

VILLAGE OF ANGEL FIRE

Angel Fire NM 87710

(575) 377-3232

PUBLIC NOTICE

Council Meeting

Tuesday May 19th at 5:30pm at Village Hall

Call to Order

Pledge of Allegiance

Roll Call

Approval of Agenda

Approval of Consent Agenda

1. Approval of the April 14th Regular Council Meeting Minutes

Requests and Responses from the Audience (Limited to 3 minutes)

Announcements and Proclamations

Reports

1. Governing Body Report

2. Manager's Report

3. Staff Report

Old Business- None

New Business

- A. Discussion/Approval of a Four County Groundwater Initiative Memorandum of Understanding (MOU)
- B. Discussion/ Approval of a Contract with Canepa and Vidal ,P.A. for Legal Services as Village Attorney
- C. Discussion / Approval of the FY 2015/2016 Interim Budget
- D. Discussion/Approval of Resolution 2015-09 a Resolution Adopting the New Mexico Procurement Code and State Procurement Regulations
- E. Discussion / Approval of a Contract with WM Serazio for the Construction of Camino Grande, MAP-7507(901) in the Amount of \$508,632.37
- F. Executive Session Per NMSA 10-15-1 H (7) and (8)
 - 1) Pending /Threatened Litigation :
 - A. Joint Declaratory Judgement Action with Angel Fire PID Re: Angel Fire Resort Operations, LLC Claim for Delinquent AFPO Assessments / Dues Against the Village of Angel Fire and/or PID Owned Lands
 - B. Wildfire Protection Fee/ Community Wildfire Protection Plan (CWPP) Re: Village of Angel Fire Liability
 - 2). Acquisition/Disposal / Leasing of Village of Angel Fire Real Property :
 - A. Village of Angel Fire Retransfer/ Reversion Deed to Angel Fire Real Estate , LLC for Unused Water Tank – Lot 2759 , Angel Fire Chalet Subdivision
 - B. Village of Angel Fire Donation of Tract C-1 to State of New Mexico for Veterans Memorial Cemetery/ Re: Transfers to 501c3 Memorial Pending Village of Angel Fire Subdivision Review / Approval
 - C. Disposition / Leasing of Village of Angel Fire Lands for Participation with Kit Carson Electric Coop in /for Angel Fire 1 Solar Array
 - D. Joint Development Agreement Options with Angel Fire Resort Operations ,LLC on Plaza del Sol/ Liberty Square Village of Angel Fire Lands for Event Center/ Fairgrounds Etc.

Terry Cordova, Village Clerk

Barbara Cottam, Mayor

Post: 5/14/2015

THE PUBLIC IS INVITED TO ATTEND

Next Regular Council meeting will be: June 9th at 5:30 pm

Subject to Change Until: Friday May 15th at 5:30pm

AGENDA MAY BE PICKED UP AT THE VILLAGE HALL

3388 MOUNTAIN VIEW BLVD., ANGEL FIRE, NM 87710

AGENDA MAY ALSO BE VIEWED AT OUR WEBSITE: ANGELFIRENM.GOV

IF YOU ARE AN INDIVIDUAL WHO IS IN NEED OF ANY AUXILIARY AID OR SERVICE TO ATTEND THE MEETING ,PLEASE CONTACT THE VILLAGE CLERKS OFFICE 48 HOURS PRIOR TO THE MEETING .

VILLAGE OF ANGEL FIRE
Angel Fire NM 87710
(575) 377-3232
PUBLIC NOTICE
Council Work Session
Tuesday May 19th, 2015 at 3:00 PM at Village Hall

Call to Order
Pledge of Allegiance
Roll Call
Approval of Agenda
Council Work Session:

- 1. Discussion and Review of the FY 2015/2016 Interim Budget**

Adjournment

Terry Cordova, Village Clerk

Barbara Cottam, Mayor

Post: 5/14/2015

THE PUBLIC IS INVITED TO ATTEND

Subject to Change Until: Friday May 15th at 3:00 pm

AGENDA MAY BE PICKED UP AT THE VILLAGE HALL
3388 MOUNTAIN VIEW BLVD., ANGEL FIRE, NM 87710
AGENDA MAY ALSO BE VIEWED AT OUR WEBSITE: ANGELFIRENM.GOV
IF YOU ARE AN INDIVIDUAL WHO IS IN NEED OF ANY AUXILIARY AID OR SERVICE TO ATTEND THE
MEETING ,PLEASE CONTACT THE VILLAGE CLERKS OFFICE 48 HOURS PRIOR TO THE MEETING .

VILLAGE OF ANGEL FIRE
Council Regular Meeting Minutes
Tuesday April 14th, 2015 at the Village Hall
DRAFT

Call to Order

Mayor Cottam called the meeting to order at 5:30 PM

Pledge of Allegiance

Mayor Cottam called for the Pledge of Allegiance.

Roll Call

Present were Mayor Cottam, Mayor Pro-tem Howe, Councilor Germscheid, Councilor Colenda, Councilor Lanon. Also present were Interim Village Manager Richard Tafoya, Village Clerk Terry Cordova. A quorum was present.

Approval of Agenda

Mayor Pro-tem Howe made the motion to approve the agenda, Councilor Lanon seconded. Motion carried 4-0

Approval of Consent Agenda

1. Approval of March 10th Regular Council Meeting Minutes

Mayor Pro-tem Howe made the motion to approve the consent agenda, Councilor Lanon seconded. Motion carried 4-0

Requests and Responses from the Audience (Limited to 3 minutes)

Bret Wier, Trini Bradly ,Mike Liddle – Invited Mayor and Council to the Kentucky Derby event that will be held on May 2nd .

Announcements and Proclamations

Reports:

a. Governing Body Report

Councilor Colenda reported on the NMML District meeting held in Eagle Nest last week. Mayor Pro-tem Howe reported that Run For The Wall is May 15th. He also reported on the Wellness and Healing retreats.

b. Manager's Report

Manager Tafoya introduced Amos Torres and stated that he was now the new Public Works Director. He also reported that Burl Smith from the planning department has completed all of the classes needed to get his certifications.

c. Staff Reports

Brad McCaslin, Police Chief, gave a report on the police department (see attached)
JD Harvey, Police Lt. reported on the award the was given to the Angel Fire Police department from CYFD for the excellent work they have done with their agency
Tommy Newkirk, Paramedic /Firefighter gave council a fire weather report (see attached)

Old Business-None

New Business

- A. Discussion /Approval of the Appointment of Richard Tafoya as Village Manager**
Mayor Pro-tem Howe made the motion to approve Richard Tafoya as Village Manager. Councilor Colenda seconded. With no discussion the motion carried 4-0 with Mayor Pro-tem Howe-aye, Councilor Germscheid –aye, Councilor Colenda –aye, Councilor Lanon-aye.
- B. Presentation by Tim and Louise Herfel Regarding Their Go Solar Company and the Proposed Allen Fields Solar Array**
Tim and Louise Herfel gave a brief presentation about their Go Solar company. (see attached)

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- C. Discussion/Approval of a Contract with Bruce's Gravel for the Transport of Solid Waste From the Village of Angel Fire Transfer Station to the Landfill**
Tracy Orr and Fabian Mascarenas, Projects and Grants explained that Bruce's contract has expired. We sent out an RFP for services and Bruce was the only one that responded. Cost of his services will be \$1,300 per haul for 2015, \$1,400 per haul for 2016, \$1,500 per haul for 2017. Bruce's Gravel will provide three trailers with a tarping system for the transport. Mayor Pro-tem Howe made the motion to approve a contract with Bruce's Gravel for the transport of Solid Waste from the Village of Angel Fire transfer station to the northeastern regional landfill. Councilor Germcheid seconded. With no discussion the motion carried 4-0
- D. Discussion / Approval of a Contract with GGH Wagon Mound , LLC and North Eastern New Mexico Regional Landfill for Disposal of Solid Waste**
Tracy Orr and Fabian Mascarenas, Projects and Grants explained that the Village of Angel Fire disposes of their municipal solid waste at GGH Wagon Mound and North Eastern New Mexico Regional Landfill. The contract is up for renewal. The cost of disposal is \$25.43 per ton. Mayor Pro-tem Howe made the motion to approve a contract with GGH Wagon Mound, LLC and North Eastern New Mexico Regional Landfill for disposal of municipal solid waste. Councilor Lanon seconded. With no the motion carried 4-0
- E. Discussion/ Approval to Proceed with the RFP Process for Attorney Services**
Tracy Orr, Projects and Grants explained our attorney contract is due to expire and the Village is publishing a RFP in the Sangre de Cristo, Taos News and the Santa Faen. The proposals will be due May 1, 2015. Mayor Pro-tem Howe made the motion to approve a request for proposal for attorney services. Councilor Germscheid seconded. With no discussion the motion carried 4-0
- F. Discussion/ Approval of Notice of Award with Archuleta Construction for the Coffey Well Two Building Project**
Amos Torres, Public Works Director explained the Dennis Engineering conducted a bid opening on March 26th to recommend a contractor for the Coffey Well Two building project. Two contractors bid on the project, Archuleta Construction and Dale Jackson Custom Builders. Even though Dale Jackson was the lower bidder he did not provide a valid Veteran Resident Contractors Certificate as outlined in the Request for bins. Archuleta Construction met all the qualifications of the bid opening. He also stated that he provide a copy of the Veteran Preference Certification requirements to each councilor. Councilors expressed their concern that local contractors are not trained to understand all of the requirements for requests for bins and asked that clerk Cordova include the website for training. That website is:
www.generalervices.state.nm.us/statepurchasing/training
Mayor Pro-tem Howe made the motion to approve the notice of award with Archuleta Construction for the Coffey Well Two building project. Councilor Lanon seconded. With no discussion the motion carried 4-0
- G. Discussion / Approval of Resolution 2015-07 a Resolution Authorizing the Village of Angel Fire to Act as Fiscal Agent for the Shuter Library of Angel Fire for Funds in the Amount of \$6,152.27**
Tracy Orr, Projects and Grants explained this is something that the Village has done for the library for many years. The grant amount is 6,152.27 and is contingent upon the State of New Mexico's successful sale of general obligation bonds. Shuter Library would like the Village of Angel Fire to act as their fiscal agent. Mayor Pro-tem Howe made the motion to approve of resolution 2015-07 a resolution authorizing the Village of Angel Fire to act as fiscal agent for the Shuter Library of Angel Fire for funds in the amount of \$6,152.27 allocated for the State of New Mexico's successful sale of general obligation bond. Councilor Colenda seconded. With no discussion the motion carried 4-

1 0 with Mayor Pro-tem Howe-aye, Councilor Germscheid –aye. Councilor Lanon-aye,
2 Colenda –aye.

3 **H. Discussion/Approval of Resolution 2015-08 a Resolution Granting a Side Yard**
4 **Setback Variance of Seven Feet Three Inches Located at 105 Calle De Los Indios**
5 **Burl Smith . Building Official explained that the house was constructed in 1984, prior to**
6 **the Village incorporation and any annexation of this subdivision . The previous owners**
7 **would not have had to request a variance as they purchased it in 1994 prior to it being**
8 **annexed into the Village as well . The sale is finale as of this meeting hence the new**
9 **owners requesting the variance . The new owners were unaware of the problem . If the**
10 **new owners wish to sell this variance will go with the sell. Mayor Pro-tem Howe made**
11 **the motion to approve resolution 2015-08 a resolution granting a side yard setback**
12 **variance of seven feet five inches for an existing dwelling located at 105 Calle De Los**
13 **Indios . Councilor Colenda seconded . With no discussion the motion carried 3-1 with**
14 **Mayor Pro-tem Howe –aye, Councilor Germscheid –aye, Councilor Colenda –aye,**
15 **Councilor Lanon -nay**

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18 **Adjournment**

19 Mayor Pro-tem Howe made the motion to adjourn at 6:25 pm, Councilor Lanon seconded. Motion
20 carried 4-0

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22 **Passed, Approved and Adopted on this 19th day in May, 2015**

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28 **_____
Barbara Cottam, Mayor**

29 **ATTEST:**

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32 **_____
Terry Cordova, Village Clerk**

**ANGEL FIRE
POLICE DEPARTMENT**

3465 MOUNTAIN VIEW BLVD
ANGEL FIRE, NM 87710

Date : 04/14/2015
Page : 1
Agency : AFPD

Calls For Service Totals By Call Type

03/01/2015 to 03/31/2015

Call Type	Totals
10-44 Property Accident	1
10-58 Violent Mental Person	1
10-75 Stolen Vehicle	1
AOA Assist Other Agency	2
CHILD AB Child Abuse	1
CIVIL PR Civil Process	1
CIVSTBY Civil Standby	1
DRTEST Driving Test	1
HW House Watch	1
INFORMAT Informational	1
PRACC Private Property Accident	3
S13A Suspicious Activity	2
S13P Suspicious Person	2
S21 Burglary	1
S21V Burglary of Vehicle	2
S22D Domestic	4
S22N Noise Complaint	5
S34 Criminal Damage	1
S35 Narcotics	3
S38 Theft	2
S40 Alarm	1
S42 Trespassing	1
S42N Trespass Notice	1
S49 Harassment	3
S52 Assault	1
Grand Total for all calls	43

**ANGEL FIRE
POLICE DEPARTMENT**

3465 MOUNTAIN VIEW BLVD
ANGEL FIRE, NM 87710

Date : 04/14/2015
Page : 1
Agency : AFPD

Arrest Totals By Violation

03/01/2015 TO 03/31/2015

Violation		Total
30-3-15	BATTERY AGAINST HOUSEHOLD MEMBER	1
5-2C-1(A)	CRIMINAL DAMAGE (Private Property) <...	1
5-2D-3(B)	POSSESSION OF LESS THAN 1oz OF...	1
5-2D-4(C)	POSSESSION OF DRUG PARAPHERNALIA	2
Grand Total		5

**ANGEL FIRE
POLICE DEPARTMENT**

3465 MOUNTAIN VIEW BLVD
ANGEL FIRE, NM 87710

Date : 04/14/2015
Page : 1
Agency : AFD

Citation Totals By Violation

03/01/2015 to 03/31/2015

Violation		Total
12-10-1.7	Taglight required	1
12-6-1.1	SPEEDING	4
12-6-12.6(A)(6)	DRIVING ON A SUSPENDED LICENSE	2
12-6-6.1	Parking Prohibited in Specified Pla	2
12-6-7.3	STOPPING FOR SCHOOL BUS	1
5-2B-10	PROPULSION OF MISSILES	1
5-2B-3	UNREASONABLE NOISE	1
5-2C-1(A)	CRIMINAL DAMAGE (Private Property)	1
5-2D-3(B)	POSSESSION OF LESS THAN 1oz OF MAR	1
5-2D-4(C)	POSSESSION OF DRUG PARAPHERNALIA	2
	Grand Total	16

Village of Angel Fire Fire Department

P.O. Box 610

Angel Fire, New Mexico 87710

(575) 377-3347 FAX: (575) 377-6098



April 14, 2015

Fire weather report

Past year:

We are still abnormally dry (drought status)

There was good fine fuel growth last year, Which means good grass to burn. This grass is expected to cure in late may to June.

Below normal moisture in snow pack with temperature slightly higher

This fire season:

Above normal precipitation with below normal temperatures.

Monsoon is expected to start July 7 and by a bit drier the later half of the season.

We should have good spring green up.

Near to below normal wind events, with limited alignment of critical fuel and weather for large fire(few large fires this year).

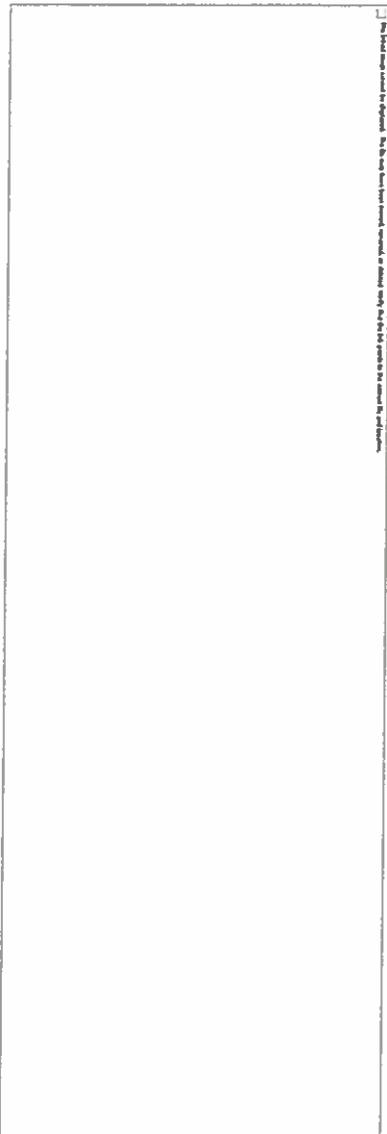
But we will have a lot more small fires due to lightning strikes. Having said this these small fire may keep us busier this year than other years.

With less large fire potential, many organizations may decide to manage fires by allowing them to run their course or run a bit longer rather than immediate extinguishment.

Andrew Bertges

Angel Fire Fire Department

Who Is GoSolarGo?

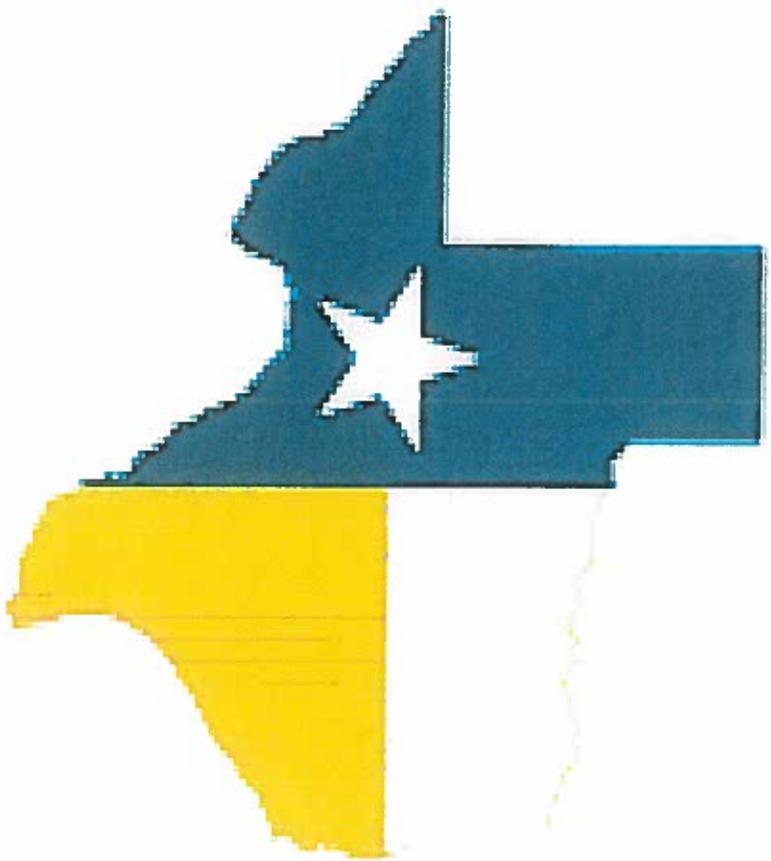


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Our Company is based on “Neiman Marcus Principles”

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**Corporate Headquarters in Dallas, Texas
Western Division Office in Angel Fire, NM**

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Inverters & Racking Systems Purchased Direct from the Manufacturer

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Dan Lepinski
GoSolarGo
Chief Technical Officer

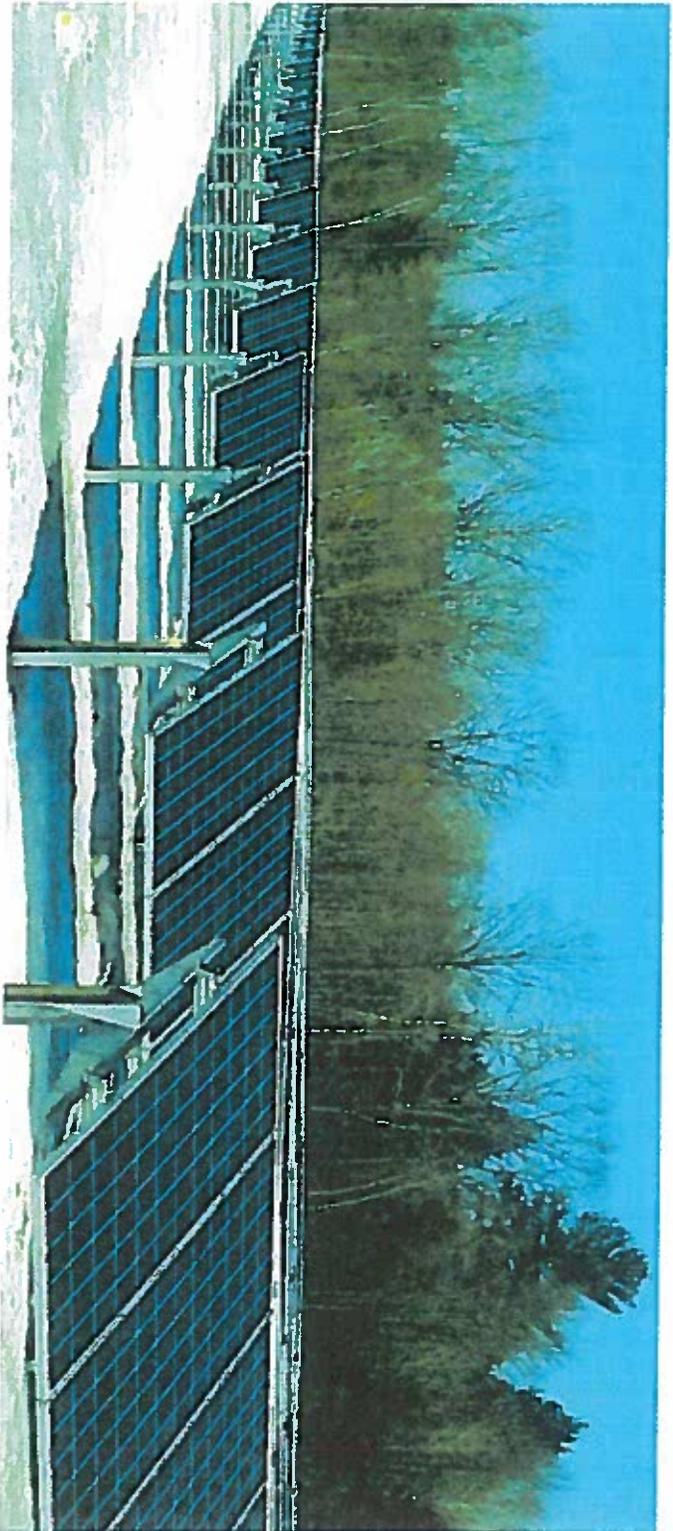
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ATRIOT
SOLAR GROUP

Patriot Solar Group
1007 Industrial Blvd.
Albion, MI, USA 49224
info@patriotsolargroup.com

The information provided by the customer. The data has been reviewed, confirmed or revised. Supply the project data to the customer for confirmation.

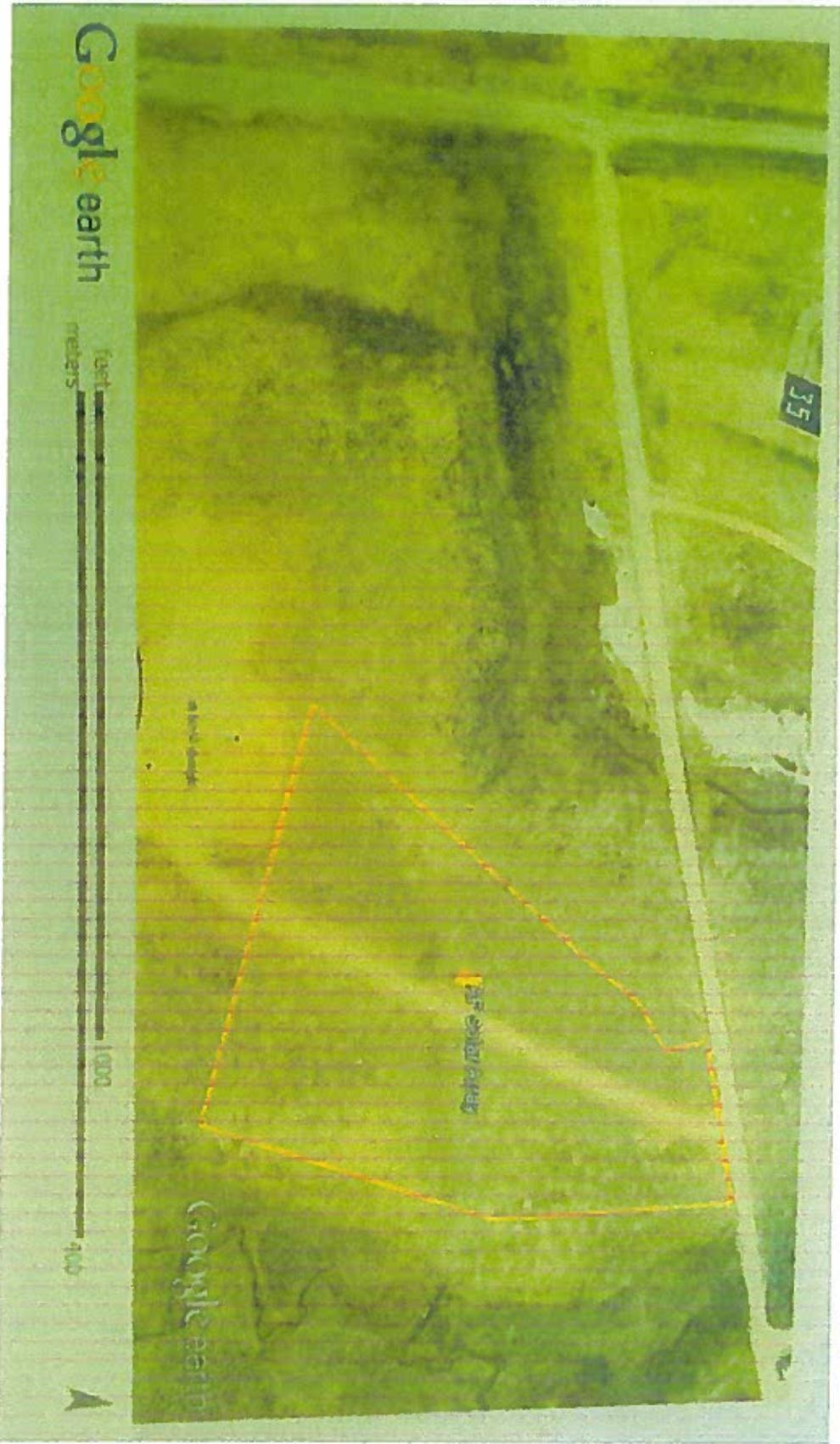


LOCATION: SARATOGA SPRINGS, NY COMPLETION: DATE APRIL 2014

PROJECT: SIZE 2MW PANEL TYPE: 72 CELL - 300 WATT

RACKING TYPE: FIXED TILT - POST DRIVEN GROUND MOUNT

TERRAIN: OPEN FIELD



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How Does Community Solar Work?

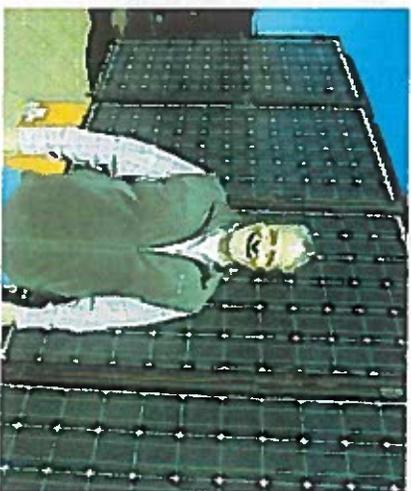
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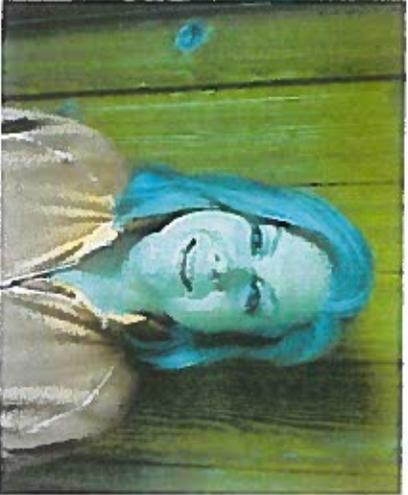
Zak Fardi



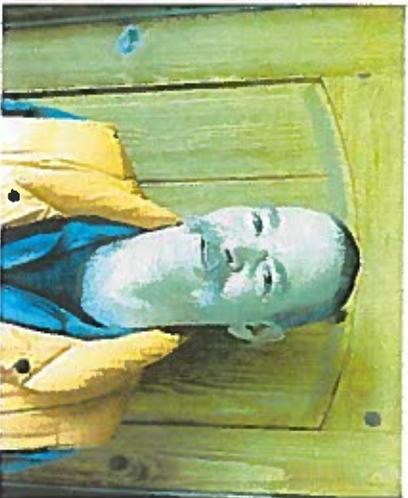
Dan Lepinski



Lewis Duff



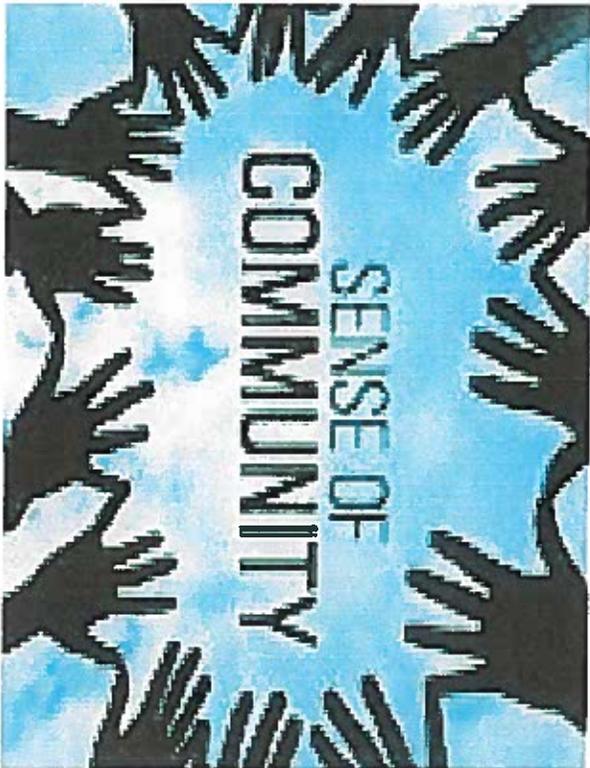
Louise Herfel



Tim Herfel



Chris Arrington



The Board shall be composed of the following: the one hundred and twenty-five (125) members of the Board of Directors.

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Q & A

You have

Questions

We have

Answers

**FOUR COUNTY/REGIONAL SWCDS GROUNDWATER INITIATIVE
COLFAX, HARDING, MORA AND UNION COUNTIES
MEMORANDUM OF UNDERSTANDING**

SIGNATURE PAGE

VILLAGE OF ANGEL FIRE

Organization or entity

Hereby agrees to be part of the Four County/Regional SWCDs Groundwater Initiative and agrees to comply with, and be bound by, the terms of the Memorandum of Understanding attached hereto and incorporated herein by reference. The party hereto has executed this agreement as of the date written below.

Signature

Date

Name

Title

Address: P.O. Box 610 Angel Fire ,NM 87710

Telephone: 575-377-3232

**FOUR COUNTY/REGIONAL SWCDS GROUNDWATER INITIATIVE
COLFAX, HARDING, MORA AND UNION COUNTIES
MEMORANDUM OF UNDERSTANDING**

Between:

**Colfax County Commissioners
Mora County Commissioners
Union County Commissioners
Harding County Commissioners
Mora-Wagon Mound Soil and Water Conservation District
Northeastern Soil and Water Conservation District
Colfax Soil and Water Conservation District
Mesa Soil and Water Conservation District
New Mexico State Land Office
New Mexico State University Cooperative Extension Service
El Llano Estacado Resource Conservation & Development Council
Adelante Resource Conservation & Development Council, Inc.
New Mexico Highlands University
EMNRD State Forestry
U.S. Forest Service
Village of Raton
Village of Springer
Village of Maxwell
Village of Cimarron
Village of Eagle Nest
Village of Wagon Mound
Town of Clayton
Village of Des Moines
Village of Folsom
Village of Roy
Village of Mosquero
Village of Angel Fire**

PURPOSE

The purpose of this Memorandum of Understanding (MOU) is for the above named cooperators participating in a voluntary groundwater monitoring study to determine groundwater resources and quality in these counties and soil and water conservation districts. The program intent is to identify resources for future development and identify areas that should not see further development for agricultural and municipal use and economic development of the region. Further intent is to educate the public about groundwater resources and management of such.

Additional agency agreements may be developed to outline activities by and between individual work units as needed for specific tasks. Such agreements will provide for the use of facilities, personnel, reimbursement for personnel expenses, cooperative projects, transfer of funds and other activities as appropriate and be subject to the laws and regulations pertaining to the respective agencies.

Below is an outline of the basic structure of a hydrogeology project at the county or soil and water district level as well as an example of a multi-year phased budget for this type of project (attached).

Any hydrogeology project requires a fundamental data set that includes:

- Static water level measurements in a well-distributed set of water wells (8-10 years)
- Geologic information about the surrounding area, including subsurface data (6-10 years)
- Water chemistry data (2-4 years)
- Water age data (2-4 years)

THE UNDERSIGNED PARTIES MUTUALLY AGREE TO:

1. Participate in the Four County/Regional SWCDs Groundwater Initiative created by this agreement. The Four County Groundwater Initiative will consist of one representative from the signing agencies as designated by that agency as well as representatives made of land owners in the four county area. The Groundwater Initiative agrees to meet at least once a year in January or February to review the work agreement and make necessary changes to the memorandum.
2. Assist with the Four County/Regional SWCDs Groundwater Initiative to foster coordination, cooperation and implementation on:
 - Goals and Objectives
 - Education
 - Action Plans and Implementation
 - Monitoring
 - Program Assessment
3. Be responsive to the MOU signatories requests for involvement and information for groundwater monitoring activities on lands or activities within their respective jurisdiction.
4. Provide opportunities to outside interest groups and the public in carrying out groundwater monitoring activities on lands within these four counties in New Mexico.
5. Utilize assistance and expertise for the management of groundwater resources as determined to be appropriate by the signatories.

6. Resolve conflicts arising from preparation or administration of a groundwater resources management plan prepared under the scope of this agreement by signatories. Conflicts with holders of an agency permit/lease will be resolved between the agency and the individual permittee/lessee (New Mexico State Land Office or other agency).

ADMINISTRATION

1. This MOU will become effective upon signature by all parties and shall continue in force for a period of five years, at which time it will expire unless extended or renewed. Any signatory may withdraw from the agreement at any time by providing 90 days written notice to all other signatories.
2. Any signatory may propose changes to this MOU. Such changes will be in the form of an amendment and may be negotiated at any time after 30 days notice to the other signatories. Changes will become effective upon signature of all parties.
3. It is recognized that each participant has a primary responsibility to its own governing body and lands under its jurisdiction. They agree to provide resources to each other as legal authorities may permit. All signing parties are responsible and accountable for their own funds, equipment, and personnel. The MOU also in no way restricts participants from participating in similar activities with other public or private agencies, organizations, and individuals.
4. No one signing this MOU or agency they represent will be entitled to monetary gain as a result thereof.
5. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds among the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.
6. The program or activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987 (Public Law 100-259) and other non discrimination statues, namely Section 504 of the Rehabilitation Act of 1973 Title IX of the Education Amendment of 1972 (&CFR-14, Subpart A and B) which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital

status or handicap be excluded from participation in, be denied of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

Four County Groundwater Initiative (Colfax, Union, Harding, Mora)

Colfax County meets more than 95% of its water supply needs with surface water. That supply is highly variable from year to year. Several years of moderate to extreme drought have severely impacted the availability of surface water within the county. According to the 2002 Colfax Regional Water Plan, the largest demand for surface water is irrigated agriculture, followed by reservoir evaporation and public water supply.

Most of the municipal water within the county is dependent upon surface water, but drought has greatly depleted these traditional resources. Raton's municipal water supply comes from Lake Maloya and Eagle Nest Lake. Cimarron and Springer get all of their water from Eagle Nest Lake. The towns of Eagle Nest, Angel Fire and Maxwell get their municipal water from wells. The wells for Maxwell are 30 to 50 ft. in depth. Throughout 2013, Maxwell suffered severe water shortages due to drought.

Domestic residences outside incorporated areas rely upon groundwater; also many of the area's livestock owners depend upon wells for livestock use. Perennial stream water is available in only a small area of the county. Many county residents would like a better understanding of the geology and the occurrence and availability of ground water in Colfax County.

Colfax County is cooperating with Mora, Union, and Harding Counties, the municipalities within the four county region and the Soil and Water Conservation Districts that represent this region to fund an aquifer mapping endeavor to better understand the groundwater resources. The goals of this project are to define groundwater bearing rock units in the subsurface, begin tracking changes in water levels in existing wells, and determine the age of water residing in the aquifers that are in use or may be used in the future. This information will allow the communities and producers to make informed decisions regarding groundwater use. Those towns that depend entirely upon surface water will benefit by knowing if there are groundwater sources to supplement their supply. County economic development initiatives will be better served by knowing where to locate or not locate new business prospects, based upon the availability of a sustainable source of water. A better knowledge of groundwater supply and quality will also be beneficial to farming and livestock producers.

The primary objective of the four county hydrogeology project is to characterize the groundwater systems utilized by the communities and producers to the fullest extent in terms of 1) static water level measurements in existing wells (5-10 years), 2) geologic information about the surrounding area, including subsurface data (4-6 years), 3) water chemistry data (1-2 years), and 4) water age data (1-2 years).

Static water level measurements provide information about drawdown and recovery of an aquifer unit. By choosing a set of wells that are distributed across a district, we can develop a sense of where the water table is falling or rising.

Groundwater is stored in and transmitted through porous and permeable rock types such as sandstone, fractured limestone, conglomerate and unconsolidated sands and gravels. It is important to know the geologic units present both at the surface and in the subsurface in order to know which rock units will be acting as aquifers and which may present barriers to groundwater flow. Geologic data includes surface geologic maps and rock unit descriptions, as well as petroleum and water well logs.

Just as the geology provides the overall context for the movement of water under the landscape, so does it provide valuable clues to where the water is present in the subsurface.

The chemistry of groundwater is related to the rock units that it has spent time in contact with. For example, the Morrison Formation sandstones contain the mineral feldspar, which includes sodium, and potassium in its crystal structure. Water that is sampled for water chemistry and returns relatively high proportions of sodium and potassium is probably from a Morrison Formation sandstone. The combination of geologic mapping, well logs and chemistry give us a much more complete picture of the subsurface.

Water age data helps us to understand whether or not a particular aquifer unit may be recharging. Using two different isotopic dating systems: carbon 14 and tritium, makes it possible for an approximate age of the water to be determined. Tritium is useful for determining if "modern" water has entered a groundwater system because this isotope has a very short half-life. A well with water that has no tritium in it has little or no recharge entering the aquifer unit.

Building these data sets for a large area is critical for our understanding of groundwater resources and can be used to craft informed decisions regarding groundwater resource use.

COUNCIL AGENDA ITEM

STAFF RECOMMENDATION

MEETING DATE: May 19, 2015

TO: Mayor / Council and Village Manager

FROM: Tracy Orr

SUBJECT: Approval of contract to provide legal services as Village attorney to the Village of Angel Fire from Canepa & Vidal, P.A.

Background/Facts : The Village of Angel Fire sent out a request for proposal for legal services for the Village of Angel Fire. The RFP was advertised in the Taos News, the Sangre de Cristo Chronicle and the Santa Fe New Mexican. The RFP was due May 1, 2015. We received one proposal from Canepa & Vidal, P.A. The proposal states that Canepa & Vidal will perform all requested work at the rate of \$150 per hour, its government rate, which is the same rate from their previous contract.

Alternatives: N/A

1) **Financial Impact and Review:**

Financial Impact: Yes

Budgeted Item: X yes ___ no

Funding Source: Admin

Finance Department Comments and Review:

Finance Directors Signature

2) **Attached Documents:** Copy of Canepa & Vidal's Contract

3) **Staff's Recommended Motion:** Motion and Second to approve Canepa & Vidal, P.A.'s contract at the rate of \$150 per hour for an initial term of two years, however, the contract may be extended by mutual agreement, and shall not exceed four years.

4) **Village Manager's Recommendation:**

Approval: ✓ Disapproval: _____ other: _____

Manager's Comments:

Signature: 

PROFESSIONAL SERVICES AGREEMENT

[Legal Services as Village Attorney]

Between Village of Angel Fire ("Village") and Canepa & Vidal, P.A. ("Contractor")

This Agreement is made and entered into this 19th day of May 2015, by and between THE VILLAGE OF ANGEL FIRE, hereinafter referred to as "the Village" and JOSEPH F. CANEPA, ESQ., CANEPA & VIDAL, P.A., a New Mexico professional association, hereinafter referred to as "the Contractor."

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work. The Contractor shall render the following services:

Serve as general legal counsel to the Village of Angel Fire as Village Attorney to include the following responsibilities: attending meetings of the Village of Angel Fire Council ("Council"), answering questions presented by the Mayor, the Council, Village Administrator, and/or duly designated Village Department Heads; addressing any legal matter that comes before the Village, including, but not limited to, reviewing contracts, reviewing services and goods, proposals and procurement; advising on personnel matters; drafting and/or reviewing and defending ordinances and resolutions; prosecuting violations of, and seeking enforcement of, Village ordinances in civil or criminal courts; lobbying and conducting of litigation or assistance to outside counsel conducting litigation. This Contract, upon approval, shall supersede any other contracts for legal services the Contractor had or has with the Village, and the legal services provided hereunder shall include all legal services previously contracted for.

2. Compensation.

A. The Village shall pay the Contractor at a rate of \$150 an hour for attorneys Joseph F. Canepa, Patricia J. Turner, Timothy Vidal, and James E. Riley, Jr., exclusive of travel costs to Angel Fire, plus New Mexico Gross Receipts Tax, for payment by the Contractor to the State of New Mexico. Other Associates will be paid at the rate of \$125 an hour. The hourly rate represents Contractor's current governmental rate for legal services provided to state agencies.

B. The Village shall also pay to the Contractor such necessary expenses of litigation, filing fees, deposition costs, copying charges, long distance telephone charges, and fax charges as may be necessary to carry out the performance of this Agreement; however, any expert witness or costs in excess of \$500 shall be incurred only with the express written approval of the Village. Notwithstanding, the Village shall pay no costs to the Contractor for litigation except those to which the Village agrees.

C. Contractor shall charge one-half (½) his hourly rate for his time for driving to Angel Fire from Santa Fe for Village Council meetings.

3. Term. This contract shall not become effective or binding until the Village Council approves it. The contract shall be for a term of four (4) years unless terminated earlier pursuant to paragraphs 4 and 14 infra. The term of this contract shall not exceed four years.

4. Termination.

A. This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than seven (7) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination; provided, however, that the Contractor may not terminate this contract if he/she/it has undertaken litigation not yet completed, unless permitted to do so by the Village.

B. This contract may be terminated in whole or in part in writing by either party for its convenience, provided the other party is given (1) not less than thirty (30) calendar days written notice (delivered by certified mail, return receipt requested), of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.

C. Upon receipt of a termination action under paragraphs (A) or (B) above, the Contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Village all data, reports, and such information and materials as may have been accumulated by the Contractor in performing this contract, whether completed or in process.

D. Upon termination action under paragraphs (A) or (B) above, the Village may take over the work and may award another party a contract to complete the work under this contract.

E. If after termination for failure of the Contractor to fulfill contractual obligations, it is determined that the Contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Village.

5. Audit: Access to Records.

A. The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance at Village funded work under this contract in accordance with generally accepted accounting principles and practices consistently applied. The Contractor shall also maintain the financial information and data used in the preparation or support of any cost submission. The Village or any of its authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours, both before and after payment. The Contractor will provide proper facilities for such access and inspection.

B. Audits conducted under this provision shall be in accordance with generally accepted auditing standards and with established procedures and guidelines of the reviewing or audit agency (ies).

6. Release on Final Payment.

The Contactor, upon final payment of the amounts due under this contract, releases the Village, its officers and employees from all liabilities, claims and obligations whatsoever arising from under this contract. The Contractor agrees not to purport to bind the Village to any obligation not assumed in this contract by the Village, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority. Payment on this contract shall not foreclose the Village's right to recover excessive illegal payments.

7. Confidentiality.

Any information that the Contractor receives or develops in the performance of this Agreement shall be kept confidential, and the Contractor shall not make such information available to any individual or organization without the Village's prior written approval.

8. Product of Service.

All briefs, legal filings and memoranda that the Contractor develops or acquires under this contract shall become the Village's property and shall be delivered if so requested to the Village no later than the final termination date of this agreement.

9. Conflict of Interest.

The Contractor warrants that Canepa & Vidal, P.A. presently has no interest, and shall not acquire any interest, directly or indirectly, that would conflict in any manner or degree with the performance of services required under this contract. When and if such provisions become applicable, the Contractor shall promptly provide a written disclosure to the Mayor of the Village.

10. Amendment.

This contract shall not be altered or changed or amended except by an instrument in writing executed by the parties. No amendment shall be effective or binding until approved by the Village Council.

11. Merger.

This contract incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been written into this written contract. No prior agreement or understanding, verbal or otherwise, of the parties or of their agents shall be valid or enforceable unless embodied in this contract.

12. Applicable Law.

This contract shall be governed by the laws of the State of New Mexico.

13. Waiver.

No waiver of any breach of this contract or any of the terms or conditions thereof shall be held to be a waiver of any other or subsequent breach; nor shall any waiver be valid or binding unless the same shall be in writing and signed by the party alleged to have granted the waiver.

14. Appropriations.

The terms of this Contract are contingent upon the Village making sufficient appropriations and authorizations for the performance of this contract. If the Village does not make sufficient appropriations and the authorizations, this contract shall, notwithstanding the provisions of paragraph 1 and 2 above, terminate immediately upon the Village giving written notice to the Contractor. The Village's decision whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

15. Equal Opportunity Compliance.

The Contractor agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the President of the United States and the Governor of the State of New Mexico, pertaining to equal employment opportunity, to the extent they pertain to this contract. In accordance with all such laws and rules and regulations, and executive orders of the President of the United States and the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this contract. If the Contractor is found to be not in compliance with these requirements to the extent they pertain to this contract, during the life of this contract, the Contractor agrees to take appropriate step to correct these deficiencies.

16. Notice.

The Procurement Code, Sections 13-1-26 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

17. Independent Contractor.

Contractor, in the performance of this contract, is an independent contractor, and the Village shall have no obligations to Contractor as an employer other than as set forth in this contract.

18. Covenant Against Contingent Fees.

The Contractor assures that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintain by the Contractor for the purpose of securing business. For breach or violation of this assurance, the Village shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fees.

19. Gratuities.

A. If the Village finds after a notice and hearing that the Contractor or any of the Contractor's agents or representative offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the Village in an attempt to secure a contract or favorable treatment in awarding, amending or making any determination related to the performance of this contract, the Village may, by written notice to the Contractor, terminate this contract. The Village may also pursue other rights and remedies that the law or this contract provides.

B. In the event this contract is terminated as provided in paragraph (A), the Village may pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor.

20. Designs and Technical Services.

No designs, drawings, specifications, reports or other technical services are to be furnished by the Contractor under this contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

VILLAGE OF ANGEL FIRE

By: _____
Barbara Cottam
Its Mayor

Per Resolution of the Village Council on 4/19/2015

ATTEST:

Terry Cordova, Clerk, Village of Angel Fire

CONTRACTOR:

CANEPA & VIDAL, P.A.

By: _____

Joseph F. Canepa

Vice President / Partner

Tax Identification Number: 85-0312205

COUNCIL AGENDA ITEM

STAFF RECOMMENDATION

MEETING DATE: May 19, 2015

TO: Mayor / Council and Village Manager

FROM: Tracy Orr

SUBJECT: Resolution 2015-09 to adopt New Mexico Procurement Code, Title 1, Chapter 4, Part 1 which are state procurement code regulations, and to adopt Chapter 13, Article 1 Procurement, from 13-1-1 to 13-1-199, which covers Public Purchases and Property, and rescinding all others.

Background/Facts : Per New Mexico State Statute, the Village is forming a Central Purchasing Office as well as training a Chief Procurement Officer. A uniform procurement code and regulations must be adopted by the Village in order to comply with the new state requirements. All other procurement codes and regulations are rescinded.

Alternatives: N/A

1) Financial Impact and Review:

Financial Impact: Yes
Budgeted Item: X yes ___ no
Funding Source: Admin

Finance Department Comments and Review:

Finance Directors Signature

2) Attached Documents: Resolution 2014-33

Staff's Recommended Motion: Motion and Second to approve Resolution 2015-09 to adopt New Mexico Procurement Code, Title 1, Chapter 4, Part 1 which are state procurement code regulations, and Chapter 13, Article 1 Procurement, from 13-1-1 to 13-1-199, which covers Public Purchases and Property.

3)

4) Village Manager's Recommendation:

Approval: ✓ Disapproval: _____ other: _____

Manager's Comments:

Signature: 

RESOLUTION NO. 2015-09

A RESOLUTION ADOPTING NEW MEXICO PROCUREMENT CODE, TITLE 1, CHAPTER 4, PART 1 WHICH ARE STATE PROCUREMENT CODE REGULATIONS, AND CHAPTER 13, ARTICLE 1 PROCUREMENT, FROM 13-1-1 TO 13-1-199 WHICH COVERS PUBLIC PURCHASES AND PROPERTY, AND RESCINDING ALL OTHERS.

WHEREAS, the Village of Angel Fire has formed a Central Purchasing Office and is training a Chief Procurement Officer to comply with New Mexico State Statute; and

WHEREAS, the Village of Angel Fire wishes to adopt the New Mexico procurement code and regulations to comply with the new state requirements; and

WHEREAS, the Village wants to adopt the procurement code and regulations as a whole or in part at the discretion of the Central Purchasing Office; and

NOW THEREFORE, BE IT RESOLVED by the Angel Fire Village Council herein authorizes adopting the New Mexico Procurement Code, Title 1, Chapter 4, Part 1 and Chapter 13, Article 1 Procurement from 13-1-1 to 13-1-199.

PASSED, APPROVED AND ADOPTED this 19th day of May, 2015

Mayor Barbara Cottam

Attest: _____
Terry Cordova, Village Clerk

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 4 STATE PROCUREMENT
PART 1 PROCUREMENT CODE REGULATIONS

1.4.1.1 ISSUING AGENCY: General Services Department - State Purchasing Division.
 [1.4.1.1 NMAC - Rp, 1.4.1.1 NMAC, 08-30-13]

1.4.1.2 SCOPE: All executive branch state agencies.

A. Except as otherwise provided in the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, the code applies to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction.

B. General. Except as otherwise provided in this section, this rule applies to every agency and to every transaction to which the Procurement Code applies except the following:

- (1) procurement of highway construction or reconstruction by the state highway and transportation department;
- (2) procurement by the judicial branch of state government;
- (3) procurement by the legislative branch of state government;
- (4) procurement by the boards of regents of state educational institutions named in Article 12 Section 11 of the constitution of New Mexico;
- (5) procurement by the state fair commission of tangible personal property, services and construction under twenty thousand dollars (\$20,000);
- (6) purchases from the instructional material fund;
- (7) procurement by all local public bodies;
- (8) procurement by regional education cooperatives;
- (9) procurement by charter schools;
- (10) procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program; and
- (11) procurement by the public school facilities authority.

[1.4.1.2 NMAC - Rp, 1.4.1.2 NMAC, 08-30-13]

1.4.1.3 STATUTORY AUTHORITY: NMSA 1978, 9-17-5, Laws of 1983, Chapter 301, Section 5; and 13-1-95, Laws of 1984, Chapter 65, Section 68 (Repl. Pamp. 1997). Subject to the authority of the secretary of the general services department, Section 13-1-95 NMSA 1978 designates the state purchasing agent as both the administrator and chief executive of the state purchasing division. The cite further designates the state purchasing agent and purchasing division shall be responsible for the procurement of items of tangible personal property, services and construction for all state agencies except as otherwise provided in the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, and shall administer the code for those state agencies not excluded from the requirement of procurement through the state purchasing agent. Among the statutory duties and responsibilities afforded the state purchasing agent is to recommend procurement regulations to the secretary of the general services department.

[1.4.1.3 NMAC - Rp, 1.4.1.3 NMAC, 08-30-13]

1.4.1.4 DURATION: Permanent.

[1.4.1.4 NMAC - Rp, 1.4.1.4 NMAC, 08-30-13]

1.4.1.5 EFFECTIVE DATE: August 30, 2013, unless a later date is cited at the end of a section.

[1.4.1.5 NMAC - Rp, 1.4.1.5 NMAC, 08-30-13]

1.4.1.6 OBJECTIVE: Section 13-1-29 C NMSA 1978 states that, the purposes of the Procurement Code are to provide for the fair and equal treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity. The objective of this rule is to have the force and effect of law to implement, interpret or make statute specific as it applies to the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978 and the purposes stated therein.

[1.4.1.6 NMAC - Rp, 1.4.1.6 NMAC, 08-30-13]

1.4.1.7 DEFINITIONS:

- A. Most of the terms which appear in this rule are defined in the Procurement Code.
- B. In these rules and regulations the following definitions apply.

(1) "Anti-poverty program businesses" means 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.

(2) "Best obtainable price" means that price at which services or goods can be purchased which is most advantageous to the purchasing entity; best obtainable price can be found by obtaining quotes or other appropriate methods; where there is only one vendor available for such a purchase utilizing a direct purchase order in accordance with statute (such as an entity requiring dues, for example), the price would be the best obtainable price since it is the only possible price for that particular procurement.

(3) "Bidding time" means the period of time between the date the invitation to bid notice is published and the date and time set for receipt of bids.

(4) "Bidder" means one who submits a bid in response to an invitation for bid or submits a quote in response to a call for formal or informal quotes.

(5) "Central purchasing office" means that office within a state agency or a local public body responsible for the control of procurement of items of tangible personal property, services or construction. "Central purchasing office" includes the purchasing division of the general services department.

(6) "Chief information officer" means the administrative head of the department of information and technology.

(7) "Chief procurement officer" means that person within a state agency's or local public body's central purchasing office who is responsible for the control of procurement of items of tangible personal property, services or construction. "Chief procurement officer" includes the state purchasing agent.

(8) "Competitive sealed bid" means the response from a bidder to an invitation to bid (ITB).

(9) "Competitive sealed proposal" means the response from an offeror to a request for proposals (RFP).

(10) "Contract" means any written, binding agreement for the procurement of items of tangible personal property, services or construction. A purchase order alone can be a binding contract.

(11) "Information systems resources" means computer voice and data communications hardware and software including imaging systems, terminals, radio and communications networks and facilities as well as information systems services and professional services contracts required for the implementation, operation, maintenance or support of an executive branch state agency computer or communication system.

(12) "Invitation for bid (IFB)" means all documents, including those attached or incorporated by reference, used for soliciting competitive sealed bids. Also sometimes referred to as an invitation to bid (ITB).

(13) "Offeror" means one who submits a proposal in response to a request for proposals.

(14) "Request for proposals (RFP)" means all documents, including those attached or incorporated by reference, used for soliciting competitive sealed proposals.

(15) "Sole source" means tangible personal property, services or construction for which there is only one source and that source is unique and no other similar items of tangible personal property, services or construction can meet the intended purpose of the procurement.

[1.4.1.7 NMAC - Rp, 1.4.1.7 NMAC, 08-30-13]

1.4.1.8 **CENTRALIZATION OF PROCUREMENT ACTIVITY (1.4.1.8 - 1.4.1.13 NMAC):**

A. State purchasing agent. All procurement for state agencies shall be performed by the state purchasing agent except the following:

- (1) professional services;
- (2) small purchases having a value not exceeding one thousand five hundred dollars (\$1,500);
- (3) emergency procurements; and
- (4) the types of procurement specified in Subsection B of 1.4.1.2 NMAC.

B. Central purchasing offices. All procurement for state agencies excluded from the requirement of procurement through the state purchasing agent shall be performed by a central purchasing office designated by statute, the governing authority of that state agency or as otherwise provided in the Procurement Code.

C. Cooperative procurement. Nothing in this section should be interpreted as limiting the ability of state agencies to make procurements under existing contracts or enter into cooperative procurement agreements in accordance with 13-1-135 and 13-1-136 NMSA 1978.

[1.4.1.8 NMAC - Rp, 1.4.1.8 NMAC, 08-30-13]

1.4.1.9 INSPECTION OF PUBLIC RECORDS: The inspection of public records is governed by the Inspection of Public Records Act, 14-2-1 through 14-2-12 NMSA 1978. To the extent that any provision of this rule conflicts with the Inspection of Public Records Act, as interpreted by the courts of this state, that act shall control. Furthermore, no obligation to keep data confidential which is contained in this rule is intended to create any liability that would not otherwise exist under state law.

[1.4.1.9 NMAC - Rp, 1.4.1.9 NMAC, 08-30-13]

1.4.1.10 DOLLAR AMOUNTS: Whenever a dollar amount appears in this rule, such amount is exclusive of applicable gross receipts and local option taxes as the term is defined in Subsection Q of Section 7-9-3 NMSA 1978.
[1.4.1.10 NMAC - Rp, 1.4.1.10 NMAC, 08-30-13]

1.4.1.11 INDEMNIFICATION AND INSURANCE:

A. Tort liability. Except as provided for in the Tort Claims Act, 41-4-1 through 41-4-27 NMSA 1978, no contract governed by this rule shall contain any provision whereby a state agency agrees to indemnify or provide tort liability insurance for any contractor. The indemnification and insurance provisions of contracts provided for in the Tort Claims Act shall be approved in writing by GSD's risk management division before they become effective.

B. Other risks. No contract governed by this rule shall contain any provision whereby a state agency agrees to indemnify or provide a contractor with insurance for non-tort risks unless the provision has been approved in writing by GSD's risk management division.

C. Contract provisions void. Any indemnification or insurance provision in any contract executed in violation of this section shall be void and of no effect.

[1.4.1.11 NMAC - Rp, 1.4.1.11 NMAC, 08-30-13]

1.4.1.12 [RESERVED]

1.4.1.13 SEVERABILITY: If any provision of this rule, or any application thereof, to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application.

[1.4.1.13 NMAC - Rp, 1.4.1.13 NMAC, 08-30-13]

1.4.1.14 APPLICATION (COMPETITIVE SEALED BIDS; 1.4.1.14 -1.4.1.28 NMAC): The provisions of 1.4.1.14 through 1.4.1.28 NMAC apply to every procurement made by competitive sealed bids.

[1.4.1.14 NMAC - Rp, 1.4.1.14 NMAC, 08-30-13]

1.4.1.15 COMPETITIVE SEALED BIDS REQUIRED: All procurement shall be achieved by competitive sealed bids except procurement achieved pursuant to the following methods:

- A. competitive sealed proposals;
- B. small purchases;
- C. sole source procurement;
- D. emergency procurement;
- E. procurement under existing contracts; and
- F. purchases from anti-poverty program businesses.

[1.4.1.15 NMAC - Rp, 1.4.1.15 NMAC, 08-30-13]

1.4.1.16 INVITATION FOR BIDS ("IFB"):

A. General. The invitation for bids ("IFB"), also sometimes referred to as the invitation to bid (ITB), is used to initiate a competitive sealed bid procurement. The IFB shall include the following:

(1) the specifications for the services, construction or items of tangible personal property to be procured, except that professional services and a design and build project delivery system cannot be procured with an IFB pursuant to 13-1-111 NMSA 1978;

(2) all contractual terms and conditions applicable to the procurement including any requirements for complying with applicable preferences provided in law;

(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 IFB may be canceled and that any and all bids may be rejected in whole or in part when it is in the best interest of the state of New Mexico; and

(6) a notice that reads substantially as follows: The Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

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

C. Evaluation criteria. The IFB shall set forth the evaluation criteria that will be used to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those

criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable. No criteria may be used in bid evaluation that are not set forth in the IFB.

D. **Bid form.** The IFB shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall sign and submit along with all other necessary submissions. A bidder may submit a reasonable facsimile of the bid form. Oral, telephonic and telegraphic bids except as provided in this subsection are invalid and shall not be considered. Telegraphic or bids sent via FAX to a third party and delivered in a sealed envelope to the location where bids are to be received by the date and time shown in the bid, will be accepted for consideration.

E. **Bid samples and descriptive literature.**

(1) "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item.

(2) "Bid sample" means a sample furnished by a bidder that shows the characteristics of an item offered in the bid.

(3) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the item bid.

(4) Bid samples, when required, shall be furnished free of expense to the state and prior to the time set for the opening of bids. Samples not destroyed or mutilated in testing will be returned upon request by mail, express or freight, collect. Each sample must be labeled to clearly show the bid number and the bidder's name.

F. **Bidding time.** Bidding time is the period of time between the date of distribution of the IFB and the time and date set for receipt of bids. In each case bidding time shall be set to provide bidders a reasonable time to prepare their bids. In no case shall the bidding time be shorter than the time required for publication under 1.4.1.17 NMAC of this rule.

[1.4.1.16 NMAC - Rp, 1.4.1.16 NMAC, 08-30-13]

1.4.1.17 PUBLIC NOTICE INVITATION FOR BID: Publication. The IFB or notice thereof shall be published not less than ten calendar days prior to the date set for the opening of bids. The IFB or notice must be published once in at least three newspapers of general circulation in this state.

A. These requirements of publication are in addition to any other procedures that may be adopted by the state purchasing agent to notify prospective bidders that bids will be received, including but not limited to publication in trade journals, if available.

B. **Bidder lists.** The state purchasing agent shall send copies of the notice or IFB involving the expenditure of more than sixty thousand dollars (\$60,000) to those businesses which have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and which have paid any required fees. (13-1-104 NMSA 1978). Reference is also given to 1.4.1.48 NMAC of this rule.

C. **Public availability.** A copy of the IFB shall be made available for public inspection at the office of the state purchasing agent.

[1.4.1.17 NMAC - Rp, 1.4.1.17 NMAC, 08-30-13]

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

[1.4.1.18 NMAC - Rp, 1.4.1.18 NMAC, 08-30-13]

1.4.1.19 AMENDMENTS TO THE INVITATION FOR BIDS:

A. **Form.** An amendment to the IFB shall be identified as such and shall require that bidders acknowledge its receipt. The amendment shall refer to the portions of the IFB it amends.

B. **Distribution.** Amendments shall be sent to all prospective bidders known to have received the IFB.

C. **Timeliness.** Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone or by other electronic means and confirmed in the amendment.

D. **Use of amendments.** Amendments should be used to:

(1) make any changes in the IFB such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(2) correct defects or ambiguities; or

(3) furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

[1.4.1.19 NMAC - Rp, 1.4.1.19 NMAC, 08-30-13]

1.4.1.20 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS:

- A. Procedure. A bid 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 IFB as the place where bids are to be received.
- B. Disposition of bid security. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.
- C. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

[1.4.1.20 NMAC - Rp, 1.4.1.20 NMAC, 08-30-13]

1.4.1.21 LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS:

- A. Definition. Any bid or any withdrawal or modification of a bid received after the time and date for opening of bids at the place designated for opening is late.
- B. General rule. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of state personnel directly serving the procurement activity.
- C. Records. All documents relating to late bids, late modifications, or late withdrawals shall be made a part of the appropriate procurement file.

[1.4.1.21 NMAC - Rp, 1.4.1.21 NMAC, 08-30-13]

1.4.1.22 BID OPENING:

- A. Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening.
- B. No bids received. Except as provided in 1.4.1.68 through 1.4.1.72 NMAC of this rule, if no bids are received or if all bids received are rejected in accordance with the provisions of 1.4.1.68 through 1.4.1.72 NMAC of this rule, a new IFB shall be issued. If upon re-bidding with no change in specifications from the first IFB, the bids received are unacceptable, or if no bids are secured, the state purchasing agent may purchase (i.e., as opposed to procure) the items of tangible personal property, construction or services in the open market at the best obtainable price.
- C. Opening and recording. Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The name of each bidder, the amount of each bid and each bid item, if appropriate, the names and addresses of the required witnesses, and such other relevant information as may be specified by the state purchasing agent shall be recorded. The record shall be open for public inspection. Each bid, except those portions for which a bidder has made a written request for confidentiality, shall also be open to public inspection. Any data, which a bidder believes should be kept confidential shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

[1.4.1.22 NMAC - Rp, 1.4.1.22 NMAC, 08-30-13]

1.4.1.23 MISTAKES IN BIDS:

- A. Consideration for award. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in 1.4.1.14 through 1.4.1.28 NMAC of this rule.
- B. General principles. Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent authorized in 1.4.1.14 through 1.4.1.28 NMAC of this rule.
- C. Mistakes discovered before opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in 1.4.1.20 NMAC of this rule.
- D. Confirmation of bid. When the procurement officer knows or has reason to conclude that a mistake has been made in the low bid, the procurement officer should request the low bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the low bid or a bid unreasonably lower than the other bids submitted. If the low bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Subsection E of this section are met.
- E. Mistakes discovered after opening. This subsection sets forth procedures to be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening.

(1) Technical irregularities. Technical irregularities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is,

when there is no effect on price, quality or quantity. The procurement officer may waive such irregularities or allow the low bidder to correct them if either is in the best interest of the state. Examples include the failure of the low bidder to:

(a) return the number of signed bids required by the IFB;

(b) sign the bid, but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound; or

(c) acknowledge receipt of an amendment to the IFB, but only if:

(i) it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms; or

(ii) the amendment involved had no effect on price, quality or quantity.

(2) Mistakes where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident on the face of a bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of a bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. It is emphasized that mistakes in unit prices cannot be corrected.

(3) Mistakes where intended correct bid is not evident. A low bidder alleging a material mistake of fact which makes the bid non-responsive may be permitted to withdraw the bid if:

(a) a mistake is clearly evident on the face of the bid document but the intended correct bid is not; or

(b) the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(4) Written determination. When a bid is corrected or withdrawn, or a correction or withdrawal is denied, the procurement officer shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

[1.4.1.23 NMAC - Rp, 1.4.1.23 NMAC, 08-30-13]

1.4.1.24 BID EVALUATION AND AWARD:

A. General. A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bid. No bid shall be evaluated for any requirement or criterion that is not disclosed in the IFB. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or local option tax but that the contracting agency shall be required to pay the tax including any increase in the tax becoming effective after the contract is entered into. The tax shall be shown as a separate amount on each billing or request for payment made under the contract.

B. Product acceptability. The IFB shall set forth all evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any or all of the following prior to award:

(1) inspection or testing of a product for such characteristics as quality or workmanship;

(2) examination of such elements as appearance, finish, taste or feel; or

(3) other examinations to determine whether it conforms with other purchase description requirements.

C. Purpose of acceptability evaluation. An acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another's but only to determine that a bidder's offering is acceptable as set forth in the IFB. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive.

D. Brand-name or equal specification. Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a 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. When bidding an "or equal" the burden of persuasion is on the supplier or manufacturer who has not been specified to convince the procurement officer that their product is, in fact, equal to the one specified. The procurement officer is given the responsibility and judgement for making a final determination on whether a proposed substitution is an "or equal".

E. Determination of lowest bidder. Following determination of product acceptability as set forth in Subsections B, C and D of this section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, discounts, transportation costs and ownership or life-cycle formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the state has available concerning future use.

(1) Prompt payment discounts. Prompt payment discounts shall not be considered in computing the low bid. Such discounts may be considered after award of the contract.

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

(3) Quantity discounts. Quantity discounts shall be included in the price of an item. Such discounts may not be considered where set out separately unless the IFB so specifies.

(4) Transportation costs. Transportation costs shall be considered in computing the low bid. Such costs may be computed into the bid price or be listed as a separate item.

(5) Total or life-cycle costs. Award may be determined by total or life-cycle costing if so indicated in the IFB. Life-cycle cost evaluation may take into account operative, maintenance, and money costs, other costs of ownership and usage and resale or residual value, in addition to acquisition price, in determining the lowest bid cost over the period the item will be used.

(6) Energy efficiency. Award may be determined by an evaluation consisting of acquisition price plus the cost of energy consumed over a projected period of use.

F. Restrictions. Nothing in 1.4.1.24 NMAC of this rule shall be deemed to permit contract award to a bidder submitting a higher quality item than designated in the IFB unless the bidder is also the lowest bidder as determined under Subsection E of this section. Further, except as provided in this subsection, 1.4.1.24 NMAC of this rule does not permit negotiations with any bidder. If the lowest responsive bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest responsible bidder may negotiate with the purchaser (i.e., this exception applies only to purchases and does not apply to procurements generally) for a lower total bid 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 budgeted project funds.

G. Documentation of award. Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

H. Publicizing awards. Written notice of award shall be sent to the successful bidder. Notice of award shall also be posted at the state purchasing agent's office.

[1.4.1.24 NMAC - Rn 1.4.1.24 NMAC, 08-30-13]

1.4.1.25 STATUTORY PREFERENCES: Statutory preferences to be applied in determining low bidder or low offeror. New Mexico law provides certain statutory preferences to resident businesses, resident veteran businesses, resident contractors and resident veteran contractors as well as for recycled content goods (13-1-21 and 13-1-22 NMSA 1978). These preferences must be applied in regard to invitations for bids and requests for proposals in accordance with statute in determining the lowest bidder or offeror.

[1.4.1.25 NMAC - Rp, 1.4.1.25 NMAC, 08-30-13]

1.4.1.26 IDENTICAL LOW BIDS:

A. Definition. Identical low bids are low responsive bids, from responsible bidders, which are identical in price after the application of the preferences referred to in 1.4.1.25 NMAC of this rule and which meet all the requirements and criteria set forth in the IFB.

B. Award. When two or more identical low bids are received, the state purchasing agent may:

(1) award pursuant to the multiple source award provisions of 13-1-153 and 13-1-154 NMSA 1978;

(2) award to a resident business or a resident veteran business or a resident contractor or a resident veteran contractor if the identical low bids are submitted by a resident business or a resident veteran business or a resident contractor or a resident veteran contractor and a nonresident business or nonresident contractor;

(3) award to a bidder offering recycled content goods if the identical low bids are for recycled content goods and virgin goods;

(4) award by lottery to one of the identical low bidders; or

(5) reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property.

[1.4.1.26 NMAC - Rp, 1.4.1.26 NMAC, 08-30-13]

1.4.1.27 MULTI-STEP SEALED BIDS:

A. General. Multi-step bidding is a variant of the competitive sealed bidding method. This method may be utilized when the state purchasing agent or a central purchasing office makes a determination that it is impractical initially to prepare specifications to support an award based on price, or that specifications are inadequate or are too general to permit full and free competition without technical evaluation and discussion.

B. Phased process. Multi-step bidding is a phased process which combines elements of both the competitive sealed proposal method, seeking necessary information or unpriced technical offers in the initial phase; and regular competitive sealed bidding, inviting bidders who submitted technically acceptable offers in the initial phase, to submit competitive sealed price bids on the technical offers in the final phase. The contract shall be awarded to the lowest responsible bidder. If time is a factor, the state purchasing agent or a central purchasing office may require offerors to submit a separate sealed bid during the initial phase to be opened after the technical evaluation.

C. Public notice. Whenever multi-step sealed bids are used, public notice for the first phase shall be given in accordance with 1.4.1.17 NMAC of this rule. Public notice is not required for the second phase.
[1.4.1.27 NMAC - Rp, 1.4.1.27 NMAC, 08-30-13]

1.4.1.28 PAYMENTS FOR PURCHASES: Contract clause. All contracts resulting from an invitation for bids shall contain a clause allowing for late payment charges against the state agency in the amount and under the conditions set forth in 13-1-158 NMSA 1978.
[1.4.1.28 NMAC - Rp, 1.4.1.28 NMAC, 08-30-13]

1.4.1.29 APPLICATION (COMPETITIVE SEALED PROPOSALS; 1.4.1.29-1.4.1.47 NMAC):

A. General. Except as provided in Subsections B and C of this section, the provisions of 1.4.1.29 through 1.4.1.47 NMAC of this rule apply to every procurement made by competitive sealed proposals.

B. Architects, engineers, landscape architects and surveyors. The provisions of 1.4.1.29 through 1.4.1.47 NMAC of this rule do not apply to the procurement of professional services of architects, engineers, landscape architects and surveyors for state public works projects or local public works projects. Except that when procuring such professional services for state public works projects or local public works projects state agencies and local public bodies shall comply with 13-1-120 through 13-1-124 NMSA 1978, competitive sealed qualifications-based proposals.

C. Procurement of professional services by state agencies with rulemaking authority. A state agency with rule making authority may adopt its own regulations for the procurement of professional services by competitive sealed proposals under the following conditions:

- (1) the state agency must receive prior written authorization from the GSD secretary;
- (2) the state agency's proposed regulations must provide that RFPs or notices thereof having a value exceeding sixty thousand dollars (\$60,000) will be provided to the state purchasing agent for distribution to prospective offerors who have registered with the state purchasing agent's office in accordance with the terms of Subsection B of 1.4.1.17 NMAC and Subsection A of 1.4.1.32 NMAC of this rule.

D. "Professional services" are defined in 13-1-76 NMSA 1978. The section of statute acknowledges the difficulty of any attempt made to recognize and list each and every service that could conceivably fall within the definition of "professional services". Instead, the statute provides in relevant part that "...other persons or businesses providing similar professional services to those listed may be designated as such by a determination issued by the state purchasing agent or a central purchasing office." In instances where "...other persons or businesses providing similar professional services..." as cited in 13-1-76, NMSA 1978, is not clearly defined, state agencies shall submit a written request to the state purchasing agent for issuance of a determination and a finding that the service is to be designated as a professional service. State agencies shall not make such a determination independent of the state purchasing agent.
[1.4.1.29 NMAC - Rp, 1.4.1.29 NMAC, 08-30-13]

1.4.1.30 GENERAL DISCUSSION:

A. Use of competitive sealed proposals. When a state agency procures professional services that are not related to a design and build project delivery system in accordance with 13-1-119.1 NMSA 1978, or when the state purchasing agent or a designee makes a determination that the use of competitive sealed bids is either not practicable or not advantageous to the state, a procurement shall be effected by competitive sealed proposals. Note well: 13-1-111 NMSA 1978 only authorizes state agencies other than the state purchasing agent to procure professional services by means of competitive sealed proposals. 13-1-111 NMSA 1978 does not authorize state agencies to avoid centralized purchasing through the state purchasing agent by issuing RFPs for items of tangible personal property, or nonprofessional services.

B. Definitions. The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" denotes a judgmental assessment of what is in the state's best interest. The use of competitive sealed bids may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the state's best interest.

C. Proposals offer flexibility. The key element in determining advantageousness is the need for flexibility. The competitive sealed proposal method differs from the competitive sealed bid method in two important ways:

- (1) it permits discussions with competing offerors and changes in their proposals including price; and;
- (2) it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of a contract.

D. Determinations by category. The state purchasing agent may make determinations by category of services or items of tangible personal property that it is either not practicable or not advantageous to procure specified types of service or items of tangible personal property by competitive sealed bids in which case competitive sealed proposals shall be utilized. The state purchasing agent may modify or revoke such determinations at any time.
[1.4.1.30 NMAC - Rp, 1.4.1.30 NMAC, 08-30-13]

1.4.1.31 REQUEST FOR PROPOSALS ("RFP"):

- A. **Initiation.** The request for proposals ("RFP") is used to initiate a competitive sealed proposal procurement. All state agencies shall follow published guidelines and procedures issued by the state purchasing agent from development stage through award of RFP-based procurements. 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;
 - (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 canceled and that any and all proposals may be rejected in whole or in part when it is in the best interest of the state of New Mexico; and
 - (9) a statement of how proposed costs should be submitted;
 - (10) a notice that reads substantially as follows: The Procurement Code, 13-1-28 through 13-1-199 NMSA 1978, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.
- B. **Incorporation by reference.** The RFP may incorporate documents by reference, provided that the RFP specifies where such documents can be obtained.
- C. **Form of proposal.** The manner in which proposals are to be submitted, including any forms for that purpose, should be designated in the RFP.
- D. **Proposal preparation time.** 30 calendar days between the date of issue and the proposal due date is the recommended minimum proposal preparation time. A longer preparation time may be required for complex procurements or for procurements that require substantial offeror resources to prepare an acceptable proposal.
[1.4.1.31 NMAC - Rp, 1.4.1.31 NMAC, 08-30-13]

1.4.1.32 PUBLIC NOTICE REQUEST FOR PROPOSAL:

- A. **Procurements by the state purchasing agent.** The state purchasing agent shall give public notice of the RFP in the same manner as provided in 1.4.1.17 NMAC of this rule. However, an RFP or a notice shall be published not less than 20 days prior to the date set for receipt of proposals unless a shorter time frame is requested and approval granted by the state purchasing agent.
- B. **Procurements of all tangible personal property or services.** The procurement manager shall deliver to the state purchasing agent or designee the following listed items no later than 15 calendar days prior to the proposed issue date:
- (1) a one-page notice suitable for distribution that contains the procurement title, purpose statement, the issue date, the name of the agency conducting the procurement, the place where a copy of the RFP document may be obtained, the date and location of the pre-proposal conference, if one is held, the name, address and phone number of the procurement manager and the deadline for submission of proposals;
 - (2) a completed state of New Mexico purchase document;
 - (3) a list containing the names and addresses of suggested sources, if any;
 - (4) a copy of the complete RFP document; for large or complex procurements, the draft RFP document shall be delivered to the state purchasing agent for review at least thirty days prior to the proposed issue date.
- C. **Procurements of professional services by other central purchasing offices.** When procuring professional services, central purchasing offices other than the state purchasing agent shall provide the following notice:
- (1) the RFP or a notice thereof shall be published not less than 10 calendar days prior to the date set for the receipt of proposals; it is recommended, however, that the time period between the published date and the date set for receipt of proposals be no less than 20 days; the RFP 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; if there is no newspaper of general circulation in the area, such other notice may be given as is commercially reasonable; and
 - (2) a copy of the RFP and notice shall be delivered to the state purchasing agent not less than 15 calendar days prior to the date set for the issuance; the state purchasing agent shall distribute the RFP or notice to prospective offerors who have registered with the state purchasing agent's office in accordance with the terms of Subsection B of 1.4.1.17 NMAC of this rule and Subsection A of this section; and
 - (3) a copy of the RFP shall be made available for public inspection at the central purchasing office.
- D. **Additional notice.** The requirements of Subsections A, B and C of this section are in addition to any other procedures which may be adopted by the state purchasing agent or central purchasing offices to notify prospective offerors that proposals will be received, including but not limited to publication in professional journals, if available.
[1.4.1.32 NMAC - Rn 1.4.1.32 NMAC, 08-30-13]

1.4.1.33 PRE-PROPOSAL CONFERENCES: Pre-proposal conferences may be conducted in accordance with 1.4.1.18 NMAC of this rule. Any such conference should be held prior to submission of initial proposals.
[1.4.1.33 NMAC - Rp, 1.4.1.33 NMAC, 08-30-13]

1.4.1.34 AMENDMENTS TO THE REQUEST FOR PROPOSALS:

A. Prior to submission of proposals. Prior to submission of proposals, amendments to the RFP may be made in accordance with 1.4.1.19 NMAC of this rule.

B. After submission of proposals. 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 canceled in accordance with 1.4.1.68 through 1.4.1.72 NMAC of this rule, and a new RFP issued.

[1.4.1.34 NMAC - Rp, 1.4.1.34 NMAC, 08-30-13]

1.4.1.35 MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the established due date in accordance with 1.4.1.20 NMAC of this rule. 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-listed offerors.

[1.4.1.35 NMAC - Rp, 1.4.1.35 NMAC, 08-30-13]

1.4.1.36 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. (See 1.4.1.35 NMAC of this rule for the definition of "established due date.") They may be considered only in accordance with 1.4.1.21 NMAC of this rule.

[1.4.1.36 NMAC - Rp, 1.4.1.36 NMAC, 08-30-13]

1.4.1.37 RECEIPT AND OPENING OF PROPOSALS:

A. Receipt. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. (See 1.4.1.35 of this rule for the definition of "established due date.")

B. Opening. Proposals shall not be opened publicly and shall not be open to public inspection until after 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 nonconfidential portion of the proposal.

[1.4.1.37 NMAC - Rp, 1.4.1.37 NMAC, 08-30-13]

1.4.1.38 EVALUATION OF PROPOSALS:

A. Evaluation factors: The evaluation shall be based on the evaluation factors and the relative weights set forth in the RFP. Numerical rating systems are required for requests for proposals-based procurements.

B. Evaluation committee. The state agency management shall appoint an evaluation committee prior to the due date for receipt of proposals. The size of the committee should be manageable and include both user and technical support representatives.

C. Classified proposals. For the purpose of conducting discussions under 1.4.1.39 NMAC of this rule, proposals shall be initially classified as:

- (1) responsive;
- (2) potentially responsive, that is, reasonably susceptible of being made responsive; or
- (3) non-responsive.

D. Disqualification. Non-responsive proposals are disqualified and eliminated from further consideration. A written determination in the form of a letter must be sent promptly to the disqualified offeror setting forth the grounds for the disqualification, and made a part of procurement file.

[1.4.1.38 NMAC - Rp, 1.4.1.38 NMAC, 08-30-13]

1.4.1.39 PROPOSAL DISCUSSIONS AND NEGOTIATIONS WITH INDIVIDUAL OFFERORS:

A. Discussions authorized. Discussions may be conducted with responsible offerors who submit acceptable or responsive, potentially acceptable or potentially responsive proposals.

B. Purposes of discussions. Discussions are held to clarify technical or other aspects of the proposals.

C. Conduct of discussions. If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended to incorporate such clarification or change. Any

substantial oral clarification of a proposal shall be reduced to writing by the offeror. Proposals may be accepted and evaluated without such discussion. This is not an opportunity for the offerors to amend the substance of their proposals.

D. Short list. All responsible offerors who submit acceptable proposals are eligible for the short list. If numerous acceptable proposals have been submitted, however, the procurement officer or procurement manager may rank the proposals and select the highest ranked proposals for the short list. Those responsible offerors who are selected for the short list are the "short-listed offerors" or "finalist offerors".

E. Competitive negotiations. Competitive negotiations may be held among the short-listed offerors to:

- (1) promote understanding of a state agency's requirements and short-listed offerors' proposal; and
- (2) facilitate arriving at a contract that will be most advantageous to a state agency taking into consideration the evaluation factors set forth in the RFP;
- (3) except for circumstances and situations otherwise approved by the state purchasing agent, negotiations of the relevant terms and conditions as well as any other important factors in an RFP and proposed contract are negotiated prior to award of a contract, not after award.

F. Conduct of competitive negotiations. Short-listed offerors shall be accorded fair and equal treatment with respect to any negotiations and revisions of proposals. The procurement officer should establish procedures and schedules for conducting negotiations. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the short-listed offeror.

[1.4.1.39 NMAC - Rp, 1.4.1.39 NMAC, 08-30-13]

1.4.1.40 DISCLOSURE: The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process and prior to award. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.40 NMAC - Rp, 1.4.1.40 NMAC, 08-30-13]

1.4.1.41 BEST AND FINAL OFFERS: Best and final offers in a request for proposals are strongly discouraged. An offeror's best offer should be included in that offeror's original proposal. No discussion or changes to that offer should be allowed prior to selection of the offeror as the successful offeror unless negotiations are undertaken pursuant to 1.4.1.39 NMAC of this rule. After such selection of a successful offeror or offerors (for a multiple award procurement) and before final award, an agency may negotiate with the selected successful offeror(s) for the best possible terms for the state but such negotiations shall not change the successful offeror's or offerors' (for a multiple award procurement) proposal(s) to the detriment of the state. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.41 NMAC - Rp, 1.4.1.41 NMAC, 08-30-13]

1.4.1.42 MISTAKES IN PROPOSALS:

A. Modification or withdrawal of proposals. Proposals may be modified or withdrawn as provided in 1.4.1.35 NMAC of this rule.

B. Mistakes discovered after receipt of proposals. This subsection sets forth procedures to be applied in several situations in which mistakes in proposals are discovered after receipt of proposals.

(1) Confirmation of proposal. When the procurement officer or procurement manager knows or has reason to conclude before award that a mistake has been made, the procurement officer or procurement manager should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in Subsection C of this section are met.

(2) During negotiations. If best and final offers are requested in the RFP, between the period of selecting short-listed/finalist offerors and the date set for best and final offers, any short-listed or finalist offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

C. Technical irregularities. Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the procurement officer or procurement manager may waive such irregularities or allow an offeror to correct them if either is in the best interest of the state. Examples include, but are not limited to, the failure of an offeror to:

- (1) return the number of signed proposals required by the RFP;
- (2) sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the offeror's intent to be bound; or
- (3) acknowledge receipt of an amendment to the RFP, but only if:
 - (a) it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or

(b) the amendment involved had no effect on price, quality or quantity.

D. Correction of mistakes. If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident to the evaluation committee members or the procurement officer or the procurement manager on the face of the proposal, in which event the proposal may not be withdrawn.

E. Withdrawal of proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if:

(1) the mistake is clearly evident to the evaluation committee members or the procurement officer or the procurement manager on the face of the proposal but the intended correct offer of the offeror is not; or

(2) the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

F. Determination required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied under Subsections C through E of this section, the procurement officer or procurement manager shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

[1.4.1.42 NMAC - Rp, 1.4.1.42 NMAC, 08-30-13]

1.4.1.43 AWARD: PROFESSIONAL SERVICES:

A. Procedure. An award shall be made to the responsible offeror whose proposal is most advantageous to a state agency, taking into consideration the evaluation factors set forth in the RFP. The procurement officer shall make a written determination showing the basis on which an award was found to be most advantageous to a state agency based on the factors set forth in the RFP. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

B. Publicizing awards. The procurement manager or procurement officer shall promptly provide all offerors who submitted responsive proposals written notice of the award. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

C. Publicizing awards. The procurement manager or procurement officer shall promptly provide all offerors who submitted responsive proposals written notice of the award which notice shall be sent via certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

[1.4.1.43 NMAC - Rp, 1.4.1.43 NMAC, 08-30-13]

1.4.1.44 AWARD: ALL TANGIBLE PERSONAL PROPERTY OR SERVICES: (INCLUDES SOFTWARE, HARDWARE, NON-PROFESSIONAL SERVICES, etc):

A. Procedure. The award shall be made by the state purchasing agent or designee to the responsible offeror whose proposal is most advantageous to the state agency, taking into consideration the evaluation factors set forth in the RFP. The procurement manager shall make a written determination in the form of an evaluation committee report showing the basis on which the recommended award was found to be most advantageous to the state agency based on the factors set forth in the RFP.

B. Publicizing awards. The procurement manager shall promptly provide all offerors who submitted responsive proposals written notice of the award. The written notice shall be sent via certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

[1.4.1.44 NMAC - Rp, 1.4.1.44 NMAC, 08-30-13]

1.4.1.45 PUBLIC INSPECTION:

A. General. After award, any written determinations made pursuant to these rules, the evaluation committee report and each proposal, except those portions for which the offeror has made a written request for confidentiality, shall be open to public inspection. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed may not be designated as confidential information. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

B. Confidential data. If a request is received for disclosure of data, for which an offeror has made a written request for confidentiality, the state purchasing agent or central purchasing office shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. If it is determined that an offeror's requested confidential data should be disclosed, that offeror will receive reasonable notice in order to afford the offeror the opportunity to take legal action to prevent the disclosure. Unless the offeror takes legal action to prevent the disclosure, the data will be so disclosed. After award the proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

[1.4.1.45 NMAC - Rp, 1.4.1.45 NMAC, 08-30-13]

1.4.1.46 PAYMENTS FOR PURCHASES: Contract clause. All contracts resulting from a request for proposals shall contain a clause allowing for late payment charges against the state agency in the amount and under the conditions set forth in 13-1-158 NMSA 1978.

[1.4.1.46 NMAC - Rp, 1.4.1.46 NMAC, 08-30-13]

1.4.1.47 DFA CONTRACT REVIEW: All contracts for professional services with state agencies shall be reviewed as to budget requirements by the department of finance and administration, if such review is required by DFA or subsequent DFA rules.

[1.4.1.47 NMAC - Rp, 1.4.1.47 NMAC, 08-30-13]

1.4.1.48 APPLICATION (SMALL PURCHASES; 1.4.1.48 - 1.4.1.52 NMAC): The provisions of 1.4.1.48 through 1.4.1.52 NMAC of this rule apply to the procurement of nonprofessional services, construction or items of tangible personal property having a value not exceeding sixty thousand dollars (\$60,000) and to the procurement of professional services having a value not exceeding sixty thousand dollars (\$60,000) the use of a statewide price agreement, an existing contract or the methods of procurement set forth in 1.4.1.50 through 1.4.1.52 NMAC of this rule provide alternatives to the competitive sealed bid and competitive sealed proposal methods of procurement. If an existing statewide price agreement, an existing contract or, the procurement methods set forth in 1.4.1.50 through 1.4.1.52 NMAC of this rule are not used, the competitive sealed bid or competitive sealed proposal methods shall apply.

[1.4.1.48 NMAC - Rp, 1.4.1.48 NMAC, 08-30-13]

1.4.1.49 DIVISION OF REQUIREMENTS: Procurement requirements shall not be artificially divided so as to constitute a small purchase under 1.4.1.48 through 1.4.1.52 NMAC of this rule.

[1.4.1.49 NMAC - Rp, 1.4.1.49 NMAC, 08-30-13]

1.4.1.50 SMALL PURCHASES OF \$20,000 OR LESS: A state agency may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) by issuing a direct purchase order to a contractor based upon the best obtainable price and in accordance with any procedures or processes set forth by the state purchasing agent.

[1.4.1.50 NMAC - Rp, 1.4.1.50 NMAC, 08-30-13]

1.4.1.51 SMALL PURCHASES OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:

A. Quotation to be obtained. Insofar as it is practical for small purchases of nonprofessional services, construction or items of tangible personal property having a value exceeding twenty thousand dollars (\$20,000) but not exceeding sixty thousand dollars (\$60,000), and in accordance with any procedures or processes set forth by the state purchasing agent, no fewer than three businesses shall be solicited via written requests containing the specifications for the procurement to submit written quotations that are recorded and placed in the procurement file. If three written quotes cannot be obtained, the agency shall document the reasons and include the document in the procurement file. Such notations as "does not carry" or "did not return my phone call" do not qualify as a valid quotation. If the lowest quotation is not acceptable, the central purchasing office must issue a written determination as to the reasons for such a decision. These reasons must not be arbitrary or capricious. The written determination becomes a part of the procurement file.

B. Disclosure. Prior to award, the contents of any response to a quotation shall not be disclosed to any other business from which the same request for quotation is also being solicited. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

C. Award. Award shall be made to the business offering the lowest acceptable quotation.

D. Records. The names of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.

[1.4.1.51 NMAC - Rp, 1.4.1.51 NMAC, 08-30-13]

1.4.1.52 SMALL PURCHASES OF PROFESSIONAL SERVICES:

A. Application. A central purchasing office may procure professional services having a value not to exceed sixty thousand dollars (\$60,000) except for the services of architects, engineers, landscape architects, or surveyors for state public works projects, as that term is defined in 13-1-91 NMSA 1978, in accordance with Subsections B, C, and D of this section and 2.40.2 through 2.40.17 NMAC.

B. Examination of offeror list. Before contacting any business, a central purchasing office is encouraged to examine the state purchasing agent's current list of potential offerors, if any. Central purchasing offices are encouraged to contact at least three businesses for written offers before selecting a contractor.

C. **Negotiations.** A central purchasing office shall negotiate a contract for the required services at a fair and reasonable price to the state agency.

D. **Disclosure.** If more than one business is contacted, the contents of the written or oral offer of one business shall not be disclosed to another business until award is made. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.52 NMAC - Rp, 1.4.1.52 NMAC, 08-30-13]

1.4.1.53 APPLICATION (SOLE SOURCE PROCUREMENTS, 1.4.1.53 - 1.4.1.57 NMAC): The provisions of 1.4.1.53 through 1.4.1.57 NMAC of this rule apply to all sole source procurements unless emergency conditions exist as defined in 1.4.1.59 NMAC of this rule.

[1.4.1.53 NMAC - Rp, 1.4.1.53 NMAC, 08-30-13]

1.4.1.54 SOLE SOURCE PROCUREMENT OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:

A. **Conditions for use.** 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, employing due diligence, determines, in writing, that:

- (1) there is only one source for the required service, construction or item of tangible personal property;
- (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and
- (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

B. **Request by using agency.** Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need. The written explanation shall be made upon a form provided by the state purchasing agent and available on-line.

C. **Posting.** Prior to the award of a sole source procurement contract, the state purchasing agent or central purchasing office shall:

- (1) provide the information set forth in statute and listed upon the form made available by the state purchasing agent on the state purchasing agent's website to the department of information technology for posting on the sunshine portal; and
- (2) forward the same information to the legislative finance committee.

D. A local public body central purchasing office, prior to award of a sole source contract, shall post the information required by statute on the local public body website, if one exists.

E. **Negotiations.** 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.

F. **Notice; protest.** At least 30 days before a sole source contract is awarded, the state purchasing agent, a central purchasing office, or a designee of either shall post notice of the intent to award a sole source contract on its website. If a central purchasing office does not maintain a website, it may post the notice on the state purchasing agent's website. Any qualified potential contractor who was not awarded a sole source contract may protest to the state purchasing agent or a central purchasing office. The protest shall be submitted:

- (1) in writing; and
- (2) within 15 calendar days of the notice of intent to award a contract being posted by the state purchasing agent or a central purchasing office.

G. **Specifications.** The state purchasing agent or a central purchasing office shall not circumvent the sole source request and posting and award process by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.

[1.4.1.54 NMAC - Rp, 1.4.1.54 NMAC, 08-30-13]

1.4.1.55 [RESERVED]

1.4.1.56 [RESERVED]

1.4.1.57 RECORDS OF SOLE SOURCE PROCUREMENTS: The state purchasing agent or central purchasing office shall maintain records of sole source procurements for a minimum of three years. The party responsible for the procurement must retain the records. Posting such procurements on the state purchasing agent's website does not remove the central purchasing office's responsibility to maintain these records if the central purchasing office was responsible for the procurement. The record of each such procurement shall be a public record and shall contain:

- A. the contractor's name and address;

- B. the amount and term of the contract;
 - C. a listing of the services, construction, or items of tangible personal property procured under the contract; and
 - D. the justification for the procurement method which shall include any written determinations and written approvals required by any provision of 1.4.1.53 through 1.4.1.57 NMAC of this rule.
- [1.4.1.57 NMAC - Rp, 1.4.1.57 NMAC, 08-30-13]

1.4.1.58 APPLICATION (EMERGENCY PROCUREMENTS, 1.4.1.58 - 1.4.1.64 NMAC): The provisions of 1.4.1.58 through 1.4.1.64 NMAC of this rule apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

[1.4.1.58 NMAC - Rp, 1.4.1.58 NMAC, 08-30-13]

1.4.1.59 DEFINITION OF EMERGENCY CONDITIONS: An emergency condition is a situation which creates a threat to public health, welfare, safety or property such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. 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:

- A. the functioning of government;
- B. the preservation or protection of property; or
- C. the health or safety of any person.

[1.4.1.59 NMAC - Rp, 1.4.1.59 NMAC, 08-30-13]

1.4.1.60 SCOPE OF EMERGENCY PROCUREMENTS: Emergency procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency. Such procurement shall not include the purchase or lease-purchase of heavy road equipment.

[1.4.1.60 NMAC - Rp, 1.4.1.60 NMAC, 08-30-13]

1.4.1.61 AUTHORITY TO MAKE EMERGENCY PROCUREMENTS: The state purchasing agent or a central purchasing office, employing due diligence, may make emergency procurements when an emergency condition arises; provided that emergency procurements shall be made with such competition as is practicable under the circumstances.

[1.4.1.61 NMAC - Rp, 1.4.1.61 NMAC, 08-30-13]

1.4.1.62 PROCEDURE: The procedure used shall be selected to assure that the required services, construction, or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

[1.4.1.62 NMAC - Rp, 1.4.1.62 NMAC, 08-30-13]

1.4.1.63 WRITTEN DETERMINATION AND POSTING REQUIRED: A written determination of the basis for the emergency procurement shall be made containing the information set forth in statute and listed on the form issued by the state purchasing agent and available on the state purchasing agent's website. Within three business days of awarding an emergency procurement, the awarding central purchasing office within a state agency shall:

- (1) provide the information required by statute to the department of information technology for posting on the sunshine portal; and
- (2) forward the same information to the legislative finance committee.

[1.4.1.63 NMAC - Rp, 1.4.1.63 NMAC, 08-30-13]

1.4.1.64 RECORDS OF EMERGENCY PROCUREMENTS: The state purchasing agent or central purchasing office shall maintain records of emergency procurements for a minimum of three years. The party responsible for the procurement must retain the records. Posting such procurements on the state purchasing agent's website does not remove the central purchasing office's responsibility to maintain these records if the central purchasing office was responsible for the procurement. The record of each such procurement shall be a public record and shall contain:

- A. the contractor's name and address;
- B. the amount and term of the contract;
- C. a listing of the services, construction, or items of tangible personal property procured under the contract; and
- D. the justification for the procurement method.

[1.4.1.64 NMAC - Rp, 1.4.1.64 NMAC, 08-30-13]

1.4.1.65 PROCUREMENT UNDER EXISTING CONTRACTS AUTHORIZED: The state purchasing agent or a central purchasing office may contract for services, professional services, construction, or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:

A. at a price equal to or less than the contractor's current federal supply contract (GSA), providing the contractor has indicated in writing a willingness to extend the contract's pricing, terms and conditions to the state agency and the purchase order adequately identifies the contract relied upon; or

B. with a business which has a current 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:

(1) the total quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and

(2) the purchase order adequately identifies the price agreement relied upon;

C. other than Subsection A and B of this section and cooperative procurements as authorized by statute (and described in 13-1-135 NMSA 1978) or the state procurement card program (described in 6-5-9.1 NMSA 1978), no other procurement under existing contracts is authorized; no central purchasing office of a state agency or any other governmental entity may utilize a contract entered into by a different state agency or other governmental entity if not involved in the procurement itself (i.e., so-called "piggybacking" of contracts; the practice of "piggybacking" is not allowed under the Procurement Code); purchases under contracts developed through cooperative procurement authorized under 13-1-135 NMSA 1978 or contracts which qualify under 13-1-129 NMSA 1978 is permitted and does not constitute "piggybacking."

[1.4.1.65 NMAC - Rp, 1.4.1.65 NMAC, 08-30-13]

1.4.1.66 LIMITATION ON SUBSECTION A OF 1.4.1.65 OF THIS RULE RELATING TO GSA

CONTRACTS: It should be understood, the state is not authorized to utilize a GSA contract per se. It is imperative, therefore, that the contractor, not a dealer or distributor, who has a current GSA contract indicate in writing a willingness to extend the contract's pricing, terms and conditions to the state of New Mexico. Therefore, a state agency shall not procure services, construction or items of tangible personal property directly under a general services administration (GSA) contract. Rather, a state agency must procure pursuant to a state purchasing agent price agreement which reflects the prices, terms and conditions of the respective GSA contract. If no such state purchasing agent price agreement exists, a state agency may make a written request to the state purchasing agent for the issuance of one. The request must be accompanied by a current copy of the applicable GSA contract, a letter from the contractor expressing a willingness to extend the contract's pricing, terms and conditions to the state of New Mexico and a letter from the state agency indicating a commitment to utilize the price agreement. The state purchasing agent will ascertain whether it is current and whether the proposed price is equal to or less than the federal supply contract price. If everything is in order, the state purchasing agent will issue a price agreement or purchase order reflecting the prices, terms and conditions of the GSA contract. A state agency shall make no procurements from the GSA contractor until a state purchasing agent price agreement has been issued.

[1.4.1.66 NMAC - Rp, 1.4.1.66 NMAC, 08-30-13]

1.4.1.67 COPIES OF CONTRACTS AND PRICE AGREEMENTS: A central purchasing office shall retain for public inspection and for the use of auditors a copy of each state purchasing agent contract or current price agreement relied upon to make purchases without seeking competitive bids.

[1.4.1.67 NMAC - Rp, 1.4.1.67 NMAC, 08-30-13]

1.4.1.68 APPLICATION (CANCELLATION OF SOLICITATIONS OR REJECTION OF BIDS OR PROPOSALS; 1.4.1.68 - 1.4.1.72 NMAC): The provisions of 1.4.1.68 through 1.4.1.72 NMAC of this rule shall govern the cancellation of any solicitations whether issued by the state purchasing agent under competitive sealed bids, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

[1.4.1.68 NMAC - Rp, 1.4.1.68 NMAC, 08-30-13]

1.4.1.69 POLICY: Any solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state of New Mexico.

[1.4.1.69 NMAC - Rp, 1.4.1.69 NMAC, 08-30-13]

1.4.1.70 CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS:

A. Prior to opening.

(1) As used in this section, "opening" means the date set for opening of bids or receipt of proposals.

(2) Prior to opening, a solicitation may be canceled in whole or in part when the state purchasing agent or central purchasing office makes a written determination that such action is in the state's best interest for reasons including but not limited to:

- (a) the services, construction, or items of tangible personal property are no longer required;
- (b) the using agency no longer can reasonably expect to fund the procurement; or
- (c) proposed amendments to the solicitation would significantly change the nature of the

procurement.

(3) When a solicitation is canceled prior to opening, notice shall be sent to all businesses solicited. The notice shall:

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

B. After opening.

(1) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the state purchasing agent or central purchasing office makes a written determination that such action is in the state's best interest for reasons including but not limited to:

- (a) all of the bids and proposals are nonresponsive;
- (b) the services, construction, or items of tangible personal property are no longer required;
- (c) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (d) the solicitation did not provide for consideration of all factors of significance to the using agency;
- (e) prices exceed available funds and it would not be appropriate to adjust quantities to come within

available funds;

- (f) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- (g) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(2) A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Paragraph (3) of Subsection A of this section.

[1.4.1.70 NMAC - Rp, 1.4.1.70 NMAC, 08-30-13]

1.4.1.71 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:

A. Reasons for rejection.

(1) Bids. As used in this section, "bid" includes both competitive sealed bids and small purchase quotations. Reasons for rejecting a bid shall include but are not limited to:

- (a) the business that submitted the bid is nonresponsive as determined under 1.4.1.73 NMAC of this rule;
- (b) the bid is not responsive; or
- (c) the service, construction, or item of tangible personal property offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the IFB.

(2) Proposals. As used in this section, "proposal" includes both competitive sealed proposals and small purchase offers. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and a using agency's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

- (a) the business that submitted the proposal is nonresponsive as determined under 1.4.1.75 through 1.4.1.79 NMAC of this rule;
- (b) the proposal is not responsive; or
- (c) the proposed price is clearly unreasonable; or
- (d) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.

B. Written determination required. A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the state purchasing agent or central purchasing office and made a part of the procurement file.

[1.4.1.71 NMAC - Rp, 1.4.1.71 NMAC, 08-30-13]

1.4.1.72 "ALL OR NONE" BIDS: When the term "all or none" is used.

A. By the purchaser in a solicitation. A solicitation may require bidders to submit bids or offers on all items listed in the solicitation, or may identify certain groups of items in which all items must be bid. If the solicitation is properly so limited, a bidder's failure to bid all items identified as "all or none" items may render the bid nonresponsive.

B. By the bidder or offeror, and not the purchaser. If the bidder restricts acceptance of the bid, or a portion thereof, by such a statement as "all or none", the bidder has "qualified" the offer which may render the bid as nonresponsive.

C. In instances as stated in both Subsections A and B of this section such a bid or offer may be accepted only if the state purchasing agent or a central purchasing office issues a determination setting forth the basis for accepting the bid or offer as being in the best interest of the state. Also in both, instances, the bid or offer is only eligible for award if it is the overall low bid for the item or items so restricted.

[1.4.1.72 NMAC - Rp, 1.4.1.72 NMAC, 08-30-13]

1.4.1.73 APPLICATION (RECEIPT; INSPECTION; ACCEPTANCE OR REJECTION OF

DELIVERIES; 1.4.1.73 - 1.4.1.74 NMAC): The using agency is responsible for inspecting and accepting or rejecting deliveries.

A. The using agency shall determine whether the quantity is as specified in the purchase order or contract.

B. The using agency shall determine whether the quality conforms to the specifications referred to or included in the purchase order or contract.

C. If inspection reveals that the delivery does not meet or conform to the quantity or quality specified in the purchase order or contract, the using agency shall notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery.

D. In case the vendor fails to comply, the using agency shall promptly file a purchasing complaint with the state purchasing agent.

E. Also, in case the vendor fails to comply, the using agency shall have no obligation to pay for the nonconforming items of tangible personal property.

F. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify that delivery has been completed and is satisfactory.

[1.4.1.73 NMAC - Rp, 1.4.1.73 NMAC, 08-30-13]

1.4.1.74 SUMMARY: Notwithstanding the requirements of 1.4.1.73 NMAC, if, after delivery and acceptance of goods, the goods or a portion thereof are later found to be non-conforming to the specifications referred to or included in the purchase order or contract, such acceptance does not waive any rights or remedies which are otherwise granted to the buyer in accordance with other applicable sections of laws of New Mexico.

[1.4.1.74 NMAC - Rp, 1.4.1.74 NMAC, 08-30-13]

1.4.1.75 APPLICATION (RESPONSIBILITY OF BIDDERS AND OFFERORS; 1.4.1.75 - 1.4.1.79

NMAC): A determination of responsibility or non-responsibility shall be governed by 1.4.1.75 through 1.4.1.79 NMAC.

[1.4.1.75 NMAC - Rp, 1.4.1.75 NMAC, 08-30-13]

1.4.1.76 STANDARDS OF RESPONSIBILITY:

A. Standards for bidders. Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder has:

(1) submitted a responsive bid;

(2) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services, construction, or items of tangible personal property described in the IFB;

(3) a satisfactory record of performance;

(4) a satisfactory record of integrity;

(5) qualified legally to contract with the state; and

(6) supplied all necessary information and data in connection with any inquiry concerning responsibility.

B. Standards for offerors. Factors to be considered in determining whether the standard of responsibility has been met include whether an offeror has:

(1) submitted a responsive proposal;

(2) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services or items of tangible personal property described in the proposal;

(3) a satisfactory record of performance;

(4) a satisfactory record of integrity;

(5) qualified legally to contract with the state; and

(6) supplied all necessary information and data in connection with any inquiry concerning responsibility.
[1.4.1.76 NMAC -Rp, 1.4.1.76 NMAC, 08-30-13]

1.4.1.77 ABILITY TO MEET STANDARDS: A bidder or offeror may demonstrate the availability of adequate financial resources, production or service facilities, personnel and experience by submitting, upon request:

- A. evidence that the bidder or offeror possesses the necessary items;
- B. acceptable plans to subcontract for the necessary items; or
- C. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

[1.4.1.77 NMAC - Rp, 1.4.1.77 NMAC, 08-30-13]

1.4.1.78 INQUIRY BY PROCUREMENT OFFICER: Before awarding a contract, the procurement officer or procurement manager must be satisfied that the bidder or offeror is responsible. Therefore, a bidder or offeror shall supply information and data requested by the procurement officer concerning the responsibility of the bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information or data in connection with such an inquiry is grounds for a determination that the bidder or offeror is not responsible.
[1.4.1.78 NMAC - Rp, 1.4.1.78 NMAC, 08-30-13]

1.4.1.79 DETERMINATION REQUIRED: If a bidder or offeror who otherwise would have been awarded a contract is found to be non-responsible, a written determination, setting forth the basis of the finding, shall be prepared by the state purchasing agent or central purchasing office. The written determination shall be made part of the procurement file, and a copy of the determination shall be sent to the non-responsible bidder or offeror.
[1.4.1.79 NMAC - Rp, 1.4.1.79 NMAC, 08-30-13]

1.4.1.80 APPLICABILITY (PROTESTS; 1.4.1.80 - 1.4.1.93 NMAC): The provisions of 1.4.1.80 through 1.4.1.93 NMAC of this rule apply to all protests filed with the state purchasing agent and all central purchasing offices that have not adopted regulations for resolving protests. Central purchasing offices with rulemaking authority, other than the state purchasing agent, may adopt regulations for resolving protests filed within their jurisdictions.
[1.4.1.80 NMAC - Rp, 1.4.1.80 NMAC, 08-30-13]

1.4.1.81 RIGHT TO PROTEST: Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract, including a sole source procurement, may protest to the state purchasing agent or central purchasing office.
[1.4.1.81 NMAC - Rp, 1.4.1.81 NMAC, 08-30-13]

1.4.1.82 FILING OF PROTEST:

- A. Protest must be written. Protests must be in writing and addressed to the state purchasing agent or central purchasing office, whichever has control and administration over the procurement.
- B. Contents. The protest shall:
 - (1) include the name and address of the protestant;
 - (2) include the solicitation number;
 - (3) contain a statement of the grounds for protest;
 - (4) include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; and
 - (5) specify the ruling requested from the state purchasing agent or central purchasing office.
- C. Pleadings. No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.
- D. Time limit. Protests shall be submitted within 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence.

[1.4.1.82 NMAC - Rp, 1.4.1.82 NMAC, 08-30-13]

1.4.1.83 PROCUREMENTS AFTER PROTEST:

- A. In the event of a timely protest, as defined in Subsection D of 1.4.1.82 NMAC of this rule, the state purchasing agent or central purchasing office shall not proceed further with the procurement unless the state purchasing agent or central purchasing office makes a written determination that the award of the contract is necessary to protect substantial interests of a state agency. Such written determination should set forth the basis for the determination. As used in 1.4.1.80 through 1.4.1.93 NMAC of this rule, the point in time in which a contract is awarded is that point at which a legally enforceable contract is created unless the context clearly requires a different meaning.

B. A procurement shall not be halted after a contract has been awarded merely because a protest has been filed. After a contract has been awarded, the state purchasing agent or central purchasing office may, in its sole discretion, halt a procurement in exceptional circumstances or for good cause shown.
[1.4.1.83 NMAC - Rp, 1.4.1.83 NMAC, 08-30-13]

1.4.1.84 PROCEDURE:

A. Upon the filing of a timely protest, the state purchasing agent or central purchasing office shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

B. The protestant and every business that receives notice pursuant to Subsection A of this section will automatically be parties to any further proceedings before the state purchasing agent or central purchasing office. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Interveners shall accept the status of the proceedings at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously established time schedules. The state purchasing agent or central purchasing office, and all employees thereof, are not parties to the proceedings.

C. The state purchasing agent or central purchasing office may take any action reasonably necessary to resolve a protest. Such actions include, but are not limited to, the following:

- (1) issue a final written determination summarily dismissing the protest;
- (2) obtain information from the staff of the state purchasing agent or central purchasing office;
- (3) require parties to produce for examination information or witnesses under their control;
- (4) require parties to express their positions on any issues in the proceedings;
- (5) require parties to submit legal briefs on any issues in the proceeding;
- (6) establish procedural schedules;
- (7) regulate the course of the proceedings and the conduct of any participants;
- (8) receive, rule on, exclude or limit evidence;
- (9) take official notice of any fact that is among the traditional matters of official or administrative notice;
- (10) conduct hearings; and
- (11) take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses.

[1.4.1.84 NMAC - Rp, 1.4.1.84 NMAC, 08-30-13]

1.4.1.85 **DISCOVERY:** Upon written request of any party, or upon its own motion, the state purchasing agent or central purchasing office may require parties to comply with discovery requests.

[1.4.1.85 NMAC - Rp, 1.4.1.85 NMAC, 08-30-13]

1.4.1.86 HEARINGS:

A. Hearings will be held only when the state purchasing agent or central purchasing office determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. Any party may request a hearing, but such requests shall be deemed denied unless specifically granted.

B. Hearings, when held, should be as informal as practicable under the circumstances, but the state purchasing agent or central purchasing office has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the state purchasing agent or central purchasing office required to adhere to formal rules of evidence or procedure.

[1.4.1.86 NMAC - Rp, 1.4.1.86 NMAC, 08-30-13]

1.4.1.87 RESOLUTION:

A. The state purchasing agent or central purchasing office shall promptly issue a written determination relating to the protest. The determination shall:

- (1) state the reasons for the action taken; and
- (2) inform the protestant of the right to judicial review of the determination pursuant to 13-1-183 NMSA

1978.

B. A copy of the written determination shall be sent immediately by certified mail, return receipt requested, to each of the parties.

[1.4.1.87 NMAC - Rp, 1.4.1.87 NMAC, 08-30-13]

1.4.1.88 RELIEF:

A. Prior to award. If, prior to award, the state purchasing agent or central purchasing office makes a written determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled.

B. After award.

(1) No fraud or bad faith. If, after an award, the state purchasing agent or central purchasing office makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith:

(a) the contract may be ratified, affirmed or revised to comply with law, provided that a written determination is made that doing so is in the best interest of the state; or

(b) the contract may be terminated, and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

(2) Fraud or bad faith. If, after an award, the state purchasing agent or central purchasing office makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be canceled.

C. Relief not allowed. Except as provided in Subparagraph (b) of Paragraph (1) of Subsection B of this section, the state purchasing agent or central purchasing office shall not award money damages or attorneys' fees. [1.4.1.88 NMAC - Rp, 1.4.1.88 NMAC, 08-30-13]

1.4.1.89 MOTION FOR RECONSIDERATION:

A. Motion. A motion for reconsideration of a written determination issued pursuant to 1.4.1.87 NMAC of this rule may be filed by any party or by any using agency involved in the procurement. The motion for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification of the determination is deemed warranted, specifying any errors of law made, or information not previously considered.

B. When to file. A motion for reconsideration shall be filed not later than seven calendar days after receipt of the written determination.

C. Response to motion. The state purchasing agent or central purchasing office shall promptly issue a written response to the motion for reconsideration. A copy of the written response shall be sent immediately by certified mail, return receipt requested, to each of the parties. [1.4.1.89 NMAC - Rp, 1.4.1.89 NMAC, 08-30-13]

1.4.1.90 DESIGNEE:

A. Designation. At any point during a protest proceeding, the state purchasing agent or central purchasing office may appoint a designee as defined in 13-1-51 NMSA 1978 to preside over the proceeding. The designee will have all of the powers described in 1.4.1.80 through 1.4.1.93 NMAC of this rule except the power to issue a written determination under 1.4.1.87 NMAC of this rule. The designee only has authority to recommend a resolution to the state purchasing agent or central purchasing office under 1.4.1.87 NMAC of this rule.

B. Who may be designated. Any person, other than the procurement officer, procurement manager or other person not directly involved in the procurement, may serve as a designee.

C. Recommended written determination. A designee shall present a recommended written resolution to the state purchasing agent or central purchasing office and mail a copy to each of the parties. No party may appeal from the recommended resolution of the designee.

D. Action by state purchasing agent or central purchasing office. The state purchasing agent or central purchasing office shall approve, disapprove or modify the recommended resolution of the designee in writing. Such approval, disapproval or modification shall be the written determination required by 1.4.1.87 NMAC of this rule. Any party may file a motion for reconsideration of the written determination pursuant to 1.4.1.89 NMAC of this rule. [1.4.1.90 NMAC - Rp, 1.4.1.90 NMAC, 08-30-13]

1.4.1.91 FINAL DETERMINATION:

A. No motion for reconsideration. In those proceedings in which no motion for reconsideration is filed, the written determination issued pursuant to 1.4.1.87 NMAC of this rule shall be the final determination for purposes of the time limits for seeking judicial review under 13-1-183 NMSA 1978.

B. Motion for reconsideration. In those proceedings in which a motion for reconsideration is filed, the written response to the motion issued pursuant to 1.4.1.89 NMAC of this rule shall be the final determination for purposes of the time limits for seeking judicial review under 13-1-183 NMSA 1978. [1.4.1.91 NMAC - Rp, 1.4.1.91 NMAC, 08-30-13]

1.4.1.92 COPIES OF COMMUNICATIONS:

A. Copies to be provided to parties. Each party to a protest proceeding shall certify that it has provided every other party with copies of all documents or correspondence addressed or delivered to the state purchasing agent or central purchasing office.

B. Ex parte communications. No party shall submit to the state purchasing agent or central purchasing office, ex parte, any material, evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest.

[1.4.1.92 NMAC - Rp, 1.4.1.92 NMAC, 08-30-13]

1.4.1.93 COUNTING DAYS: In computing any period of time prescribed in 1.4.1.80 through 1.4.1.93 NMAC of this rule, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

[1.4.1.93 NMAC - Rp, 1.4.1.93 NMAC, 08-30-13]

1.4.1.94 CHIEF PROCUREMENT OFFICER REGISTRATION AND CERTIFICATION:

A. Registration. On or before January 1, 2014, and every time thereafter that a chief procurement officer is hired, each state agency and local public body shall provide to the state purchasing agent the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office, if applicable.

B. Information required. The information required from the state agency or local public body shall be submitted to the state purchasing agent through a database established by the state purchasing agent and made available on the state purchasing division's website. All required information must be submitted using this method.

C. Certification. On or before January 1, 2015, the state purchasing agent shall establish a certification program for chief procurement officers that includes initial certification and recertification every two years for all chief procurement officers. In order to be certified and recertified, a chief procurement officer shall obtain such education and training as deemed appropriate by the secretary of the general services department and pass a certification or recertification examination, as appropriate, approved by the secretary of the general services department. Separate certifications designed by the state purchasing agent and approved by the secretary of the general services department may be required before a chief procurement officer may conduct specialized procurement processes such as qualifications-based proposals, design-and-build projects, construction manager-at-risk projects, and other such procurements as determined by the state purchasing agent and approved by the secretary of the general services department. The secretary of the general services department reserves the right to add other elements to the required certification process as are deemed necessary or useful.

D. Chief procurement officer duties, responsibilities and obligations. On and after July 1, 2015, only certified chief procurement officers may:

- (1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;
- (2) issue purchase orders and authorize small purchases pursuant to the Procurement Code; and
- (3) approve procurement pursuant to the Procurement Code;
- (4) provided that, persons using procurement cards may continue to issue purchase orders and authorize small purchases.

[1.4.1.94 NMAC - N, 08-30-13]

1.4.1.95 STATE USE ACT:

A. Procurement of services. In regard to the procurement of services, before utilizing any other procurement method allowed under the Procurement Code, a state agency or local public body shall first offer the procurement to the central non-profit agency under contract with the state. The central non-profit agency has the right of first refusal for any procurement of services provided that the service is stated on a list provided and published by the central non-profit agency and provided that the provider can meet the time requirements of the state agency.

B. Central non-profit agency. The central non-profit agency shall:

- (1) publish the list of services available through the central non-profit agency on a website available to all state agencies and local public bodies;
- (2) ensure that all service providers on this list meet the eligibility requirements to offer services under 13-1C-1 et. seq. NMSA 1978; and
- (3) ensure that the prices offered to state agencies and local public bodies reflect the fair market value of such services in accordance with 13-1C-5 NMSA 1978;
- (4) provided that, under 13-1C-6 NMSA 1978, services provided pursuant to and facilities covered by 22-14-27 NMSA 1978 are excluded from procurement through the central non-profit agency.

C. Procurement of services pursuant to 13-1C-1 et. seq. NMSA 1978 are exempt from the Procurement Code.
[1.4.1.95 NMAC - N, 08-30-13]

History of 1.4.1 NMAC:

Pre-NMAC History:

Laws of 1984, Chapter 65, Section 1 enacted the Procurement Code to apply to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction. To implement the Code, and in accordance with the statutory requirements applicable at the date and time, the subject and material found in this rule was first filed with the state records center and archives in 1984 as general services department (GSD) Procurement Code Regulations, GSD Rule No. 84-611, filed 11-21-84; superseded by Procurement Code Regulations, GSD Rule No. 87-601, filed 12-16-87; superseded by Procurement Code Regulations, GSD Rule No. 89-601, filed 12-01-89; superseded by Procurement Code Regulations, GSD Rule No. 93-601, filed 09-21-93; superseded by 1 NMAC 5.2, filed 01-15-98.

History of Repealed Material:

1.4.1 NMAC, Procurement Code Regulations (filed 11/01/2001) repealed 09-30-05.

1.4.1 NMAC, Procurement Code Regulations (filed 09/16/2005) repealed 08-30-13.

Other History:

GSD Rule No. 93-601 (filed 09-21-93) was renumbered, reformatted and amended to 1 NMAC 5.2, Procurement Code Regulations, effective 01-15-98.

1 NMAC 5.2, Procurement Code Regulations (filed 01-02-98) was renumbered, reformatted, amended and replaced to 1.4.1 NMAC, Procurement Code Regulations, effective 11-15-01.

1.4.1 NMAC, Procurement Code Regulations (filed 11/01/2001) was replaced by 1.4.1 NMAC, Procurement Code Regulations, effective 09-30-05.

1.4.1 NMAC, Procurement Code Regulations (filed 09/16/2005) was replaced by 1.4.1 NMAC, Procurement Code Regulations, effective 08-30-13.

CHAPTER 13

Public Purchases and Property

Art.

1. Procurement, 13-1-1 to 13-1-199.
- 4A. Art in Public Places, 13-4A-1 to 13-4A-11.
6. Sale of Public Property, 13-6-1 to 13-6-8.
7. Health Care Purchasing, 13-7-1 to 13-7-16.

ARTICLE 1

Procurement

Sec.

- 13-1-37. Definition; central purchasing office.
- 13-1-38.1. Definition; chief procurement officer.
- 13-1-70.1. Definition; person.
- 13-1-95. Purchasing division; creation; director is state purchasing agent; appointment; duties.
 - 13-1-95.2. Chief procurement officers; reporting requirement; training; certification.
- 13-1-97. Centralization of procurement authority.
 - 13-1-97.2. Competitive sealed bids and proposals; record maintenance.
- 13-1-98. Exemptions from the Procurement Code.
- 13-1-119.1. Public works project delivery system; design and build projects authorized.
- 13-1-121. Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; selection committee; state public works projects.
- 13-1-125. Small purchases.
- 13-1-126. Sole source procurement.
 - 13-1-126.1. Sole source contracts; notice; protest.
- 13-1-127. Emergency procurements.

Sec.

- 13-1-128. Sole source and emergency procurements; publication of award to agency web site and sunshine portal; content and submission of record.
 - 13-1-152.1. Water storage tank service contracts.
 - 13-1-154.1. Multiple source contracts; architectural and engineering services contracts; indefinite quantity construction contracts.
 - 13-1-156.1. Trade, exchange or disposal of tangible personal property; state-owned railroad.
 - 13-1-177. Authority to suspend or debar.
 - 13-1-178. Causes for debarment or suspension; time limit.
 - 13-1-180. Debarment or suspension; notice of determination.
 - 13-1-180.1. Continuation of current contracts; restrictions on subcontracting.
 - 13-1-188. Public acquisition of American-made motor vehicles required.
 - 13-1-199. Penalties.

13-1-37. Definition; central purchasing office.

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

13-1-38.1. Definition; chief procurement officer.

"Chief procurement officer" means that person within a state agency's or local public body's central purchasing office who is responsible for the control of procurement of items of tangible personal property, services or construction. "Chief procurement officer" includes the state purchasing agent.

13-1-70.1. Definition; person.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity.

13-1-95. Purchasing division; creation; director is state purchasing agent; appointment; duties.

- A. The "purchasing division" is created within the general services department.
- B. Subject to the authority of the secretary, the state purchasing agent shall be the administrator and director of the purchasing division. The state purchasing agent shall be appointed by the secretary with the approval of the governor.
- C. The purchasing division and state purchasing agent shall be responsible for the procurement of services, construction and items of tangible personal property for all state agencies except as otherwise

provided in the Procurement Code and shall administer the Procurement Code for those state agencies not excluded from the requirement of procurement through the state purchasing agent.

D. The state purchasing agent shall have the following additional authority and responsibility to:

- (1) recommend procurement rules to the secretary;
- (2) establish and maintain programs for the development and use of procurement specifications and for the inspection, testing and acceptance of services, construction and items of tangible personal property;
- (3) cooperate with the state budget division of the department of finance and administration in the preparation of statistical data concerning the acquisition and usage of all services, construction and items of tangible personal property by state agencies;
- (4) require state agencies to furnish reports concerning usage, needs and stocks on hand of items of tangible personal property and usage and needs for services or construction;
- (5) prescribe, with consent of the secretary, forms to be used by state agencies to requisition and report the procurement of items of tangible personal property, services and construction;
- (6) provide information to state agencies and local public bodies concerning the development of specifications, quality control methods and other procurement information; and
- (7) collect information concerning procurement matters, quality and quality control of commonly used services, construction and items of tangible personal property.

E. The state purchasing agent shall, upon the request of the central purchasing office of a local public body, procure a price agreement for the requested services, construction or items of tangible personal property. The state purchasing agent may procure a price agreement for services, construction or items of tangible personal property for a state agency or local public body that does not have a chief procurement officer.

13-1-95.2. Chief procurement officers; reporting requirement; training; certification.

A. On or before January 1 of each year beginning in 2014, and every time a chief procurement officer is hired, each state agency and local public body shall provide to the state purchasing agent the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office, if applicable.

B. The state purchasing agent shall maintain a list of the names of the chief procurement officers reported to the state purchasing agent by state agencies and local public bodies. The state purchasing agent shall make the list of chief procurement officers available to the public through the web site of the purchasing division of the general services department and in any other appropriate form.

C. The state purchasing agent shall offer a certification training program for chief procurement officers each year.

D. On or before January 1, 2015, the state purchasing agent shall establish a certification program for chief procurement officers that includes initial certification and recertification every two years for all chief procurement officers. In order to be recertified, a chief procurement officer shall pass a recertification examination approved by the secretary of general services.

E. On and after July 1, 2015, only certified chief procurement officers may do the following, except that persons using procurement cards may continue to issue purchase orders and authorize small purchases:

- (1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;
 - (2) issue purchase orders and authorize small purchases pursuant to the Procurement Code;
- and
- (3) approve procurement pursuant to the Procurement Code.

13-1-97. Centralization of procurement authority.

A. All procurement for state agencies shall be performed by the state purchasing agent except as otherwise provided in the Procurement Code.

B. All procurement for state agencies excluded from the requirement of procurement through the office of the state purchasing agent shall be performed by a central purchasing office, the chief procurement officer or as otherwise provided in the Procurement Code.

C. 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.

ment Code. Local public bodies shall identify their designated central purchasing office to the state purchasing agent and shall report their chief procurement officers to the state purchasing agent.

13-1-97.2. Competitive sealed bids and proposals; record maintenance.

A central purchasing office shall maintain, for a minimum of three years, all records relating to the award of a contract through a competitive sealed bid or competitive sealed proposal process.

13-1-98. 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 Sections 13-1-135 through 13-1-137 NMSA 1978;
- B. procurement of tangible personal property or services for the governor's mansion and grounds;
- C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;
- D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;
- E. purchases of books, periodicals and training materials in printed or electronic format from the publishers or copyright holders thereof;
- F. travel or shipping by common carrier or by private conveyance or to meals and lodging;
- G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;
- H. contracts with businesses for public school transportation services;
- I. 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 industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;
- J. purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;
- K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;
- L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;
- M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;
- N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;
- O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;
- P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;
- Q. contracts with professional entertainers;
- R. contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
- S. 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;
- T. works of art for museums or for display in public buildings or places;
- U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of

New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978] or operation and maintenance of a hospital pursuant to the Special Hospital District Act [Chapter 4, Article 48A NMSA 1978];

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement of printing services for materials produced and intended for resale by the cultural affairs department;

Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000);

Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act [13-1C-1 through 13-1C-7 NMSA 1978];

AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;

BB. procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act [Chapter 10, Article 11NMSA 1978];

DD. the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock;

EE. contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act of 1984 and the federal Violence Against Women Act;

FF. procurement by or through the children, youth and families department of pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act [32A-23-1 through 32A-23-9 NMSA 1978]; and

GG. procurements exempt from the Procurement Code as otherwise provided by law.

13-1-119.1. 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. The determination shall be issued only after the state purchasing agent or a 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. A 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 do not apply to a design and build project delivery system and the services procured for the project if:

(1) the maximum allowable construction cost of the project is four hundred thousand dollars (\$400,000) or less; and

(2) the only requirement for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaption for a pre-engineered building or 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.

13-1-121. Competitive sealed qualifications-based proposals; architects; engineers; landscape architects; surveyors; selection committee; state public works projects.

A. The "architect, engineer, landscape architect and surveyor selection committee" is created. The committee, which shall serve as the selection committee for state public works projects, except for highway projects of the department of transportation, is composed of four members as follows:

(1) one member of the agency for which the project is being designed;

(2) the director of the facilities management division of the general services department, who shall be chair;

(3) one member designated by the joint practice committee; and

(4) one member designated by the secretary.

B. The staff architect or the staff architect's designee of the facilities management division shall serve as staff to the architect, engineer, landscape architect and surveyor selection committee.

C. The members of the architect, engineer, landscape architect and surveyor selection committee shall be reimbursed by the facilities management division for per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

D. The department of transportation shall create a selection committee by rule, after notice and hearing, that shall serve as the selection committee for highway projects of the department.

13-1-125. Small purchases.

A. A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding sixty thousand dollars (\$60,000), excluding applicable state

and local gross receipts taxes, in accordance with the applicable small purchase rules adopted by the secretary, a local public body or a central purchasing office that has the authority to issue rules.

B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding sixty thousand dollars (\$60,000), excluding applicable state and local gross receipts taxes, except for the services of landscape architects or surveyors for state public works projects or local public works projects, in accordance with professional services procurement rules promulgated by the department of finance and administration, the general services department or a central purchasing office with the authority to issue rules.

C. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000), excluding applicable state and local gross receipts taxes, by issuing a direct purchase order to a contractor based upon the best obtainable price.

D. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section.

13-1-126. Sole source procurement.

A. 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 determines, in writing, that:

- (1) there is only one source for the required service, construction or item of tangible personal property;
- (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and
- (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

B. The state purchasing agent or a central purchasing office shall use due diligence in determining the basis for the sole source procurement, including reviewing available sources and consulting the using agency, and shall include its written determination in the procurement file.

C. 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.

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

E. The state purchasing agent or a central purchasing office shall not circumvent this section by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.

13-1-126.1. Sole source contracts; notice; protest.

A. At least thirty days before a sole source contract is awarded, the state purchasing agent, a central purchasing office or a designee of either shall post notice of the intent to award a sole source contract on its web site. If a central purchasing office does not maintain a web site, it shall post the notice on the state purchasing agent's web site. The notice shall identify at a minimum:

- (1) the parties to the proposed contract;
- (2) the nature and quantity of the service, construction or item of tangible personal property being contracted for; and
- (3) the contract amount.

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

13-1-127. Emergency procurements.

A. The state purchasing agent or a central purchasing office may make emergency procurements when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions; provided that emergency procurements shall be made with competition as is practicable under the circumstances.

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

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

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

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

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

13-1-128. Sole source and emergency procurements; publication of award to agency web site and sunshine portal; content and submission of record.

A. Prior to award of a sole source procurement contract, the state purchasing agent or central purchasing office shall:

- (1) provide the information described in Subsection E of this section to the department of information technology for posting on the sunshine portal; and
- (2) forward the same information to the legislative finance committee.

B. Prior to the award of a sole source procurement contract, the local public body central purchasing office shall post the information described in Subsection E of this section on the local public body web site, if one exists.

C. Within three business days of awarding an emergency procurement contract, the awarding central purchasing office within a state agency shall:

- (1) provide the information described in Subsection E of this section to the department of information technology for posting on the sunshine portal; and
- (2) forward the same information to the legislative finance committee.

D. Within three business days of awarding an emergency procurement contract, the local public body central purchasing office shall post the information described in Subsection E of this section on the local public body web site, if one exists.

E. 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;
- (4) whether the contract was a sole source or emergency procurement contract; and
- (5) the justification for the procurement method.

13-1-152.1. Water storage tank service contracts.

A municipality may, by direct negotiation subsequent to receiving responses to requests for proposals, enter into a multiyear service contract for the engineering, repair and maintenance of a water storage tank and the appurtenant facilities owned, controlled or operated by the municipality; provided that the contract for services includes provisions that:

A. provide that the municipality is not required to make total payments in a single year that exceed the water utility charges received by the municipality for that year;

B. require that the work be performed under the review of a professional engineer licensed in New Mexico who certifies that the work will be performed in compliance with all applicable codes and engineering standards; and

C. provide that if, on the date of commencement of the contract, the water storage tank or appurtenant facilities require engineering, repair or service in order to bring the tank or facilities into compliance with federal, state or local requirements, the party contracting with the municipality shall provide the engineering, repair or service and that the cost of the work necessary to ensure such compliance shall be itemized separately and charged to the municipality in payments spread over a period of not less than three years from the date of commencement of the contract.

13-1-154.1. Multiple source contracts; architectural and engineering services contracts; indefinite quantity construction contracts.

A. A state agency may procure multiple architectural or engineering services contracts for multiple projects under a single qualifications-based request for proposals; provided that the total amount of multiple contracts and all renewals for a single contractor does not exceed two million dollars (\$2,000,000) over four years and that a single contract, including any renewals, does not exceed five hundred thousand dollars (\$500,000).

B. A state agency may procure multiple indefinite quantity construction contracts pursuant to a price agreement for multiple projects under a single request for proposals, provided that the total amount of a contract and all renewals does not exceed two million dollars (\$2,000,000) over four years and the contract provides that any one purchase order under the contract may not exceed five hundred thousand dollars (\$500,000).

C. A state agency may make procurements in accordance with the provisions of Subsection A or B of this section if:

(1) the advertisement and request for proposals states that multiple contracts may or will be awarded, states the number of contracts that may or will be awarded and describes the services or construction to be performed under each contract;

(2) there is a single selection process for all of the multiple contracts, except that for each contract there may be a separate final list and a separate negotiation of contract terms;

(3) each of the multiple contracts for architectural or engineering services or construction shall have a term not exceeding four years, including all extensions and renewals;

(4) a contract to be awarded pursuant to this section to a firm that is currently performing under a contract issued pursuant to this section will not cause the total amount of all contracts issued pursuant to this section to that firm to exceed two million dollars (\$2,000,000) in any four-year period for architectural, engineering or construction services; and

(5) the procurement is subject to the limitations of Sections 13-1-150 through 13-1-154 NMSA 1978.

13-1-156.1. Trade, exchange or disposal of tangible personal property; state-owned railroad.

A. In addition to other methods of disposal authorized by law, the tangible personal property of a state-owned railroad may be traded or exchanged for new items of tangible personal property, or disposed of, by the department of transportation or a local public body that manages the railroad, if authorized by the department of transportation pursuant to the provisions of this section. The central purchasing office may require in a request for proposals that quotes be submitted for the purchase or disposal of the tangible personal property to be traded in, exchanged or disposed of. The tangible personal property may be traded, exchanged or disposed of pursuant to the terms of the contract with the responsible offeror who is awarded the contract if an amount offered in trade or exchange, or amount for disposal, in the proposal is found by the central purchasing office to be:

(1) a fair reflection of the current market value;

(2) representative of the condition of the tangible personal property;

(3) in the best interest of the agency; and

(4) included as an itemized adjustment in the price in the case of a trade or exchange, or itemized cost in the case of disposal.

B. All terms of the trade, exchange or disposal of the items of tangible personal property shall be part of the contract.

13-1-177. Authority to suspend or debar.

A. The state purchasing agent or a central purchasing office, after consultation with the using agency, may suspend a person from consideration for award of contracts if the state purchasing agent or central purchasing office, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to Section 13-1-178 NMSA 1978.

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

C. The state purchasing agent or a central purchasing office, after reasonable notice to the person involved, shall have authority to recommend to the governing authority of a state agency or a local public body the debarment of a person 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. The authority to debar shall be exercised by the governing authority of a state agency or a local public body in accordance with rules that shall provide for reasonable notice and a fair hearing prior to debarment.

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

13-1-178. Causes for debarment or suspension; time limit.

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

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

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

(3) conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving stolen property or for violation of federal or state tax laws;

(4) conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;

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

(6) civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;

(7) civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act (Chapter 57, Article 12 NMSA 1978);

(8) violation by a bidder, offeror or contractor of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the state purchasing agent or a central purchasing office to be so serious as to justify suspension or debarment action, including:

(a) willful failure to perform in accordance with one or more contracts; or

(b) 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;

(9) any other cause that the state purchasing agent or a central purchasing office determines to be so serious and compelling as to affect responsibility as a contractor; or

(10) for a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code.

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

13-1-180. Debarment or suspension; notice of determination.

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

- A. mailed to the last known address on file with the state purchasing agent or central purchasing office, by first class mail, within three business days after issuance of the written determination;
- or
- B. transmitted electronically within three business days after issuance of the written determination.

13-1-180.1. Continuation of current contracts; restrictions on subcontracting.

A. Notwithstanding the debarment, suspension or proposed debarment of a person, a state agency or local public body may continue contracts or subcontracts in existence at the time that the person is debarred, suspended or proposed for debarment unless the governing authority of the state agency or local public body directs otherwise.

B. Unless the governing authority of a state agency or local public body issues a written determination based on compelling reasons holding otherwise, a person that has been debarred or suspended or whose debarment has been proposed shall not, after the date that the person is debarred, suspended or proposed for debarment:

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

C. Unless pursuant to written authorization based on the compelling reasons of the governing authority of a state agency or local public body, the state purchasing agent or a central purchasing office shall not consent to enter a subcontract subject to the Procurement Code with a person that has been debarred, suspended or proposed for debarment.

D. A person that has entered into a contract subject to the Procurement Code shall not subcontract with another person that has been debarred, suspended or proposed for debarment without the written authorization of the state purchasing agent or a central purchasing office. A person that wishes to subcontract with another person that has been debarred, suspended or proposed for debarment shall make a request to the applicable state agency or local public body that includes the following:

- (1) the name of the proposed subcontractor;
- (2) information about the proposed subcontractor's debarment, suspension or proposed debarment;
- (3) the requester's compelling reasons for seeking a subcontract with the proposed subcontractor; and
- (4) a statement of how the person will protect the interests of the state agency or local public body considering the proposed subcontractor's debarment, suspension or proposed debarment.

13-1-188. 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; provided that this section shall not apply to motor vehicles used for law enforcement purposes. For the purposes of this section, "motor vehicle" means a light-duty vehicle under eight thousand five hundred pounds.

13-1-199. Penalties.

Any business or person that willfully violates the Procurement Code is guilty of:

- A. a misdemeanor if the transaction involves fifty thousand dollars (\$50,000) or less; or
- B. a fourth degree felony if the transaction involves more than fifty thousand dollars (\$50,000).

ARTICLE 4A

Art in Public Places

Sec.
13-4A-3. Definitions.

13-4A-3. Definitions.

As used in the Art in Public Places Act:

A. "agency" means all state departments and agencies, boards, councils, institutions, commissions and quasi-public corporations, including all state educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, and all statutorily created post-secondary educational institutions;

B. "architect" means the person or firm designing the project for the contracting agency to which the one percent provision pursuant to Section 13-4A-4 NMSA 1978 applies;

C. "contracting agency" means the agency having the control, management and power to enter into contracts for new construction or renovation of any public building;

D. "division" means the arts division of the cultural affairs department;

E. "public buildings" means those buildings under the control and management of the facilities management division of the general services department, the department of game and fish, the energy, minerals and natural resources department, the department of transportation, the state fair commission, the supreme court, the commissioner of public lands, the cultural affairs department, the governing boards of the state educational institutions and statutorily created post-secondary educational institutions, the public education department and the legislature or all buildings constructed with funds appropriated by the legislature. For the purposes of the Art in Public Places Act, "public buildings" does not include such auxiliary buildings as maintenance plants, correctional facilities, warehouses or temporary structures; and

F. "work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic or photograph; a work of calligraphy; a work of graphic art, including an etching, lithograph, offset print, silk screen or a work of graphic art of like nature; works in clay, textile, fiber, wood, metal, plastic, glass and like materials; or mixed media, including a collage or assemblage or any combination of the foregoing art media that is chosen to be included in or immediately adjoining the public building under consideration. Under special circumstances, the term may include environmental landscaping if approved by the division.

ARTICLE 6

Sale of Public Property

Sec.
13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

13-6-1. Disposition of obsolete, worn-out or unusable tangible personal property.

A. The governing authority of each state agency, local public body, school district and state educational institution may dispose of any item of tangible personal property belonging to that authority and delete the item from its public inventory upon a specific finding by the authority that the item of property is:

(1) of a current resale value of five thousand dollars (\$5,000) or less; and

(2) worn out, unusable or obsolete to the extent that the item is no longer economical or safe for continued use by the body.

B. The governing authority shall, as a prerequisite to the disposition of any items of tangible personal property:

(1) designate a committee of at least three officials of the governing authority to approve and oversee the disposition; and

(2) give notification at least thirty days prior to its action making the deletion by sending a copy of its official finding and the proposed disposition of the property to the state auditor and the

appropriate approval authority designated in Section 13-6-2 NMSA 1978, duly sworn and subscribed under oath by each member of the authority approving the action.

C. A copy of the official finding and proposed disposition of the property sought to be disposed of shall be made a permanent part of the official minutes of the governing authority and maintained as a public record subject to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

D. The governing authority shall dispose of the tangible personal property by negotiated sale to any governmental unit of an Indian nation, tribe or pueblo in New Mexico or by negotiated sale or donation to other state agencies, local public bodies, school districts, state educational institutions or municipalities or through the central purchasing office of the governing authority by means of competitive sealed bid or public auction or, if a state agency, through the surplus property bureau of the transportation services division of the general services department.

E. A state agency shall give the surplus property bureau of the transportation services division of the general services department the right of first refusal when disposing of obsolete, worn-out or unusable tangible personal property of the state agency.

F. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D or E of this section, the governing authority may sell or, if the property has no value, donate the property to any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986.

G. If the governing authority is unable to dispose of the tangible personal property pursuant to Subsection D, E or F of this section, it may order that the property be destroyed or otherwise permanently disposed of in accordance with applicable laws.

H. If the governing authority determines that the tangible personal property is hazardous or contains hazardous materials and may not be used safely under any circumstances, the property shall be destroyed and disposed of pursuant to Subsection G of this section.

I. No tangible personal property shall be donated to an employee or relative of an employee of a state agency, local public body, school district or state educational institution; provided that nothing in this subsection precludes an employee from participating and bidding for public property at a public auction.

J. This section shall not apply to any property acquired by a museum through abandonment procedures pursuant to the Abandoned Cultural Properties Act [18-10-1 to 18-10-5 NMSA 1978].

K. Notwithstanding the provisions of Subsection A of this section, the department of transportation may sell through public auction or dispose of surplus tangible personal property used to manage, maintain or build roads that exceeds five thousand dollars (\$5,000) in value. Proceeds from sales shall be credited to the state road fund. The department of transportation shall notify the department of finance and administration regarding the disposition of all property.

L. If the secretary of public safety finds that the K-9 dog presents no threat to public safety, the K-9 dog shall be released from public ownership as provided in this subsection. The K-9 dog shall first be offered to its trainer or handler free of charge. If the trainer or handler does not want to accept ownership of the K-9 dog, then the K-9 dog shall be offered to an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 free of charge. If both of the above fail, the K-9 dog shall only be sold to a qualified individual found capable of providing a good home to the animal.

ARTICLE 7

Health Care Purchasing

Sec.

13-7-14. Coverage for telemedicine services.

13-7-15. Prescription drugs; prohibited formulary changes; notice requirements.

Sec.

13-7-16. Coverage for autism spectrum disorder diagnosis and treatment; permissible limitations. (Effective January 1, 2015.)

13-7-14. Coverage for telemedicine services.

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall allow covered benefits to be provided through telemedicine services. Coverage for health care services provided through telemedicine shall be determined in a manner consistent with coverage for health care services provided through in-person consultation.

B. The provisions of this section shall not be construed to require coverage of an otherwise noncovered benefit.

C. A determination by a group health plan that health care services delivered through the use of telemedicine are not covered under the plan shall be subject to review and appeal pursuant to the Patient Protection Act [Chapter 59A, Article 57 NMSA 1978].

D. The provisions of this section shall not apply in the event that federal law requires the state to make payments on behalf of enrollees to cover the costs of implementing this section.

E. Nothing in this section shall require a health care provider to be physically present with a patient at the originating site unless the consulting telemedicine provider deems it necessary.

F. Telemedicine used to provide clinical services shall be encrypted and shall conform to state and federal privacy laws.

G. The provisions of this section shall not apply to group health coverage intended to supplement major medical group-type coverage, such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other limited-benefit health insurance policy.

H. As used in this section:

(1) "consulting telemedicine provider" means a health care provider that delivers telemedicine services from a location remote from an originating site;

(2) "health care provider" means a duly licensed hospital or other licensed facility, physician or other health care professional authorized to furnish health care services within the scope of the professional's license;

(3) "in real time" means occurring simultaneously, instantaneously or within seconds of an event so that there is little or no noticeable delay between two or more events;

(4) "originating site" means a place at which a patient is physically located and receiving health care services via telemedicine;

(5) "store-and-forward technology" means electronic information, imaging and communication, including interactive audio, video and data communications, that is transferred or recorded or otherwise stored for asynchronous use; and

(6) "telemedicine" means the use of interactive simultaneous audio and video or store-and-forward technology using information and telecommunications technologies by a health care provider to deliver health care services at a site other than the site where the patient is located, including the use of electronic media for consultation relating to the health care diagnosis or treatment of the patient in real time or through the use of store-and-forward technology.

13-7-15. Prescription drugs; prohibited formulary changes; notice requirements.

A. As of January 1, 2014, group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for prescription drugs categorized or tiered for purposes of cost-sharing through deductibles or coinsurance obligations shall not make any of the following changes to coverage for a prescription drug within one hundred twenty days of any previous change to coverage for that prescription drug, unless a generic version of the prescription drug is available:

(1) reclassify a drug to a higher tier of the formulary;

(2) reclassify a drug from a preferred classification to a non-preferred classification, unless that reclassification results in the drug moving to a lower tier of the formulary;

(3) increase the cost-sharing, copayment, deductible or co-insurance charges for a drug;

(4) remove a drug from the formulary;

(5) establish a prior authorization requirement;

(6) impose or modify a drug's quantity limit; or

(7) impose a step-therapy restriction.

B. The administrator for the group health coverage shall give the affected enrollee at least sixty days' advance written notice of the impending change when it is determined that one of the following modifications will be made to a formulary:

(1) reclassification of a drug to a higher tier of the formulary;

(2) reclassification of a drug from a preferred classification to a non-preferred classification, unless that reclassification results in the drug moving to a lower tier of the formulary;

(3) an increase in the cost-sharing, copayment, deductible or coinsurance charges for a drug;

(4) removal of a drug from the formulary;

(5) addition of a prior authorization requirement;

(6) imposition or modification of a drug's quantity limit; or

(7) imposition of a step-therapy restriction for a drug.

C. Notwithstanding the provisions of Subsections A and B of this section, the administrator for group health coverage may immediately and without prior notice remove a drug from the formulary if the drug:

- (1) is deemed unsafe by the federal food and drug administration; or
- (2) has been removed from the market for any reason.

D. The administrator for group health coverage prescription drug benefits shall provide to each affected enrollee the following information in plain language regarding prescription drug benefits:

- (1) notice that the group health plan uses one or more drug formularies;
- (2) an explanation of what the drug formulary is;
- (3) a statement regarding the method the group health plan uses to determine the prescription drugs to be included in or excluded from a drug formulary; and
- (4) a statement of how often the group health plan administrator reviews the contents of each drug formulary.

E. As used in this section:

- (1) "formulary" means the list of prescription drugs covered by group health coverage; and
- (2) "step therapy" means a protocol that establishes the specific sequence in which prescription drugs for a specified medical condition and medically appropriate for a particular patient are to be prescribed.

13-7-16. Coverage for autism spectrum disorder diagnosis and treatment; permissible limitations. (Effective January 1, 2015.)

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage for an eligible individual who is nineteen years of age or younger, or an eligible individual who is twenty-two years of age or younger and is enrolled in high school, for:

- (1) well-baby and well-child screening for diagnosing the presence of autism spectrum disorder; and
- (2) treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis.

B. Coverage required pursuant to Subsection A of this section:

- (1) shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan;
- (2) shall not be denied on the basis that the services are habilitative or rehabilitative in nature;
- (3) may be subject to other general exclusions of the group health coverage, including coordination of benefits, participating provider requirements, restrictions on services provided by family or household members and utilization review of health care services, including the review of medical necessity, case management and other managed care provisions; and
- (4) may be limited to exclude coverage for services received under the federal Individuals with Disabilities Education Improvement Act of 2004 and related state laws that place responsibility on state and local school boards for providing specialized education and related services to children three to twenty-two years of age who have autism spectrum disorder.

C. The coverage required pursuant to Subsection A of this section shall not be subject to deductibles or coinsurance provisions that are less favorable to a covered individual than the deductibles or coinsurance provisions that apply to physical illnesses that are generally covered under the group health coverage, except as otherwise provided in Subsection B of this section.

D. A group health plan shall not deny or refuse health coverage for medically necessary services or refuse to contract with, renew, reissue or otherwise terminate or restrict health coverage for an individual because the individual is diagnosed as having autism spectrum disorder.

E. The treatment plan required pursuant to Subsection B of this section shall include all elements necessary for the group health coverage to pay claims appropriately. These elements include, but are not limited to:

- (1) the diagnosis;
- (2) the proposed treatment by types;
- (3) the frequency and duration of treatment;
- (4) the anticipated outcomes stated as goals;
- (5) the frequency with which the treatment plan will be updated; and
- (6) the signature of the treating physician.

F. This section shall not be construed as limiting benefits and coverage otherwise available to an insured under group health coverage.

G. The provisions of this section shall not apply to policies intended to supplement major medical group-type coverages such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or other limited-benefit health insurance policies.

H. As used in this section:

(1) "autism spectrum disorder" means a condition that meets the diagnostic criteria for the pervasive developmental disorders published in the Diagnostic and Statistical Manual of Mental Disorders, current edition, published by the American psychiatric association, including autistic disorder; Asperger's disorder; pervasive development disorder not otherwise specified; Rett's disorder; and childhood disintegrative disorder;

(2) "habilitative or rehabilitative services" means treatment programs that are necessary to develop, maintain and restore to the maximum extent practicable the functioning of an individual; and

(3) "high school" means a school providing instruction for any of the grades nine through twelve.

COUNCIL AGENDA ITEM
STAFF RECOMMENDATION

MEETING DATE: May 19, 2015

TO: Mayor / Council and Village Manager

FROM: Tracy Orr/Fabian Mascarenas

SUBJECT: Approve contract with WM Serazio for the construction of Camino Grande, MAP-7507(901) in the amount of \$508,632.37.

Background/Facts : The Village of Angel Fire went out to bid recently for the construction of the Camino Grande road project. The first and only bid from WM Serazio Construction Company came in on April 28, 2015. The bid was for \$741,076.21 and was \$148,071.69 more than the engineer's estimate, which was \$593,004.52. The Village rejected this bid and re-bid the project. The second bid was due May 12, 2015. WM Serazio was the sole bidder again and his second bid came in lower at \$646,654.44. Dennis Engineering was able to negotiate this amount down to \$508,632.37. The MAP Grant is for \$211,272.00 and the Village match is \$70,434.00. We have spent \$45,143.35 for engineering services so far.

Alternatives: N/A

1) **Financial Impact and Review:**

Financial Impact: Yes

Budgeted Item: Yes

Funding Source: Streets Department and MAP 7507(901)

Finance Department Comments and Review:

Finance Directors Signature

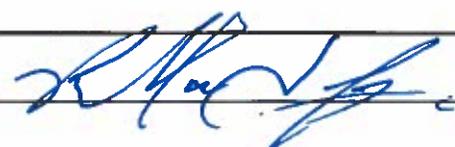
2) **Attached Documents:** Contract

3) **Staff's Recommended Motion:** Motion and Second to Approve a contract between WM Serazio and the Village of Angel Fire for construction on Camino Grande road under MAP 7507(901) in the amount of \$508,632.37.

4) **Village Manager's Recommendation:**

Approval: / **Disapproval:** _____ **other:** _____

Manager's Comments:

Signature: _____


W. M. SERAZIO CO
GENERAL CONTRACTOR
LIC. N.M. 053309
P.O. 1192 (138 W.TROY AVE.)
RATON, NEW MEXICO
87740-1192
PHONE: 575-445-8350 FAX: 575-445-8350

Dennis Engineering
Attn: Tappan

RE: Angel Fire Job

I have reduced erosion control, geo mat, traffic control since you agreed to a one lane closure using my employees and testing. I hope this will work.

Bill

Village of Angel Fire

Camino Grande Improvements
- Negotiations for Best Obtainable Price -

BASE BID SCHEDULE I: STA. 0+00 TO 15+00

Bid Item	Description	Unit	Estimated Quantity	Unit Price	Extended Amount
203000	UNCLASSIFIED EXCAVATION	LS	1	10000	10000 ⁰⁰
207000	SUBGRADE PREPARATION	SY	5350	3 ⁰⁰	16,050 ⁰⁰
304010	BASE COURSE 9" IN PLACE	CY	1310	38 ⁵⁰	50,435 ⁰⁰
423270	HOT MIX ASPHALT (HMA) SUPERPAVE SP-IV, INCLUDING BITUMINOUS MATERIAL	SY	5150	22 ⁵⁰	115825 ⁰⁰
602240	SOIL EROSION PROTECTION	SY	640	N/A	DELETED
603000	TEMPORARY AND PERMANENT EROSION AND SEDIMENT CONTROL	LS	1	8000 ⁰⁰	8000 ⁰⁰
604260	STABILIZATION GEOTEXTILE	SY	5540	6 ²⁵	35250 ⁰⁰
604700	METAL BARRIER W/ BEAM	LF	490	25 ⁰⁰	12250 ⁰⁰
606050	METAL BARRIER END TREATMENT	EA	4	2500 ⁰⁰	2500⁰⁰ 10,000 ⁰⁰
606015	TYPE "C" CURB RETURN	EA	2	5500 ⁰⁰	11,000 ⁰⁰
609018	CONCRETE APRON CURB AND GUTTER, TYPE "A" 6" X 24"	LF	350	30 ⁰⁰	10,500 ⁰⁰
609024	CONCRETE BARRIER CURB AND GUTTER, TYPE "B" 6" X 24"	LF	2520	35 ⁰⁰	88,200 ⁰⁰
609024	CONCRETE VALLEY GUTTER, 6" X 24"	LF	26	30 ⁰⁰	780 ⁰⁰
618000	TEMPORARY TRAFFIC CONTROL AND MANAGEMENT	LS	1	13,000 ⁰⁰	13,000 ⁰⁰
621000	MOBILIZATION	LS	1	40,000 ⁰⁰	40,000 ⁰⁰
663855	ADJUST VALVE BOX TO GRADE	EA	1	900 ⁰⁰	2,700 ⁰⁰
701000	ALUMINUM PANEL SIGN	SP	6	100 ⁰⁰	600 ⁰⁰
701000	SETTLING POST AND BASE POST FOR PANEL SIGNS	LF	9	25 ⁰⁰	475 ⁰⁰

70000	REFLECTORIZED PAINTED MARKINGS	LF	5650	1.65	9,322.50
80100	CONSTRUCTION STAKING BY CONTRACTOR	LF	1540	13.00	20,020.00
90100	CONTRACTORS QUALITY CONTROL CONSTRUCTION TESTING	ALL	1	12,500.00	12,500.00
Sub-Total: Base Bid Schedule I: Sta. 0+00 to 15+00					464,457.50
Gross Receipt Tax @ 7.7708%					36,092.06
Total: Base Bid Schedule I: Sta. 0+00 to 15+00					500,549.56 ^{lump}

471,957.50

36,674.67

508,632.31

5/14/2015

Village of Angel Fire

Camino Grande Improvements
- Negotiations for Best Obtainable Price -

ADDITIVE BID SCHEDULE 1: 15+00 TO 19+33

Bid Item	Description	Unit	Estimated Quantity	Unit Price	Extended Amount
21200	UNCLASSIFIED EXCAVATION	LS	1	3500 ⁰⁰	3500 ⁰⁰
51703	SUBGRADE PREPARATION	SY	1410	3 ⁰⁰	4230 ⁰⁰
54801	BASE COURSE 9" IN PLACE	CY	340	38 ⁵⁰	13090 ⁰⁰
42517	HOT MIX ASPHALT (HMA) SUPERPAVE, SP-1V, INCLUDING BITUMINOUS MATERIAL	SY	1281	22 ⁵⁰	28,800 ⁰⁰
605001	TEMPORARY AND PERMANENT EROSION AND SEDIMENT CONTROL	LS	1	1000 ⁰⁰	1,000 ⁰⁰
604760	STABILIZATION GEOTEXTILE	SY	1420	6²⁵ 6 ²⁵ 8 ⁰⁰	8,875 ⁰⁰
600424	CONCRETE BARRIER CURB AND GUTTER, TYPE "B" 6' X 24"	LF	786	35 ⁰⁰	27,510 ⁰⁰
614000	TEMPORARY TRAFFIC CONTROL AND MANAGEMENT	LS	1	3500 ⁰⁰	3,500 ⁰⁰
704000	REFLECTORIZED PAINTED MARKINGS	LF	1581	1 ⁴⁵	2,223 ⁵⁰
901400	CONSTRUCTION STAKING BY CONTRACTOR	LF	393	13 ⁰⁰	5,109 ⁰⁰
901000	CONTRACTORS QUALITY CONTROL, CONSTRUCTION TESTING	ALL	1	3500 ⁰⁰	3500 ⁰⁰
Sub-Total: Additive Bid Schedule 1: 15+00 TO 19+33					101,737. ⁵⁰
Gross Receipt Tax @				7.7708%	7,905. ⁸³
Total: Additive Bid Schedule 1: 15+00 TO 19+33					109,643. ³³