BERNALILLO COUNTY

BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2018-11

Procurement Ordinance

Chapter 2, Article V, Division 1 – 3 (Secs. 2-356 – 2-402)

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Chapter 2 – ADMINISTRATION
ARTICLE V. - PURCHASING

DIVISION 1. – GENERALLY
Sec 2-356. RULES OF CONSTRUCTION; PURPOSES

(a) The Procurement Ordinance ("Ordinance") shall be liberally construed and applied to promote its purposes and policies.

(b) Any conflict in interpretation of the Ordinance with the New Mexico State Procurement Code [NMSA 1978, Section 13-1-1, et seq.] shall be resolved as required by applicable law.

(c) The purpose of the Ordinance is to provide for the fair and equitable treatment of all Persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec 2-357. APPLICATION OF THE ORDINANCE

(a) This Ordinance applies to all expenditures by the County of Bernalillo ("County") for procurement of Tangible Personal Property, Services, and Construction, except as otherwise provided in this Article.

(b) Procurement involving the expenditure of federal funds must be conducted in accordance with the mandatory applicable federal laws and regulations. Such laws and regulations will supersede this Ordinance where it is inconsistent with those federal laws and regulations. Nothing in this Ordinance shall prevent the County from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with the County Code of Conduct or other applicable law.

(c) When mandatory applicable state or federal laws or regulations are inconsistent with the provisions of this Ordinance, compliance with such state or federal laws or regulations shall constitute compliance with the Ordinance.

(d) Any Contract or procurement document executed in violation of the Ordinance or other applicable laws shall be void and of no effect.

(e) All matters not specifically addressed in the Ordinance are intentionally omitted and are not governed by the provisions of the State of New Mexico Procurement Code, unless expressly made applicable to home rule local government entities.

(f) The effective date of section 2-393 (Design and Build Project System Requirements) shall be April 26, 2018. The balance of this Article shall become effective on July 1, 2018.

(g) NO IMPAIRMENT FROM PARTIAL INVALIDITY: The provisions of this Ordinance are severable, and if any provision, section, clause, sentence, or part thereof is held to be illegal, invalid, unconstitutional, or inapplicable, to any person, persons, circumstances, situation, or otherwise, the illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining sentences, clauses, sections, articles, or parts of this Ordinance or their applicability to other persons, circumstances or situations.

Sec 2-358. DEFINITIONS

(a) Architectural and Engineering Services - Professional Services within the scope of the practice of architecture and professional engineering, as defined by the State of New Mexico, involving research, design, development, Construction, alteration, or repair of real property;

(b) Best Obtainable Price – a price at which Tangible Personal Property, Services or Construction can be purchased which is most advantageous to the County;

(c) Bidder or Offeror - one who submits a bid or proposal in response to a Request for Bids, Request for Proposals, or submits a Quote in response to a call for formal or informal Quotes;

(d) Brand-Name Specification - a Specification limited to describing an item by manufacturer's name or catalogue number;

(e) Brand-Name or Equal Specification - a Specification describing one or more items by manufacturer's name or catalogue number to indicate the standard of quality, performance or other pertinent characteristics and providing for the substitution of equivalent items;

(f) Capital Project - a project involving Construction, paid for with funds intended for capital improvements, which may include Architectural or Engineering Services;

(g) Central Purchasing Office – the central department or office of the County led by the Chief Procurement Officer and charged with the duty of procurement;

(h) Chief Procurement Officer – the Person holding the position as the head of the Procurement Office in the County;

(i) Construction - building, altering, repairing, installing or demolishing in the ordinary course of business any: (1) road, highway, bridge, parking area or related project; (2) building, stadium or other structure; (3) airport, subway or similar facility; (4) park, trail, athletic field, golf course or similar facility; (5) dam, reservoir, canal, ditch or similar facility; (6) sewage or water treatment facility, power generating plant, pump station, natural gas compressing station or similar facility; (7) sewage, water, gas or other pipeline; (8) transmission line; (9) radio, television or other tower; (10) water, oil or other storage tank; (11) shaft, tunnel or other mining appurtenance; (12) electrical wiring, plumbing or plumbing fixture, gas piping, gas appliances or water conditioners; (13) air conditioning conduit, heating or other similar mechanical work; or (14) similar work, structures or installations. Construction shall also include: (15) leveling or clearing land; (16) excavating earth; (17) drilling wells of any type, including seismographic shot holes or core drilling; and (18) similar work, structures or installations;

(j) Construction Management - consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project;

(k) Construction Manager - a Person who acts as an agent of the County for Construction Management, for whom the County shall assume all the risks and responsibilities;

(l) Construction Manager at Risk - a Person who, pursuant to a Contract with the County, provides the pre-Construction Services and Construction Management required in a

Construction Manager at Risk delivery method;

(m) Contract - any written agreement for the procurement of items of Tangible Personal Property, Services or Construction;

(n) Contractor – means any business having a Contract with the County to furnish Tangible Personal Property, Services or Construction;

(o) Cooperative Procurement – (i) the action taken when two or more entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits; (ii) a variety of arrangements, whereby two or more public procurement entities (or agencies) purchase from the same supplier or multiple suppliers using a single RFB or RFP; (iii) cooperative procurement efforts may result in Contracts that other entities may utilize;

(p) Cost-Plus-Percentage-of-Cost-Contracts - an agreement in which the Contractor is provided a specified percentage profit over and above the actual costs of Tangible Personal Property, Services or Construction;

(q) Debarment – a final order that denies a Contractor the right to bid or offer to enter into a Contract with the County;

(r) Definite Quantity Contract - a Contract which requires the Contractor to furnish a specified quantity of Tangible Personal Property, Services, or Construction at or within a specified time;

(s) Determination - the documentation of a decision including the facts and justifications required to support a decision. A Determination becomes part of the procurement file to which it pertains;

(t) Employee - an individual receiving a salary, wages or per diem and mileage from the County whether elected or not and any noncompensated individual performing personal services as an elected or appointed official or otherwise for the County;

(u) External Procurement Unit - any procurement organization not located in the State of New Mexico which, if in this state, would qualify as a state agency or a Local Public Body. An agency of the United States government is an External Procurement Unit;

(v) Financial Interest – (i) holding a position in a business as officer, director, trustee, partner or holding any position in management; or (ii) ownership of more than five percent interest in a business;

(w) Gratuity - a payment, loan, subscription, advance, deposit of money, service or anything of more than nominal value, received or promised, unless consideration of substantially equal or greater value is exchanged;

(x) Immediate Family - a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law;

(y) Indefinite Quantity Contract - a Contract which requires the Contractor to furnish an indeterminate quantity of specified Tangible Personal Property, Services, or Construction during a prescribed period of time at a definite unit price or at a specified discount from list or catalogue prices;

(z) Landscape Architectural Services - services including but not limited to consultation, investigation, reconnaissance, research, design, preparation of drawings and Specifications and administration of Contracts where the dominant purposes of such services are: (i) the preservation or enhancement of land uses and natural features; (ii) the location and Construction of functional approaches for structures, pathways or walkways; or (iii) the design of trails, plantings and landscape irrigation. Excluded from the provisions of this section are the services of architects, engineers and surveyors as defined in this Article;

(aa) Local Public Body - every political subdivision of the state and the agencies, instrumentalities and institutions thereof;

(bb) Multiple Source Award - an award of Contract for one or more similar Tangible Personal Property, Services, or Construction to more than one Bidder or Offeror;

(cc) Multi-Step Sealed Bidding or Proposal – a two phase process consisting of a technical first phase when Bidders submit unpriced technical offers and a second phase when approved Bidders have costs reviewed;

(dd) NMSA – New Mexico Statutes Annotated;

(ee) Person - an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity;

(ff) Price Agreement – a Definite Quantity Contract or Indefinite Quantity Contract which requires the Contractor to furnish items of Tangible Personal Property, Services, or Construction to the County which issues a Purchase Order or written agreement, if the quantities ordered are within the quantity limitations of the Contract, if any;

(gg) Professional Services – services rendered by members of a recognized profession or possessing a special skill. Such Services are generally acquired to obtain information, advice, training or direct assistance. Services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, Construction Managers and other Persons or businesses providing similar Professional Services, which may be designated as such by a Determination issued by the Central Purchasing Office;

(hh) Public Records – all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of the County and relate to public business, whether or not the records are required by law to be created or maintained;

(ii) Purchase Order - the document issued by the Central Purchasing Office that directs a Contractor to deliver items of Tangible Personal Property, Services, or Construction;

(jj) Quote – purchasing method generally used for small orders under a certain dollar threshold, request is sent to suppliers along with a description of the commodity or Services needed and the supplier is asked to respond with price and other information by a predetermined date. Evaluation and recommendation for award should be based on the quotation that best meets price, quality, delivery, service, past performance, and

reliability. Award is made to the most Responsive, Responsible Bidder;

(kk) Request for Bids ("RFB") – all documents used to solicit competitive single or Multi-Step Sealed Bids for which an award is based on compliance the Specifications and low bid pricing;

(ll) Request for Proposal ("RFP") – all documents used to solicit proposals from potential providers (Offerors) for Tangible Personal Property, Services or Construction. Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price, prior to Contract award. May include a provision for the negotiation of best and final offers. May be a single-step or multi-step process. Award is made to the most Responsive, Responsible Bidder;

(mm) Request for Qualifications ("RFQ") – a request for submission of unpriced offers to be followed by a formal solicitation limited to those Bidders or Offerors whose offers have been qualified under the criteria set forth in the first solicitation;

(nn) Responsibility – the status in which a Bidder or Offeror establishes, to the satisfaction of the Chief Procurement Officer, an ability to fulfill the solicitation expectations and requirements. The Chief Procurement Officer may consider such criteria as described in this Article;

(oo) Responsible Bidder (or Offeror) – a business entity or individual who has the ability to fulfill the solicitation expectations and requirements, including but not limited to financial and technical capacity to perform the requirement of the solicitation and subsequent Contract;

(pp) Responsive Bidder (or Offeror) – a Contractor, business entity or individual who has submitted a bid or proposal that fully conforms in all material respects to the Request for Bids /Request for Proposal and all of its requirements including all form and substance;

(qq) Selection Advisory Committee ("SAC") – the committee established by County Ordinance for the purpose of selecting firms to provide Services of architects, landscape architects, engineers or surveyors;

(rr) Services – furnishing labor, time or effort by a Contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance. Services includes the furnishing of insurance but does not include Construction or the services of Employees of the County;

(ss) Specification - a description of the physical or functional characteristics or of the nature of items of Tangible Personal Property, Services, or Construction. "Specification" may include a description of any requirement for inspecting or testing, or for preparing items of Tangible Personal Property, Services, or Construction for delivery;

(tt) Surveying Services - any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for: (i) the measuring and locating of lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volume; (ii) the monumenting of property boundaries and the platting and layout of lands and subdivisions thereof; (iii) the application of photogrammetric methods used to derive

topographic and other data; (iv) the establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogrammetric methods, Construction surveys for engineering and architectural public works; and (v) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

(uu) Suspension – a temporary order of the Chief Procurement Officer that denies a Contractor the right to bid or offer to enter into a Contract with the County;

(vv) Tangible Personal Property - goods other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials;

(ww) User Department or User – a County department, office, unit or staff member for which procurement services are provided.

Sec 2-359. ELECTRONIC TRANSMISSIONS

(a) The Chief Procurement Officer shall develop procedural rules to use electronic media, including distribution of solicitations and acceptance of sealed bids and competitive sealed proposals that include electronic signatures, which shall include:

(1) appropriate security to prevent unauthorized access to electronically submitted bids or proposals prior to the date and time set for opening of bids or the deadline set for receipt for proposals, including the electronic bidding, approval and award process; and

(2) accurate retrieval or conversion of electronic forms of information into a medium that allows inspection and copying.

(b) The Central Purchasing Office, in any Request for Bids or a Request for Proposals, may require all or any part of a sealed bid or a competitive sealed proposal to be submitted electronically if it determines that an electronic submission will be advantageous to the procurement process. If electronic submission is required:

(1) hard copy documentation shall not be submitted to the Central Purchasing Office prior to the award of the Contract, except as specifically identified in the Request for Bids or the Request for Proposals;

(2) the Request for Bids or Request for Proposals shall specify an opening date and time, a fixed closing date and time and an email account or other secure electronic location to which the electronic bid or proposal shall be submitted;

(3) sealed bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the RFB unless all bids are submitted electronically, in which case the amount of each bid, each bid item, and other relevant information as may be specified by the bid requirements, together with the name of each Bidder, shall be recorded and made open to public inspection by the Central Purchasing Office; and

(4) sealed proposals shall be opened by the Central Purchasing Office, then evaluated and the Contract awarded as required in the Request for Proposals and as otherwise provided in the Ordinance.

Sec 2-360. CENTRAL PURCHASING OFFICE

(a) The Central Purchasing Office shall perform all duties required by the Ordinance and other relevant statutes. The Central Purchasing Office may coordinate with the state purchasing agent, the Central Purchasing Offices of other Local Public Bodies, and the purchasing office of External Procurement Units to maximize benefits of joint and cooperative efforts.

(b) The Central Purchasing Office is delegated the responsibility for all procurement transactions, including negotiating and finalizing Contract documents as described herein, administering this Ordinance and ensuring compliance with all applicable policies, procedures, laws, regulations, rules, statutes and Ordinances. The Central Purchasing Office is also responsible for creating and maintaining the procedural rules needed to effectuate the Ordinance.

(c) All procurements shall be performed by the Central Purchasing Office except as otherwise provided in the Ordinance or other procedural rules promulgated under its authority.

(d) The County shall report to the State of New Mexico Procurement Agent the Person within the Central Purchasing Office designated as the "Chief Procurement Officer." The Chief Procurement Officer shall maintain high standards of education and knowledge of the profession.

(e) The Chief Procurement Officer may make Determinations regarding exemptions, the issuance of Purchase Orders, authorization of small purchases and approval of procurements pursuant to the Ordinance.

(f) The Chief Procurement Officer may delegate his/her authority to subordinates as he/she deems necessary and appropriate by clearly delineating in writing such delegated authority and the limitations thereto.

Sec 2-361. EXEMPTIONS FROM THE PROCUREMENT ORDINANCE

(a) The provisions of the Ordinance shall not apply to:

(1) procurement of items of Tangible Personal Property or Services from a state agency, a Local Public Body or External Procurement Unit;

(2) printing and duplicating Contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

(3) purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

(4) purchases of books, periodicals, manuals and training materials published in all formats;

(5) insurance coverage for the County including but not limited to the New Mexico Association of Counties (excluding the purchase of insurance through a broker);

(6) travel by common carrier or by private conveyance and related travel expenditures such as meals and lodging;

(7) procurement of Tangible Personal Property or Services, as defined in this Article,

from the Corrections Industries Division of the New Mexico Corrections Department;

(8) purchases consisting of memberships, subscription services (excluding electronic or web-based subscription services), conference and training registration fees, and other similar purchases where prepayments are required;

(9) the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

(10) Contracts with a private independent Contractor for housing of inmates as well as the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

(11) Contracts and expenditures for services or items of Tangible Personal Property to be paid or compensated by money or other property transferred to the Bernalillo County Sheriff's Department by the United States Department of Justice Drug Enforcement Administration;

(12) Contracts with professional entertainers;

(13) 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, arbitrators, court reporters, process servers and witness fees, but does not include Contracts for legal services;

(14) Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possesses specialized training methods, techniques, or expertise in the subject matter;

(15) Contracts for services 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;

(16) works of art for museums or for display in public buildings or places;

(17) Contracts 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];

(18) direct purchases of advertising in all media, including radio, television, print and electronic, excluding Professional Services provided by marketing firms;

(19) 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];

(20) purchases of products or Services for eligible Persons with disabilities pursuant to the federal Rehabilitation Act of 1973;

(21) 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 of 1994;

(22) purchases of parts and labor or maintenance agreements to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop or the original equipment manufacturer;

(23) purchases of computer software, online diagnostic tools, web-based or electronic subscriptions and ancillary services required to match software already in use. This includes licensing fees, upgrades, implementation, maintenance or other related Services for proprietary software, if such services are available from only a single vendor;

(24) sponsorship Contracts allowing Persons or other entities to publicize the County's participation in community events in return for consideration;

(25) purchases of drugs, controlled substances and other related chemicals, the distribution and use of which is controlled by law or requires licensing, provided that such purchases are properly receipted and accounted for with appropriate supporting documentation, which shall be subject to internal audit;

(26) purchases of Tangible Personal Property, and ancillary Services such as installation, training, modification or maintenance, where required to match equipment currently in use and where standardization is in the best interest of the County and where a unique or novel application (available from only a single provider) is required to be used, with all such purchases justified in writing and approved by the Chief Procurement Officer;

(27) leases, licenses, permits, exchanges or purchases of real property and all other real property transactions, including closing costs;

(28) postage or shipping Services;

(29) relocation of utility lines within an easement owned by a public utility which requires its own Contractors to move the utility lines;

(30) purchases necessary for the investigation of criminal activities, which, if purchased competitively, may compromise an investigation as determined by the Sheriff or designee in writing; all funds expended for this type of activity will be properly receipted and accounted for with supporting documentation maintained by the Sheriff's Department and reviewed on a quarterly basis by the County Manager or designee;

(31) Contracts for retirement benefits which are paid for directly by County Employees;

(32) a Contract for materials grown, processed or manufactured in this state by Small Businesses, cooperatives, community self-determination corporations or other such enterprises; prior to negotiating a Contract under this exemption, the Central Purchasing Office shall make a Determination of the reasonableness of the price and the quality of the materials and that the public interest will best be served by the procurement;

(33) procurements exempt from the Ordinance as otherwise provided by law.

Sec 2-362. SOURCE SELECTION METHODS

(a) All County procurements shall be made by competitive sealed bids, except:

(1) When competitive sealed proposals, including Requests for Qualifications, are authorized;

(2) For small purchases;

(3) For Sole Source procurement;

(4) For Emergency procurement;

(5) When procured under existing government Contracts or by Cooperative Procurement;

(6) Purchases from antipoverty program businesses;

(7) For Construction Manager at Risk and Design-Build Construction projects.

(b) A Request for Information ("RFI") may be used to determine the market availability or to solicit information on Tangible Personal Property, Services or Construction.

(c) It is a violation of the Ordinance to split Contracts and purchases and/or to participate in any bid rigging activities to circumvent the required purchasing and contracting processes. In no event shall any purchase be arbitrarily or capriciously divided so as to circumvent any requirement of the Ordinance.

Sec 2-363. COMPETITIVE SEALED BIDS

(a) The Request for Bids ("RFB") is used to initiate a competitive sealed bid procurement and shall contain:

(1) The Specifications for the Tangible Personal Property, Services, or Construction to be procured;

(2) All Contract terms and conditions applicable to the procurement;

(3) Bid form(s) to be submitted by Bidders;

(4) The location where bids are to be received;

(5) Date, time and place of the bid opening;

(6) The requirements for complying with any applicable preference provisions as required under state statute and this Ordinance;

(7) A notice that states that the County Ordinance imposes civil and criminal penalties for its violation in addition to the penalties for illegal bribes, Gratuities, kickbacks or other criminal activities that are prohibited by the New Mexico Criminal Code.

(b) Notice of an RFB shall not be published prior to the completion or approval of the Request for Bids by the Central Purchasing Office.

(c) Any business requesting an RFB shall, at the time the request is made, provide to the Central Purchasing Office a current mailing address, telephone, fax numbers and email address, if available.

(d) Amendments to the RFB

(1) The Central Purchasing Office may amend the RFB to:

a. Make material changes such as changes in quantity, purchase descriptions, Specifications, delivery schedules and opening dates;

b. Correct defects or ambiguities;

c. Furnish all 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.

(2) Any amendment shall be sent via standard mail, faxed or electronically transmitted to all Bidders that have supplied their current contact information, pursuant to this section, and shall be distributed within a reasonable time to allow prospective Bidders to consider them in preparing their Bids.

(e) Bidding time

(1) Bidding time is the period of time between publication of the Request for Bids and the date of bid opening.

(2) The Central Purchasing Office shall allow a reasonable bidding time for preparation of bids, except when a shorter time is determined to be in the best interest of the County. A Request for Bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids.

(f) Pre-bid conference

(1) Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective Bidders known to have received an RFB.

(2) Nothing stated at the pre-bid conference shall change the RFBs unless a change is made by written amendment.

(g) Receipt and acceptance of bids

(1) Bids must be accepted for consideration, without alteration or correction, except as authorized in the Ordinance.

(2) Bids are to be evaluated on the requirements set forth in the Request for Bids. Any criteria that affects the bid price, such as discounts, transportation costs, total or life cycle costs, must be objectively measurable. No criteria may be used in bid evaluation that are not set forth in the Request for Bids.

(3) Each bid received by the Central Purchasing Office shall be stamped as received and labeled with date and time of filing. All bids shall be retained by the Central Purchasing Office in a secure place until the date and time for opening.

(h) If the lowest Responsible bid has otherwise qualified, and if there is no change in the original Specifications, terms, and conditions, the County may negotiate with the lowest Bidder for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid exceeded budgeted project funds.

(i) Correction or withdrawal of bids

(1) A bid mistake discovered before bid opening may be modified or withdrawn by a Bidder prior to the opening by delivering a written notice to the Central Purchasing Office.

(2) After bid opening, no modifications in price or other provisions of bids are permitted. However, a low Bidder, alleging a material mistake of fact which makes his bid non-Responsive, may be permitted to withdraw his bid if:

a. The mistake is clearly evident on the face of the bid; or

b. The Bidder submits evidence which clearly and convincingly demonstrates that a mistake was made; or

c. The decision to permit or deny withdrawal of a bid on the basis of mistake is a decision to be made by the Central Purchasing Office and shall be supported by a written Determination setting forth the grounds of the decision.

(3) After the bid opening and prior to the award, the following provisions apply:

a. Minor Technical Irregularities: The Central Purchasing Office may waive technical irregularities that do not alter the price, quality or quantity of the Tangible Personal Property, Services, or Construction bid;

b. Mistakes where the intent of a bid is clearly evident on the face of the bid document shall be corrected and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(4) All corrections or withdrawals allowed by the Central Purchasing Office shall be supported by a written Determination placed in the applicable procurement file.

(j) A bid shall be opened publicly in the presence of one or more witnesses at the time and place designated in the RFB. The amount of each bid, and each bid item (if appropriate), and other relevant information, together with the name of each Bidder, shall be recorded in the procurement file and each bid shall be open to public inspection. In the event that all bids are submitted electronically, no public bid opening is required, in which case the amount of each bid, each bid item, and other relevant information as may be specified by the bid requirements, together with the name of each Bidder, shall be recorded and made open to public inspection by the Central Purchasing Office;

(k) Bid award:

(1) Following award, a record of the basis for the award and the names of all people present at the bid opening shall be made part of the procurement file;

(2) Written notice of the award shall be sent to all Bidders of record;

(3) A Contract shall be awarded on the bid amount exclusive of any applicable state gross receipts or local option tax. Contracts shall require the County to pay these applicable taxes, including any increase that becomes effective after the Contract is executed. The applicable gross receipts tax or local option tax shall be shown as a separate amount on each billing or request for payment made under the Contract.

(l) Identical low bids. When two or more identical low bids are received and all applicable preferences have been applied, the Central Purchasing Office may:

(1) Award pursuant to the Multiple Source Award provisions of this Article;

(2) Award to a business or Contractor who qualifies for any preferences pursuant to this Article if the identical low bids are submitted by a business or Contractor that does not qualify for any preferences;

(3) Award by lottery to one of the identical low Bidders; or

(4) Reject all bids and resolicit bids or proposals for the required Tangible Personal Property, Services, or Construction.

(m) Bid and performance bonds and other security.

(1) Bid security, performance bonds or other security may be required for Contracts for items of Tangible Personal Property, Services, or Construction as deemed necessary to protect the County.

(2) Any bonding requirements shall not be used as a substitute for a Determination of the Responsibility of a Bidder or Offeror.

(3) When the RFB requires bid security, noncompliance by the Bidder requires that the bid be rejected.

(4) If a Bidder is permitted to withdraw its bid before award, no action shall be taken against the Bidder or its surety.

(5) As to performance and payment bonds for Construction Contracts, see the requirements of Section 13-4-18 NMSA 1978 and Division 2 of this Article.

Sec 2-364. REQUEST FOR QUALIFICATIONS

A Request for Qualifications may be issued requesting the submission of unpriced offers to be followed by a formal solicitation limited to those Bidders or Offerors whose offers have been qualified under the criteria set forth in the first solicitation.

Sec 2-365. COMPETITIVE SEALED PROPOSALS

(a) The Request for Proposals ("RFP") is used to initiate a competitive sealed proposal and competitive sealed qualifications-based proposal and may be used when procuring:

(1) Professional Services;

(2) Design and build projects;

(3) Contracts for Construction and facility maintenance, Service and repairs;

(4) Construction Manager at Risk Contracts;

(5) Contracts for design and installation of measures the primary purpose of which is to conserve natural resources including guaranteed utility savings Contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978]; or

(6) Other items of Tangible Personal Property, Services or Construction when the use of competitive sealed bidding is either not practicable or advantageous to the County.

(b) Competitive qualifications-based proposals shall be used for procurement of Professional Services of architects, engineers, landscape architects, Construction Managers and surveyors who submit proposals pursuant to the requirements of the Ordinance.

(c) Competitive sealed proposals, including competitive sealed qualifications-based proposals, shall include:

(1) The Specifications for the Tangible Personal Property, Services or Construction to be procured;

(2) All contractual terms and conditions applicable to the procurement;

(3) Instructions and information to Offerors, including the date, time, and place where proposals are to be received and reviewed;

(4) All evaluation factors, including the relative weight to be given to each factor, including price, when applicable;

(5) A statement that discussions may be conducted with Offerors who submit proposals, but that proposals may be accepted without such discussions;

(6) The form for disclosure of campaign contributions given by Prospective Contractors to Applicable Public Officials pursuant to the requirements of the Ordinance; and

(7) The requirements for complying with any applicable preference provisions as required under state statute and this Ordinance.

(d) In selecting qualified financial institutions, the Central Purchasing Office shall include socially responsible banking performance as a factor worth at least 15 percent of the total point value in determining the winning offer.

(e) A Request for Proposals may require that all or a portion of a Responsive proposal be submitted electronically.

(f) In the case of requests for competitive qualifications-based proposals, price shall be determined by formal negotiations related to scope of work.

(g) Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with Responsible Offerors who submit proposals found to be reasonably likely to be selected for award. This section shall not apply to architects, engineers, landscape architects and surveyors who submit proposals pursuant to the requirements of this Article.

(h) 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 signature on the Contract(s) resulting from the procurement.

(i) The award shall be made to the Responsible Offeror or Offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the Request for Proposals.

Sec 2-366. FORMAL COMPETITIVE SEALED BID AND PROPOSAL MATTERS

(a) A notice of any formal competitive solicitation (i.e. RFB, RFP) shall be published for not less than ten calendar days prior to the date set forth for the opening of bids or proposals. The notice shall be published at least once in a newspaper of general circulation in the County and may be posted on the County's website to notify interested parties of the project.

(b) A copy of any formal competitive solicitation (RFB, RFP) shall be made available for public inspection at the Central Purchasing Office or by electronic posting on the internet.

(c) The Central Purchasing Office shall send copies of the notice of formal competitive solicitations (RFB, RFP) to those businesses that have signified in writing an interest in submitting bids or proposals for particular categories of items of Tangible Personal Property, Services or Construction and that have paid any fees, if required. The Central Purchasing Office may satisfy the requirement of sending copies of a notice of bids or proposals by distributing the documents to prospective Bidders through electronic media.

(d) A Request for Bids, a Request for Proposals or any other 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 County. If no bids are received or if all bids received are rejected and if the Request for Bid was for Tangible Personal Property, Services or Construction, then new Request for Bids may be issued. If upon rebidding the Tangible Personal Property, Services or Construction, the bids received are unacceptable, or if no bids are secured, the Central Purchasing Office may purchase the Tangible Personal Property, Services or Construction in the open market at the Best Obtainable Price.

(e) Minor Technical Irregularities: The Central Purchasing Office may waive technical irregularities in bids or proposals that do not alter the price, quality or quantity of the items of Tangible Personal Property, Services or Construction. Technical irregularities are matters of form, rather than substance, which are evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Bidders or Offerors; i.e. when there is no effect on the price, quantity, quality, delivery or material Contract conditions. The Chief Procurement Officer or designee may waive such irregularities, or allow the low Bidder(s) or Offeror(s) to correct them, if either action is in the best interest of the County. Examples include, but are not limited to, the failure of a low Bidder(s) or Offeror(s) to: (i) Return the number of signed bids or proposals required by the solicitation; (ii) Sign the bid or proposal, but only if the unsigned bid or proposal is accompanied by other material indicating the low Bidder's or Offeror's intent to be bound; (iii) or acknowledge receipt of an addendum to the RFB or RFP, but only if it is clear from the bid or proposal that the low Bidder(s) or Offeror(s) received the addendum and intended to be bound by its terms or the addendum involved had no effect on price, quality or quantity.

(f) Standards of Responsibility for Bidders or Offerors: Factors to be considered in determining whether the standard of Responsibility has been met include whether a Bidder or Offeror has:

(1) submitted a Responsive bid or offer;

(2) ability, capacity, availability and skill to perform the Contract;

(3) adequate financial resources, production or service facilities, personnel, service

reputation and experience to make satisfactory delivery of the Tangible Personal Property, Services or Construction described in the RFB or RFP;

(4) a satisfactory record of previous performance on similar work;

(5) a satisfactory record of integrity, character, customer service, reputation and judgment;

(6) previous and existing compliance with laws;

(7) met the requirements of the Unfair Business Practices provisions of this Article;

(8) qualified legally to Contract with the County; and

(9) supplied all necessary information and data in connection with any inquiry concerning Responsibility.

(g) Finding of Responsibility: If a Bidder or Offeror who otherwise would have been awarded a Contract is found not to be a Responsible Bidder or Offeror, a Determination that the Bidder or Offeror is not a Responsible Bidder or Offeror, setting forth the basis of the finding, shall be prepared by the Chief Procurement Officer or designee. The unreasonable failure of a Bidder or Offeror to promptly supply information in connection with an inquiry with respect to Responsibility is grounds for a Determination that the Bidder or Offeror is not a Responsible Bidder or Offeror.

(h) Prequalification: A business may be prequalified by the Central Purchasing Office as a Bidder or Offeror for particular types of Tangible Personal Property, Services or Construction.

Sec 2-367. PROCUREMENT PREFERENCES

(a) For the purposes of this section:

(1) Business means a commercial enterprise carried on for the purpose of selling Tangible Personal Property or Services, including growing, producing, processing or distributing agricultural products.

(2) Formal Solicitation means a competitive bid process or competitive proposal process, including a competitive qualifications-based proposal process.

(3) Local Business means a business that holds a valid Resident Business/Contractor certificate from the New Mexico Taxation and Revenue Department pursuant to 13-1-22, NMSA 1978 and maintains its principal office and place of business in Bernalillo County, which is staffed and open to the public on a regular basis, subject to verification by the County.

(4) Pay Equity Business means any business that maintains a deviation of 7% or less between the salaries paid to men and salaries paid to women for comparable positions, as reported in the Pay Equity Reporting form that has been submitted by each Bidder and/or Offeror as prescribed under this Article. For purposes of this definition, comparable positions are those listed in the Job Classification Guide 2010 (as may be updated and amended from time to time) published by the federal Equal Employment Opportunity Commission.

(5) Recycled Content Goods means supplies and materials composed of 25% or more

recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid Specifications.

(6) Small Business shall mean a Local Business which employs an average of fewer than fifty (50) full-time employees in a calendar year, which number shall be verified by submittal of an affidavit from a Certified Public Accountant.

(7) State Resident Business/Contractor means a business that has a valid Resident business certificate or a valid Resident Contractor business certificate issued by the New Mexico Taxation and Revenue Department pursuant to 13-1-22, NMSA 1978.

(8) State Veteran Resident Business /Contractor means a Resident Veteran Business that has a valid Veteran Resident Business certificate or a valid Resident Veteran Contractor certificate issued by the New Mexico Taxation and Revenue Department pursuant to 13-1-22, NMSA 1978.

(b) Application of State and County Preferences

(1) When making a purchase through a formal solicitation process of Tangible Personal Property, Services or Construction, and prior to making a recommendation of award, the Central Purchasing Office shall apply the applicable preferences and related percentages as provided below. Preferences under the New Mexico State Procurement Code Section 13-1-21, NMSA 1978 shall be applied before any County preferences created under this Ordinance. The total amount of all preferences is limited as provided herein.

(2) State Preferences

a. The State Resident Business preference of 5% shall be applied to a qualified bid or proposal submitted in response to a Request for Bids or Request for Proposals for the purchase of Tangible Personal Property or Services in accordance with state law.

b. The State Resident Contractor preference of 5% shall be applied to a qualified bid or proposal submitted in response to a competitive solicitation for the purchase of Construction in accordance with state law.

c. The State Veteran Business preference of 10% shall be applied to a qualified bid or proposal for the purchase of Tangible Personal Property, Services and Construction submitted in response to a competitive solicitation by a state certified Veteran's business in accordance with state law.

d. The State Veteran Contractor preference of 10% shall be applied to a qualified bid or proposal for the purchase of Tangible Personal Property, Services and Construction submitted in response to a competitive solicitation by a state certified Veteran's business in accordance with state law.

e. The Recycled Content Goods preference of 5% shall be applied to a qualified bid or proposal from any Business in accordance with state law, except a Resident Veteran Business.

f. The Recycled Content Goods preference of 10% shall be applied to a qualified bid or proposal from a Resident Veteran Business with annual gross revenues

of up to $3,000,000 in the preceding tax year in accordance with state law.

g. The Central Purchasing Office shall not apply a business both a State Resident Business/Contractor preference and a State Resident Veteran Business/Veteran Contractor preference in accordance with state law.

(3) County Preferences

a. A Local Business preference of 5% shall be applied to a qualified bid or proposal submitted in response to a competitive solicitation for the purchase of Tangible Personal Property, Services and Construction by a local business, as defined herein.

b. A Small Business preference of 5% shall be applied to a qualified bid or proposal, submitted in response to a competitive solicitation for the purchase of Tangible Personal Property, Services and Construction by a Small Business as defined herein.

c. A Pay Equity preference of 5% shall be applied to a qualified bid or proposal, submitted in response to a competitive solicitation that at the time of submittal holds a valid Pay Equity Business Certificate issued by the County or any political subdivision of the State of New Mexico.

(4) Order of Application of Preferences

a. When the Central Purchasing Office makes a purchase using a formal bid process, the County shall deem any bid subject to any of the preferences listed in this Ordinance to be lower by the specified percentage listed in the specific preference than the bid actually submitted; and

b. When the Central Purchasing Office makes a purchase using a formal Request for Proposals process based on either a point-based system and / or weight factors, the Central Purchasing Office shall apply an additional percentage of the total possible points or the total weight of all the factors used in evaluating the proposals in the amounts specified in this Ordinance.

(5) Eligibility for Preferences

a. To qualify for the state's Resident Business and / or Resident Contractor preference, the Bidder or Offeror must submit with its bid or proposal its Resident Business and / or Resident Contractor Certificate issued by the State of New Mexico with its submittal.

b. To qualify for the state's Resident Veteran's preference, the Bidder or Offeror must submit with its bid or proposal the certificate of its Resident Veteran's Business and / or Resident Veteran's Contractor preference issued by the State of New Mexico.

c. If necessary, the Central Purchasing Office may seek additional information or proof to verify a local business eligibility for a local preference.

d. Only the Bidder or Offeror submitting a bid or proposal and not a subcontractor, may qualify for a preference.

e. Pay Equity Reporting Form and Pay Equity Preference:

i) Reporting Form: All competitive sealed bids and competitive sealed proposals may include a completed Bernalillo County Pay Equity Reporting Form to determine the deviation between salaries for men and women and to encourage compliance with the New Mexico State Fair Pay for Women Act. The Central Purchasing Office shall require that bids and proposals include the Form for the Bidder to be eligible for this preference. The Central Purchasing Office may allow for a revised Pay Equity Reporting Form to be submitted by the respondent should, in their sole opinion, the originally submitted form require a technical change;

ii) Certification: The County Manager or designee shall provide a Pay Equity Business Certificate to businesses that meet, to his/her satisfaction, the requirements contained herein. Certificates shall only be valid for the duration set forth on their face as allowed under the statute, Ordinance or regulation of the State of New Mexico or political subdivision that issued said certificate;

iii) The pay equity preference described herein shall not become available until the County Manager or designee establishes its own pay equity preference certification program or enters into an agreement with the State of New Mexico or one of its political subdivisions that allows the Central Purchasing Office to use its pay equity certification program.

(6) Limitation (percentage): The total amount of all preferences applied under this section including the applicable State preference, for the purchase of Tangible Personal Property, Services or Construction in any single award shall not exceed 15%, with the limit on State preferences as set forth under the New Mexico State Procurement Code.

(7) County Preference Limitation (dollar amount): When applying the County preferences as set forth in this section, the total dollar amount of County preferences shall never exceed $150,000.00.

(8) Protests: The procedures provided in the Ordinance governing protests and judicial review apply to a protest concerning the awarding of a Contract in violation of this section.

(9) This section shall not apply when the expenditure includes federal funds for the specific purchase is involved, or when the expenditure of grant funds includes a condition of which prohibits a local preference.

Sec 2-368. SMALL PURCHASES

(a) The Central Purchasing Office shall procure items of Tangible Personal Property, Services or Construction having a value not exceeding $100,000, excluding applicable state and local gross receipts taxes, in accordance with the applicable small purchase rules adopted by the Central Purchasing Office.

(1) Insofar as it is practical for small purchases of non-Professional Services, Construction or items of Tangible Personal Property having a value exceeding

$20,000 but not exceeding $100,000, no fewer than three businesses shall be solicited via written requests containing the Specifications for the procurement; written Quotes shall be recorded and placed in the procurement file.

(2) If three written Quotes cannot be obtained, the User shall document the reasons and include the document in the procurement file. Award shall be made to the business offering the lowest acceptable Quote.

(3) If the lowest Quote 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 and the written Determination shall become a part of the procurement file.

(b) Notwithstanding the requirements of this section, the County may procure items of Tangible Personal Property, Services or Construction having a value not exceeding $20,000, excluding applicable state and local gross receipts taxes, based upon the Best Obtainable Price.

(c) Notwithstanding the requirements of this section, the Central Purchasing Office may procure Professional Services having a value not exceeding $80,000, excluding applicable state and local gross receipts taxes based upon the Best Obtainable Price.

(d) Contracting with firms or individuals to provide professional Architectural, Engineering, Construction Management and other related Professional Services, including Landscape Architectural or Surveying Services, shall be accomplished in accordance with the provisions of the applicable sections of this Article. The Central Purchasing Office shall negotiate a Contract for the required Services at a fair and reasonable price to the County.

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

Sec 2-369. SOLE SOURCE PROCUREMENT

(a) A Contract for Tangible Personal Property, Services or Construction may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the Chief Procurement Officer or designee makes a written Determination, after conducting a good-faith review of available sources and consulting the User Department, that:

(1) There is only one source for the required Tangible Personal Property, Services or Construction;

(2) The Tangible Personal Property, Services or Construction are unique and this uniqueness is substantially related to the intended purpose of the Contract; and

(3) Other similar Tangible Personal Property, Services or Construction cannot meet the intended purpose of the Contract.

(b) The Central Purchasing Office shall use due diligence in determining the basis for the Sole Source procurement, including reviewing available sources and consulting the User, and shall include its written Determination in the procurement file.

(c) The Central Purchasing Office shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to the County.

(d) The Central Purchasing Office shall not circumvent this section by narrowly drafting Specifications so that only one predetermined source would satisfy those Specifications.

(e) At least fifteen calendar days before a Sole Source Contract is awarded, the Central Purchasing Office shall post notice of the intent to award a Sole Source Contract on its web site. The notice shall identify at a minimum:

(1) The Contractor's name and address;

(2) The estimated amount and term of the Contract;

(3) A listing of the Tangible Personal Property, Services or Construction procured under the Contract; and

(4) The justification for the procurement method.

(f) The record of each such procurement shall be Public Record and shall be maintained as required by applicable New Mexico statutes and regulations regarding records retention.

(g) Any qualified potential Contractor who was not awarded a Sole Source Contract may protest to the 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 Central Purchasing Office.

Sec 2-370. EMERGENCY PROCUREMENT

(a) The 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 items of Tangible Personal Property, Services or Construction 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 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) Within three business days of awarding an emergency procurement Contract, the Central Purchasing Office shall post on its web site the notice, identifying, at a minimum:

(1) The Contractor's name and address;

(2) The amount and term of the Contract;

(3) A listing of the Tangible Personal Property, Services or Construction procured under the Contract; and

(4) The justification for the procurement method.

(f) The record of each such procurement shall be Public Record and shall be maintained as required by applicable New Mexico statutes and regulations regarding records retention.

Sec 2-371. EXISTING GOVERNMENT CONTRACTS AND COOPERATIVE PROCUREMENT (AS A MEANS OF SOURCE SELECTION)

(a) Existing Government Contracts: Notwithstanding the other requirements of the Ordinance, the Central Purchasing Office may Contract for Tangible Personal Property, Services or Construction without use of competitive sealed bids or competitive sealed proposals as follows:

(1) at a price equal to or less than the Contractor's current federal supply Contract price (GSA), providing the Contractor has indicated in writing a willingness to extend such Contractor pricing terms and conditions to the County and the Purchase Order adequately identifies the Contract relied upon;

(2) with a business which has a current exclusive or nonexclusive Price Agreement with the state purchasing agent or a Central Purchasing Office for the item, Services or Construction meeting the same standards and Specifications as the items to be procured if the following conditions are met:

a. the quantity purchased does not exceed the quantity which may be purchased under the applicable Price Agreement; and

b. the Purchase Order adequately identifies the Price Agreement relied upon;

(3) at a current Contract price obtained by any other public agency, Local Public Body, External Procurement Unit or cooperative purchasing agency using competitive solicitation processes publicized in accordance with the requirements of the procurement laws and regulations applicable to that agency.

(b) Cooperative Procurement:

(1) The County may participate in, sponsor or administer a Cooperative Procurement agreement for the procurement of any items of Tangible Personal Property, Services or Construction with any other state agency, Local Public Body or External Procurement Unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, Local Public Bodies or External Procurement Units involved.

(2) The Cooperative Procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a Cooperative Procurement agreement entered into pursuant to this subsection shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the contracting parties may be located outside this state.

(3) All Cooperative Procurement agreements, where the County acts as lead agency, shall be available for public viewing on the County's website. The records for all other Cooperative Procurement agreements shall be Public Records and shall be maintained and available for inspection as required by applicable New Mexico statutes and regulations.

(c) The Central Purchasing Office shall retain a copy of each Contract relied upon; these Contracts may be required for auditing purposes and for public review.

Sec 2-372. INSURANCE RELATED PURCHASES

(a) Insurance coverage for the County, other than Employee health care and other voluntary Employee benefits, may be remarketed by a controlled bidding process through a broker under the direction of the County's Risk Management Department.

(b) Employee health care insurance and other voluntary Employee benefits shall be obtained in accordance with the procurement methods described in this Article.

(c) The selection of the County's broker responsible for the negotiation of insurance coverages for the County will be obtained in accordance with the procurement methods described in this Article.

Sec 2-373. ANTIPOVERTY PROGRAM BUSINESS PURCHASES

(a) Without regard to the bid requirements of this Article, the Central Purchasing Office may negotiate a Contract for materials grown, processed or manufactured in this state by Small Businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or through private philanthropy.

(b) Prior to negotiating a Contract under this section, a Central Purchasing Office shall make a Determination of the reasonableness of the price and the quality of the materials and that the public interest will best be served by the procurement.

Sec 2-374. ASSISTANCE TO SMALL BUSINESS

(a) The Central Purchasing Office shall develop training programs to assist small businesses in learning how to do business with the County.

(b) The Central Purchasing Office may make special provisions for progress payments as such office or officer may deem reasonably necessary to encourage procurement from small businesses in accordance with procedural rules promulgated by the Central Purchasing Office.

(c) The Chief Procurement Officer may reduce the bid bond, performance bond or payment bond to encourage procurement from small businesses, except as otherwise provided by law.

Sec 2-375. PUBLIC ACQUISITION OF AMERICAN MADE MOTOR VEHICLES REQUIRED

(a) The County 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.

Sec 2-376. UNFAIR BUSINESS PRACTICES

(a) For the purposes of this Section, "Unfair Business Practices" shall mean a system or pattern of acts or practices that a relevant federal or state enforcement agency has made a formal finding within the last three years to be discriminatory, deceptive, fraudulent, or abusive (or similar terms) under the New Mexico Unfair Practices Act, NMSA 1978, § 57-12-1 et seq, or an applicable federal or other state consumer protection law relating to the subject matter of the procurement) or that have violated a relevant criminal statute, as evidenced by a public enforcement order or judgment, settlement with the enforcement agency or other formal finding by the relevant enforcement agency with regulatory enforcement authority under the applicable consumer protection law, or criminal conviction.

(b) The County finds that it is a priority to protect its interests and the public's trust by conducting its business with partners that are committed to and consistently demonstrate engaging in fair and responsible business practices. The general purpose and intent of this Section are to ensure to the maximum extent practicable that the County's contracting practices support conducting its business with partners who are committed to and consistently demonstrate engaging in fair and responsible business practices and avoid conducting its business with partners that engage in criminal or systematic deceptive, fraudulent or abusive business practices.

(c) Requirements:

(1) All RFBs and RFPs will include an Unfair Business Practices Disclosure Form for the reporting of all relevant violations that shall be submitted together with the bid or proposal;

(2) Any Person or entity who has reported, or failed to report, relevant violations constituting Unfair Business Practices as set forth in this Article may be subject to rejection of bid or proposal based on finding of non-Responsibility;

(3) All Contractors shall report to the Central Purchasing Office all additional Unfair Business Practices violations during the term of their agreement(s) with the County;

(4) Any Person or entity that is awarded a Contract with the County who has been found to engage in Unfair Business Practices as set forth in this Article may be subject to Contract termination.

(d) The County Manager or designee may waive the requirements of this section when it is in the best interests of the County.

Sec 2-377. PROCUREMENT OF BANKING SERVICES

(a) Socially Responsible Banking

(1) The Chief Procurement Officer, in conjunction with the Deputy County Manager for Finance, in selecting qualified depositories for County moneys, shall have the power

and duty to:

a. Require that prospective Offerors provide the County with data on their socially responsible banking practices;

b. Utilize socially responsible banking performance as a factor in determining the successful proposal;

c. Accept proposals for depository services only from financial institutions that have received a rating of "Outstanding" in their most recent Community Reinvestment Act review by the Office of the U.S. Comptroller of the Currency, U.S. Federal Reserve Bank or the Federal Deposit Insurance Corporation. The Chief Procurement Officer may waive this requirement, with written notice to the County Commission, in the event that no qualified Offerors apply, the federal program is no longer applicable, or to satisfy a compelling County need;

d. Include in Contracts for depository services a statement of work that provides a framework for socially responsible banking;

e. Establish relevant reporting criteria and timeframes to validate the statement of work.

(2) Socially responsible banking proposal criteria shall include, but are not limited to, community involvement and reinvestment; meeting community banking needs; supporting small business lending and community development; providing for home ownership and consumer credit; assisting distressed homeowners; and allowing for products and services that are advantageous for the County and its Residents.

(b) Statement of Work:

(1) The statement of work for socially responsible banking tasks shall include, but is not limited to, the following:

a. Community Involvement and Reinvestment

i) The bank will report to the County on its efforts to invest in low- and moderate- income areas and minority census tracts.

ii) The bank, through its community investment program or other similar program, will collaborate and support annually at least one designated non-profit organization focused on providing financial services, education and asset building for low-income people in the County.

iii) The bank, through its community investment program or other similar program, will collaborate with and support annually at least one organization that provides free tax preparation Services in the County that target lower-income workers to help them take advantage of the Earned Income Tax Credit and other tax credits.

iv) The bank will report on its community development activities (such as investments, lending, and Services) to demonstrate the bank's response to the credit, financial and banking needs of low- to moderate- income individuals in the County and surrounding areas.

v) The bank will provide the County with reasonable notice of branch closures and openings within the County, including the reasons for any closures.

b. Community Banking Needs

i) The bank will continue to support and participate in programs that strive to reach traditionally underserved populations as described in the Community Reinvestment Act. These programs may include unbanked, under banked, and low-income populations. The bank will provide free or low-cost services and products and increase access to these underserved populations.

ii) The bank will make its best effort to offer consumers prepaid debit cards with the primary features and criteria outlined in the Cities for Financial Empowerment (CFE) Coalition's Bank on National Account Standards.

iii) The bank will provide easy-to-understand fee schedules and make a reasonable effort to offer fair, responsible, and affordable small-dollar loans.

c. Small Business Lending and Community Development. The bank will provide a single point of contact for business lending and partnership, and will participate as agreed in small business trade fairs, outreach or educational opportunities.

d. Home Ownership and Consumer Credit

i) The bank will provide a single point of contact in its loan servicing group for the County Manager or designee.

ii) The bank will participate in outreach and educational opportunities aimed at salvaging distressed home mortgages, will collaborate with HUD-certified housing counseling services, and will inform customers who do not qualify for home loans or other products about local non-profit credit and debt counseling services.

(2) The Chief Procurement Officer, in conjunction with the Deputy County Manager for Finance, may propose exceptions to this statement of work, subject to Board approval by resolution, in future Contract cycles.

(c) Reporting:

(1) Any banking Contract must include a requirement that the bank provide the following reporting:

a. Residential lending information - The bank will provide the total number and the total dollar amount of Residential loans for one- to four-family dwellings applied for and originated during the previous calendar year in each of the following listed categories. The data shall be provided for the entire County by zip code. For home loans, fixed-rate loans shall be reported separately from adjustable-rate loans.

i) Home purchase loans, both federally insured and conventional loans;

ii) Refinancing of home loans;

iii) Home improvement loans;

iv) Home equity loans;

v) Multi-family loans;

vi) Loans to non-occupant owners of single-family housing;

vii) Modifications of distressed loans and the type of modification, including interest rate reductions, forbearance, principal reduction, or repayment plans in which the outstanding loan amount increases, and an indication of whether the modification was executed under the federal Home Affordable Modification Program (HAMP), another federal program or the institution's own modification program;

viii) Short sales, deeds in lieu, and other mechanisms besides loan modifications that avoid foreclosure;

ix) Defaults and delinquencies on home loans.

b. Small business lending information - The bank will provide the total number and the total dollar amount of small business loans originated during the previous calendar year for the entire County by zip code, and for minority- and women-owned business enterprises in the entire County. Loans to small businesses with annual revenues above $1 million dollars shall be reported separately from loans to small businesses with annual revenues under $1 million. The bank may use data reporting procedures mandated by the federal Community Reinvestment Act for reporting small business loans.

c. Community development loans and investments - The bank will provide the number and dollar amount of community development loans and investments including loans and investments for affordable housing, small business development, economic development and community facilities for the entire County by zip code or neighborhood. The bank may use definitions of community development found in federal Community Reinvestment Act regulations. For each loan and investment, the bank will indicate if the loan or investment was for affordable housing, small business development, economic development, community facilities and other such categories requested by the Director.

d. Consumer loan data - The number and dollar amount of consumer loans for the entire County by zip code. Price information shall be reported in a manner similar to Home Mortgage Disclosure Act (HMDA) data.

e. Checking, savings and loan products - Information on selected checking, savings, prepaid card, small dollar loan and other products marketed to County Residents, including information on fees, interest and features.

f. Other - Narrative descriptions will be required to describe efforts to meet all other items set forth in the statement of work.

(2) The Chief Procurement Officer, in conjunction with the Deputy County Manager for Finance, may propose exceptions to these reporting elements, subject to Board

approval by resolution, in future Contract cycles.

Sec 2-378. CONTRACTS

(a) Contract Approval: The County Manager or designee shall have the authority to approve all Contracts for the County; Contracts in excess of any amounts adopted by resolution of the Board shall be approved by the Board in accordance with the requirement of the applicable resolution.

(b) Contract Classifications: The Chief Procurement Officer shall determine the use of standard and specialized Contracts including but not limited to Definite Quantity Contracts, Indefinite Quantity Contracts and Price Agreements (including Cost-Plus-Percentage-of-Cost Contracts), as required acting in the best interest of the County; provided that the County shall not enter into any Contract for Construction which is a Cost-Plus-Percentage-of-Cost Contracts, unless the Contract meets the requirements in this Article for an Emergency purchase or is determined by the Chief Procurement Officer to be in the best interest of the County. A cost-reimbursement Contract may be used when such Contract is likely to be less costly or it is impracticable to otherwise obtain the items of Tangible Personal Property, Services or Construction required.

(c) Contract Clauses: All County Contracts shall include provisions necessary to define the responsibilities and rights of the parties to the Contract. The Chief Procurement Officer shall include uniform clauses that protect the best interest of the County, including but not limited to the following subjects:

(1) Unilateral right of the County to order in writing:

a. Changes in the work within the scope of the Contract; and

b. Temporary stoppage of the work or the delay of performance;

(2) Variations occurring between estimated quantities of work in a Contract and actual quantities;

(3) Liquidated damages;

(4) Permissible excuses for delay or nonperformance;

(5) Termination of the Contract for default;

(6) Termination of the Contract in whole or in part for the convenience of the County;

(7) Assignment clauses providing for the assignment by the Contractor to the County of causes of action for violation of state or federal antitrust statutes;

(8) Identification of subcontractors by Bidders; and

(9) Uniform subcontract clauses in Contracts.

(10) Insurance provisions (if applicable)

(d) The County shall include a clause in Contracts imposing late payment charges against the County in the amount and under the conditions stated in in this Article.

(e) Price Adjustments: Adjustments in price shall be computed in one or more of the following ways as specified in the Contract:

(1) In such other manner as the Contracting parties may mutually agree; or

(2) In the absence of agreement by the parties, by a unilateral Determination reasonably computed by the County of the costs attributable to the events or conditions.

(f) Multi-year Contracts

(1) Prerequisites. Prior to the use of a multi-year Contract, the Central Purchasing Office shall determine that:

a. The estimated requirements cover the period of the Contract and are reasonably firm and continuing; and

b. The Contract will serve the best interests of the County.

(2) A multi-year Contract for items of Tangible Personal Property, Services or Construction except for Professional Services may be entered into for any period of time deemed to be in the best interests of County not to exceed ten years.

(3) A multi-year Contract for Professional Services may be entered into for any period of time not to exceed six years, including all extensions, except for the following:

a. Contracts for the Services of trustees, escrow agents, registrar, paying agents, letter of credit issuers and other forms of credit enhancement; and other similar Services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding;

b. Contracts for Services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act; and

(4) For Construction, Architectural, and Engineering Services provided for specific projects already in progress, the Chief Procurement Officer, by written Determination, may approve an extension beyond a multi-year term set forth in this Section.

(5) Availability of funds: Payment and Contractor performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds.

(6) Cancellation: If funds are not appropriated or otherwise made available to support continuation of the multi-year Contract, the Contract shall be cancelled.

(g) Multiple Source Award: A Multiple Source Award may be made pursuant to the competitive sealed bid or competitive sealed proposal requirements of this Article when awards to two or more Bidders or Offerors are necessary for adequate delivery or service. Multiple source awards shall not be made when a single award will meet the needs of the County without sacrifice of economy or service. A Multiple Source Award shall be based upon the lowest Responsible bid as identified by Competitive Sealed Bids or most highly qualified as identified by Competitive Sealed Proposals.

Sec 2-379. PROCUREMENT OF USED ITEMS

(a) When procuring used items of Tangible Personal Property, the estimated cost of which

exceeds $20,000, shall request Quotes as though the items were new, adding Specifications that permit used items under conditions which may include but are not limited to:

(1) Requiring a written warranty for at least 90 days after date of delivery; and

(2) An independent "certificate of working order" by a qualified mechanic or appraiser.

(b) All purchases of used items under $20,000 shall be made at the Best Obtainable Price.

(c) The price paid for used items, including all fees and applicable surcharges, shall not exceed the current value established by:

(1) The current book value established by any well-recognized market-value guide or publication, where such information is available;

(2) Where such information is not available, price shall not exceed the value as established (a) by appraisal, or (b) by the price of comparable goods;

(3) The provisions of this section shall apply to the purchase of used items by auction, through private sale, or through public sale.

Sec 2-380. TRADE IN OR EXCHANGE OF USED ITEMS

(a) The Central Purchasing Office, when trading in or exchanging used items of Tangible Personal Property the estimated value of which exceeds five thousand dollars ($5,000) as part-payment on the procurement of new items of Tangible Personal Property, shall:

(1) have two written Quotes for purchase of the property at a specified price; or

(2) have an independent appraisal made of the items to be traded in or exchanged, which shall be in writing, shall be made part of the procurement file and shall be a Public Record.

(3) contain notice in applicable Request for Bids or Request for Proposals to prospective Bidders or Offerors which includes the description and Specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged, and the location where the items to be traded in or exchanged may be inspected.

(b) Award shall be based upon the net bid. Bidders or Offerors shall compute their net bid or offer by deducting the appraised value or highest Quote of the items to be traded in or exchanged from the gross bid or offer on the new items of Tangible Personal Property to be procured. If an amount offered in trade is less than the appraised value or the highest Quote but is found to be a fair reflection of the current market, representative of the condition of the items of Tangible Personal Property and in the best interest of the County, the bid or offer may be accepted. Documentation of the terms of acceptance shall be in writing, shall be made a part of the procurement file and shall be a Public Record.

Sec 2-381. RECEIPT, INSPECTION, AND PAYMENT

(a) The User Department is responsible for inspecting and accepting or rejecting deliveries. The User Department shall determine whether the quantity is as specified in the Purchase Order or Contract and whether the quality conforms to the Specifications referred to or included in the Purchase Order or Contract. If inspection reveals that the delivery does

not conform to the quantity or quality specified in the Purchase Order or Contract, the User Department shall immediately notify the Central Purchasing Office. The User Department shall notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery. In case the vendor fails to comply, the County shall have no obligation to pay for the nonconforming items of Tangible Personal Property.

(b) The County shall not issue payment without certification from the User Department stating that products, equipment or Services have been received or completed as specified.

(c) Prepayment shall be allowed when approved by the Chief Procurement Officer, or his/her designee.

(d) In the event of disputed invoices, unless otherwise agreed upon by the parties or unless otherwise specified in the RFB, RFP, or other solicitation, within twenty days from the date the invoice is received by the County, the Central Purchasing Office or User Department shall issue a written notification of full or partial rejection of the items of Tangible Personal Property, Services or Construction.

(e) Except as otherwise provided herein, upon approval by the Central Purchasing Office or User Department that the items of Tangible Personal Property, Services or Construction have been received and accepted, payment shall be tendered to the Contractor within thirty days of the date the invoice is received by the County. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date the invoice is received by the County, late payment charges shall be paid on the unpaid balance due on the Contract to the Contractor at the rate of one percent per month. For purchases funded by state or federal grants to the County, if the County has not received the funds from the federal or state funding agency, payments shall be tendered to the Contractor within five working days of receipt of funds from that funding agency.

(f) Late payment charges that differ from the provisions of this section may be assessed if specifically provided for by Contract or pursuant to tariffs approved by the New Mexico public utility commission or the public regulation commission.

Sec 2-382. RIGHT TO INSPECT PLANT

A Contract or a solicitation may include a provision permitting the County, at reasonable times, to inspect the facility or place of business of a Contractor or any subcontractor that is related to the performance of any Contract awarded or to be awarded.

Sec 2-383. CONTRACT AUDIT

The County shall be entitled to audit the books and records of a Contractor or any subcontractor under any negotiated Contract or subcontract to the extent that such books and records relate to the performance of such Contract or subcontract. Such books and records shall be maintained by the Contractor for a period of three years from the date of final payment under the prime Contract and by the subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

Sec 2-384. SPECIFICATIONS

(a) All Specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive. All Specifications shall be drafted so as to ensure maximum practicable competition and fulfill the requirements of the County. In preparing Specifications, if, in the opinion of the Central Purchasing Office, a proposed component is of a nature that would restrict the number of Responsible Bidders or Responsible Offerors and thereby limit competition, if practicable, the Central Purchasing Office shall draft the Specifications without the component and procure the component by issuing a separate Request for Bids or Request for Proposals or by entering into a Sole Source procurement.

(b) A Brand-Name or Equal Specification may be used when the Central Purchasing Office determines that only the identified Brand-Name item will satisfy the needs of the County. Should the essential characteristics of the Brand-Names included in the Specifications be commonly known in the industry or trade, such a detailed description is not necessary. 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. The Central Purchasing Office or the User Department shall seek to identify sources from which the designated Brand-Name items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable.

(c) The County shall not accept any bid or proposal from a Person who directly participated in the preparation of Specifications. This prohibition does not extend to vendors who have suggested changes to Specifications that were approved by the County during the course of a publicly-solicited, formal bid or proposal process.

(d) The requirements of this section regarding the purposes and non-restrictiveness of Specifications shall also apply to all Specifications prepared other than by County personnel, including, but not limited to, those prepared by architects, engineers and designers.

Sec 2-385. PROTEST AND APPEALS

(a) Any Bidder or Offeror who is aggrieved in connection with a solicitation or award of a Contract may protest to the Chief Procurement Officer. The protest shall be submitted in writing within fifteen calendar days after knowledge of the facts or occurrences giving rise to the protest.

(b) In the event of a timely protest, the Central Purchasing Office shall not proceed further with the procurement unless it makes a Determination that the award of the Contract is necessary to protect substantial interests of the County. 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 Central Purchasing Office may, in its sole discretion, halt a procurement in exceptional circumstances or for good cause shown.

(c) The Central Purchasing Office shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Bidder or Offeror. This authority shall be exercised in accordance with this section but shall not include the authority to award

money damages or attorneys' fees.

(d) The Central Purchasing Office shall promptly issue a 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 this Article.

(e) The written Determination shall immediately be sent via certified mail to the protestant and otherwise provided via standard mail or electronically to other Bidders or Offerors involved in the procurement.

(f) The Chief Procurement Officer shall promulgate procedural rules for the resolution of protests under this Article, provided that the County shall not have the authority to award money damages or attorneys' fees.

Sec 2-386. REMEDIES PRIOR TO EXECUTION OF CONTRACT

If prior to the execution of a valid, written Contract by all parties and necessary approval authorities, the Central Purchasing Office makes a Determination that a solicitation or proposed award of the proposed Contract is in violation of law, then the solicitation or proposed award shall be canceled.

Sec 2-387. RATIFICATION OR TERMINATION AFTER EXECUTION OF CONTRACT

(a) If after the execution of a valid, written Contract by all parties and necessary approval authorities, the Central Purchasing Office makes a Determination that a solicitation or award of the Contract was in violation of law and if the business awarded the Contract did not act fraudulently or in bad faith:

(1) the Contract may be ratified, affirmed, and revised to comply with law, provided that a Determination is made that doing so is in the best interests of the County; or

(2) the Contract may be terminated, and the Contractor shall be compensated for the actual expenses reasonably incurred under the Contract plus a reasonable profit prior to termination.

Sec 2-388. JUDICIAL REVIEW

All actions authorized by the Ordinance for judicial review of a Determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

Sec 2-389. VENDOR SUSPENSION AND DEBARMENT

(a) The Chief Procurement Officer, after reasonable notice to the business involved, shall have authority to recommend to the Board the Suspension or Debarment of a business for cause from consideration for award of Contracts if after reasonable investigation, he or she finds that a Person has engaged in conduct that constitutes cause for Debarment.

(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, 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 Chief Procurement Officer, after reasonable notice to the Person involved, shall have authority to recommend to the County Manager the Debarment of Person(s) for cause from consideration for award of Contracts. The Debarment shall not be for a period of more than three years. The authority to debar shall be exercised only upon reasonable notice and a hearing prior to Debarment.

(d) 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 or settlement with enforcement agency against a Bidder, Offeror or Contractor for a civil violation related to honesty, integrity or business ethics;

(7) civil judgment or settlement with enforcement agency against a Bidder, Offeror or Contractor pursuant to the New Mexico Unfair Trade Practices Act or other similar act from another state or the United States Government;

(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 Chief Procurement Officer 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 Chief Procurement Officer 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 this Ordinance.

(e) 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.

(f) The Chief Procurement Officer shall promulgate procedural rules to adjudicate all Debarments and Suspensions under this Section.

Sec 2-390. ETHICAL CONDUCT

(a) Bribes, Gratuities, and Kickbacks: All Contracts and solicitations thereof shall contain references to the New Mexico criminal statutes prohibiting bribes, Gratuities and kickbacks.

(b) Campaign Contribution Disclosure and Prohibition:

(1) Any Prospective Contractor shall disclose all campaign contributions given by the Contractor, Family Member or representative to any public official of the County during the two-years prior to the date on which a proposal is submitted or, in the case of a Sole Source or small purchase Contract for Professional Services, the two-years prior to the Contract date, if the aggregate total of contributions given by the Prospective Contractor or a Family Member or Representative of the Prospective Contractor to the public official exceeds two hundred fifty dollars ($250) over the two-year period.

(2) The disclosure shall indicate the date, the amount, the nature and the purpose of the contribution. The disclosure statement shall be on a form developed and made available electronically by the County. The County shall indicate on the form the name or names of every Applicable Public Official, if any, for which disclosure is required by a Prospective Contractor for each competitive sealed proposal, sole source or small purchase Contract. The form shall be filed as part of the competitive sealed proposal, or in the case of a sole source or small purchase Contract, on the date on which the Contractor signs the Contract.

(3) A Prospective Contractor submitting a disclosure statement pursuant to this section who has not contributed to an Applicable Public Official, whose Family Members have not contributed to an Applicable Public Official or whose representatives have not contributed to an Applicable Public Official, shall make a statement that no contribution was made.

(4) A Prospective Contractor or a Family Member or Representative of the Prospective Contractor shall not give a campaign contribution or other thing of value to an Applicable Public Official or the Applicable Public Official's employees during the Pendency of the Procurement Process or during the pendency of negotiations for a sole source or small purchase Contract.

(5) A solicitation or proposed award for a proposed Contract may be canceled or a Contract that is executed may be ratified or terminated pursuant to this Article if:

a. a Prospective Contractor fails to submit a fully completed disclosure statement

pursuant to this section or violates any provision of the Bernalillo County Code of Conduct; or

b. a Prospective Contractor or Family Member or Representative of the Prospective Contractor gives a campaign contribution or other thing of value to an Applicable Public Official or the Applicable Public Official's employees during the Pendency of the Procurement Process.

(6) As used in this section:

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

b. "Family Member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of: (i) a Prospective Contractor, if the Prospective Contractor is a natural Person; or (ii) an owner of a Prospective Contractor;

c. "Pendency of the Procurement Process" means the time period commencing with the public notice of the Request for Proposals and ending with the award of the Contract or the cancellation of the Request for Proposals;

d. "Prospective Contractor" means a Person or business that is subject to the competitive sealed proposal process set forth in this Article or is not required to submit a competitive sealed proposal because that Person or business qualifies for a sole source or small purchase Contract; and

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

(c) Contingent Fees:

(1) It is unlawful for a Person or business to be retained or for a business to retain a Person or business to solicit or secure a Contract upon an agreement or understanding that the compensation is contingent upon the award of the Contract, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business and Persons or businesses employed by the County which are providing Professional Services to the County in anticipation of the receipt of federal or state grants or loans;

(2) The prohibition against contingent fees shall not apply to the procurement of legal services upon approval of the Board.

(d) Conflict of Interest: Employees and other individuals representing the County shall comply with the County's Ordinances, policies, procedures, and administrative instructions governing conflicts of interest, and the County Code of Conduct and Governmental Conduct Act, Section 10-16-1 et seq., NMSA 1978.

(e) Unlawful Employee Participation:

(1) It is unlawful for any County Employee to participate directly or indirectly in a procurement when the Employee or any member of the Employee's Immediate Family has a Financial Interest pertaining to the procurement.

(2) An Employee or any member of an Employee's Immediate Family who holds a Financial Interest in a disclosed blind trust shall not be deemed to have a Financial Interest with regard to matters pertaining to that trust.

(f) Contemporaneous Employment Prohibition: It shall be unlawful for any County Employee who is participating directly or indirectly in the procurement process to become or to be, while such an Employee, the Employee of any Person or business Contracting with the County. The County Manager or designee may grant a waiver from unlawful Employee participation as set forth in the Ordinance upon making a Determination that:

(1) the contemporaneous employment or Financial Interest of the Employee has been publicly disclosed;

(2) the Employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and

(3) the Employee participation is in the best interests of the County.

(g) Confidential Information: It shall be unlawful for any Employee or former Employee knowingly to use any information which is available to an Employee because of the Employee's status as an Employee of the County and which is not a matter of public knowledge or available to the public on request for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other Person.

(h) Recovery of Value: The value of anything transferred or received in breach of the ethical standards of this section by an Employee or a nonemployee may be recovered from both Employee and nonemployee.

Sec 2-391. PENALTIES

(a) Any business or Person that willfully violates any provision of the Ordinance may be subject to a civil penalty of not more than one thousand dollars ($1,000) for each violation with any penalty collected under the provisions of this section shall be credited to the County's general fund.

(b) Upon a showing that a subcontractor made a kickback to a prime Contractor or a higher-tier subcontractor in connection with the award of a subcontract or order thereunder, it is conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County. An amount equal to the kickback is imposed as a civil penalty by the County upon the recipient and upon the subcontractor making such kickbacks in addition but pursuant to the terms and conditions of subsection (a) above, and/or

(c) Any business or Person that willfully violates the Ordinance may be criminally prosecuted and subject to penalties contained in Section 1-6 of the Bernalillo County Code.

(d) Any business or Person that willfully violates any provision of the Ordinance contrary to the New Mexico Criminal Code may be referred to the appropriate authorities for felony or misdemeanor prosecution.

DIVISION 2. – PUBLIC WORKS PROJECTS; CONSTRUCTION

Sec 2-392. CONSTRUCTION CONTRACTS

(a) The award and execution of Contracts for major Construction, including but not limited to roads, bridges, airports, buildings and dams, shall be made by the Board or designee by resolution. The Chief Procurement Officer or designee responsible for the procurement shall give notice to prospective Bidders pursuant to this Article.

(b) All Tangible Personal Property, Services or Construction for Capital Projects, shall be procured through the Central Purchasing Office in accordance with all applicable policies, procedures, laws, regulations, rules, statutes and Ordinances.

(c) Upon award of a Construction Contract in excess of $25,000, performance and payment bonds shall be delivered by the Contractor. The performance bond shall be in an amount equal to 100% of the Contract price unless it is determined by the Central Purchasing Office that a lower bond, no less than 50%, is in the best interest of the County. The payment bond shall be for an amount that is approved by the County, but in an amount that satisfactorily covers the subcontractors on the project.

(d) Bid Security: When applicable, Bidders for Construction Contracts must provide bid security when the price is estimated to exceed $25,000. The bid security shall be equal to at least five percent of the amount of the bid and shall be (1) a bond provided by a surety company authorized to do business in this state; or (2) or otherwise supplied in a form satisfactory to the County.

(e) Prior to submitting a bid or proposal for a public works project, if the Central Purchasing Office, or a Responsible Bidder or Responsible Offeror determines that there is only one source for a specific Tangible Personal Property, Services or Construction that is required in the Specifications, the Central Purchasing Office, Responsible Bidder or Responsible Offeror may require any bid or offer submitted by a subcontractor or supplier to price separately the specific Tangible Personal Property, Services or Construction.

(f) Except to the extent necessary to ensure that a surety company meets the requirements of Subsection A of Section 13-4-18 NMSA 1978, an Employee of the County, or a Person acting or purporting to act on behalf of that Employee, shall not require a Bidder or an Offeror in a procurement for a Construction Contract pursuant to this Article to make application or furnish financial data for a surety bond or to obtain a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid or proposal.

(g) A subcontractor may be required to provide a performance and payment bond on a public works project.

(h) Public Works Minimum Wage Act:

(1) Every proposed Construction Contract in excess of the minimum threshold set forth by state statute shall contain a provision stating the minimum wages to be paid

various classes of laborers and mechanics. With respect to all such Contracts, the New Mexico Department of Workforce Solutions (or successor agency) shall be contacted for a wage rate determination.

(2) Every Contract within the scope of the Public Works Minimum Wage Act [13-4-10 to 13-4-17 NMSA 1978] shall contain further provision that in the event it is found by the director of the Labor Relations Division of the New Mexico Department of Workforce Solutions (or its successor) that any laborer or mechanic employed on the site of the project has been or is being paid as a result of a willful violation a wage rate or fringe benefit rate less than the rates required, the County may, by written notice to the Contractor, subcontractor, employer or Person acting as a Contractor, terminate the right to proceed with the work or the part of the work as to which there has been a willful failure to pay the required wages or fringe benefits, and the County may prosecute the work to completion by Contract or otherwise, and the Contractor or Person acting as a Contractor and the Contractor's or Person's sureties shall be liable to the state for any excess costs occasioned thereby. Any party receiving notice of termination of a project or subcontract pursuant to the provisions of this section may appeal the finding of the director as provided in the Public Works Minimum Wage Act.

(3) In order to respond to a Request for Proposals or to be considered for award of any portion of a public works project that is subject to the Public Works Minimum Wage Act, the Contractor, serving as a prime Contractor or not, shall be registered with the Labor Relations Division of the New Mexico Department of Workforce Solutions (or its successor). Bidding documents issued or released by the County shall include a clear notification that each Contractor, prime Contractor or subcontractor is required to be registered pursuant to the Public Works Minimum Wage Act.

(4) The County shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime Contractor that does not provide proof of required registration for itself.

(5) The Public Works Minimum Wage Act shall not be construed to supersede or impair a more stringent requirement under any authority granted by federal law to provide for the establishment of specified wage rates.

(i) Subcontractors Fair Practices Act

(1) For any public works project, the County shall evaluate bids and administer Contracts as they pertain to the listing of subcontractors in accordance with the requirements of the Subcontractors Fair Practices Act, Sections 13-4-31 through 13-4-42, NMSA 1978.

(j) Public Works Mediation

(1) State statute, NMSA Sections 13-4C-1 et seq., mandates that all disputes related to the performance of a public works project shall exhaust procedures set forth in the Public Works Mediation Act before seeking judicial relief. Disputes arising pursuant to the Public Works Minimum Wage Act, the Workers' Compensation Act, or disputes regarding an apprenticeship, are exempted from the mandatory public works mediation process.

(2) A dispute that arises under an arbitration clause of a Contract for a public works project that includes a clause in the Contract that requires arbitration is exempt from the provisions of the Public Works Mediation Act.

(3) When a public works project involves the expenditure of federal funds, the mediation process shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the Public Works Mediation Act, compliance with federal law or regulations shall constitute compliance with the Public Works Mediation Act.

Sec 2-393. DESIGN AND BUILD PROJECT SYSTEM REQUIREMENTS

(a) A design and build project may be authorized when the Chief Procurement Officer makes a Determination in writing that it is appropriate and in the best interest of the County to use the system on a specific project. The Determination shall be issued only after the Chief Procurement Officer 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 County 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 Chief Procurement Officer 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 (e) and (f) of this section, for each proposed design and build project, a two-phase procedure for awarding design and build Contracts shall be used 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 New Mexico registered engineer or architect, either in-house or selected in accordance with applicable law, 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 shall be short-listed in accordance with technical and qualifications-based criteria in a manner set forth in the solicitation; 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 (e) and (f) 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 Central Purchasing Office shall adopt procedural rules to be followed when procuring design and build projects.

(e) The requirements of Subsections (c) and (d) of this section do not apply to a design and build project 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.

(f) The procurement of a design and build project qualifying for exemptions pursuant to Subsection (e) 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 in accordance with applicable law.

Sec 2-394. CONSTRUCTION MANAGER AT RISK

(a) As used in this section:

(1) "Construction Manager at Risk Delivery Method" means a Construction method wherein a Construction Manager at Risk provides a range of pre-Construction Services and Construction Management, including cost estimation and consultation regarding the design of the building project, preparation and coordination of bid packages, scheduling, cost control, value engineering and, while acting as the general Contractor during Construction, detailing the trade Contractor scope of work, holding the trade Contracts and other subcontracts, prequalifying and evaluating trade Contractors and subcontractors and providing management and Construction Services, all at a Guaranteed Maximum Price for which the Construction Manager at Risk is financially responsible;

(2) "Guaranteed Maximum Price" means the maximum amount to be paid by the County for the Construction of the facility, including the cost of the work, the general conditions and the fees charged by the Construction Manager at Risk.

(b) A Construction Manager at Risk Delivery Method may be used when the County determines that it is in its interest to use that method on a specific Construction project, provided that the Construction Manager at Risk shall be selected pursuant to the provisions of this section.

(c) The Central Purchasing Office shall form a selection committee of at least three members with at least one member being an architect or engineer. The Central Purchasing Office in conjunction with the selection committee shall develop an evaluation process, including a multiphase procedure consisting of two or three steps. A two-step procedure may be used when the total amount of money available for the project is less than five hundred thousand dollars ($500,000) and shall include a Request for Qualifications and

an interview. A three-step procedure shall consist of a Request for Qualifications, a Request for Proposals and an interview.

(d) A Request for Qualifications shall be published in accordance with the notice requirements for Requests for Proposals provided in this Article and shall include at a minimum the following:

(1) a statement of the minimum qualifications for the Construction Manager at Risk, including the requirements for:

a. a Contractor's license for the type of work to be performed, issued pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978];

b. registration pursuant to Section 13-4-13.1 NMSA 1978; and

c. a minimum bond capacity.

(2) a statement of the scope of work to be performed, including:

a. the location of the project and the total amount of money available for the project;

b. a proposed schedule, including a deadline for submission of the statements of qualification;

c. specific project requirements and deliverables;

d. the composition of the selection committee;

e. a description of the process the selection committee shall use to evaluate qualifications;

f. a proposed Contract; and

g. a detailed statement of the relationships and obligations of all parties, including the Construction Manager at Risk, agents, such as an architect or engineer, and the County.

(3) a verification of the maximum allowable Construction cost; and

(4) a Request for a Proposal bond as required by this Article.

(e) The selection committee shall evaluate the statements of qualifications submitted and determine the Offerors that qualify for the Construction Manager at Risk. If the selection committee has chosen a three-step procedure, the committee shall issue a Request for Proposals to the Offerors that qualify.

(f) If the selection committee has chosen a two-step procedure, the committee shall rank the Persons that qualify based upon the statements of qualification and interview up to three of the highest-ranked Offerors.

(g) In a three-step procedure, the selection committee shall issue a Request for Proposals and evaluate the proposals pursuant to the requirements of this Article regarding the evaluation of Requests for Proposals except that:

(1) the Request for Proposals shall be sent only to those determined to be qualified

pursuant to this section;

(2) the selection committee shall evaluate the proposals and conduct interviews with up to three of the highest-ranked Offerors instead of negotiating with Responsible Offerors found to be reasonably likely to be selected; and

(3) pursuant to subsection (h) of this section, the Contract award may be made after the interviews.

(h) After conducting interviews with the highest-ranked Offerors and after considering the factors listed in subsection (i) of this section, the selection committee shall recommend to the Central Purchasing Office the Offeror that will be most advantageous to the County. Should the Central Purchasing Office be unable to negotiate a satisfactory Contract with the Offeror considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that Offeror shall be formally terminated. The Central Purchasing Office shall then undertake negotiations with the second most qualified Offeror. Failing accord with the second most qualified Offeror, the Central Purchasing Office shall formally terminate negotiations with the Offeror. The Central Purchasing Office shall then undertake negotiations with the third most qualified Offeror. Should the Central Purchasing Office be unable to negotiate a Contract with any of the Offerors selected by the committee, additional Offerors shall be ranked in order of their qualifications and the Central Purchasing Office shall continue negotiations in accordance with this section until a Contract is signed with a qualified Offeror or the procurement process is terminated and a new Request for Proposals is initiated.

(i) In evaluating and ranking statements of qualifications, proposals and results of interviews, and in the final recommendation of a Construction Manager at Risk, the selection committee shall consider:

(1) the Offeror's experience with Construction of similar types of projects;

(2) the qualifications and experience of the Offeror's personnel and consultants and the role of each in the project;

(3) the plan for management actions to be undertaken on the project, including services to be rendered in connection with safety and the safety plan for the project;

(4) the Offeror's experience with the Construction Manager at Risk method; and

(5) all other selection criteria, as stated in the request for qualifications and the Request for Proposals.

(j) Nothing in this section precludes the selection committee from recommending the termination of the selection procedure pursuant to the provisions of this Article and repeating the selection process pursuant to this section. Any material received by the selection committee in response to a solicitation that is canceled shall not be disclosed so as to be available to competing Offerors.

(k) After a Contract is awarded, the selection committee shall make the names of all Offerors and the names of all Offerors selected for interview available for public inspection along with the selection committee's final ranking and evaluation scores. Offerors who were interviewed but not selected for Contract award shall be notified in writing.

(l) The Contract with the Construction Manager at Risk shall specify:

(1) the Guaranteed Maximum Price; and

(2) the percentage of the Guaranteed Maximum Price that the Construction Manager at Risk will perform with its own work force.

(m) The Construction Manager at Risk, in cooperation with the County, shall seek to develop subcontractor interest in the project and shall furnish to the County and any architect or engineer representing the County a list of subcontractors who state in writing that they are a Responsible Bidder or a Responsible Offeror, including suppliers who are to furnish materials or equipment fabricated to a special design and from whom proposals or bids will be requested for each principal portion of the project. The County and its architect or engineer shall promptly reply in writing to the Construction Manager at Risk if the County, architect or engineer knows of any objection to a listed subcontractor or supplier, provided that the receipt of the list shall not require the County, architect or engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the County, architect or engineer later to object to or reject any proposed subcontractor or supplier.

(n) The Construction Manager at Risk shall assist the Central Purchasing Office with:

(1) conducting pre-bid or pre-proposal meetings;

(2) advising the County about bidding or proposals;

(3) drafting of the Contracts; and

(4) evaluating submissions by Responsible Bidders and Offerors.

DIVISION 3. – PUBLIC WORKS PROJECTS; PROFESSIONAL SERVICES

Sec 2-395. SELECTION ADVISORY COMMITTEE

(a) Proposal Guidelines: In order for a consultant to be eligible to perform Professional Services of architects, engineers, landscape architects, Construction Managers and surveyors for the County, all work must be performed under the direct supervision of a registered New Mexico Professional Engineer (or land surveyor, architect or landscape architect, if applicable). Procurement involving the expenditure of federal funds must be conducted in accordance with the mandatory applicable federal laws and regulations.

(b) Submittal Requirements and Scoring Criteria: Submittal requirements and scoring criteria shall be specified in each request for proposal (RFP). Proposals which do not contain all of the mandatory information in their proposals may be considered incomplete and may not be considered by the Selection Advisory Committee.

(c) Required Proposal Format: Proposal format is discretionary. Any specific requirements or limits will be defined in each request for proposal as appropriate.

(d) Pre-Proposal Conference: A pre-proposal conference to answer questions may be held during the advertising period. Notice of the pre-proposal conference will be included in the request for proposal (RFP).

(e) Selection Process: The Selection Advisory Committee and the Central Purchasing Office

will review each proposal to ensure that it is complete in all required elements. Any proposal that is incomplete may be deemed non-Responsive and may not be scored. All Responsive proposals will be reviewed and scored by each individual committee member in accordance with the provisions of the RFP. The Selection Advisory Committee will collate scores and determine those firms, if any, which may be interviewed.

(f) Interviews (if applicable): Prior to the interviews, the Selection Advisory Committee shall agree on a rating system combining the aspects of the written proposal, any required submittals and the interviews. At the selection interviews, the Selection Advisory Committee shall rate all interviewed Offerors. The combined rating shall be used to determine the final ranking of the firms for negotiations. The Selection Advisory Committee's final ranking and evaluation matrix for all proposals shall be made a part of the procurement file with the Central Purchasing Office. This information shall be kept confidential until after award of the Contract to the successful firm by the Board or designee by resolution.

(g) Negotiations: Following the interviews, the County shall negotiate with the highest ranked firm. Negotiations shall be based upon man-hour estimates submitted as part of a cost proposal following ranking by the Selection Advisory Committee. If agreement on terms can be reached, a Contract shall be prepared in accordance with provisions adopted by resolution regarding the County Manager's approval authority set forth in this Article. If agreement cannot be reached within a reasonable time, the County shall terminate negotiations with the highest ranked firm, and begin negotiations with the next firm on the ranking list. This process will continue until a Contract has been negotiated with one of the firms on the ranking list. If negotiations with the top three firms on the ranking list have been exhausted and a Contract can still not be negotiated, the County may rank the other Offerors in their order of qualifications and negotiate with those other qualified Offerors evaluated by the committee or terminate negotiations.

(h) Selection Advisory Committee Membership:

(1) The Public Works Division Selection Advisory Committee members shall be as follows: One position shall be occupied by the Deputy County Manager for Public Works or designated staff alternate and another position shall be recommended by the Deputy County Manager for Public Works from public works staff along with an alternate. The Deputy County Manager for General Services shall recommend two members along with alternates. One member along with an alternate shall be a citizen-at-large, not associated with the County or any professional firm.

(2) For projects not led the by Public Works Division, other applicable Deputy County Managers from divisions utilizing the Selection Advisory Committee process shall assign members and alternates as stated above. The Deputy County Manager for General Services shall recommend two members along with alternates. One member along with an alternate shall be a citizen-at-large, not associated with the County or any professional firm.

(3) In case of a project of unique or special nature, the Central Purchasing Office in conjunction with the User Department may name non-voting subject matter expert(s) to provide advice to the Selection Advisory Committee during the evaluation process.

(4) For projects with funding from other agencies or jurisdictions of at least one third of the project's total funding, the applicable Deputy County Manager of the division responsible for the project may name a voting member to the Selection Advisory Committee for each respective agency(ies).

(i) Board of County Commissioners Approval of Contracts: All Contracts for professional architectural, engineering, land surveying or other Professional Services related to public works, in an amount exceeding that delegated to the County Manager by resolution shall require final approval of the Board prior to the award of the Contract.

(j) Ownership of Documents: All Contracts between the County and any firm selected under this division shall contain the provision that all designs, drawings, Specifications, notes, computer discs and generated work regardless of the media used and other work developed in the performance of the Contract are the sole property of the County.

(k) Multiple-Award Requests for Proposals: Multiple awards of qualification-based selection of Offerors shall be allowed, unless prohibited by applicable federal law on the date of award. To utilize multiple Offeror awards, the solicitation must identify the types of projects for which the RFP is advertised. The specific type of projects shall be identified by professional discipline and type of work proposed such that qualified firms and individuals can be identified by the Selection Advisory Committee. Each request for proposal issued under this section may contain sample tasks on which the Offeror will base the technical proposal. These sample tasks may be examples of typical work, which could be awarded under the Contract and not actual projects. The maximum number of tasks for which a firm may propose may be defined in the RFP. In addition the RFP may state the maximum number of consultants which will be selected for award in each task. The written proposals will be scored by the Selection Advisory Committee and interviews may be held. The Selection Advisory Committee will rank the firms based on the written proposals and interviews, if applicable, and recommend the selected firms for award. Once selection is complete and the list of Offerors is approved, pursuant to the Contract approval requirements of this Article, project assignments shall be made in accordance with the provisions of the awarded Contract(s).

Sec 2-396. – Sec 2-402. RESERVED

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY, NEW MEXICO this 27th day of March, 2018.

APPROVED AS TO FORM

W. Ken Martinez, County Attorney

BERNALILLO COUNTY COUNTY CLERK SEAL STATE OF NEW MEXICO

ATTEST:

Linda Stover, County Clerk

BOARD OF COUNTY COMMISSIONERS

Steven Michael Quezada, Chair

Lonnie C. Talbert, Vice Chair

Excused

Debbie O'Malley, Member

Maggie Hart Stebbins, Member

James E. Smith, Member