

City of Las Vegas

Resolution No. 12-24

Procurement Code



**CITY OF LAS VEGAS
PURCHASING RULES AND REGULATIONS
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CITY OF LAS VEGAS
PURCHASING RULES AND REGULATIONS

1.0 DEFINITIONS

1.1 GENERAL

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

1.2 Definition: ARCHITECTURAL SERVICES

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

1.3 Definition: APPLICABLE PUBLIC OFFICIAL

"Applicable Public Official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

1.4 Definition: BRAND-NAME SPECIFICATION

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

1.5 Definition: BRAND-NAME OR EQUAL SPECIFICATION

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

1.6 Definition: BUSINESS

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

1.7 Definition: CAMPAIGN CONTRIBUTION

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

1.8 Definition: CATALOGUE PRICE

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

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

1.9 Definition: CENTRAL PURCHASING OFFICE

"Central purchasing office" means that office or officer within a state agency or a local public body responsible for the control of procurement of items of tangible personal property, services or construction.

There is hereby created a Central Purchasing Office within the Finance Department of the City of Las Vegas to be administered by the Procurement Officer who shall be the Finance Director of the City or his/her designee.

All procurement for local public bodies shall be performed by a central purchasing office designated by the governing authority of the local public body except as otherwise provided in the Procurement Code.

1.10 Definition: CHANGE ORDER

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

1.11 Definition: CONFIDENTIAL INFORMATION

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

1.12 Definition: CONSTRUCTION

- A. "Construction" means building, altering, repairing, installing or demolishing in the ordinary course of business any:
1. road, highway, bridge, parking area or relate project;
 2. building, stadium or other structure;
 3. airport, subway or similar facility;
 4. park, trail, athletic field, golf course or similar facility;
 5. dam, reservoir, canal, ditch or similar facility;
 6. sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility;
 7. sewage, water, gas or other pipeline;
 8. transmission line;
 9. radio, television or other tower;
 10. water, oil or other storage tank;
 11. shaft, tunnel or other mining appurtenance;
 12. electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners;
 13. air conditioning conduit, heating or other similar mechanical work; or
 14. similar work, structures or installations.
- B. "Construction" shall also include:
1. leveling or clearing land;
 2. excavating earth;
 3. drilling wells of any type, including seismographic shot holes or core drilling; and
 4. similar work, structures or installations.

1.13 Definition: CONSTRUCTION MANAGEMENT AND CONSTRUCTION MANAGER

- 1) "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project.
- B. "Construction manager" means a person who acts as an agent of the state agency or local public body for construction management, for whom the state agency or local public body shall assume all the risks and responsibilities.

1.14 Definition: CONTRACT

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

1.15 Definition: CONTRACT MODIFICATION

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

1.16 Definition: CONTRACTOR

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

1.17 Definition: COOPERATIVE PROCUREMENT

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

1.18 Definition: COST ANALYSIS

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

1.19 Definition: COST DATA

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

1.20 Definition: COST REIMBURSEMENT CONTRACT

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

1.21 Definition: DATA "Data" means recorded information regardless of form or characteristic.

1.22 Definition: DEFINITE QUANTITY CONTRACT

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

1.23 Definition: DESIGNEE

"Designee" means a representative of a person holding a superior position.

1.24 Definition: DETERMINATION

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

1.25 Definition: DIRECT OR INDIRECT PARTICIPATION

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

1.26 Definition: ELECTRONIC

"Electronic" includes electric, digital, magnetic, optical, electronic or similar medium.

1.27 Definition: EMPLOYEE

"Employee" means an individual receiving a salary, wages or per diem and mileage from a state agency or a local public body whether elected or not any non-compensated individual performing personal services as an elected or appointed official or otherwise for a state agency or a local public body.

1.28 Definition: ENGINEERING SERVICES

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

1.29 Definition: EXTERNAL PROCUREMENT UNIT

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

1.30 Definition: FINANCIAL INTEREST

"Financial interest means:"

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

1.31 Definition: FIRM FIXED PRICE CONTRACT

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

1.32 Definition: GARAGE LIABILITY INSURANCE

"Garage Liability Insurance" means liability insurance that covers any damage to vehicles or properties belonging to the City of Las Vegas while in the possession of the vendor (mechanic).

1.33 Definition: GRATUITY

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

1.34 Definition: HEAVY ROAD EQUIPMENT

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

1.35 Definition: HIGHWAY RECONSTRUCTION

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

1.36 Definition: IMMEDIATE FAMILY

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

1.37 Definition: **INDEFINITE QUANTITY CONTRACT**

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

1.38 Definition: **INVITATION FOR BIDS**

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

1.39 Definition: **LANDSCAPE ARCHITECTURAL SERVICES**

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

- A. The preservation or enhancement of land uses and natural features.
- B. The location and construction of functional approaches for structures, pathways or walkways; or
- C. The design of trails, plantings and landscape irrigation. Excluded from the provisions of this section are the services of architects, engineers and surveyors as defined in the Procurement Code.

1.40 Definition: **LOCAL PUBLIC WORKS PROJECT**

"Local public works project" means a project of a local public body which uses architectural or engineering services requiring professional services costing twenty-five thousand dollars (\$25,000) or more, or landscape architectural or surveying services requiring professional services costing five thousand dollars (\$5,000) or more, excluding applicable state and local gross receipts taxes.

1.41 Definition: **LOCAL PUBLIC BODY**

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

1.42 Definition: MULTI-TERM CONTRACT

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

1.43 Definition: MULTIPLE SOURCE AWARD

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

1.44 Definition: NOTICE OF INVITATION FOR BIDS

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

1.45 Definition: PRICE AGREEMENT

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

1.46 Definition: PENDENCY OF THE PROCUREMENT PROCESS

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

1.47 Definition: PERSON

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

1.48 Definition: PRICE ANALYSIS

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

1.49 Definition: PRICING DATA

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

1.50 Definition: PROCUREMENT

"Procurement" means:

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

1.51 Definition: PROCUREMENT OFFICER

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

1.52 Definition: PROFESSIONAL SERVICES

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

1.53 Definition: PROSPECTIVE CONTRACTOR

"Prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or small purchase contract.

1.54 Definition: PURCHASE ORDER

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

1.55 Definition: PURCHASE REQUEST

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

1.56 Definition: QUALIFIED PRODUCTS LIST

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

1.57 Definition: REGULATION

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

1.58 Definition: REQUEST FOR PROPOSALS

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

1.59 Definition: RESPONSIBLE BIDDER

"Responsible bidder" means a bidder who submits a responsive bid and who has production or service facilities, personnel, service reputation and experience are production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.

1.60 Definition: RESPONSIBLE OFFEROR

"Responsible offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

1.61 Definition: RESPONSIVE BID

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

1.62 Definition: RESPONSIVE OFFER

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

1.63 Definition: REPRESENTATIVE OF A PROSPECTIVE CONTRACTOR

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

1.64 Definition: SERVICES

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

1.65 Definition: SMALL BUSINESS

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

1.66 Definition: SPECIFICATION

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

1.67 Definition: SURVEYING SERVICES

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

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

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

1.68 Definition: TANGIBLE PERSONAL PROPERTY

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

1.69 Definition: USING AGENCY

“Using agency” means any state agency or local public body requiring services, construction or items of tangible personal property.

CENTRALIZATION OF PROCUREMENT AUTHORITY

All procurement for local public bodies shall be performed by a central purchasing office designated by the governing authority of the local public body except as otherwise provided in the Procurement Code.

All contracts and purchase requisitions of vehicles and heavy equipment must be approved by the City Manager before any purchase order is issued.

2.0 PURCHASE REQUESTS

2.1 SPECIFICATION FOR PURCHASE REQUISITIONS

All departments shall requisition materials or services except as otherwise provided by these regulations by use of Requisition for Purchase Form, (attached see Appendix C).

Department Directors, who obtain services, construction, or items of tangible personal property through an Emergency Procurement, shall prepare a letter of Determination defining the emergency situation and shall complete a Requisition Form no later than five (5) days after such procurement with the Central Purchasing Office/Finance Director. Preplanned and/or pre-approved.

- A. All using agency requests for procurement shall contain:
 - 1. A statement of need and the specifications of the item(s), construction or service(s) needed; and
 - 2. A statement of the quantity needed and a general statement of quality.
- B. The central purchasing office may consolidate procurements and may contract for items of tangible personal property or services at a firm price at which the items or services needed during the year or portion of a year shall be purchased.
- C. A brand name may be used when the brand name is the clearest and best understood manner of describing the item. When a brand name is used, it must be followed by the words "or equal," except for those instances where the materials or services are designed to match other in use on a particular public improvement, either completed or in the course of completion, or where a unique or novel product application is required to be used in the public interest as per Section 22.
- D. The Central Purchasing Office shall notify the department who filed the requisition, if any changes are needed of the department's requisition, relative to specifications, price, contractual conditions, quantity or delivery costs, proper account use, and prior to the issuance of a purchase order.
- E. A purchase order shall be a statement of intent to purchase and shall clearly state the quantity and quality of items to be purchased. The Central Purchasing Office

may consolidate purchases and may contract for items at a firm price at which the materials or services needed during the year, or portion of a year, shall be purchased.

- F. Purchase orders shall only be issued by the Finance Department after receipt from the department involved in the purchase, of a properly executed requisition for purchase.
- G. Procurement shall not be artificially divided so as to constitute a small purchase under these regulations.
- H. All contracts and solicitations therefore shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

2.2 SMALL PURCHASES

A central purchasing office shall procure services, (except for professional services, see section 2.3) construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) in accordance with these regulations:

- A. Single purchase involving the expenditure of five hundred dollars (\$500) or less, issuing a direct purchase order to a contractor based upon the best obtainable price from a minimum of 2 quotes.
 - 1. If any responsible bid is the same as or within one percent or within five hundred dollars (\$500), whichever is smaller, of the lowest bid, the Central Purchasing Office shall notify the Department Director involved in the purchase who shall be give the option of selecting the bidder to whom the award will be given.
- B. A single purchase involving the expenditure of more than five hundred dollars (\$500.01), but less than five thousand dollars (\$5,000.00), may be made after requesting three oral or telephoned bids, the oral or telephoned bids to be recorded for auditor's inspection. If less than three bids are received, the purchase may be made without the bids but at the best documented obtainable price, the documentation to be recorded for auditor's inspection. Separate purchases of the same or similar materials or services from the same of different suppliers at the same time or about the same time where each purchase does not exceed five thousand dollars (\$5,000.00) but the aggregate of such purchases exceeds five thousand dollars (5,000.00) shall be considered a single purchase involving more than five thousand dollars (\$5,000.00).
- C. A single purchase involving the expenditure of more than five thousand dollars (\$5,000.01) but not more than twenty thousand dollars (\$20,000.00) shall be made only after sending notices to prospective bidders and after the expiration of the time specified in the notice or after the receipt of responses from all persons to whom

notices were sent and attempting otherwise to secure at least three bona fide written responsible bids. If less than three responsible bids are secured, and purchase of more than five thousand dollars (\$5,000.01) but not more than twenty thousand dollars (\$20,000.00) may be made without three written bids, but such purchase must be made at the best obtainable price, the documentation to be recorded for auditor's inspection. Separate purchases of the same or similar materials or services from the same or different suppliers at the same time or about the same time where each purchase does not exceed more than twenty thousand dollars (\$20,000.00) shall be considered a single purchase involving more than twenty thousand dollars (\$20,000.00).

- D. A single purchase involving the expenditure of more than twenty thousand dollars (\$20,000.00) shall be done through the Competitive Sealed Bid or Competitive Sealed Proposal processes outlined in the Procurement Code.
- E. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.
- F. Without regard to the bid requirements of these regulations, the City of Las Vegas may purchase materials at prices equal to or less than the prices paid for material meeting the same specifications or standards purchased under State Purchasing Agent or Procurement Officer if the following conditions are met:
 - 1. Prices must be from a current contract entered into by the State Purchasing Agent.
 - 2. The quantity purchased shall not exceed the quantity which may be purchased under the applicable State Purchasing Agent contract.
 - 3. The material shall be purchased at the best available price.
 - 4. The Requisition for Purchase shall adequately identify the State Purchasing Agent contract relied upon, recording: contract number, item's) number, contract expiration date and copy of contract attached.
 - 5. The Central Purchasing Office shall retain for public inspection and for the use of auditors, a copy of each state purchasing agent contract relied upon to make purchases without seeking competitive bids.
 - 6. Purchases shall not be made from other than state contract vendors if the contract so provides and if the state contract has been arrived at by utilization of the requirements of other than State Agencies under the supervision of the State Purchasing Agent.

2.3 PROFESSIONAL SERVICES

With regard to contracts for technical and professional services including but not limited to contracts for legal services, appraisal services, engineering consulting, or other consulting services, when the contract is for less than \$50,000.00, a determination shall be made by the department involved in the procurement stating the service or services required, the criteria used for selection, the persons, partnerships, corporations or associations considered and the basis for the final selection.

2.4 SMALL PURCHASES: PURCHASE REQUISITION CRITERIA

- a. TO \$500 Purchase under Resolution # 07-41; best obtainable price from 2 quote minimum.
- b. \$500.01 to \$5,000.00 requires three (3) documented telephone or written bids.
- c. \$5,000.01 to \$20,000.00 requires sending bid notice and receiving signed bids within the time specified.
- d. \$20,000.01 and over requires competitive sealed bids or proposals pursuant to Resolution # 07-41 and the State Procurement Code.

3.0 EXEMPTIONS FROM THE PROCUREMENT CODE

The provisions of the Procurement Code shall not apply to:

- A. Procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Section 13-1-135 through 13-1-137 NMSA 1978;
- B. Printing and duplicating contracts involving materials that are required to be filed in connection with proceeding before administrative agencies or state or federal courts
- C. Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services.
- D. Purchases for books and periodicals from the publishers or copyright holders thereof;
- E. Travel or shipping by common carrier or by private conveyance or to meals and lodging;
- F. Purchase of livestock at auction rings or the procurement of animals to be used for research and experimentation or exhibit.;
- G. Contracts with businesses for public school transportation services;
- H. Procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

- I. Minor purchases not exceeding five thousand dollars (\$5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;
- J. Municipalities having adopted home rule charters and having enacted their own purchasing ordinances;
- K. The issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;
- L. Contracts entered into by a local public body with a private independent contract for the operation, or provision and operation, of a jail pursuant to Sections 33-326 and 33-3-27 NMSA 1978;
- M. Contracts for maintenance of grounds and facilities at highway rests stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;
- N. Contracts and expenditures for services or items for tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;
- O. Contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;
- P. Contracts with professional entertainers;
- Q. Contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
- R. Contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;
- S. Works of art for museums or for display in public buildings or places;
- T. Purchases of advertising in all media, including radio, television, print and electronic;
- U. Purchases of promotional goods intended for resale by the tourism department;
- V. Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act.

4.0 SOLE SOURCE

A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the state purchasing agent or a central purchasing office makes a determination, after conducting a good-faith review of available sources and consulting the using agency, that there is only one source for the required service, construction or item of tangible personal property. The state

(purchasing agent or a central purchasing office shall conduct negotiations, as appropriate as to price, delivery and quantity in order to obtain the price most advantageous to the state agency or a local public body. A contract for the purchase of research consultant services by institutions of higher learning constitutes a sole source procurement.

5.0 EMERGENCY PROCUREMENTS

- A. The state purchasing agent, a central purchasing office or a designee of either may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions; provided that emergency procurements shall be made with competition as is practicable under the circumstances. A written determination of the basis for the emergency procurement and for the selection of the particular contractor or vendor shall be included in the procurement file. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.
- B. An emergency condition is a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, fires, epidemics, riots, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response. The existence of the emergency condition creates an immediate and serious need for services; construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:
- 1 The function of government;
 - 2 The preservation or protection of property; or
 - 3 The health or safety of any person.
- C. Money expended for planning and preparing for an emergency response shall be accounted for and reported to the finance committee
- D. And the department of finance and administration within sixty days after the end of each fiscal year.

5.1 SOLE SOURCE AND EMERGENCY PROCUREMENTS: CONTENT AND SUBMISSION OR RECORD

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

1. The contractor's name and address;
 2. The amount and term of the contract;
 3. A listing of the services, construction or items of tangible personal property procured under the contract; and
 4. The justification for the procurement method.
- (

6.0 GARAGE LIABILITY REQUIREMENT

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

7.0 COMPETITIVE SEALED BIDS

All procurement shall be achieved by competitive sealed bid pursuant to Sections 7.1 through 7.12 of the Procurement Code, except procurement achieved pursuant to the following sections of the Procurement Code (13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978):

- A. Section 8.0 (8.1 through 8.13) competitive sealed proposals;
- B. Section 2.2, small purchases;
- C. Section 4.0, sole source procurement;
- D. Section 5.0, emergency procurements
- E. Section 14.0, existing contracts; and
- F. Section 28.0, purchases from antipoverty program businesses.

7.1 COMPETITIVE SEALED BIDS: REQUIREMENTS

The Request for Bid (RFB) is used to initiate a competitive sealed bid procurement. The RFB shall include the following:

1. The specifications for the services, construction or items of tangible personal property to be procured.
2. All contractual terms and conditions applicable to the procurement, including:
 - a. Affidavit
 - b. Campaign Contribution Disclosure
 - c. Bid bond, if applicable
3. The term of the contract and conditions of renewal or extension, if any.
4. Instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening.
5. A notice that the RFB may be cancelled and that any and all bids may be rejected in whole or in part when it is in the best interest of the City of Las Vegas.
6. A notice that reads substantially as follows:

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1 the New Mexico criminal statutes impose felony penalties for bribes 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kick-backs.

7.2 COMPETITIVE SEALED BIDS: INVITATION FOR BIDS

An invitation for bids shall be issued and shall include the specifications for the services, construction or items of tangible personal property to be procured, all contractual terms and conditions applicable to the procurement, the location where bids are to be received and the date, time and place of the bid opening.

7.3 SIGNATURES FOR RFB

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

7.4 CAMPAIGN CONTRIBUTION DISCLOSURE

Pursuant to Chapter 81, State Laws of 2006 any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with the state agency or local public body.

7.5 AMENDMENTS TO INVITATION TO BID

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

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

7.6 COMPETITIVE SEALED BIDS: PUBLIC NOTICE

- A. An invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. In the case of purchases made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in

addition to any other procedures that may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including publication in a trade journal, if available. If there is no newspaper of general circulation in the area in which the central purchasing office is located, such other notice may be given as is commercially reasonable.

- B. Central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more twenty thousand dollars (\$20,000) to those businesses that have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and that have paid any required fees. A central purchasing office may set different registration fees for different categories of services, construction or items of tangible personal property, but such fees shall be related to the actual, direct cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders.
- C. A central purchasing office may satisfy the requirement of sending copies of a notice or invitation for bids by distributing the documents to prospective bidders through electronic media. Central purchasing office will not accept RFB/RFP by electronic media.
- D. As used in this section, "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a general contractor for work to be subcontracted pursuant to the construction contract. Central purchasing offices shall make copies of invitations for bids for construction contracts available to prospective bidders. A central purchasing office may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time limits specified in the documents for bid, which time limits shall be no less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the applicable central purchasing office.

7.7 COMPETITIVE SEALED BIDS: RECEIPT AND ACCEPTANCE OF BIDS

- A. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code (13-1-28 NMSA 1978). In addition to the requirement for the prime contractor and subcontractors to be registered as provided in Section 13-4-13.1 NMSA 1978, bids shall be evaluated based on the requirements set forth in the invitation for

bids, which requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or lifecycle costs that will affect the bid price shall be objectively measurable, which shall be defined by rule. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids. A bid submitted by a prime contractor that was not registered as required by Section 13-4-13.1 NMSA 1978 shall not be considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with that section may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978.

- B. If the lowest responsible bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid was up to 10 percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budget project funds.

7.8 COMPETITIVE SEALED BIDS: CORRECTION OR WITHDRAWAL OF BIDS

- A. A bid containing a mistake discovered before bid opening may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the invitation for bids as the place where bids are to be received. After bid opening, no modifications in bid prices or other provisions of bids shall be permitted. A low bidder alleging a material mistake of fact which makes his bid non-responsive may be permitted to withdraw its bid if:
 - 1. The mistake is clearly evident on the face of the bid documents; or
 - 2. The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.
- B. Any decision by a procurement officer to permit or deny the withdrawal of a bid on the basis of a mistake contained therein shall be supported by a determination setting forth the grounds for the decision.

7.9 COMPETITIVE SEALED BIDS: BID OPENING

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

7.10 COMPETITIVE SEALED BIDS: AWARD

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

7.11 COMPETITIVE SEALED BIDS: MULTI-STEP SEALED BIDDING

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

7.12 COMPETITIVE SEALED BIDS: IDENTICAL BIDS

When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the state purchasing agent or a central purchasing office may:

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

8.0 COMPETITIVE SEALED PROPOSALS

8.1 COMPETITIVE SEALED PROPOSALS: CONDITIONS FOR USE

- A. Except as provided in Subsection G of Section 13-1-119.1 NMSA 1978, when a state agency or a local public body is procuring professional services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either office makes a written determination

that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals.

- B. Competitive sealed proposals may also be used for contracts for construction and facility maintenance, service and repairs.
- C. Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors who submit proposals pursuant to Sections 13-1 120 through 13-1-124 NMSA 1978.
- D. Competitive sealed proposals shall also be used for contracts for the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (6-23-1 NMSA 1978).
- E. The governor shall appoint an advisory committee to provide assistance in development of rules for the implementation of this section. The advisory committee shall include one representative from the New Mexico building and construction trades council, American federation of labor-congress for industrial organizations, and a representative of:
 - 1. the associated general contractors - New Mexico building branch;
 - 2. the New Mexico chapter of the national electrical contractors association;
 - 3. the New Mexico sheet metal contractors association;
 - 4. the mechanical contractors association of New Mexico;
 - 5. the New Mexico association of counties;
 - 6. the New Mexico municipal league;
 - 7. the public education department;
 - 8. the construction industries commission;
 - 9. the Rio Grande underground contractors association;
 - 10. the American subcontractors association of New Mexico
 - 11. The higher education community; and
 - 12. The general public, who is not associated with the construction industry and who will serve as chair of the committee.

8.2 COMPETITIVE SEALED PROPOSALS: REQUEST FOR PROPOSALS

- A. The request for proposals (RFP) is used to initiate a competitive sealed proposal procurement. At a minimum the RFP shall include the following:
 - 1. The specifications for the services or items of tangible personal property to be procured.
 - 2. All contractual terms and conditions applicable to the procurement.
 - a. Affidavit
 - b. Campaign Contribution Disclosure
 - c. Bid Bond, if applicable.

3. Instructions concerning the submission and response to questions.
4. The term of the contract and conditions of renewal or extension, if any.
5. Instructions and information to offerors, including the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed.
6. All of the evaluation factors and the relative weights to be given to the factors in evaluating proposals.
7. A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions.
8. A notice that the RFP may be cancelled and those any and all proposals may be rejected in whole or in part when it is in the best interest of the City of Las Vegas.
9. A statement of how proposed costs should be submitted.
10. A notice that reads substantially as follows:

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kick-backs.

- B. In the case of requests for competitive qualifications-based proposals, price shall be determined by formal negotiations related to scope of work.
- C. All specifications shall be drafted to ensure maximum practicable competition

8.3 SIGNATURES FOR RFP

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

8.4 CAMPAIGN CONTRIBUTION DISCLOSURE

Pursuant to Chapter 81, State Laws of 2006 any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body.

8.5 COMPETITIVE SEALED PROPOSALS: PUBLIC NOTICE

Public notice of the request for proposals shall be given in the same manner as provided in Section 13-1-104 NMSA 1978 of the Procurement Code.

8.6 AMENDMENTS TO THE REQUEST FOR PROPOSALS

- A. Prior to submission of proposals, amendments to the RFP may be made in accordance with Section 1.41.19 of the State Procurement Code.
- B. After submission of proposals, amendments to the RFP shall be distributed only to short-listed offerors. The short-listed offerors shall be permitted to submit new proposals or to amend those submitted. If in the opinion of the procurement officer or procurement manager, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be cancelled in accordance with Sections 1.4.168 through 1.41.72 of the State Procurement Code, and a new RFP issue.

8.7 MODIFICATION OR WITHDRAWAL OF PROPOSALS

Proposals may be modified or withdrawn prior to the established due date in accordance with Section 1.4.1.20 of the State Procurement Code. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or, if discussions have begun, it is the time and date by which best and final offers must be submitted by short list offerors.

8.8 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. They may be considered only in accordance with Section 1.4.1.21 of the State Procurement Code.

8.9 RECEIPT AND OPENING OF PROPOSALS

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

8.10 COMPETITIVE SEALED PROPOSALS: EVALUATION FACTORS

The request for proposals shall state the relative weight to be given to the factors in evaluating proposals. Numerical rating systems are required for procurements of information systems resources. [1.4.1.38 NMAC 09/30/2005]

8.11 COMPETITIVE SEALED PROPOSAL: NEGOTIATIONS

Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. This section shall not apply to architects, engineers, landscape architects and surveyors who submit proposals pursuant to Sections 13-1120 through 13-1-124 NMSA 1978.

8.12 COMPETITIVE SEALED PROPOSALS: DISCLOSURE; RECORD

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

8.13 COMPETITIVE SEALED PROPOSALS: AWARD

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

9.0 PROCUREMENT OF PROFESSIONAL SERVICES

9.1 PROCUREMENT OF PROFESSIONAL SERVICES: LOCAL PUBLIC BODIES, LEGISLATIVE BRANCH; SELECTION AND AWARD

- A. Each agency within the legislative branch of government operating under the provisions of the Procurement Code (13-1-28 NMSA 1978) and each local public body shall adopt regulations regarding its selection and award of professional services contracts.
- B. The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the local public body or legislative agency respectively, taking into consideration the evaluation factors set forth in the request for proposals.

9.2 PROCUREMENT OF PROFESSIONAL SERVICES: LOCAL PUBLIC BODIES; PROFESSIONAL TECHNICAL ADVISORY ASSISTANCE

- A. Any local public body which does not have on staff a licensed professional engineer, surveyor, architect or landscape architect shall have appointed to it or have the appointment waived by the appropriate New Mexico professional society listed in Subsection 0 of this section, an individual to serve as a professional technical advisor. The professional technical advisor shall be a senior member of an architectural, engineering, surveying or landscape architectural business with experience appropriate to the type of local public works project proposed and shall be a resident licensed architect, professional

engineer, surveyor or landscape architect in the state who possesses at least ten years of experience in responsible charge as defined in the Architectural Act (Chapter 61, Article 15 NMSA 1978), the Engineering and Surveying Practice Act (Chapter 61, Article 23 NMSA 1978) or the Landscape Architects Act (Chapter 61, Article 24B NMSA 1978), respectively.

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

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

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

9.4 COMPETITIVE SEALED PROPOSALS; PROFESSIONAL SERVICES CONTRACTS; CONTRACT REVIEW

All contracts for professional services with state agencies shall be reviewed as to form, legal sufficiency and budget requirements by the general services department or the Department of Finance and Administration if required by the regulations of either or both of the departments. This section shall not apply to contracts entered into by the legislative branch of state government, the judicial branch of state government or the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico.

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

In addition to compliance with the requirements of Sections 13-1-112 through 13-1-114 and 13-1-116 through 13-1-118 NMSA 1978, a state agency or local public body, when procuring the services of architects, landscape architects, engineers or surveyors for state public works projects or local public works projects, shall comply with Sections 131-120 through 13-1-124 NMSA 1978.

9.6 PUBLIC WORKS PROJECT DELIVERY SYSTEM; DESIGN AND BUILD PROJECTS AUTHORIZED

A. Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use the system on a specific project with a maximum allowable construction cost of the more than ten million dollars (\$10,000,000). The determination shall be issued only after the state purchasing or central purchasing office has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:

1. The extent to which the project requirements have been or can be adequately defined;
2. Time constraints for delivery of the project;
3. The capability and experience of potential teams with the design and build process;

4. The suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and
 5. The capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.
- B. When a determination has been made by the state purchasing agent or a central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect and a contractor properly licensed in New Mexico for the type of work required.
- C. Except as provided in Subsections F and G of this section, for each proposed state or local public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following:
1. During phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in-house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria; and
 2. During phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest ranked firm.
- D. Except as provided in Subsections F and G of this section, to ensure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate rules applicable to all using agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.
- E. All state agency shall make the decision on a design and build project delivery system for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a design and build project delivery system for a local public works project.

- F. The requirements of Subsections C and D of this section and the minimum construction cost requirement of Subsection A of this section do not apply to a design and build project delivery system and services procured for the project if:
 - A. The maximum allowable construction cost of the project is four hundred thousand dollars (\$400,000) or less; and
 - B. The only requirements for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaptation for a pre-engineered building system.

- G. The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978.

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

- A. For each proposed state public works project, local public works project or construction management contract, the architect, engineer, landscape architect, construction management and surveyor selection committee, state highway and transportation department selection committee or local selection committee, as appropriate, shall evaluate statements of qualifications and performance data submitted by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

- B. The appropriate selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by the using agency authorizing the project:
 - 1. Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;
 - 2. Capacity and capability of the business, including any consultants, their representatives, qualifications and locations, to perform the work, including any specialized services, within the time limitations;
 - 3. Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;
 - 4. Proximity to or familiarity with the area in which the project is located;
 - 5. The amount of design work that will be produced by a New Mexico business within this state;

6. The volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, the principle of selection on the most highly qualified businesses is not violated; and
7. Notwithstanding any other provisions of this subsection, price may be considered in connection with construction management contracts, unless the services are those of an architect, engineer, landscape architect or surveyor.

C. Notwithstanding the requirement of Subsections A and B of this section, if fewer than three businesses have submitted a statement of qualifications for a particular project, the appropriate committee may:

1. Rank in order of qualifications and submit to the secretary or local governing authority of the public body for award those businesses which have submitted a statement of qualifications; or
2. Recommend termination of the selection process pursuant to Section 131-131 NMSA 1978. Any proposal received in response to the terminated solicitation is not public information and shall not be made available to competing offerors.

D. The names of all businesses submitting proposals and the names of all businesses, if any selected for interview shall be public information. After an award has been made, the appropriate selection committee's final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected for contract award shall be so notified in writing within fifteen days after an award is made.

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

The secretary or his designee, or the secretary of the highway and transportation department or his designee or a designee of a local public body shall negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering or surveying services at compensation determined in writing to be fair and reasonable. In making this decision, the secretary or his designee or the designee of a local public body shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services. Should the secretary or his designee or the designee of a local public body be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The secretary or his designee or the designee of a local public body shall then undertake negotiations with the second most qualified business. Failing accord

with the second most qualified business, the secretary or his designee or a designee of the local public body shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the secretary or a designee of a local public body shall formally terminate negotiations with the third most qualified business. Should the secretary or his designee or a designee of a local public body be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the secretary or his designee or the designee of a local public body shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated. The secretary or the representative of a local public body shall publicly announce the business selected for award.

9.9 ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL AND SURVEYING CONTRACTS

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

10.0 BID SECURITY

10.1 BID SECURITY: REQUIREMENTS

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

10.2 DIRECTED SURETYSHIP PROHIBITED: PENALTY

- A. Except to the extent necessary to ensure that a surety company meets the requirements of Subsection A of Section 13-4-18 NMSA 1978, an employee of the state or its political subdivisions, or a person acting or purporting to act on behalf of that employee, shall not require a bidder or an offeror in a procurement for a construction contract pursuant to the Procurement Code (13-1-28 NMSA 1978) to make application or furnish financial data for a surety bond or to obtain a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid or proposal.
- B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

10.3 BID SECURITY: REJECTION OF BIDS

- A. When the invitation for bids requires bid security, noncompliance by the bidder requires that the bid be rejected.
- B. If a bidder is permitted to withdraw its bid before award, no action shall be made against the bidder or the bid security.

10.4 BID AND PERFORMANCE BONDS: ADDITIONAL REQUIREMENTS

- A. Bid and performance bonds or other security may be required for contracts for items of tangible personal property or services as the state purchasing agent or a central purchasing office deems necessary to protect the interests of the state agency or a local public body. Any such bonding requirements shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.
- B. As to performance and payment bonds for construction contracts, see the requirements of Section 13-4-18 NMSA 1978.

10.5 BONDING OF SUBCONTRACTORS

A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract for work to be performed on a project is fifty thousand dollars (\$50,000) or more.

11.0 MULTIPLE SOURCE AWARD

11.1 MULTIPLE SOURCE AWARD: LIMITATIONS ON USE

A MULTIPLE SOURCE AWARD MAY BE MADE PURSUANT TO Section 83 (13-1-110 NMSA 1978) of the Procurement code when awards to two or more bidders or offerors are necessary for adequate delivery or service . Multiple source awards shall not be

made when a single award will meet the needs of the state agency or local public body 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 state agency or a local public body. A multiple source award shall be based upon the lowest responsible bid or proposal received in each geographical area.

11.2 MULTIPLE SOURCE AWARD: DETERMINATION REQUIRED

The state purchasing agent or central purchasing office shall make a determination setting forth the reason for a multiple source award.

12.0 REJECTION OR CANCELLATION OF BIDS OR PROPOSALS

12.1 REJECTION OR CANCELLATION OF BIDS OR REQUESTS FOR PROPOSALS: NEGOTIATIONS

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

12.2 IRREGULARITIES IN BIDS OR PROPOSALS

The state purchasing agent or a central purchasing office may waive technical irregularities in the form of bid or proposal of the lower bidder or offeror which do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid offer.

12.3 RESPONSIBILITY OF BIDDERS AND OFFERORS

If a bidder or offeror who otherwise would have been awarded a contract is found not to be a responsible bidder or offeror, a determination that the bidder or offeror is not a responsible bidder or offeror, setting forth the basis of the finding, shall be prepared by the state purchasing agent or a central purchasing office. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the bidder or offeror is not a responsible bidder or offeror.

12.4 PREQUALIFICATION OF BIDDERS

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

13.0 CONSTRUCTION CONTRACTS

13.1 CONSTRUCTION CONTRACTS: CENTRAL PURCHASING OFFICE

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

13.2 CONSTRUCTION CONTRACTS: CONSTRUCTION MANAGEMENT SERVICES

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

13.3 CONSTRUCTION CONTRACT: RIGHT TO INSPECT PLANT

A contract or a solicitation therefore may include a provision permitting a state agency or a local public body, at reasonable times, to inspect the part of the plant or place of

business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded.

14.0 PROCUREMENT UNDER EXISTING CONTRACTS

- A. Notwithstanding the requirements of Sections 13-1-102 through 13-1-118 NMSA 1978, the state purchasing agent or a central purchasing office may contract for services, construction or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:
 - 1. At a price equal to or less than the contractor's current federal supply contract price (GSA), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the state agency or local public body and the purchase order adequately identifies the contract relied upon; or
 - 2. With a business which has a current exclusive or nonexclusive price agreement with the state purchasing agent or a central purchasing office for the item, services or construction meeting the same standards and specifications as the items to be procured if the following conditions are met:
 - a. The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and
 - b. The purchase order adequately identifies the price agreement relied upon.

B. The central purchasing office shall retain for public inspection and for the use of auditors a copy of each federal supply contractor state purchasing agent price agreement relied upon to make purchases without seeking competitive bids or proposals.

15.0 COOPERATIVE PROCUREMENT

15.1 COOPERATIVE PROCUREMENT: AUTHORIZED

- A. Any state agency or local public body may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external procurement units involved. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative procurement agreement entered into pursuant to this subsection shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the contracting parties may be located outside this state. An approved and signed copy of all

cooperative procurement agreements entered into pursuant to this subsection shall be filed with the state purchasing agent. A cooperative procurement agreement entered into pursuant to this subsection is limited to the procurement of items of tangible personal property, services or construction.

- B. Notwithstanding the provisions of Subsection A of this section, a cooperative procurement agreement providing for mutually held funds or for other terms and conditions involving public funds or property included in Section 11-1-4 NMSA 1978 shall be entered into pursuant to the provisions of the Joint Powers Agreements Act (110101 to 11-1-7 NMSA 1978).
- C. Central purchasing offices other than the state purchasing agent may cooperate by agreement with the State purchasing agent in obtaining contracts or price agreements, and such contract or agreed prices shall apply to purchase orders subsequently issued under the agreement.

15.2 COOPERATIVE PROCUREMENT: RECYCLED CONTENT GOODS

- A. Beginning July 1, 1995, each central purchasing office shall, whenever its price, quality, quantity, availability and delivery requirements are met, purchase recycled content goods through contracts established by the purchasing division of the general services department or with other central purchasing offices.
- B. For purposes of this section, "recycled content goods" means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

15.3 COOPERATIVE PROCUREMENT: REPORTS REQUIRED

The general services department and the department of finance and administration shall notify the state purchasing agent on or before January 1 of each year of the cooperative procurement agreements entered into by state agencies with local public bodies or external procurement units during the preceding fiscal year.

16.0 SALE, ACQUISITION OR USE OF PROPERTY BY A STATE AGENCY OR A LOCAL PUBLIC BODY

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

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

17.0 COST OR PRICING DATA

17.1 COST OR PRICING DATA: REQUIRED

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

17.2 COST OR PRICING DATA: NOT REQUIRED

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

1. The procurement is based on competitive sealed bid;
2. The contract price is based on established catalogue prices or market prices;
3. The contract price is set by law or regulation;
4. The contract is for professional services; or
5. The contract is awarded pursuant to the Public Building Energy Efficiency Act (Chapter 6, Article 23 NMSA 1978).

17.3 COST OR PRICING DATA: CHANGE ORDERS OR CONTRACT MODIFICATIONS

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

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

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

17.5 COST OR PRICING DATA: CERTIFICATION REQUIRED

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

17.6 COST OR PRICING DATA: PRICE ADJUSTMENT PROVISION REQUIRED

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

17.7 COST OR PRICE DATA: ANALYSIS

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

17.8 COST PRINCIPLES: REGULATIONS

The secretary, a local public body or a central purchasing office which has the authority to issue regulations may promulgate regulations setting forth principles to be used to determine the allow ability of incurred costs for the purpose of reimbursing costs to a contractor.

17.9 AUDIT OF COST OR PRICING DATA

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

18. CONTRACT AUDIT

A state agency or a local public body shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

19. TYPES OF CONTRACTS

Subject to the limitations of Sections 123 through 127 (13-1-150 to 13-1-154 NMSA 1978) of the Procurement Code, any type of contract, including but not limited to definite quantity contracts, indefinite quantity contracts and price agreements, which will promote the best interests of the state agency or a local public body may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited except for the purchase of insurance. A cost-reimbursement contract may be used when such contract is likely to be less costly or it is impracticable to otherwise obtain the services, construction or items of tangible personal property required.

19.1 MULTI-TERM CONTRACTS: SPECIFIED PERIOD

A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Building Energy Efficiency and Water Conservation Act (Public Facility Energy Efficiency and Water Conservation Act, Chapter 6, Article 23 NMSA 1978), the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. A contract for professional services may not exceed for four years, including all extensions and renewals, except for the following:

1. Services required to support or operate federally certified Medicaid, financial assistant and child support enforcement management information or payment systems;

2. Services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125;
3. A multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding; and
4. Services relating to the implementation, operation and administration of the Education Trust Act (21-21K-1 to 21-21K-7 NMSA 1978).

19.2 MULTI-TERM CONTRACTS: DETERMINATION PRIOR TO USE

Prior to the utilization of a multi-term contract, the state purchasing agent or the central purchasing office involved shall make a determination that:

- a. The estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- b. The contract will serve the best interests of the state agency or a local public body.

19.3 MULTI-TERM CONTRACTS: CANCELLATION DUE TO UNAVAILABILITY OF FUNDS

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

20. PROCUREMENT OF USED ITEMS

20.1 PROCUREMENT OF USED ITEMS: APPRAISAL REQUIRED: COUNTY ROAD EQUIPMENT EXCEPTION FOR AUCTIONS

A central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds five thousand dollars (\$5,000), for use in construction and maintenance of county streets, roads and highways, subject to the following provisions:

1. The commercial auction company shall have been in business for at least three years preceding the date of purchase and shall conduct at least five auctions annually;
2. The value of each piece of equipment shall be appraised prior to the auction by a qualified disinterested appraiser retained and paid by the county, who shall make a written appraisal report stating the basis for the appraisal, including the age, condition and comparable sales, and stating that the appraiser has exercised his independent judgement without prior understanding or agreement with any person as to a target value or range of value;

3. An independent "certificate of working condition" shall be obtained prior to the auction from a qualified mechanic who shall have made a detailed inspection of each major working or major functional part and certified the working condition of each; and
4. The price paid, including all auctions fees and buyer's surcharges shall not exceed the appraised value.

20.2 TRADE OR EXCHANGE OF USED ITEMS: APPRAISAL REQUIRED

- A. A central purchasing office, when trading in or exchanging used items of tangible personal property the estimated value of which exceeds five thousand dollars (\$5,000) as part-payment on the procurement of new items of tangible personal property, shall:
 1. Have an independent appraisal made of the items to be traded or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged and location where the items to be traded in or exchanged may be inspected; or
 2. Have two written quotes for purchase of the property at a specified price.

- B. Award shall be based upon the net bid. Bidders or offerors shall compute their net bid or offer by deducting the appraised value or highest quote of the items to be traded in or exchanged from the gross bid or offer on the new items of tangible personal property to be procured. If an amount offered in trade is less than the appraised value or the highest quote but is found to be a personal property and in the best interest of the agency, the bid or offer may be accepted. Documentation of the terms of acceptance shall be in writing, shall be made a part of the procurement file and shall be a public record.

20.3 RECEIPT: INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES

The using agency shall determine whether the quantity is as specified in the purchase order or contract and whether the quality conforms to the specifications referred to or included in the purchase order or contract. If inspection reveals that the delivery does not conform to the quantity or quality specified in the purchase order or contract, the using agency shall immediately notify the vendor that the delivery has been rejected and

shall order the vendor to promptly make a satisfactory replacement or supplementary delivery. In case the vendor fails to comply, the central purchasing office shall have no obligation to pay for the nonconforming items of tangible personal property. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify to the central purchasing office that delivery has been completed and is satisfactory.

21. PAYMENTS PURCHASES

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

tangible personal property along with details of how the contract may proceed to provide remedial action.

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

22. BRAND-NAME SPECIFICATION

22.1 BRAND-NAME SPECIFICATION: USE

A brand-name specification may be used only when the state purchasing agent or a central purchasing office makes a determination that only the identified brand-name item or items will satisfy the needs of the state agency or a local public body.

22.2 BRAND-NAME SPECIFICATION: COMPETITION

The state purchasing agent or a central purchasing office shall seek to identify sources from which the designated brand-name items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 99 (13-1-126 NMSA 1978) of the Procurement Code.

22.3 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED CHARACTERISTICS

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

22.4 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED LANGUAGE

Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

23. UNIFORM CONTRACT CLAUSES

- A. A state agency, local public body or central purchasing office with the power to issue regulations may require by regulation that contracts include uniform clauses providing for termination of contracts, adjustments in prices, adjustments in time of performance or other contract provisions as appropriate, including but not limited to the following subjects:
1. The unilateral right of a state agency or a local public body to order in writing:
 - a. Changes in work within the scope of the contract; and
 - b. Temporary stoppage of the work or the delay of performance;
 2. Variations occurring between estimated quantities of work in a contract and actual quantities;
 3. liquidated damages;
 4. permissible excuses for delay or nonperformance;
 5. termination of the contract for default;
 6. termination of the contract in whole or in part for the convenience of the state agency or a local public body;
 7. assignment clauses providing for the assignment by the contractor to the state agency or a local public body of causes of action for violation of state or federal antitrust statutes;
 8. identification of subcontractors by bidders in bids; and
 9. uniform subcontract clauses in contracts.
- B. A state agency, local public body or central purchasing office with the power to issue regulations shall require by regulation that contracts include a clause imposing late payment charges against the state agency or local public body in the amount and under the conditions stated in Section 13-1-158 NMSA 1978.

24. PRICE ADJUSTMENTS

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

- a. By agreement on a fixed-price adjustment before commencement of performance or as soon thereafter as practicable;
- b. By unit prices specified in the contract or subsequently agreed upon by the parties.
- c. By the costs attributable to the events or conditions as specified in the contract or subsequently agreed upon by the parties;
- d. By a provision for both upward and downward revision of stated contract price upon the occurrence of specified contingencies if the contract is for commercial items sold in substantial quantities to the general public with prices based upon established catalogue or list prices in a form regularly maintained by the manufacturer or vendor and published or otherwise available for customer

inspection. In the event of revision of the stated contract price, the contract file shall be promptly documented by the state purchasing agent or central purchasing office.

- e. In such other manner as the contracting parties may mutually agree; or
- f. In the absence of agreement by the parties, by a unilateral determination reasonably computed by the state agency or a local public body of the costs attributable to the events or conditions.

25. PROCUREMENT PROTEST

25.1 RIGHT TO PROTEST

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

25.2 PROCUREMENTS AFTER PROTEST

In the event of a timely protest under Section 145 (13-1-172 NMSA 1978) of the Procurement Code, the state purchasing agent or a central purchasing office shall not proceed further with the procurement unless the state purchasing agent or a central purchasing office makes a determination that the award of the contract is necessary to protect substantial interests of the state agency or a local public body.

25.3 AUTHORITY TO RESOLVE PROTESTS

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

25.4 PROTEST: DETERMINATION

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

- A. State the reasons for the action taken; and
- B. Inform the protestant of the right to judicial review of the determination pursuant to Section 156 (13-1-183 NMSA 1978) of the Procurement Code.

25.5 PROTEST: NOTICE OF DETERMINATION

A copy of the determination issued under Section 148 (13-1-175 NMSA 1978) of the Procurement Code shall immediately be mailed to the protestant and other bidders or offerors involved in the procurement.

26.0 AUTHORITY TO DEBAR OR SUSPEND

The state purchasing agent or a central purchasing office, after reasonable notice to the business involved, shall have authority to recommend to the governing authority of a state agency or a local public body the suspension or debarment of a business for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three years, and a suspension shall not exceed three months. The authority to debar or suspend shall be exercised by the governing authority of a state agency or a local public body in accordance with regulations which shall provide for reasonable notice and a fair hearing prior to suspension or debarment.

26.1 CAUSES FOR DEBARMENT OR SUSPENSION: TIME LIMIT

The causes for debarment or suspension occurring within three years of a procurement include but are not limited to the following:

- A. Conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- B. Conviction of a bidder, offeror or contractor under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;
- C. Conviction of a bidder, offeror or contractor under state or federal anti-trust statutes arising out of the submission of bids or proposals.
- D. Violation by a bidder, offeror or contractor of contract provisions, as set forth in this subsection, of a character which is reasonably regarded by the state purchasing agent or a central purchasing office to be so serious as to justify suspension or debarment action:
 - 1. Willful failure to perform in accordance with one or more contracts, provided that this failure has occurred within a reasonable time preceding the decision to impose debarment; or
 - 2. A history of failure to perform, or of unsatisfactory performance of, one or more contracts, provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose

debarment and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

- E. Any other cause occurring within three years of a procurement which the state purchasing agent or a central purchasing office determines to be so serious and compelling as to affect responsibility as a contractor; or
- F. For a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code (13-1-28 NMSA 1978) within three years of procurement.

26.2 DEBARMENT OR SUSPENSION: DETERMINATION.

The governing authority of a state agency or a local public body shall issue a written determination to debar or suspend. The determination shall:

- A. State the reasons for the action taken, and
- B. Inform the debarred or suspended business involved of its rights to judicial review pursuant to Section 156 (13-1-183 NMSA 1978) of the Procurement Code.

27. EXECUTION OF CONTRACT

27.1 REMEDIES PRIOR TO EXECUTION OF CONTRACT

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

27.2 RATIFICATION OR TERMINATION AFTER EXECUTION OF CONTRACT

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

The contract may be ratified, affirmed and revised to comply with law, provided that a determination is made that doing so is in the best interests of a state agency or a local public body; or

The contract may be terminated, and the contractor shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

(27.3 JUDICIAL REVIEW

All actions authorized by the Procurement code (13-1-28 NMSA) for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

28. ASSISTANCE TO SMALL BUSINESS

28.1 ASSISTANCE TO SMALL BUSINESS: POLICY

It shall be the policy of this state to encourage small businesses to do business with state agencies and local public bodies.

28.2 ASSISTANCE TO SMALL BUSINESS: DUTIES OF THE STATE PURCHASING AGENT

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

28.3 ASSISTANCE TO SMALL BUSINESS: BID BONDS; REDUCTION

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

29. ANTIPOVERTY PROGRAM BUSINESS

- A. Without regard to the bid requirements of Section 75 (13-1-102 NMSA 1978) of the Procurement Code, a central purchasing office may negotiate a contract for

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

- B. Prior to negotiating a contract under this section, a central purchasing office shall make a determination of the reasonableness of the price and quality of the materials and that the public interest will best be served by the procurement.

30. PUBLIC ACQUISITION OF AMERICAN-MADE MOTOR VEHICLES REQUIRED

A state agency shall only acquire motor vehicles assembled in North America except for gas-electric hybrid vehicles until these vehicles are assembled in North America. For the purposes of this section, "motor vehicle" means a light duty vehicle under 8500 pounds.

31. PROCUREMENTS PURSUANT TO THE CORRECTIONS INDUSTRIES ACT

- A. All state agencies shall purchase and all local public bodies may purchase items of tangible personal property and services offered pursuant to the provisions of the Corrections Industries Act (33-8-1 NMSA 1978).
- B. The corrections industries commission shall prepare a catalogue containing an accurate and complete description of all items of tangible personal property and services available. A copy of the catalogue shall be provided to each state agency and local public body. The catalogue shall contain an approximate time required for delivery of each item of tangible personal property and service.
- C. The state purchasing agent or a central purchasing office shall purchase available items of tangible personal property and services from the catalogue unless a determination is made that
 - 1. An emergency exists requiring immediate action to procure the items of tangible personal property or service;
 - 2. The specifications for the items of tangible personal property or service, including quality, quantity and delivery requirements, cannot be met within a reasonable time by the corrections department; or
 - 3. The price to be paid to the corrections department for the items of tangible personal property or service is higher than the bid price of comparable items of tangible personal property or services.

32. BRIBES, GRATUITIES AND KICKBACKS

32.1 UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED

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

32.2 BRIBES, GRATUITIES AND KICKBACKS: CONTRACT REFERENCE REQUIRED

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

32.3 CONTINGENT FEES PROHIBITED

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

32.4 CONTEMPORANEOUS EMPLOYMENT PROHIBITED

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

32.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT AND UNLAWFUL EMPLOYEE PARTICIPATION PERMITTED

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

- a. The contemporaneous employment of financial interest of the employee has been publicly disclosed;

- b. The employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- c. The employee participation is in the best interests of the state agency or a local public body.

32.6 USE OF CONFIDENTIAL INFORMATION PROHIBITED

It is unlawful for any state agency or local public body 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.

32.7 CIVIL PENALTY

Any person, firm or corporation that knowingly violates any provision of the Procurement Code (13-1-28 NMSA 1978) is subject to a civil penalty of not more than one thousand dollars (\$1,000) for each procurement in violation of any provision of the Procurement Code. The attorney general or the district attorney in the jurisdiction in which the violation occurs is empowered to bring a civil action for the enforcement of any provision of the Procurement Code. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought.

32.8 RECOVERY OF VALUE TRANSFERRED OR RECEIVED; ADDITIONAL CIVIL PENALTY

An amount equal to the value of anything transferred or received in violation of the provisions of the Procurement code (13-1-28 NMSA 1978) by a transferor and transferee may be imposed as a civil penalty upon both the transferor and transferee. The civil penalty provided for in this section is imposed in addition but pursuant to the terms and conditions of Section 169 (13010196 NMSA 1978) of the Procurement Code.

32.9 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 a subcontract or order there under, it is conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the state agency or a local public body. An amount equal to the kickback is imposed as a civil penalty by the state agency or a local public body upon the recipient and upon the subcontractor making such kickbacks in addition but pursuant to the terms and conditions of Section 169 (13-1-196 NMSA 1978) of the Procurement Code.

32.10 MISDEMEANOR

Any business or person which violates the Procurement Code (13-1-28 NMSA 1978) is guilty of a misdemeanor.

33.0 CITY OF LAS VEGAS HOUSING AUTHORITY

Procurement for the Housing Authority will follow the City of Las Vegas Procurement Code for purchases less than \$100,000.

33.1 PROCUREMENT POLICY CITY OF LAS VEGAS PUBLIC HOUSING AUTHORITY

This Procurement Policy complies with the Annual Contributions Contract (ACC) between the City of Las Vegas Public Housing Authority (LVPHA) and the HUD, Federal Regulations at 24 CFR 85.36, the procurement standards of the Procurement Handbook for PHAs, HUD Handbook 7460.8, Rev 2, and applicable State and Local.

GENERAL PROVISIONS

General

The LVPHA shall: provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the LVPHA; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the LVPHA ; promote competition in contracting; and assure that LVPHA purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State, and local laws.

Application

This Procurement Policy applies to all procurement actions of the Authority, regardless of the source of funds, except as noted under "exclusions," below. However, nothing in this Policy shall prevent the LVPHA from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

Definition

The term "procurement," as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

Exclusions

This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR Part 990. These excluded areas are subject to applicable State and local requirements.

Changes in Laws and Regulations

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

Public Access to Procurement Information

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the New Mexico Freedom of Information Act.

ETHICS IN PUBLIC CONTRACTING

General

The LVPHA hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law.

Conflicts of Interest

No employee, officer, Board member, or agent of the LVPHA shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

- A. An employee, officer, Board member, or agent involved in making the award;
- B. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);
- C. His/her partner; or
- D. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

Gratuities, Kickbacks, and Use of Confidential Information

No officer, employee, Board member, or agent shall ask for or accept gratuities, favors, or items of more than \$25 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

Prohibition Against Contingent Fees

Contractors wanting to do business with the LVPHA must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

PROCUREMENT PLANNING

Planning is essential to managing the procurement function properly. Hence, the LVPHA will periodically review its record of prior purchases, as well as future needs, to: find patterns of procurement actions that could be performed more efficiently or economically; maximize competition and competitive pricing among contracts and decrease the LVPHA's procurement costs; reduce LVPHA administrative costs; ensure that supplies and services are obtained without any need for re-procurement, e.g., resolving bid protests; and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage security, and handling requirements when planning the most appropriate purchasing actions.

PURCHASING METHODS

Petty Cash Purchases

Purchases under \$50 may be handled through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the LVPHA shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically.

Small Purchase Procedures

For any amounts above the Petty Cash ceiling, but not exceeding \$100,000, the LVPHA may use small purchase procedures. Under small purchase procedures, the LVPHA shall obtain a reasonable number of quotes (preferably three); however, for purchases of less than \$2,000, also known as Micro Purchases, only one quote is required provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the LVPHA. If award is to be made for reasons other than lowest price documentation shall be provided in the contract file.

The LVPHA shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to:

1. Permit use of the small purchase procedures or
2. Avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.

Sealed Bids

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, the PHA publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and noncomplex service contracts that are expected to exceed \$100,000.

- A. **Conditions for Using Sealed Bids.** LVPHA shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.
- B. **Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.
- C. **Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
- D. **Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a

nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the LVPHA or fair competition shall not be permitted.

Competitive Proposals

Unlike sealed bidding, the competitive proposal method permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the PHA, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

- A. **Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold.
- B. **Form of Solicitation.** Other than AIE services, competitive proposals shall be solicited through the issuance of a RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The LVPHA may assign price a specific weight in the evaluation criteria or the LVPHA may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- C. **Evaluation.** The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the LVPHA shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. An Evaluation Report, summarizing the results of the evaluation, shall be prepared prior to award of a contract.

- D. Negotiations. Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the PHA and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the LVPHA's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment.

The contracting officer may inform an offeror that its price is considered by the PHA to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

- E. Award. After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the LVPHA provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

- F. A/E Services. The LVPHA must contract for A/E services using QBS procedures, utilizing a RFQ. Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services, though architectural/engineering firms are potential sources.

Noncompetitive Proposals

- A. Conditions for Use. Procurement by noncompetitive proposals (sole-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:
1. The item is available only from a single source, based on a good faith review of available sources;
 2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the LVPHA, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;
 3. HUD authorizes the use of noncompetitive proposals; or
 4. After solicitation of a number of sources, competition is determined inadequate.
- B. Justification. Each procurement, based on noncompetitive proposals, shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:
1. Description of the requirement;
 2. History of prior purchases and their nature (competitive vs. noncompetitive);
 3. The specific exception in 24 CFR 85.36(d)(4)(i)(A) through (D) which applies;
 4. Statement as to the unique circumstances that require award by noncompetitive proposals;
 5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);

6. Statement as to efforts that will be taken in the future to promote competition for the requirement;
7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

Cooperative Purchasing/Intergovernmental Agreements

The LVPHA may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The LVPHA may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 24 CFR 85.36.

ICE

For all purchases above the Micro Purchase threshold, the LVPHA shall prepare an ICE prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

COST AND PRICE ANALYSIS

The LVPHA shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

Petty Cash and Micro Purchases No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.

Small Purchases

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

Sealed Bids

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the LVPHA cannot reasonably determine price reasonableness, the LVPHA must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

Competitive Proposals

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the LVPHA must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the LVPHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

Contract Modifications

A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$100,000.

SOLICITATION AND ADVERTISING

Method of Solicitation

- A. Petty Cash and Micro Purchases. The LVPHA may contact only one source if the price is considered reasonable.
- B. Small Purchases. Quotes may be solicited orally, through fax, or by any other reasonable method.
- C. Sealed Bids and Competitive Proposals. Solicitation must be done publicly. The LVPHA must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.
 - 1 Advertising in newspapers or other print mediums of local or general circulations.
 - 2 Advertising in various trade journals or publications (for construction).
 - 3 E-Procurement. The LVPHA may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 24 CFR 85.36, State and local requirements, and the Authority's procurement policy.

Time Frame

For purchases of more than \$100,000, the public notice should run not less than once each week for two consecutive weeks.

Form

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

Time Period for Submission of Bids

A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

Cancellation of Solicitations

- A. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
 - 1 The supplies, services or construction is no longer required;
 - 2 The funds are no longer available;
 - 3 Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
 - 4 Other similar reasons.

- B. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
 - 1 The supplies or services (including construction) are no longer required;
 - 2 Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - 3 All factors of significance to the LVPHA were not considered;
 - 4 Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - 5 There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
 - 6 For good cause of a similar nature when it is in the best interest of the LVPHA.

- C. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

- D. A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- E. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the LVPHA's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either
 - 1 Re-solicit using an RFP; or
 - 2 Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the LVPHA's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- F. If problems are found with the specifications, LVPHA should cancel the solicitation, revise the specifications and resolicit using an IFB.

Credit (or Purchasing) Cards

Credit card usage should follow the rules for all other small purchases. For example, the Contracting Officer may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Contracting Officer would generally need to have obtained a reasonable number of quotes before purchasing via a credit card.

When using credit cards, the LVPHA should adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

BONDING REQUIREMENTS

The standards under this section apply to construction contracts that exceed \$100,000. There are no bonding requirements for small purchases or for competitive proposals. The LVPHA may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

- A. Bid Bonds. For construction contracts exceeding \$100,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.
- B. Payment Bonds. For construction contracts exceeding \$100,000, the successful bidder shall furnish an assurance of completion. This assurance may be anyone of the following four:
 - 1 A performance and payment bond in a penal sum of 100% of the contract price; or

- 2 Separate performance and payment bonds, each for 50 % or more of the contract price; or
- 3 A20 % cash escrow; or
- 4 A 25 % irrevocable letter of credit.

C. These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

CONTRACTOR QUALIFICATIONS AND DUTIES

Contractor Responsibility

PHAs shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- A. Have adequate financial resources to perform the contract, or the ability to obtain them;
- B. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- C. Have a satisfactory performance record;
- D. Have a satisfactory record of integrity and business ethics;
- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- G. Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

Suspension and Debarment

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (24 CFR Part 24) or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

Vendor Lists

All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

CONTRACT PRICING ARRANGEMENTS

Contract Types

Any type of contract which is appropriate to the procurement and which will promote the best interests of the LVPHA may be used, provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and LVPHA.

For all cost reimbursement contracts, LVPHA must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

Options

Options for additional quantities or performance periods may be included in contracts, provided that:

- A. The option is contained in the solicitation;
- B. The option is a unilateral right of the Authority;
- C. The contract states a limit on the additional quantities and the overall term of the contract;
- D. The options are evaluated as part of the initial competition;
- E. The contract states the period within which the options may be exercised;
- F. The options may be exercised only at the price specified in or reasonably determinable from the contract; and

- G. The options may be exercised only if determined to be more advantageous to LVPHA than conducting a new procurement.

CONTRACT CLAUSES

All contracts should identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the LVPHA.

Additionally, the forms HUD-5369, 5369-A, 5369-B, 5369, 5370, 5370-C, and 51915-A , which contain all HUD-required clauses and certifications for contracts of more than \$100,000, as well as any forms/clauses as required by HUD for small purchases, shall be used in all corresponding solicitations and contracts issued by this Authority.

CONTRACT ADMINISTRATION

The LVPHA shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

SPECIFICATIONS

General

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying LVPHA needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

Limitation

The following types of specifications shall be avoided:

- A. geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);
- B. brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

APPEALS AND REMEDIES

General

It is LVPHA policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

Informal Appeals Procedure

The LVPHA shall adopt an informal bid protest/appeal procedure for contracts of \$100,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

Formal Appeals Procedure

A formal appeals procedure shall be established for solicitations/contracts of more than \$100,000.

- A. **Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- B. **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in LVPHA. Contractor claims shall be governed by the Changes clause in the form HUD-5370.

ASSISTANCE TO SMALL AND OTHER BUSINESSES

Required Efforts

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the LVPHA project are used when possible. Such efforts shall include, but shall not be limited to:

- A. Including such firms, when qualified, on solicitation mailing lists;
- B. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- E. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;
- F. Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 135 (so-called Section 3 businesses); and
- G. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

Goals shall be established periodically for participation by small businesses, minority owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in LVPHA prime contracts and subcontracting opportunities.

Definitions

1. A small business is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR Part 121 should be used to determine business size.

2. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
3. A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
4. A "Section 3 business concern" is as defined under 24 CFR Part 135.
5. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

BOARD APPROVAL OF PROCUREMENT ACTIONS

Other than approval of this Procurement Policy, approval by the Board of Commissioners is not required for any procurement action, as permitted under State and local law. Rather, it is the responsibility of the Executive Director to make sure that all procurement actions are conducted in accordance with the policies contained herein.

DELEGATION OF CONTRACTING AUTHORITY

While the Executive Director is responsible for ensuring that the LVPHA's procurements comply with this Policy, the Executive Director may delegate all procurement authority as is necessary and appropriate to conduct the business of the Agency.

Further, and in accordance with this delegation of authority, the Executive Director shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described in Section III below, consistent with Federal, State, or local law.

DOCUMENTATION

The LVPHA must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not necessarily be limited to, the following:

- A. Rationale for the method of procurement (if not self-evident);
- B. Rationale of contract pricing arrangement (also if not self-evident);
- C. Reason for accepting or rejecting the bids or offers;

- D. Basis for the contract price (as prescribed in this handbook);
- E. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- F. Basis for contract modifications; and

- G. Related contract administration actions.

The level of documentation should be commensurate with the value of the procurement.

Records are to be retained for a period of three years after final payment and all matters pertaining to the contract are closed.

DISPOSITION OF SURPLUS PROPERTY

Property no longer necessary for the LVPHA's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

FUNDING AVAILABILITY

Before initiating any contract, the LVPHA shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.

SELF-CERTIFICATION

The LVPHA self-certifies that this Procurement Policy, and the LVPHA's procurement system, complies with all applicable Federal regulations and, as such, the LVPHA is exempt from prior HUD review and approval of individual procurement action.

CALL FOR BIDS

The City of Las Vegas, New Mexico will open Sealed Bids at 3:00 p.m., _____, 20____, at the City Council Chambers, 1700 North Grand Avenue, Las Vegas, New Mexico, or other designated area at the City Offices; ON THE FOLLOWING: _____

The BIDDING FORMS AND TECHNICAL SPECIFICATIONS may be examined at the following location: _____

Copies of the BIDDING FORMS AND TECHNICAL SPECIFICATIONS may be obtained at the office of _____

Mailed Bids should be addressed to the City Clerk, P.O. Box 160, Las Vegas, New Mexico 87701; with the envelope marked: _____
Opening No. _____; on the lower left-hand corner of the submitted envelope. It shall be the responsibility of the bidder to see that their bid is delivered to the **City Clerk** by the date and time set for the bid request. If the mail or delivery of bid request is delayed beyond the opening date and time, bid thus delayed will not be considered. A public opening will be held and any bidder or their authorized representative is invited to attend.

The City of Las Vegas reserves the right to reject any/or all bids submitted.

CITY OF LAS VEGAS,

CITY MANAGER

CITY CLERK

FINANCE DIRECTOR

PURCHASING OFFICER

Opening No. _____

Date Issued: _____

Date Issued: Published: _____

STANDARD BID CLAUSES

AWARDED BID

Awarding of Bid shall be made to the responsible Bidder whose Bid meets the required specifications. The City of Las Vegas (City) reserves the right to reject or accept any of all Bid specifications and to waive any insubstantial irregularity in the form of the Bid.

The City of Las Vegas may make multiple awards of the bid, to those bidding in law enforcement related services. The City Reserves the right to award the bid to the most advantageous Bidder to the City.

TIMETABLE

Bids pursuant to this request must be received at the City Clerk's Office at 1700 North Grand Avenue, Las Vegas, New Mexico, on or before _____ at 3:00 p.m., at which time all bids received will be opened. An opening will occur at the City's Council Chambers or other designated area at the City Offices. Awarding of Bid is projected for _____, 20___. The successful Bidder will be notified by mail.

ENVELOPES

Sealed Bid envelopes shall be clearly marked on the lower left-hand corner, identified by the Bid Name and Opening Number. Failure to comply with this requirement may result in the rejection of your submitted Bid.

BRIBERY AND KICKBACK

The Procurement Code of New Mexico; (Section 13-1-28 through 13-1-99 N.M.S.A. 1978), impose a third degree felony penalty for bribery of a public official or public employee. In addition the New Mexico Criminal Statutes (Section 30-4-1, N.M.S.A. 1978): state that it is a third degree felony to commit the offense of demanding or receiving a bribe by a public official of public employee. And (Section 30-24-2, N.M.S.A. 1978): it is a fourth degree felony to commit the offense of soliciting or receiving illegal kickbacks. Also (Section 30-41-1 through 30-41-3, N.M.S.A. 1978): states that it is a fourth degree felony to commit the offense of offering or paying illegal kickbacks.

NON-COLLUSION

In signing their Bid and Affidavit, the Bidder certifies that he/she has not, either directly or indirectly entered into action of restraint of free competition, in the connection with the submitted bid.

RESPONSIBILITY OF BIDDER

At all times it shall be the responsibility of the Bidder to see their bid is delivered to the City Clerk by the Date and Time scheduled for opening. If the mail or delivery of said Bid is delayed beyond the scheduled opening date and time set, bid this delayed will not be considered.

CLARIFICATION OF BID

Bidder requiring clarification or interpretation of Bid specifications shall make a written request to the Department involved in this bid request at least five (5) days prior to the scheduled bid opening date with a copy forwarded to the Finance Department. Any interpretation, corrections or changes of said Bid Specifications, Opening Date, or Time Change will be made by Addendum only. Interpretations, Corrections or changes of said bid made in any other manner will not be binding and the Bidder shall not rely upon such interpretation, corrections and changes.

MODIFICATION OF BID

Bids may be withdrawn upon receipt of written request prior to the scheduled bid opening for the purpose of making any corrections or changes. Such corrections must be properly identified and signed or initialed by the Bidder. Resubmission must be prior to the scheduled bid opening time in order to be considered. After bid opening, no price modifications of submitted bids or other provisions shall be permitted.

WITHDRAWAL OF BID

A low Bidder alleging a material mistake of fact, after bids have been opened may request their bid be withdrawn upon receipt of a written request to the Finance Department prior to the scheduled awarding date.

INSPECTION

Final inspection and acceptance will be made at the City's destination. Products rejected for nonconformance with the specifications shall be removed by the Bidder; at his/her risk and expense promptly after notice of rejection.

FEDERAL TAX IDENTIFICATION NUMBER

Pursuant to IRS requirements, Bidder shall provide their Federal Tax ID Number if Bidder is incorporated. If Bidder is a sole proprietorship or partnership then they shall provide their Social Security Number.

FEDERAL TAX ID NUMBER: _____
SOCIAL SECURITY NUMBER: _____

NEW MEXICO TAX IDENTIFICATION NUMBER

Payment may be withheld under (Section 7-10-5, N.M.S.A. 1978) if you are subject to New Mexico Gross Receipts Tax and have not registered for a New Mexico (CRS) Tax Identification Number. Contact the New Mexico Taxation & Revenue Department at (505) 827-0700 for registering instructions.

NEW MEXICO TAX IDENTIFICATION NO. (CRS): _____

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Bidder shall submit a completed Campaign Contribution Disclosure Form Pursuant to Chapter 81, Laws of 2006.

COMMERCIAL WARRANTY

The Bidder agrees that the products or services furnished under a Purchase Order shall be covered by the most favorable commercial warranties that the Bidder gives to any customer for such products or services. And that the rights and remedies provided therein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of its Purchase Order. Bidder agrees not to disclaim warranties of fitness for any particular purpose or merchantability.

Furthermore, Bidder agrees that its warranty for all products furnished under a Purchase Order pursuant to this Call for Bids shall be for a period of one year following the installation of said products by others. Also a receipt of a notice by the City's Engineer the products have been installed correctly and have been demonstrated to be capable of performing their intended function.

SPECIAL NOTICE

To preclude possible errors and/or misinterpretations, bid prices must be affixed in ink or typewritten legibly.

DEFAULT

The City reserves the right to cancel all or any part of an order without cost to the City if the Bidder fails to meet the provisions of the City's Purchase Order or the product specifications and to hold the Bidder liable for any excess costs occasioned due to the Bidder's default. The Bidder shall not be liable for any excess costs if failure to perform on an order arises out of cause beyond the control and without fault or negligence of the Bidder. Such causes include, but are not restricted to, acts of God or public enemy; acts of State or Federal Government; fires, floods, epidemics, quarantine restrictions, strikes, embargoes, unusually severe weather, or defaults of subcontractors. Due to any of the above unless the City shall determine that the supplies or services to be furnished by the subcontractor are obtainable from other sources in the City in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law.

BID PROTESTS

If any Bidder is of the opinion that the specifications as written preclude him/her from submitting a bid. His/her opinion should be made known to the Department involved in this bid request at least twelve (12) days prior to the scheduled bid opening date with a copy forwarded to the Finance Department. Bid protests will not be considered from parties which do not also furnish satisfactory documentation with their protest that their proposed system fully meets the functional intent of the TECHNICAL SPECIFICATIONS which accompany a Call for Bids.

NON-EXCLUSION

Specifications of the bid request are not meant to exclude any Bidder or Manufacturer. Where a brand name or equal is indicated, it is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to restrict competition. "No Substitute" specifications may be authorized, only if required to match existing equipment.

If any Bidder is of the opinion that the specifications as written preclude him/her from submitting a bid. His/her opinion should be made known to the Department involved in this bid request at least five (5) days prior to the scheduled bid opening date; with a copy forwarded to the Finance Department.

Brand names and numbers are for reference only and equivalents will be considered. If bidding "EQUIVALENT" Bidder must be prepared to furnish complete data upon request, preferably with the bid to avoid awarding delay.

CONTRACT

When the City issues a Purchase Order in response to an awarded Bid a binding contract is created (unless a specified contract has been created).

TERMINATION

This Price Agreement may be terminated by either party upon signing a written notice to the other party at least thirty (30) days in advance of the date of termination. Notice of termination of this Price Agreement shall not affect any outstanding orders.

TAXES

Bidder must pay all applicable taxes.

NOTE:

If bidder is from outside the City of Las Vegas, the successful bidder must pay Gross Receipts in the City of Las Vegas.

BIDDER INFORMATION

BIDDER: _____

AUTHORIZED AGENT: _____

ADDRESS: _____

TELEPHONE NUMBER (_____) _____

FAX NUMBER (_____) _____

DELIVERY: _____

STATE PURCHASING RESIDENT CERTIFICATIN NO.: _____

NEW MEXICO CONTRACTORS LICENSE NO.: _____

BID ITEM (S): _____

ITEM (S) UNDER THIS BID ARE TO BE F.O.B. LAS VEGAS, NEW MEXICO 87701. THE CITY OF LAS VEGAS RESERVES THE RIGHT REJECT ANY OR ALL BIDS AND TO WAIVE ANY TECHINCAL IRREGULARITY IN THE FORM OF THE BID.

AFFIDAVIT FOR FILING WITH COMPETITIVE BID

STATE OF _____ }

COUNTY OF _____ }

I _____, of lawful age, being of first duly sworn in oath, say that I am the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any city official or employee as to the terms of said prospective contract, or any other terms of said prospective contract; or in any discussion between bidders with any city official concerning an exchange of money or any other thing of value for special consideration in the letting of a contract.

Subscribed and sworn to before me, this _____ day of _____, 20____.

Signature

(SEAL)

Notary Public Signature
My Commission Expires: _____

**CITY OF LAS VEGAS
BID FORM**

BID ITEM (S): _____

A. _____	\$ _____
B. _____	\$ _____
C. _____	\$ _____
D. _____	\$ _____
E. _____	\$ _____
F. _____	\$ _____
G. _____	\$ _____
F. _____	\$ _____
G. _____	\$ _____
H. _____	\$ _____
I. _____	\$ _____
J. _____	\$ _____
K. _____	\$ _____
L. _____	\$ _____
M. _____	\$ _____
N. _____	\$ _____
O. _____	\$ _____
P. _____	\$ _____
Q. _____	\$ _____
R. _____	\$ _____
S. _____	\$ _____

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

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

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

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

"Prospective contractor" means a person who is subject to the competitive sealed

proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(The above fields are unlimited in size) _____

Signature

Date

Title (position)

-OR-

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

REQUEST FOR PROPOSALS

The City of Las Vegas, New Mexico will open Sealed Proposals at 3:00 p.m., _____ , 20____, at the City Council Chambers, 1700 North Grand Avenue, Las Vegas, New Mexico, or other designated area at the City Offices; ON THE FOLLOWING:

Proposal Forms and Specifications may be obtained from the following location:

Mailed proposals should be addressed to the City Clerk, 1700 N. Grand Ave., Las Vegas, New Mexico 87701; with the envelope marked: _____ Opening No. _____ ; on the lower left-hand corner of the submitted envelope. It shall be the responsibility of the Offeror to see that their proposal is delivered to the **City Clerk** by the date and time set for the proposal request. If the mail or delivery of proposal request is delayed beyond the opening date and time, proposal thus delayed will not be considered. Proposals will be reviewed at a later date with possible negotiations to follow.

The City of Las Vegas reserves the right to reject any/or all proposals submitted.

CITY OF LAS VEGAS,

CITY MANAGER

CITY CLERK

FINANCE DIRECTOR

PURCHASING OFFICER

Opening No. _____

Date Issued: _____

Published: _____

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STANDARD PROPOSAL CLAUSES

AWARDED PROPOSAL

Awarding of Proposal shall be made to the responsible Offeror whose Proposal best meets the specifications. The City of Las Vegas (City) reserves the right to reject any or all Proposals submitted.

The City of Las Vegas reserves the right to make multiple awards on Professional Services proposals. All contracts shall be presented to the Governing Body for approval.

TIMETABLE

Proposals pursuant to this request must be received at the City Clerk's Office at 1700 North Grand Avenue, Las Vegas, New Mexico, on or before: _____, 20____; 3:00 p.m.; at which time all proposals received will be opened. The opening will occur at the City Offices. Awarding of proposal is projected for: _____, 20__. The successful offeror will be notified by mail.

ENVELOPES

Sealed Proposal envelopes shall be clearly marked on the lower left-hand corner, identified by the Proposal name and opening number. Failure to comply with this requirement may result in the rejection of the submitted Proposal.

BRIBERY AND KICKBACK

The procurement code of New Mexico; (Section 13-1-28 through 13-1-199 N.M.S.A. 1978), impose a third degree felony penalty for bribery of a public official or public employee. In addition, the New Mexico Criminal Statutes (Section 30-4-1 N.M.S.A. 1978), states that it is a third degree felony to commit offense of demanding or receiving a bribe by a public official or public employee. (Section 30-24-2 N.M.S.A. 1978), it is a fourth degree felony to commit the offense of soliciting or receiving illegal kickbacks. In addition, (Section 30-41-1 through 30-41-3 N.M.S.A. 1978), states that it is a fourth degree felony to commit the offense of offering or paying illegal kickbacks.

RESPONSIBILITY OF OFFEROR

At all times it shall be the responsibility of the Offeror to see that their Proposal is delivered to the City Clerk by the Date and Time scheduled for opening. If the mail or delivery of said proposal is delayed beyond the scheduled opening date and time set proposal thus delayed will not be considered.

NON-COLLUSION

In signing their Proposal and Affidavit, the offeror certifies that he/she has not, either directly or in directly entered into action of restraint of free competition, in the connection with the submitted Proposal.

CLARIFICATION OF PROPOSAL

Offeror requiring clarification or interpretation of the proposal specifications shall make a written request to the Department involved in this proposal request at least five (5) days prior to the scheduled proposal opening date; with a copy forwarded to the Finance Department. Any interpretations, correction, or changes (not part of the negotiation stage) of said proposal specifications shall be made by "ADDENDUM" only; including any Opening Date or Time Change. Interpretations, corrections, or changes of said proposal made in any other manner (before opening and negotiation stage) will not be binding and offeror shall not rely upon such interpretations, corrections, and changes.

MODIFICATION OR WITHDRAWAL OF PROPOSAL

A Proposal may not be withdrawn or cancelled by the offeror following the scheduled opening date and time; the Offeror does so agree in submitting their Proposal. Prior to the schedule time and date of opening, proposals submitted early may be withdrawn, but may not be re-submitted.

APPLICATION OF PREFERENCE

Pursuant to (Section 13-1-21 and 13-1-22 N.M.S.A. 1978) any New Mexico resident business or resident manufacturer who wishes to receive the benefit of an "Application of Preference" must provide their Certification Number (issued by N.M. State Purchasing) with their proposal on the "OFFEROR INFORMATION/AFFIDAVIT" form.

FEDERAL TAX IDENTIFICATION NUMBER

Pursuant to IRS requirements, Offerors shall provide their Federal Tax ID Number if Offeror is incorporated. If Offeror is a sole proprietorship or partnership, then shall provide their Social Security Number.

FEDERAL TAX ID NUMBER: _____

SOCIAL SECURITY NUMBER: _____

NEW MEXICO TAX IDENTIFICATION NUMBER

Payment may be withheld under (Section 7-10-5 N.M.S.A. 1978) if you are subject to New Mexico Gross Receipts Tax and have not registered for a New Mexico (CRS) Tax Identification Number, contact the New Mexico Taxation & Revenue Department at (505) 8270700 for registering instructions.

New Mexico (CRS) Tax Identification Number: _____

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Bidder shall submit a completed Campaign Contribution Disclosure Form Pursuant to Chapter 81, Laws of 2006.

SPECIAL NOTICE

Proposal will be opened and all submitted copies will be checked for accuracy of Department's specific amount of copies requested. Any price or other factors of the submitted proposals will not be read out loud to anyone in attendance at the proposal opening. All factors of the submitted proposal are not public record to other offerors or interested parties before the negotiation or awarding process.

The department involved in the proposal request will evaluate all proposals submitted according to the evaluation criteria indicated in the proposal specifications.

NEGOTIATION

Pursuant to the City of Las Vegas Purchasing rules and regulations (section 6.7) discussions or negotiations may be conducted with a responsible offeror who submits an acceptable or potentially acceptable proposal.

CONTRACT

When the City issues a Purchase Order in response to an awarded proposal, a binding contract is created, (unless a specific contract has been created).

TAXES:

Bidder must pay all applicable taxes.

NOTE:

If bidder is from outside the City of Las Vegas, the successful bidder Must pay Gross Receipts Tax in the City of Las Vegas. Successful bidder will be required to obtain a business license from the City of Las Vegas prior to commencing any project within the City limits.

STANDARD PROPOSAL CLAUSES FOR ARCHITECTURAL, ENGINEERING, LANDSCAPE
ARCHITECTURAL, AND SUVEYORS

AWARDED PROPOSAL

Awarding of proposal shall be made to the responsible offeror whose proposal best meets the specification. The City of Las Vegas (City) reserves the right to reject any or all proposals submitted.

TIMETABLE

Proposal pursuant to this request must be received at the City Clerk's Office at 1700 North Grand Avenue, Las Vegas, New Mexico, on or before: _____, 20__; 3:00 p.m.; at which time all proposal received will be opened. The opening will occur at the City Council Chambers or other designated area at the City Offices. Awarding of proposal is projected for: _____, 20__. The successful offeror will be notified by mail.

ENVELOPES

Sealed proposal envelopes shall be clearly marked on the lower left-hand corner, identified by the Proposal Name and Opening Number. Failure to comply with this requirement may result in the rejection of the submitted proposal.

BRIBERY AND KICKBACK

The Procurement Code of New Mexico (Section 13-1-28 through 13-1-199 N.M.S.A. 1978) imposes a third degree felony penalty for bribery of a public official or public employee. In addition, the New Mexico Criminal Statutes (Section 30-4-1, N.M.S.A. 1978) states that it is a third degree felony to commit the offense of demanding or receiving a bribe by a public official or public employee. (Section 30-24-2 N.M.S.A. 1978) it is a fourth degree felony to commit the offense of soliciting or receiving illegal kickbacks. In addition (Section 30-41-1 through 30-413, N.M.S.A. 1978) states that it is a fourth degree felony to commit the offense of offering or paying illegal kickbacks.

RESPONSIBILITY OF OFFEROR

At all times it shall be the responsibility of the offeror to see that their proposal is delivered to the City Clerk by the Date and Time scheduled for the opening. If the mail or delivery of said proposal is delayed beyond the scheduled opening date and time set proposal this delayed will not be considered.

NON-COLLUSION

In signing of their proposal and affidavit the offeror certifies that he/she has not, either directly or indirectly entered into action of restraint of free competition in connection with the submitted proposal.

CLARIFICATION OF PROPOSAL

Offeror requiring clarification or interpretation of the proposal specifications shall make a written request to the Department involved in the proposal request at least five (5) days prior to the scheduled proposal opening date; with a copy forwarded to the Finance Department. Any interpretations, corrections, or changes (not part of the negotiation stage) of said proposal specifications shall be made by "ADDENDUM" only; including any Opening Dates or Time Change. Interpretations, corrections, or changes of said proposal made in any other manner (before opening and negotiation stage) will not be binding and offeror shall not rely upon such interpretations, corrections, and changes.

MODIFICATION OR WITHDRAWAL OF PROPOSAL

A proposal may not be withdrawn or cancelled by the offeror following the scheduled opening date and time; the offeror does so agree in submitting their proposal. Prior to the scheduled time and date of opening, proposals submitted early may be withdrawn but may not be re-submitted.

APPLICATION OF PREFERENCE

Pursuant to (Section 13-1-21 and 13-1-22, N.M.S.A. 1978), any New Mexico resident business or resident manufacturer who wishes to receive the benefit of an "Application of Preference" must provide their Certificate Number (issued by N.M. State Purchasing); with their proposal on the "OFFEROR INFORMATION/AFFIDAVIT" form.

FEDERAL TAX IDENTIFICATION NUMBER

Pursuant to IRS requirements, offerors shall provide their Federal Tax ID Number if offeror is incorporated. If offeror is a sole proprietorship or partnership, then shall provide their Social Security Number.

FEDERAL TAX ID NUMBER: _____

SOCIAL SECURITY NUMBER: _____

NEW MEXICO TAX IDENTIFICATION NUMBER

Payment may be withheld under; (Section 7-10-5, N.M.S.A. 1978) if you are subject to New Mexico Gross Receipts Tax and have not registered for New Mexico (CRS) Tax Identification Number. Contact the New Mexico Taxation & Revenue Department at (505) 8270700 for registering instructions.

SPECIAL NOTICE

Proposals will be opened and all submitted copies will be checked for accuracy of Department's specific amount of copies requested. Any price or other factors of the submitted proposals will not be read out loud to anyone in attendance at the proposal opening. All factors of the submitted proposals are not public record to other offerors or interested parties before the negotiation or awarding process.

The department involved in the proposal request will evaluate all proposals submitted according to the evaluation criteria indicated in the proposal specifications.

NEGOTIATION

Pursuant to the City of Las Vegas Purchasing Rules and Regulations (section 6.7); discussions or negotiations may be conducted with a responsible offeror who submits an acceptable or potentially acceptable proposal. Negotiations of price will be done after all evaluation criteria have been met.

CONTRACT

When the City issues a purchase order in response to an awarded proposal, a binding contract is created (unless a specific contract has been created).

TAXES:

Bidder must pay all applicable taxes.

NOTE:

If bidder is from outside the City of Las Vegas, the successful bidder must pay Gross Receipts Tax in the City of Las Vegas.

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

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

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

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

"Prospective contractor" means a person who is subject to the competitive sealed

proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(The above fields are unlimited in size) _____

Signature

Date

Title (position)

-OR-

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)