by the Purchasing Officer to ensure contract clauses and federal flowdown language are included in each contract as required.

Fixed Price v. Cost Reimbursement

Procurement by the Sealed Bid/Invitation For Bids (IFB) method when certain conditions are present. Among those listed is the condition that:

a. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
b. Paragraph 9.d of FTA Circular 4420.1E authorizes procurement by the Competitive Proposal/Request for Proposals (RFP) method and either a fixed price or cost reimbursement type contract may be awarded.
c. Paragraph 7.i of FTA Circular 4420.1E requires that departments must document their reasons for selecting the contract type as a part of the written record of procurement history.
d. Paragraph 10.e of FTA Circular 4420.1E prohibits the cost plus a percentage of cost method of contracting.

There are two broad categories of contract types: fixed-price contracts and cost-

reimbursement contracts. Within these two families of contract types there are a number of subtypes offering differing degrees of incentives. At the extremes are the firm-fixed-price contract, in which the contractor has complete responsibility for the costs of performance and the resulting profit or loss, and the cost-plus-fixed-fee contract, in which the contractor has virtually no risk for performance costs and the fee (profit) is fixed. Between these two extremes are the various incentive-type contracts where the degree of cost risk and profit incentive can be tailored to meet almost any specific program situation.

Fixed-price contracts

These contracts are appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications or design specifications, and where performance uncertainties do not impose unreasonably high risks upon the contractor.

Cost-reimbursement contracts

These contracts are one in which the City does not contract for the performance of a specified amount of work for a predetermined price, but agrees instead to pay the contractor's reasonable, allocable and allowable costs of performance regardless of whether the work is completed. The City/Department assumes a high risk of incurring cost overruns, while the contractor has almost no risk of financial losses. Cost-type contracts are suitable when (a) you are unable to accurately describe the work to be done, or (b) there is an inability to accurately estimate the costs of performance. If either of these conditions is present, the cost-reimbursement contract is the proper type of contract. *Cost-type contracts are ideally suited to complex requirements because the parties can devote their attention to accomplishing the work rather than on the claims process, which will be significant on larger, complex projects.*

Time and Materials Contracts

Departments will use time and materials contracts only:

(1) After a determination that no other type of contract is suitable;
(2) The contract specifies a ceiling price, and the contractor shall not exceed that price except at its own risk; and
(3) The *Method of Procurement Decision Matrix Form* (Attachment 3) must be submitted to the Purchasing Officer and included with the file for this type of contract.

Labor / Hour Contracts

Labor / hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

Cost Plus Percentage of Cost Contracts (CPPC)

The FTA Circular 4420.1E clearly prohibits the use of this contracting method.

Out of Scope Changes

An "out of scope change" is a contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement. Please use the sole source policies for this type of action. FTA Circular 4220.1E, paragraph 9(f).

Contract Term Limitation

The City shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change, will require a sole source justification.

Revenue Contract

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the City.

Tag-ons

The use of tag-ons, or the addition of work including supplies, equipment or services, that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals, is prohibited and applies to the original buyer as well as to others. In scope "tag-on" changes are not considered tag-ons.

Piggybacking

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services. Piggybacking is permissible when the solicitation document and resultant contract

contain an assign ability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, completed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represents the reasonably

foreseeable needs of the party(s) to the solicitation and contract. If the City and another party jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

E-Commerce

E-Commerce is an allowable means to conduct procurements. If an E-Commerce solicitation will be utilized, full and open competition must be addressed in compliance with the Federal Circular 4200.1E. A written procedure will be required prior to use of E-Commerce. Please call the Purchasing Office prior to use of this alternative.

Payments

Advance Payments

FTA does not authorize, and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

Progress Payments

Grantees may use progress payments provided the following requirements are followed:

(1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.

(2) The grantee must obtain adequate security for progress payments adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

Contract Provisions

All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
b. Termination for cause and for convenience by the City or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000.)

Liquidated Damages Provisions

The City may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. In order to obtain liquidated damages, the City must suffer an actual loss. The amount of liquidated damages must be reasonable in light of the loss suffered. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

Architectural and Engineering Services Conflicts of Interest

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

> "In order to prevent real or apparent conflicts of interest, the City prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work."

Flowdown of FTA Clauses

Please see the attached *FTA Contract Clauses* as a guide to ensure the proper clauses are included in the procurement process. These clauses are required to be included in all FTA contracts and purchase orders. (Attachment 9)

A full text of all Contract Clauses from FTA Best Practices Manual may be found here.

Buy America

As a condition of responsiveness to bidding for procurements of rolling stock, iron, steel, or manufactured products greater than $100,000 the bidder must submit with the bid or offer, a

completed Buy America certificate in accordance with Part 661.6 for steel, iron, and manufactured products, or Part 661.12 for rolling stock (including train control, traction power, and communication equipment). Once submitted the bidder is bound by the certification provided. If the bidder does not submit a certification, the bid shall be considered non-responsive. If the bidder executes certification that it cannot comply but may be eligible for an exception, then the City shall review the circumstances and determine if it should request a waiver form the FTA. There are specific instances included in the regulations for waiver of Buy America provisions including that it is in the public's best interest, that there are no U.S. products available, or there is a 25 percent price difference between the foreign and domestic products.

See FTA's Buy America web pagehttp://www.fta.dot.gov/legal/buy_america/14456_ENG_HTML.htm for additional information on requirements.

Certifications in compliance with Part 661.6 and 661.12 are provided in Attachments 14 and 15

Lobbying

Contractors who apply or bid for an award of $100,000 or more must file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each level of FTA fund recipient certifies to the level above it that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each FTA fund recipient must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that specific Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from each level of fund recipient to the next level of fund recipient until it reaches the grantor. See "Lobbying" as provided in http://www.fta.dot.gov/library/admin/BPPM/appA1.html#BM10.

Certifications in Attachment 16

ATTACHMENTS
City of Santa Fe
Contract / Purchase Order File Index
(For Sealed Bids Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

Section A - Solicitation Documents		
Tab #	**Document(s)**	**Audit**
1	Purchase Request	
2	Specifications & DBE Goals	
3	Requirement Justification	
4	Independent Cost Estimate	
5	Bidder's List	
6	Justification of Procurement Method	
7	Copy of IFB	
8	Proof of publication	
9	IFB Attachments / Modifications	
10	Pre-Bid Minutes & List of Attendees	
11	Correspondence with Bidders	
12	Protests Prior to Bid Opening	
13	Interoffice Correspondence	
14	Review of Responsiveness	

Sealed Bid No._____ Contract Administrator: _____

Date: _____

City of Santa Fe
Contract / Purchase Order File Index
(For Sealed Bids Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

Section B – Award Documents		
Tab #	**Document(s)**	**Audit**
1	Rationale for Method of Procurement Copy of Each Bid	
2	Late Bid – Bid Errors	
3	Bid Analysis / Tabulation Sheet	
4	Technical Evaluation & Pre-Award Survey	
5	Affirmative Action Evaluation / DBE Plan	
6	Bidder's Responsibility Determination	
7	Price Analysis	
8	Record of Negotiation for Single Bid	
9	Justification of Contract Type	
10	Award Recommendation Memo	
11	Board Resolution	
12	Notice of Award	
13	Notice to Unsuccessful Bidders (Bond, Check Returns)	
14	FTA Approval	
15	Legal Review of Contract Documents	
16	Contract Document	
17	Bond & Certificate of Insurance	
18	Notice to Proceed	
19	Purchase Order	

City of Santa Fe
Contract / Purchase Order File Index
(For Sealed Bids Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

Section C – Contract Administration Documents		
Tab #	**Document(s)**	**Audit**
1	Post Award Conference	
2	Status Reports	
3	Change Notices / Modifications / Change Orders	
4	Site Visit Reports	
5	Progress Meeting Minutes	
6	Quality Assurance Records	
7	Termination / Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payments	
10	Notice of Substantial Acceptance	
11	Notice of Claims	
12	Release of Claims / Bonds	
13	Assignments	
14	Notice of Final Payment	
15	Audit Reports	
16	Liquidated Damages	
17	Close Out Documentation	

City of Santa Fe
Contract / Purchase Order File Index (For RFP Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

Section A - Solicitation Documents		
Tab #	**Document(s)**	**Audit**
1	Purchase Request Rationale for Method of Procurement	
2	Specifications / Statement of Work	
3	Justification for Procurement	
4	Cost Estimate	
5	Set Aside Decision / DBE Goal	
6	Justification of Procurement Method	
7	List of Prospective Proposers	
8	Proof of publication	
9	Copy of RFP	
10	Addenda	
11	Pre-Proposal Minutes & List of Attendees	
12	Correspondence with Bidders	
13	Interoffice Correspondence	
14	Review of Responsiveness	

RFP No. _____ Contract Administrator: _____

Date: _____

City of Santa Fe
Contract / Purchase Order File Index (For RFP Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

Section B – Award Documents		
Tab #	**Document(s)**	**Audit**
1	Copy of Each Proposal	
2	Proposal Tabulation Sheet	
3	Evaluation Team Notification	
4	Evaluation Sheet / Matrix	
5	Pre-Award Survey	
6	Determination of Zone of Consideration	
7	Late Proposals	
8	Invitations for Oral Interviews	
9	Notice of Rejection	
10	Minutes of Meetings	
11	Correspondence with Proposers	
12	Cost or Price Analysis	
13	Justification of Contract Type	
14	Negotiation Memorandum	
15	Copy of Each Best & Final Offer	
16	Award Recommendation Memo	
17	Board Resolution	
18	Legal Review of Contract Documents	
19	Notice of Award	
20	Notice to Unsuccessful Bidders	
21	Procurement Summary	
22	Determination and Findings	
23	Bonds & Certificates of Insurance	
24	Contract Document	
25	Notice to Proceed	
26	Purchase Order	

City of Santa Fe
Contract / Purchase Order File Index (For RFP Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

Section C – Contract Administration Documents		
Tab #	**Document(s)**	**Audit**
1	Post Award Conference	
2	Quality Assurance Records	
3	Change Notices / Modifications / Change Orders	
4	Periodic Status Reports	
5	Contractor Evaluation Form	
6	Site Visit Reports	
7	Termination / Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payments & Receipts	
10	Advance or Progress Payment Documents	
11	Notice of Substantial Acceptance	
12	Punch List Discrepancies	
13	Notice of Final Acceptance	
14	Notice of Claims	
15	Release of Claims / Bonds	
16	Assignments	
17	Notice of Final Payment	
18	Audit Reports	
19	Liquidated Damages	
20	Close Out Documentation	

City of Santa Fe
Responsibility Determination Form

BID / RFP No: _____

Supplier: _____

Date: _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable	**Comment**
1. Appropriate financial, equipment, facility, and personnel.	Yes No	_____
2. Ability to meet the delivery schedule.	Yes No	_____
3. Satisfactory period of performance.	Yes No	_____
4. Satisfactory record of integrity, not on declined or suspend listings.	Yes No	_____
5. Receipt of all necessary data from supplier.	Yes No	_____
6. Debarred and Suspended List has been checked (supplier not listed)	Yes No	_____

City of Santa Fe
Method of Procurement Decision Matrix Form

To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below. All elements must apply to use that method

Micro-purchase
Amount <$1000 ❒
Multiple sources ❒

Competitive Procurement
Amount >$1000 < $10,000 ❒
Multiple sources available ❒
Not an emergency purchase ❒

Sole Source
OEM or custom item ❒
Only one source available ❒
Approved by FTA-
sole source ❒

Sealed Bid (IFB) >$10,000
Complete & adequate specs
or purchase description ❒
Two or more responsible
Bidders willing to compete ❒
Selection can be made on
basis of price ❒
Procurement suitable for
firm, fixed price ❒
No discussion with bidders
needed after receipt of offers ❒

Competitive Proposals (RFP)
Complete specifications not feasible ❒
Bidder input needed for specification ❒
Two or more responsible bidders willing
to compete ❒
Discussion needed with bidders after
receipt of proposals, prior to award. ❒
Fixed price can be set after discussions ❒

Time and Materials Contract
(subset of RFP)
Fixed price cannot be set for work ❒
Complete extent of work unknown,
whether time, or material use, or both. ❒

Best Value
Price and qualitative consideration
Greatest value to the City ❒

Public exigency
/issue/emerg. ❒
Competition is inadequate
after public solicitation ❒

Emergency Procurement
(subset of sole source)

There is a health and safety
issue that prohibits delay. ❒

City of Santa Fe
Bid Checklist Form

	YES	NO
1. Price is firm, fixed and definite	_____	_____
2. Bid is responsive to requirements of the solicitation	_____	_____
3. Exceptions taken to any material term or condition of the solicitation	_____	_____
4. Bid is ambiguous	_____	_____
5. All amendments to solicitation acknowledged	_____	_____
6. Bid signed	_____	_____
7. All material representations, bonds, guarantees and certifications completed.	_____	_____
8. All required information submitted.	_____	_____
9. Bid is not defective	_____	_____

City of Santa Fe

Bid Cost Factors Form

Solicitation / Bid No: _____

Supplier Price Evaluation Factors:

1. Purchase price: $ _____

2. Payment discount terms: _____

3. Transportation costs: _____

4. Warranty: _____

5. Installation: _____

6. Training: _____

7. Technical assistance: _____

Total bid: _____

Evaluation: **$** _____

City of Santa Fe
NONCOMPETITIVE PROCUREMENT JUSTIFICATION FORM

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

_____ The item is available only from a single source (sole source justification is attached).

_____ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

_____ FTA authorizes noncompetitive negotiations (letter of authorization is attached).

_____ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

_____ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

_____

_____

_____

_____

_____ Cost Analysis is attached.

_____	_____
Purchasing Officer	Department Director
_____	_____
Date	Date

City of Santa Fe
Cost and Price Analysis Form

Comparisons with other competitive proposals: _____
Price quoted by vendor: _____
Competitive prices obtained from other vendors:_____
(state name of vendor and price):

Previous Contracts: _____
Date of Contract: _____
Purchase Price: _____

Catalog/Market Prices: _____
Source: _____
Purchase Price: _____

Historical Prices: _____
Date: _____
Purchase Price: _____

Independent Cost Estimates: _____
Source: _____
Date: _____
Purchase Price: _____

Price/Performance Ratio (if applicable): _____

Market Data: _____
Source: _____
Date: _____
Purchase Price: _____

City of Santa Fe
Disclosure Statement

The U.S. Department of Transportation Federal Transit Administration Master Agreement, Section 3a(1) prohibits the recipient's employees, officers, board members or agents from participating in the selection, award, or administration of a third party contract or subagreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award:

a) an employee, officer, board member or agent;
b) any member of his or her immediate family;
c) his or her partner;
d) an organization that employs or intends to employ any of the above.

It is the responsibility of the officers and employees of the City of Santa Fe, upon acquiring interests which conflict or might appear to conflict with the interests of the Federal Transit Administration and/or the City of Santa Fe, to bring them forth immediately for resolution.

I, the undersigned City of Santa Fe employee, acknowledge receipt, understanding and acceptance of the City of Santa Fe Code of Ethics and this Disclosure Statement, and certify that (1) I have not solicited or received any kickbacks or gratuities, and (2) I have no financial interest in any supplier with whom the City of Santa Fe does business. If any real or perceived conflict should arise in the discharge of my duties, I will report such conflict immediately to the Director of Human Resources in writing.

Name: _____ Title: _____

Date: _____

This statement will be renewed on an annual basis

FTA CONTRACT CLAUSES						
	Clauses	**Professional Services/A&E**	**Operations/ Management**	**Rolling Stock Purchase**	**Construction**	**Materials & Supplies**
1	Fly America	X	X	X	X	X
2	Buy America			X	X	X
3	Charter Bus & School Bus		X			
4	Cargo Preference			X	X	X
5	Seismic Safety	X (A & E)			X	
6	Energy Conservation	X	X	X	X	X
7	Clean Water	> $100,000	> $100,000	> $100,000	> $100,000	> $100,000
8	Bus Testing			X		
9	Pre-Award/Post Audit			X		
10	Lobbying	X	X	X	X	X
11	Access to Records	X	X	X	X	X
12	Federal Changes	X	X	X	X	X
13	Bonding				> $100,000	
14	Clean Air	> $100,000	> $100,000	> $100,000	> $100,000	> $100,000
15	Recycled Products	> $10,000	> $10,000	> $10,000	> $10,000	> $10,000
16	Davis-Bacon Act				> $2,000	
17	Contract Work Hours			> $100,000	> $100,000	

18	Copeland Anti-Kickback				> $2,000	
19	No Government obligation	X	X	X	X	X
20	Program Fraud	X	X	X	X	X
21	Termination	> $10,000	> $10,000	> $10,000	> $10,000	> $10,000
22	Government-wide Debarment	> $25,000	> $25,000	> $25,000	> $25,000	> $25,000
23	Federal Privacy Act	X	X	X	X	X
24	Civil Rights	X	X	X	X	X
25	Breach of Contract	> $100,000	> $100,000	> $100,000	> $100,000	> $100,000
26	Patent Rights	ONLY FOR EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK				
27	Transit Employees Protective Act		X			
28	Disadvantaged Business Act	X	X	X	X	X
29	State and Local Govt Laws/Regulations	X	X	X	X	X
30	Incorporation of FTA Terms	X	X	X	X	X
31	Drug & Alcohol		X			
32	ITS National Architecture	X	X	X	X	X
33	TVM Certifications			X		
34	Metric Requirements		X	X		
35	ADA Compliance	X	X	X	X	X

36	Notice of Federal Participation	> $500,000	> $500,000	> $500,000	> $500,000	> $500,000

City of Santa Fe
Sole Source Cost Analysis Form

Prior to proceeding with sole source procurements, including contract modifications, the requesting department must perform a cost analysis in order to demonstrate the proposed price is fair and reasonable. The cost analysis should examine the elements of cost (labor hours, material, overhead, and profit) for professional consulting and architectural and engineering type contracts.

Please note: It is not sufficient to list the last price paid and the percentage change of the newly quoted price. Actual analysis of the figures should be evident to explain why any increase or decrease in quoted costs is reasonable. All of the following elements must be completed for each proposed sole source procurement.

1. Verification of cost or pricing data and evaluation of cost elements:

_____
_____
_____
_____
_____
_____

2. Comparison of cost proposed with independent or previous cost estimate, market indices, and other factors:

_____
_____
_____
_____
_____
_____

3. Evaluation of suppliers' costs first hand and assessment for completeness and reasonableness, including evidence and rationale for determination.

_____
_____
_____
_____
_____
_____

hment 12 **City of Santa Fe**
Award Recommendation & Justification Form

Department: _____

Procurement Number: _____
(RFP/BID #)

Subject: _____

Report Date: _____ Number Bids / RFP'S Mailed: _____ Number of Bids / RFP'S Received: _____

Recommendation:

_____
_____
_____
_____
_____
_____
_____
_____

Justification:

_____
_____
_____
_____
_____
_____
_____
_____

Approvals:

_____ _____
PROCURING AGENT PURCHASING OFFICER

City of Santa Fe
Price / Rate Quotation Form

Department: _____

Subject: _____

Report Date: _____ Number of Quotes Received: _____

Qty.	Qty/Ctn	Item	Vendor	Price

Amount

Recommendation:

_____
_____
_____
_____
_____
_____
_____

Approvals:

_____ _____

PROCURING AGENT PURCHASING OFFICER

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

CERTIFICATION REGARDING LOBBYING

As required by U.S. DOT regulations, ``New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying,'' including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements).

The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____ _____

Signature Date

_____

Name and Title of Authorized Representative

_____

Organization Name