

CITY OF CARLSBAD PROCUREMENT POLICY

1. MISSION STATEMENT

1.1 Our goal is to ensure an efficient, cost-effective method of procurement for the City of Carlsbad. The mission of the Purchasing Office is to provide for the acquisition of property, construction projects, or services within regulations adopted by the Governing Body of the City of Carlsbad and the State of New Mexico;

2. LOCAL PREFERENCE

2.1 The City of Carlsbad recognizes the value of revenue derived from local businesses and in accordance with this policy will attempt to procure goods and services locally whenever possible as permissible by the New Mexico State Procurement Code and in accordance with the City of Carlsbad Procurement Policy.

3. PURCHASING OFFICE

3.1 The Purchasing Manager is hereby designated as the Certified Procurement Officer. Certified Procurement Officer (CPO) means that person within a Local Public Body's Central Purchasing Office who is responsible for the control of procurement of items of tangible personal property, services or construction.

The Purchasing Manager shall be registered and certified by the State of New Mexico Purchasing Division. Only a Certified Procurement Officer is authorized by the New Mexico State Procurement Code to approve purchases for the City of Carlsbad. Additional Purchasing Department staff may also receive certification upon completion of training and by passing the CPO examination. In the absence of the Purchasing Manager, additional CPO's will be authorized to perform the same functions with the same authority as the Purchasing Manager

The Purchasing Manager shall supervise the Purchasing Office and is responsible for enforcement of procurement policies and procedures for the City of Carlsbad. The Purchasing Manager shall also annually review procurement policies and procedures to ensure compliance with all applicable state laws.

The Purchasing Manager shall have the authority to delegate responsibilities as necessary to carry out the day to day functions of the City of Carlsbad.

- 3.2 The Purchasing Office shall be responsible for the control of procurement for the municipality and shall perform all duties required by the Procurement Code and all other relevant statutes. The Purchasing Office shall also cooperate and coordinate with the State Purchasing Agent and the purchasing offices of other local public bodies to maximize the benefits to the municipality from such joint and cooperative efforts.
- 3.3 The Purchasing Manager shall establish municipal procurement procedures in accordance with this policy and applicable law and may amend such procedures from time-to-time to ensure compliance with this policy and applicable law and to ensure the efficiency and effectiveness of the municipal procurement practices.
- 3.4 The Purchasing Office shall perform all procurement functions for the municipality, except when otherwise expressly authorized by statute or ordinance or regulation of the municipality.

4. DEFINITIONS

4.1 Definition: Procurement shall mean:

- a) Purchasing, renting, leasing, or otherwise acquiring items of tangible personal property, services or construction; and
- b) All procurement functions, including but not limited to preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and contract administration. (NMSA 13-1-74)

4.2 Definition: Purchase Requisition shall mean:

- a) "Purchase requisition" means the document by which a using agency requests the purchase of a specified service, construction or item of tangible personal property and may include but is not limited to the technical description of the requested item, delivery schedule, transportation requirements, suggested sources of supply and supporting information. (NMSA 13-1-78) The City has an approved purchase requisition form with a unique numerical sequence that may be submitted electronically or on hard copy paper form if necessary. Only requests submitted by these two methods will be accepted.

4.3 Definition: Purchase Order shall mean:

- a) "Purchase order" means the document issued only by the central purchasing office (purchasing department of the City) that directs a contractor to deliver items of tangible personal property, services or construction. (NMSA 13-1-77)
- b) City employees and Department Directors are not authorized to purchase tangible goods or give notice to proceed with a project, or authorize performance of a service without prior authorization, in the form of a purchase order, being issued by the Purchasing Department.

4.4 Definition: Professional Service shall mean:

- a) "Professional service" means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the State Purchasing Agent or a Central Purchasing Office. (NMSA 13-1-76)

4.5 Definition: Non-Professional Service shall mean:

- a) "Non-Professional Services" is the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance.
- b) "Non-Professional Services" include the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body. (NMSA 13-1-87)

4.6 Definition: Small Purchase shall mean:

- a) Small purchase means a purchase of a tangible good or service of less than \$2,500.
- b) Professional Services, as defined in 4.4 (a), under \$60,000.00 are considered a small purchase and are exempt from formal procurement.

4.7 Definition: Capital Purchase shall mean:

- a) Capital purchases are defined as any tangible property with a life expectancy greater than one year and valued over \$5,000.00.

4.8 Definition: Non-Depreciable Asset shall mean:

- a) An asset with a life expectancy greater than one year and a value between \$2,500 and \$4,999.99.

5. APPLICATION OF THE NEW MEXICO PROCUREMENT CODE

- 5.1 Except as otherwise specified herein, procurement by the City of Carlsbad shall be in accordance with the New Mexico Procurement Code, as may be amended.
- 5.2 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 the Procurement Code where the Procurement Code is inconsistent with those federal laws and regulations.
- 5.3 City employees found to be in violation of the City Procurement Policy and/or State of New Mexico Procurement Code may be subject to disciplinary action in accordance with the City personnel policy and/or collective bargaining agreement, up to and including discharge. Violation of the Procurement Code may result in suspension of purchasing privileges, revocation of purchasing privileges and possible civil and criminal penalties.
- 5.4 City employees found to be in violation of the City Procurement Policy and/or State of New Mexico Procurement Code will be notified in writing by the Purchasing Manager of the violation. A copy of the violation notice will be sent to the Department Director, Finance Director and City Administrator.

Employees who have 3 violations will receive an automatic suspension of all purchasing privileges until which time the employee can be trained in proper procurement practices.

Employees who have already received a suspension and continue to violate the procurement policies will be subject to permanent revocation of all purchasing privileges in addition to disciplinary action including but not limited to termination of employment.

- 5.5 The State of New Mexico Procurement Code (NMSA 1978) provides criminal and civil penalties for violation of the Procurement Code. (See 5.7)
- 5.6 All purchases are subject to the New Mexico State Procurement Code with exception to the following:
 - a) procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;
 - b) printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

- c) purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;
- d) purchases of books and periodicals from publishers or copyright holders thereof;
- e) travel or shipping by common carrier or by private conveyance or to meals and lodging;
- f) minor purchases not exceeding five thousand dollars (\$5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;
- g) the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;
- h) contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;
- i) contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New Mexico law enforcement agencies by the United States Department of Justice Drug Enforcement Administration;

- j) contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;
- k) contracts with professional entertainers;
- l) contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
- m) contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;
- n) works of art for museums or for display in public buildings or places;
- o) contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act [4-48B-1 NMSA 1978] or operation and maintenance of a hospital pursuant to the Special Hospital District Act [4-48A-1 NMSA 1978];

5.7 The following acts involving use of public funds are considered crimes in the State of New Mexico and carry the following criminal penalties: (See Page 7)

Demanding or receiving bribe by public officer or public employee	CC §30-24-2	Third degree felony 3 years; \$5,000 Forfeiture of office
<ul style="list-style-type: none"> -Requesting a thing of value in exchange for official action -Taking an official act for the primary purpose of directly enhancing his own financial interest or financial position -Willful violation of financial disclosure requirements -Paying or receiving public money for services not rendered -Making or permitting false public voucher -Unlawful interest in public contracts where the value received by him is more than \$50 -Tampering with public records 	EC §10-16-3 EC §10-16-4 EC §10-16A-7 CC §30-23-2 CC §30-23-3 CC §30-23-6 CC §30-26-1	Fourth degree felony 18 months; Max \$5,000
Knowingly and willingly: <ul style="list-style-type: none"> -Obtaining personal benefits incompatible with the public interest -Accepting honoraria -Using confidential information for private gain -Unlawful contracting -Unlawful speculation in claims against state -Unlawful interest in public contracts where the value received by him is \$50 or less -Refusal to surrender public record -Willful neglect of duty 	(EC Penalty found §10-16-17) EC §10-16-3 EC §10-16-4 EC §10-16-6 EC §10-16-7; §10-16-8; §10-16-9 CC §30-23-5 CC §30-23-6 CC §30-26-2 EC §10-17-12	Misdemeanor Max 1 year; \$1,000 10-60 days; \$100-\$500
-Demanding illegal fees involves asking for anything of value greater than that fixed or allowed by law for the execution or performance of any service	CC §30-23-1	Petty Misdemeanor Max 6 mos.; \$500

6. REQUIREMENTS AND RESPONSIBILITIES OF EMPLOYEES WITH PURCHASING AUTHORITY

- 6.1 Each City employee who has purchasing authority and/or privileges or participates in the procurement process shall be certified by the City of Carlsbad Purchasing Office prior to participating in the procurement process.
- 6.2 Certification will be achieved by attending City sponsored training sessions and passing an exam including multiple choice and true/false questions covering the basic principles of the Procurement Policy.
- 6.3 A grade of 70% or higher will be required to pass the exam. Employees may take the exam multiple times if needed.
- 6.4 It is unlawful for any City employee or public officer, as defined in the Procurement Code, and the Governmental Conduct Act (NMSA 10-16-1) to participate directly or indirectly in the procurement process when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.
- 6.5 An employee or public officer shall disqualify himself or herself from participating in any official act directly affecting a business in which he or she has a financial interest. No employee or public official shall acquire a financial interest at a time when he or she believes or has reason to believe that it will be directly affected by his or her official act.
- 6.6 Any employee or public official who has a financial interest which he or she believes or has reason to believe may be affected by an official act taken within the scope of his or her employment shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the City Clerk at the time the conflict occurs and during the month of January every year thereafter. Additionally, it shall be the duty of an employee to inform his or her department head of such a financial interest at the time he or she acquires it. The information on the disclosures shall be made available by the City Clerk for inspection as permitted by law. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in City employment.

- 6.7 The City shall not enter into any contract with a business in which an employee has a controlling interest involving services or property of a value in excess of \$1,000.00, unless the contract is made after public notice and through a competitive process.

7. PURCHASES UNDER \$20,000

- 7.1 A purchase requisition shall be submitted to the Purchasing Department **PRIOR** to placing an order for goods or services. The entire requisition must be accurately completed for a purchase order number to be assigned. Any purchase made without a Purchase Order number having been issued, will be considered a Procurement Violation and will be subject to disciplinary action as outlined in 5.4. The City has the right to refuse to pay for any purchase obtained without a Purchase Order.
- 7.2 A copy of each purchase order will be provided to the vendor when placing the order.
- 7.3 All purchase orders will detail payment terms for vendors and a notice that acceptance of the purchase order constitutes acceptance of the payment terms as well as the pricing on the purchase order.

Any discrepancy in pricing terms or quantities discovered by the vendor upon receiving the purchase order should be brought to the City's attention before the order is placed in order for corrections to be made prior to invoicing.

- 7.4 Purchases up to \$2,500.00 are considered small purchases and only one vendor quotation is required. However, purchase at the best available price is encouraged.
- 7.5 Purchases from \$2,501.00 to \$4,999.99 must have three (3) telephone quotes indicated on the requisition.
- 7.6 Purchases of \$5,000.00 to \$19,999.99 must have **three written quotes** attached to the requisition. Requisitions over \$10,000.00 must be submitted to the Finance Director, or designee, for budget verification. The Finance Director will then forward the requisition to the City Administrator for final approval.
- 7.7 Requisitions **SHALL NOT** be artificially divided as to:
a) Constitute a small purchase (under \$2,500) or
b) Avoid the Bid/RFP process
- 7.8 When obtaining quotes, vendors must be supplied with the same specifications for the materials or services required. All vendors contacted must have an equal opportunity to supply the material or service. Quotation information obtained shall not be discussed with another vendor prior to award. Any addendum to a request for a quotation, written or oral, must be provided to all vendors who were asked to respond.

- 7.9 In the event two vendors have the same quote, written justification shall be provided by the requisitioner as to how one vendor was chosen. Determinations can be made by local availability, items in stock, vendor delivery, shipping charges, or a coin toss.

8. PURCHASES OVER \$20,000.00

- 8.1 Purchases of goods or services of \$20,000.00 and over, which have specific minimum standards to be met, require formal sealed bids for tangible goods or a formal request for proposals (RFP) for services. Bids are awarded based on lowest responsive bid. RFPs are awarded based on a pre-determined point evaluation system and reviewed and scored by an Evaluation Committee consisting of a minimum of three individuals that may include city employees, city council members, committee members or other individuals as deemed necessary to provide adequate expertise in a given area.
- 8.2 All bids or requests for proposals (RFP) require City Council approval prior to advertising. The Department Director shall prepare an Agenda Briefing Memorandum (ABM) and submit to the City Administrator for presentation to the City Council. Specifications for all bids or a copy of the complete Request for Proposals (RFP) must be submitted with the Agenda Briefing Memorandum (ABM) for the City Administrator's review and approval prior to going before the City Council.
- 8.3 Public notice must be made at least ten (10) calendar days prior to the scheduled bid or RFP opening. If it is determined to be in the best interest of the City, additional time may be allowed. Under no circumstances is the Bid or RFP to be opened prior to the time and date scheduled.
- 8.4 All bids or proposals submitted to the City for consideration shall be accompanied by the following required forms:
- a) Campaign Contribution Disclosure Form (Required)
 - b) New Mexico Resident Business Certification (If Applicable)
 - c) New Mexico Resident Veterans Business Certification (If Applicable)
 - d) Department of Workforce Solutions Registration Number (If Applicable)
 - e) Subcontractors List (If Applicable)
- 8.5 After bids are opened, the Purchasing Department will forward a copy of the bids received and bid tabulation to the appropriate Departmental Director or designated Agent. The Department Director or Agent will then review the bid documents and submit a letter of recommendation and the bid summary to the City Administrator for Governing Body approval.

- 8.6 The City frequently utilizes the services of professional engineers and architects in the development of bid specifications, bid documents and architectural plans related to construction projects.

In this event, the engineer or architect in charge has the authority to act as the agent for the City in the distribution of bid documents and plans, conducting of pre-bid conferences, coresponding with bidders, and the writing of any necessary addenda. The agent shall be responsible for reviewing contractor bids for accuracy as well as review for proper licensing of the prime as well as sub-contractors.

The agent may make recommendation to City staff of the acceptability of the low bid for award or rejection. The City retains the right of final approval or rejection of any and all bids pending approval of the City Council.

9. REQUEST FOR PROPOSALS

- 9.1 Competitive sealed proposals or Requests for Proposals (RFP) require advance planning. Proposal documents must first be presented to the City Administrator with an Agenda Briefing Memorandum (ABM) to be reviewed and approved by the City Administrator prior to seeking the approval of the City Council.
- 9.2 Public notices must be published at least ten (10) calendar days prior to the deadline for submission. If it is determined to be in the best interest of the City, additional time may be allowed. Under no circumstances are proposals to be opened prior to the scheduled date and time for submission.
- 9.3 Prior to the time and date for submission of proposals, only the Purchasing Manager or designated agent may communicate with the proposers. The Purchasing Manager will field all questions and consult if needed with City staff with technical expertise. Only the Purchasing Manager or designated Agent may issue a notice of addendum.
- 9.4 After the deadline for submission, proposals shall be opened by the Purchasing Manager or designee from the Purchasing Department. There will not be a public opening for RFPs.

The proposals will be reviewed by an evaluation committee and evaluated taking into consideration the evaluation criteria set forth in the RFP document. The evaluation committee will then forward a copy of the winning proposal and evaluation score sheets to the Purchasing Manager.

The Purchasing Manager will review the evaluation sheets for accuracy, compile the scores into an evaluation summary and submit an ABM to the City Administrator for City Council approval.

- 9.5 Negotiations may be conducted with a responsive offeror who submitted a proposal found to be reasonable and likely to be selected for award. The contents of any competing proposal shall not be disclosed during the negotiations process. All negotiations will be conducted under the direction of the City Administrator.
- 9.6 The names of all businesses submitting proposals and those selected for award shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information.
- 9.7 This section may not apply to architects, engineers, landscape architects and surveyors who submit proposals. See Section 12.

10. BIDDER PREFERENCES

- 10.1 The 5% State of New Mexico Resident Bidders' Preference is applicable and required by the New Mexico State Procurement Code (NMSA 13-1-21) on all formal sealed bids and requests for proposals.
- 10.2 A bidder or proposer must have registered with the New Mexico Taxation and Revenue Department and have a Resident Bidder's Preference Number indicated on the Bid or RFP documents to obtain the 5% preference.
- 10.3 A copy of a current Resident Business Certification must be submitted with the bid or proposal to be considered eligible for the preference.
- 10.4 When the City makes a purchase using a formal bid process, the City shall deem a bid submitted by a resident business to be five percent lower than the bid actually submitted. (NMSA 13-1-21)
- 10.5 When the City makes a purchase using a formal request for proposal process, five percent of the total weight of all the factors used in evaluating the proposals shall be awarded to a resident business based on the resident business possessing a valid resident business certificate. (NMSA 13-1-21)
- 10.6 The State of New Mexico Procurement Code has a provision to allow for preference to be given to qualified veterans businesses. This preference will be in place for all Bids and Requests for Proposals (RFP) as required by (NMSA 13-1-21 and 13-1-22)
- 10.7 In accordance with Sections 13-1-21 NMSA 1978 resident veterans businesses are to receive the following preferences:

1. Resident veterans businesses with annual revenues of \$1M or less are to receive a 10% preference discount on their bids and proposals.
2. Resident veterans businesses with annual revenues of more than \$1M but less than \$5M are to receive an 8% preference on their bids and proposals.
3. Resident veterans businesses with annual revenues of more than \$5M are to receive a 7% preference discount on their bids and proposals.

This preference is separate from the current in-state preference and is not cumulative with that preference. However, veteran businesses will still receive the in-state preference once the veteran's preference cap is exceeded.

10.8 All public solicitations must contain the "Resident Veterans Preference Certification."

10.9 Points will only be awarded based on Offeror's ability to provide a copy of a valid Resident Business Certificate or Resident Veterans Certificate.

10.10 All requests for proposals (RFP) must contain the following statements in the Evaluation and Points Summary:

a) "I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending December 31, the following to be true and accurate:

1. "In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body as the case may be.

2. "I understand that knowingly giving false or misleading information on this report constitutes a crime."

10.11 A copy of the statements shall be submitted to the Purchasing Office upon award of a contract.

10.12 If applicable, a copy of the Resident Veteran's Preference Certification shall be submitted to the Purchasing Department with the bid or proposal submission.

10.13 Procurements involving federal funds are excluded from in-state preference laws.

10.14 If no acceptable bid or offer is received after two (2) solicitation attempts, the

Governing Body may direct the Purchasing Office to purchase the required goods or services on the open market at the best obtainable price.

- 10.15 The Bid or RFP Award date shall be the date which the City Council formally approves the recommendation for award at the bi-monthly scheduled City Council meeting.
- 10.16 Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the Central Purchasing Office pursuant to the provisions of Section 18.

11. PROCUREMENT OF NON-PROFESSIONAL SERVICES

11.1 Definition: Non-Professional Services:

“Services” means the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than reports and other materials which are merely incidental to the required performance.

“Services” includes the furnishing of insurance but does not include construction or the services of employees of a state agency or a local public body. (NMSA 13-1-87)

- 11.2 Purchases for services of less than \$2,500 shall be considered a small purchase.
- 11.3 Purchases of services of \$2,500 to \$4,999.99 shall require 3 valid telephone quotes.
- 11.4 Purchases of services of more than \$5,000 but less than \$19,999.99 require 3 valid written quotes.
- 11.5 Purchases for services of \$10,000 or more require budget approval by Finance Director, or designee, and approval of City Administrator.
- 11.6 Purchases for services over \$20,000.00, the award of which is based upon identified criteria and is not awarded based exclusively on price, are subject to competitive sealed proposal (RFP).

12. PROCUREMENT OF PROFESSIONAL SERVICES

12.1 Definition of Professional Services:

“Professional services” means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction

managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the State Purchasing Agent or a Central Purchasing Office. (NMSA 13-1-76)

- 12.2 Professional Services under \$60,000.00 are considered a small purchase and are exempt from formal procurement.
- 12.3 Professional Services of more than \$60,000.00 will follow the Request for Proposal process as defined in Section 9.
- 12.4 However, nothing in this section shall prevent the City from seeking qualifications based proposals for professional services under \$60,000.00 if in the best interest of the City.

13. DEPRECIABLE, NON-DEPRECIABLE AND CAPITAL ASSET PURCHASES

13.1 Definition of Capital Purchase;

A Capital Purchase, also known as a Depreciable Asset, is any purchase of an item from a capital expenditure line item that adds depreciable value to a new or existing asset.

13.2 Definition of Depreciable Asset;

“Depreciable Assets” are defined as any tangible property with a life expectancy greater than one year and valued over \$5,000.00.

- 13.3 All items purchased from a capital line item, regardless of value, are required to be placed on City inventory and will require a Fixed Asset Form, (except for capital improvement construction projects).

- 13.4 A Fixed Asset Form shall be sent to the Purchasing Department for any capital purchase, (except for capital improvement construction projects). Purchase orders will not be processed without a Fixed Asset Form.

- 13.5 Invoices will not be processed for payment without a properly completed Fixed Asset Form.

13.6 Definition of Non-Depreciable Asset;

Assets valued between \$2,500 and \$4,999.99 that is recorded on the City inventory ledger, but is not classified as a depreciable asset.

- 13.7 Non-Depreciable Assets (small fixed assets) are purchased from operating account

line item number 69000.

- 13.8 Non-Depreciable Asset purchases must be pre-approved in the department budget.
- 13.9 A Fixed Asset Form shall be submitted with the purchase of any item from a non-depreciable asset line item (69000), and will be placed on the City's inventory ledger.
- 13.10 A Fixed Asset Form shall also be required anytime an inventoried item is deleted, transferred or scrapped and submitted to the Fixed Asset Coordinator.

14. SOLE SOURCE AND EMERGENCY PURCHASES

- 14.1 The only exceptions to the requirements listed herein are Sole Source Purchases and Emergency Purchases.
- 14.2 Sole Source Purchases are defined as a purchase for which there is only one source for the required service, construction or item of tangible personal property.

A WRITTEN DETERMINATION must be made as to why the item is sole source, and be approved by the Purchasing Manager prior to submitting requisition and must be kept on file in the Purchasing Department. Sole source determinations are valid for a period of one (1) year and retained in the Purchasing Department.

- 14.3 Sole Source purchases must be posted publically on the City of Carlsbad website for a minimum of 30 days. The first 15 days shall serve as a "protest" period in which any vendor wishing to challenge the sole source determination will be afforded the opportunity to do so. If another vendor is in fact able to provide the good or service, the sole source shall be revoked and quotes obtained from any known vendors. (1.4.1.53 - 1.4.1.57) NMAC

14.4 EMERGENCY PROCUREMENT

DEFINITION OF EMERGENCY CONDITIONS:

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

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

[1.4.1.59 NMAC]

- 14.5 Emergency procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency. Such procurement shall not include the purchase or lease-purchase of heavy road equipment.
- 14.6 All emergency purchases must be approved by the Purchasing Manager. At the discretion of the Purchasing Manager, certain purchasing policies may be bypassed to alleviate the emergency situation. Every effort should be made to purchase competitively if the situation allows.
- 14.7 The Purchasing Office is required to retain documentation of sole source and emergency purchases; therefore, it is imperative that all information pertaining to these types of purchases be submitted to the Purchasing Department in written form from the requesting department.
- 14.8 All emergency procurements must be posted publically on the City of Carlsbad website for a minimum of 30 days. The posting of the notice shall not halt the procurement, but only serves as notice that the procurement was made under emergency conditions.

15. PROCUREMENT UNDER EXISTING CONTRACTS

- 15.1 The City may contract for goods, services or construction without the use of quotes, competitive sealed bids or proposals as follows:
 - a) Through the use of a State Price Agreement (SPA) with a business which has a current price agreement with the State Purchasing Agent or a purchasing office for the item, services, or construction meeting the same standards and specifications as the items to be purchased if the following conditions are met:
 1. The total quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement, and
 2. The purchase requisition adequately identifies the price agreement relied upon, and
 3. The vendor indicates a willingness to extend the contract's pricing, terms, and conditions to the City.
- 15.2 Cooperative agreements can be a useful procurement methodology allowed by the Procurement Code. They are based upon already negotiated agreements, allowing the City to benefit from formal procurement solicitations that have already been

conducted by the Cooperative Agency on behalf of other governmental entities.

- 15.3 GSA contracts may not be used directly by a local public body. Only the State Purchasing Division may authorize use of a GSA contract by offering the service or goods through a State Price Agreement (SPA). 1.4.1.66 NMAC
- 15.4 The City may not “piggyback” from contracts issued by any other governmental entity, unless the procurement was conducted as a “joint effort” between two or more utilizing entities. 1.4.1.65 (C) NMAC

16. GROSS RECEIPTS TAX

- 16.1 The City of Carlsbad pays Gross Receipts Tax only as required by law and enforced by the State of New Mexico Taxation and Revenue Department. In general, the City pays taxes on professional services, non-professional services, labor, construction and construction materials.
- 16.2 The City is exempt from gross receipts tax on tangible items. If there is a question concerning the tax application for a specific purchase or project, the requestor should contact the Purchasing Department for clarification. In the event that gross receipts tax is not applied to an invoice for a taxable good or service and the matter cannot be resolved timely with the vendor, the Purchasing Department will complete a Compensating Tax Form and remit payment to the State of New Mexico Taxation and Revenue Department at the current compensating tax rate, as required by law.
- 16.3 The City shall not be responsible for paying gross receipts tax above the required state compensating tax rate, due to failure to charge and collect tax on the part of the vendor.

17. CERTIFICATES OF INSURANCE

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

18. PROTEST RIGHTS AND PROCEDURES

- 18.1 Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the Central Purchasing Office in accordance with the New Mexico Procurement Code. (NMSA 13-1-172)
- 18.2 The protest must be submitted in writing within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise thereto.
- 18.3 Protestants may file a protest on any phase of a solicitation or award, including, but not limited to, specification preparation, bid solicitation, award, cancellation of solicitation, bid rejection, or other means arising from a solicitation or award of a contract.
- 18.4 The protest shall:
- a) Include the name and address of the protestant;
 - b) Identify the contracting activity and the number of the solicitation, if any, and if a contract has been awarded, the contract number, if any;
 - c) Contain a statement of the grounds of protest;
 - d) Include supporting exhibits, evidence affidavits, or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; and
 - e) Specify the ruling requested from the Purchasing Office.
- 18.5 No formal briefs or other technical forms of pleading or motion are required but protests and other submissions should be concise, logically arranged, and direct.
- 18.6 In the event of a timely protest, the Purchasing Office shall not proceed further with the procurement unless the Purchasing Office determines that the award of the contract is necessary to protect substantial interest of the municipality.
- 18.7 The Central Purchasing Officer or designee has the authority to take any action reasonably necessary to resolve a protest. This authority shall be exercised in accordance with the regulations promulgated by the municipality or Purchasing Office but shall not include the authority to award money for damages or attorney's fees. Additionally:
- a) The Purchasing Office shall give notice of the protest to the contractor if award has been made or if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest or appeal is denied.
 - b) The Purchasing Office shall provide a copy of the protest to any using agency that

requested the solicitation.

- c) Notice shall be given by first class mail within five (5) days of the filing of the protest.
- d) The Central Purchasing Officer shall, upon written request, make available to any party information bearing on the substance of the protest which has been submitted by the parties, except to the extent that withholding of information is permitted or required by law or regulation.
- e) Any interested party may file a response to the protest within fifteen (15) days after a notice of protest is mailed by the Purchasing Office. All responses shall be filed with the Purchasing Office and a copy shall be mailed to the protestant by the interested party or using agency filing a response. The protestant may file a rebuttal to any response within ten (10) days of the filing of a response. All responses and rebuttals shall include supporting evidence, documents, exhibits, and affidavits, unless not available within the filing time in which case the expected availability date shall be indicated.
- f) The protestant or any interested party, may request a hearing before the Central Purchasing Officer within ten (10) days after the deadline for filing the last permissible response or rebuttal. The Central Purchasing Officer may schedule a conference or hearing at its discretion if no request has been filed. Notice of hearings shall be mailed to the protestant, all interested parties, and the using agency not less than fifteen (15) days before scheduled hearing.
- g) Any written comments to be submitted as a result of the conference or hearing must be received by the Purchasing Office within five (5) days of the date on which the conference or hearing was held unless the Purchasing Office provides otherwise.

18.8 The Central Purchasing Officer shall make a written determination on the merits of the protest as expeditiously as possible or, in any event, within thirty (30) days of the receipt of all information or the date of any conference or hearing held on the matter, whichever is later, and shall furnish a copy of the determination to the protestant and other interested parties. Such determination should include:

- a) a copy of the protest;
- b) a copy of the bid or offer submitted by the protestant and a copy of the bid or offer that is being considered for award or that is being protested;
- c) a copy of the solicitation, including the specifications, or portions thereof, relevant to the protest;
- d) a copy of the abstract of bids of offers or relevant portions thereof;

- e) any other documents which are relevant to the protest, including the contract, if one has been awarded;
 - f) a statement setting forth findings and conclusions in the matter together with any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegations of the protest;
 - g) a statement of the relief granted; and
 - h) a statement to inform all parties of the right to appeal to the governing body and to a judicial review of the final determination pursuant to Section 13-1-183 NMSA 1978, as amended.
- 18.9 A copy of the determination shall be mailed immediately to the protestant, the using agency that requested the procurement, and other interested parties involved in the procurement.

18.10 MOTION FOR RECONSIDERATION

- a) A motion for reconsideration of a written determination issued pursuant to 13-1-175 NMSA of this rule may be filed by any party or by any using agency involved in the procurement. The motion for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification of the determination is deemed warranted, specifying any errors of law made, or information not previously considered.
- b) A motion for reconsideration shall be filed not later than seven calendar days after receipt of the written determination.
- c) The state purchasing agent or central purchasing office shall promptly issue a written response to the motion for reconsideration. A copy of the written response shall be sent immediately by certified mail, return receipt requested, to each of the parties.
- d) In those proceedings in which no motion for reconsideration is filed, the written determination issued pursuant to 1.4.1.87 NMAC of this rule shall be the final determination for purposes of the time limits for seeking judicial review under 13-1-183 NMSA 1978.

- e) In those proceedings in which a motion for reconsideration is filed, the written response to the motion issued pursuant to 1.4.1.89 NMAC of this rule shall be the final determination for purposes of the time limits for seeking judicial review under 13-1-183 NMSA 1978
- f) Any aggrieved person may appeal, per Section 13-1-183, NMSA 1978, the decision of the central purchasing office by filing an action in District Court within (30) days of the entry of the decision by the Municipal Clerk. On appeal, the record of the proceedings before the Central Purchasing Officer shall constitute the record of the municipal actions regarding the procurement in issue.

19. PAYMENTS FOR PURCHASES (13-1-158 NMSA)

- a) No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under [Section 13-1-98](#) NMSA 1978 by exclusion of the purchase from the Procurement Code [[13-1-28](#) through [13-1-199](#) NMSA 1978].
- b) Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the central purchasing office or using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the central purchasing office or using agency shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.
- c) Except as provided in Subsection D of this section, upon certification by the central purchasing office or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per

month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency.

- d) If the central purchasing office or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action.
- e) Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission [public regulation commission].

20. PAYMENTS FOR PUBLIC WORKS CONSTRUCTION

20.1 57-28-5: Payments; Prompt Pay Required; Withholding Prohibited

- a) Except as provided in Subsection B of this section, all construction contracts shall provide that payment for amounts due shall be paid within twenty-one days after the owner receives an undisputed request for payment. Payment by the owner to the contractor may be made by first-class mailing, electronic funds transfer or by hand delivery of the undisputed amount of a pay request based on work completed or service provided under the contract. If the owner fails to pay the contractor within twenty-one days after receipt of an undisputed request for payment, the owner shall pay interest to the contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until the payment is issued. If an owner receives an improperly completed invoice, the owner shall notify the sender of the invoice within seven days of receipt in what way the invoice is improperly completed, and the owner has no further duty to pay on the improperly completed invoice until it is resubmitted as complete.
- b) A local public body may make payment within forty-five days after submission of an undisputed request for payment when grant money is a source of funding, if:
 - (1) the construction contract specifically provides in a clear and conspicuous manner for a payment later than twenty-one days after submission of an undisputed request for payment; and

(2) the following legend or substantially similar language setting forth the specified number of days appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans: "Notice of Extended Payment Provision

This contract allows the owner to make payment within _____ days after submission of an undisputed request for payment."

- c) All construction contracts shall provide that contractors and subcontractors make prompt payment to their subcontractors and suppliers for amounts owed for work performed on the construction project within seven days after receipt of payment from the owner, contractor or subcontractor. If the contractor or subcontractor fails to pay the contractor's or subcontractor's subcontractor and suppliers by first-class mail or hand delivery within seven days of receipt of payment, the contractor or subcontractor shall pay interest to the subcontractors and suppliers beginning on the eighth day after payment was due, computed at one and one-half percent of the undisputed amount per month or fraction of a month until payment is issued. These payment provisions apply to all tiers of contractors, subcontractors and suppliers.
- d) A creditor shall not collect, enforce a security interest against, garnish or levy execution on those progress payments or other payments that are owed by an owner, contractor or subcontractor to a person, or the owner's contractor's or subcontractor's surety, who has furnished labor or material pursuant to a construction contract.
- e) When making payments, an owner, contractor or subcontractor shall not retain, withhold, hold back or in any other manner not pay amounts owed for work performed.

20.2 57-28-8: Final Completion

- a) Ten days after certification of completion, any amounts remaining due the contractor or subcontractor under the terms of the contract shall be paid upon the presentation of the following:
 - 1. a properly executed release and duly certified voucher for payment;
 - 2. a release, if required, of all claims and claims of lien against the owner arising under and by virtue of the contract other than such claims of the contractor, if any, as may be specifically excepted by the contractor or subcontractor from the operation of the release in stated amounts to be set forth in the release; and
 - 3. proof of completion.

21. STATE USE ACT REQUIREMENTS

- 21.1 The purpose of the State Use Act is to encourage and assist persons with disabilities to achieve maximum personal independence through useful and productive employment by ensuring an expanded and constant market for services delivered by persons with disabilities, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and entitlements. 13-1C-2 NMSA
- 21.2 a) In regards to procurement of services, before utilizing any other procurement method allowed under the Procurement Code, a state agency or local public body shall first offer the procurement to the central non-profit agency under contract with the state. The central non-profit agency has the right of first refusal for any procurement of services provided that the provider can meet the time requirements of the state agency or local public body.
- b) The central non-profit agency shall:
- 1) publish a list of services available through the central non-profit agency on a website available to all state agencies and local public bodies.
 - 2) ensure that all service providers on this list meet the eligibility requirements to offer services under 13-1C-1 NMSA.
 - 3) ensure that the prices offered to state agencies and local public bodies reflect the fair market value of such services in accordance with 13-1C-6 NMSA.
 - 4) provided that, under 13-1C-6 NMSA, services provided pursuant to and facilities covered by 22-14-27 NMSA are excluded from procurement through the central non-profit agency.
- 21.3 13-1C-7
- a) A state agency or local public body intending to procure a service on a list published by the council shall, in accordance with rules of the council, procure the service at the price established by the council if the service is available within the period required by the state agency or local public body. Procurement pursuant to the State Use Act [Chapter [14](#), Article 4 NMSA 1978] is exempt from the provisions of the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978].
- b) The council and a state agency or local public body may enter into a

cooperative agreement for effective coordination of the objectives of the State Use Act and any other law requiring procurement of services from a state agency or local public body.

- 21.4 Procurement of services pursuant to 13-1C-1 NMSA are exempt from the Procurement Code.