

Grantee Name: City of Carlsbad

CDBG Project Number: 18-C-NR-I-01-G-12

RESOLUTION # 2019-49

**ADOPTION OF REQUIRED  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)  
ANNUAL CERTIFICATIONS AND COMMITMENTS**

**WHEREAS**, municipalities, counties or other entities that accept Community Development Block Grant (CDBG) funds must adopt certain required federal regulations; and

**WHEREAS**, the City of Carlsbad (hereinafter referred to as the Grantee) wishes to ensure compliance with federal regulations by adopting the following required certifications and commitments:

<b>Citizen Participation</b>	certifies its commitment to citizen participation by preparing and adopting a Citizen Participation Plan that includes ways to encourage public input using various methods to reach the public and assures that citizens are provided reasonable notice and timely access to local meetings, per the Open Meetings Act (NMSA 1978, Chapter 10, Article 15)
<b>Fair Housing</b>	certifies its commitment to the Fair Housing Act of 1968 to affirmatively further fair housing, which prohibits discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing on the basis of race, color, religion, sex, disability, familial status, or national origin
<b>Residential Anti-Displacement &amp; Relocation Assistance</b>	certifies its compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, whose purpose is to provide uniform, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG-funded project or activity
<b>Section 3</b>	certifies its commitment to Section 3, a provision of the Housing and Urban Development (HUD) Act of 1968, which requires recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low and very low income residents in connection with projects and activities in their community. Attached is the Grantee Section 3 hiring information.
<b>Procurement</b>	certifies its compliance with federal procurement code (24 CFR Part 85.36) and New Mexico Procurement Code (§13-1-120 NMSA 1978) by adopting a procurement policy annually for CDBG projects

## GRANTEE SECTION 3 PLAN CHART

- Chart for Section 3 Plan **MUST** be filled out for job classifications that result from this CDBG funding. If this project will not create jobs, this chart will not be applicable. Attach additional job classifications as necessary.

City of Carlsbad ANTICIPATED/ACTUAL HIRES			2019/20 HIRING YEAR	
PLANNED			ACTUAL	
Job Classification	# of Positions to be Filled	# of Positions to be Filled by Lower Income City of Carlsbad Residents	# of Positions Filled	Positions Filled by Lower Income City of Carlsbad Residents
N/A	0	0		

**NOW, THEREFORE, BE IT RESOLVED**, that the Grantee adopts the above CDBG certifications and commitments that must be adopted annually.

**PASSED, APPROVED, SIGNED, AND ADOPTED** at a duly called and convened regular meeting of the governing body of the City of Carlsbad this 24th day of September, 2019.

SIGNED: \_\_\_\_\_

Dale W. Janway, Mayor

ATTEST:

Nadine Mireles  
Nadine Mireles, City Clerk

## EXHIBIT 1-Z

### CDBG FEDERAL REQUIREMENTS

#### CITIZEN PARTICIPATION REQUIRED ELEMENTS

In accordance with the 1987 revisions to the Housing and Community Development Act and in an effort to further encourage citizen participation, City of Carlsbad has prepared and adopted this Citizen Participation Plan.

##### Objective A

City of Carlsbad will provide for and encourage citizen participation within its area of jurisdiction, with particular emphasis on participation by persons of low and moderate income. *Action items:*

1. *Adopt and circulate an Open Meetings Resolution which provides citizens with reasonable notice of county/municipality upcoming meetings, actions and functions.*
2. *Develop press releases on county/municipality meetings, actions and hearings, and circulate to newspapers, radio and television media.*
3. *Develop and maintain listing of groups and representative of low and moderate income persons, and include on mailing lists of announcements, notices, press releases, etc.*

##### Objective B

City of Carlsbad will provide citizens with reasonable and timely access to local meetings, information and records relating to the proposed and actual use of CDBG funds. *Action items:*

1. *Public notices, press releases, etc., should allow for a maximum length of notice to citizens.*
2. *Appropriate information and records relating to the proposed and actual use of CDBG funds must be available upon request to all citizens. Personnel and income records may be exempted from these requirements.*
3. *Meetings, hearing, etc., should be conducted at times and locations conducive to public attendance, e.g., evenings, Saturdays.*

##### Objective C

City of Carlsbad will provide technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals. *Note: the level and type of assistance is to be determined by the county/municipality. Action items:*

1. *Low and moderate income groups should be advised that technical assistance, particularly in the area of community development, is available from the county/municipality upon request.*
2. *Document technical assistance provided to such groups and has documentation available for review.*



#### Objective D

City of Carlsbad \_\_\_\_\_ will provide a minimum of two public hearings to obtain citizen participation and respond to proposals and questions at all stages of the Community Development Block Grant Program. *Action items:*

1. *Advise citizens of the CDBG program objectives, range of activities that can be applied for and other pertinent information.*
2. *Conduct a minimum of two public hearings:*
  - a. *One public hearing will be held to advise citizens of the program objectives and range of activities that can be applied for, and to obtain the citizen's views on community development and housing needs, to include the needs of low and moderate income people. This hearing will take place prior to the selection of the project to be submitted to the state for CDBG funding assistance.*
  - b. *A second public hearing will be held to review program performances, past use of funds and make available to the public its community development and housing needs, including the needs of low and moderate income families, and the activities to be undertaken to meet such needs.*
3. *Publish public hearing notices in the non-legal section of newspapers or in other local media. Evidence of compliance with these regulations will be provided with each CDBG application, i.e., hearing notice minutes of public meetings, list of needs and activities to be undertaken, etc. Amendments to goals, objectives and applications are also subject to public participation.*

#### Objective E

City of Carlsbad \_\_\_\_\_ will provide timely written answers to written complaints and grievances within 15 working days where practical. *Action items:*

1. *Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.*
2. *Allow for appeal of a decision to a neutral authority.*
3. *File a detailed record of all complaints or grievances and responses in one central location with easy public access.*

#### Objective F

City of Carlsbad \_\_\_\_\_ will identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate. *Action items:*

1. *Identify areas where large majorities of non-English speaking persons reside and make appropriate provisions when issues affecting these areas are to be discussed at public meetings, hearings, etc. Appropriate provisions will include having interpreters available at the meeting and having briefing material available in the appropriate language.*
2. *Maintain records/rosters of public hearing attendees and proceedings to verify compliance with this objective.*



## FAIR HOUSING REQUIRED ELEMENTS

A resolution of the \_\_\_\_\_ Governing Body \_\_\_\_\_ of the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Carlsbad \_\_\_\_\_, adopting a fair housing policy, making known its commitment to the principle of fair housing, and describing actions it shall undertake to affirmatively further fair housing.

WHEREAS; the Housing and Community Development act of 1974 as amended requires that all applicant for Community Development Block Grants funds certify that they shall affirmatively further fair housing; and

WHEREAS; the Civil Rights Act of 1968 (commonly known as the Federal Fair Housing Act) and the Fair Housing Amendments Act of 1988 declare a national policy to prohibit discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing or in the provision of brokerage services, on the basis of race, color, religion, sex, disability, familial status or national origin; and

WHEREAS; fairness is the foundation of the American system and reflects traditional American values; and

WHEREAS; discriminatory housing practices undermine the strength and vitality of America and its people;

NOW, THEREFORE, BE RESOLVED THAT the \_\_\_\_\_ Governing Body \_\_\_\_\_ of the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Carlsbad \_\_\_\_\_ hereby wish all persons living, working, doing business in or traveling through this \_\_\_\_\_ City \_\_\_\_\_ to know that: discrimination in the sale, rental, leasing, and financing of housing or land to be used for construction of housing, or in the provision of brokerage services on the basis of race, color, religion, sex, handicap, familial status or national origin is prohibited by Title VIII of the Fair Housing Act Amendments of 1988; and that it is the policy of the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Carlsbad \_\_\_\_\_ to implement programs, within the constraints of its resources, to ensure equal opportunity in housing for all persons regardless of race, color, religion, sex, handicap, familial status or national origin; and within available resources the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Carlsbad \_\_\_\_\_ will assist all persons who feel they have been discriminated against in housing issues on the basis of race, color, religion, sex, handicap, familial status or national origin to seek equality under existing federal and state laws to file a complaint with the New Mexico Attorney General's Office or the U.S. Department of Housing and Urban Development; and that the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Carlsbad \_\_\_\_\_ shall publicize this Resolution and thereby encouraging owners of rental properties, developers, builders and others involved with housing to become aware of their respective responsibilities and rights under the Fair Housing Amendments Act of 1988 and any applicable state or local laws or ordinances; and that the \_\_\_\_\_ City \_\_\_\_\_ of \_\_\_\_\_ Carlsbad \_\_\_\_\_ shall undertake the following actions to affirmatively further fair housing:

(List all such actions to include: mailing copies of this resolution to the real estate community, banks, developers, community organizations and local media; posting copies of this resolution at identified locations; distributing flyers; sponsoring schools)

The City of Carlsbad shall post a copy of this resolution on the City's Website and shall post copies at various City buildings where the community can have access to view.



## RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE REQUIRED ELEMENTS

### I. Background/Introduction

Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)(4)), Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(16)), and implementing regulations at 24 CFR Part 42, specify that a grantee under the Community Development Block Grant (CDBG) must certify that it has in effect and is following a "residential Anti-displacement and relocation assistance plan" (Plan). As a CDBG grantee, City of Carlsbad must certify to State of New Mexico Department of Finance and Administration Local Government Division that it has and is following such a Plan.

The Plan must include three components: 1) one-for-one replacement requirements for lower-income housing units, 2) relocation assistance, and 3) a description of the steps City of Carlsbad will take to minimize displacement.

### II. Activities Covered by the Plan

All activities involving the use of CDBG funds that cause displacement as a direct result of demolition or conversion of a lower-income dwelling are subject to the requirements specified in the Plan. Activities for which funds are first obligated on or after September 30, 1988 are subject to the requirements specified in the Plan, without regard to the source year of the funds.

### III. Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) govern displacement that directly results from acquisition, rehabilitation, or demolition of real property when federal funds are used. City of Carlsbad's Residential Anti-displacement and Relocation Assistance Plan is in no way intended to supersede the URA. CDBG assisted activities may still be subject to the requirements of the URA.

### IV. One-for-One Replacement Units

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income units. Replacement lower-income dwelling units may be provided by any governmental agency or private developer and must meet the following requirements:

- A. The units must be located within City of Carlsbad to the extent feasible, the units shall be located within the same neighborhood as the units replaced

- B. The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in the units shall be in accordance with applicable local housing occupancy codes. The units may not be replaced with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless City of Carlsbad has provided information demonstrating that such a proposed replacement is consistent with the needs assessment contained State of New Mexico Department of Finance and Administration Local Government Division HUD-approved Consolidated Plan.
- C. The units must be in standard condition and must at a minimum meet Section 8 Program Housing Quality Standards. Replacement lower-income units may include units brought from a substandard condition to standard condition if: 1) no person was displaced from the unit; and 2) the unit was vacant for at least 3 months before execution of the agreement between City of Carlsbad and the property owner.
- D. The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under Section F below and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.
- E. The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance
- F. Before City of Carlsbad enters into a contract committing it to provide CDBG funds for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, City of Carlsbad must make public and submit in writing to State of New Mexico Department of Finance and Administration Local Government Division the following information:
- 1 A description of the proposed assisted activity;
  - 2 The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;
  - 3 A time schedule for the commencement and completion of the demolition or conversion;
  - 4 The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data is not available at the time of the submission to State of New Mexico Department of Finance and Administration Local Government Division, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwellings units by size shall be submitted and disclosed to the public as soon as it is available;
  - 5 The source of funding and time schedule for the provision of replacement dwelling units;
  - 6 The basis for concluding that each replacement unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
  - 7 Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the needs assessment contained in



the State of New Mexico Department of Finance and Administration Local  
Government Division Consolidated Plan.

- G. The one-for-one replacement requirements may not apply if HUD determines, based on objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within City of Carlsbad. In making such a determination, State of New Mexico Department of Finance and Administration Local Government Division will consider such factors as vacancy rates, numbers of lower-income units in City of Carlsbad and the number of eligible families on the Section 8 waiting list.

V. Relocation Assistance

Each lower-income person who is displaced as a direct result of CDBG assisted demolition or conversion of a lower-income dwelling shall be provided with relocation assistance.

Relocation assistance includes advisory services and reimbursement for moving expenses, security deposits, credit checks, other moving expenses, including certain interim living costs, and certain replacement housing assistance.

Displaced persons have the right to elect, as an alternative to the benefits described in this Plan, to receive benefits under the URA, if they determine that it is in their best interest to do so. The following relocation assistance shall be available to lower-income displacement persons:

- A. Displaced lower-income persons will receive the relocation assistance required under 49 CFR 24, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the person elects to receive assistance under the URA or the assistance required by CDBG regulations. Relocation notices must be distributed to the affected persons in accordance with 49 CFR 24.203 of the URA;
- B. The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit and for credit checks required to rent or purchase the replacement dwelling unit;
- C. Actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:
  - 1. The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or
  - 2. The person is displaced from a lower-income dwelling unit, none of the comparable replacement units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available through one-for-one replacement requirements
- D. Replacement Housing Assistance. Displaced persons are eligible to receive one of the following two forms of replacement housing assistance:
  - 1. Each person shall be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of

utilities for a replacement dwelling to the "Total Tenant Payment", as determined under 24 CFR 813.107. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance under the Section 8 program.

Where Section 8 assistance is provided to the displaced person,

City of Carlsbad must provide the person with referrals to comparable units whose owners are willing to participate in Section 8 program to the extent that cash assistance is provided, it will be provided in installments.

2. In lieu of the housing voucher, certificate or cash assistance described above, the person may elect to receive a lump sum payment allowing them to secure participation in a housing cooperative or mutual housing association. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the

"Total Tenant Payment", as determined under 24 CFR 813.107, from the monthly cost of rent and average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings in a federally insured financial institution conducting business within City of Carlsbad.

Displaced lower-income tenants shall be advised of their right to elect relocation assistance pursuant to the URA and the regulations at 49 CFR 24 as an alternative to the relocation assistance available under CDBG regulations.

#### VI. Eligibility for Relocation Assistance

A lower-income person is eligible for relocation assistance if they are considered to be a "displaced person" as defined in 24 CFR 42.305. A displaced person means a lower-income person who, in connection with an activity assisted under the CDBG program, permanently moves from real property or permanently moves personal property from real property as a direct result of demolition or conversion of a lower-income dwelling.

For purposes of this definition, a permanent move includes a move made permanently and:

- A. After notice by the owner to move from the property, if the move occurs on or after the date of the submission of a request to City of Carlsbad for CDBG assistance that is later approved for the requested activity; or
- B. After notice by the owner to move from the property, if the move occurs on or after the date of the initial official submission to HUD of the consolidated plan under 24 CFR Part 91 describing the assisted activity; or
- C. Before the dates described in A & B above, if City of Carlsbad or State of New Mexico Department of Finance and Administration Local Government Division determines that the displacement was a direct result of conversion or demolition in connection with a CDBG assisted activity; or
- D. By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
  1. The tenant moves after execution of the CDBG agreement covering the acquisition, rehabilitation or demolition and the move occurs before the tenant is



provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions, including a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent before such agreement, or the total tenant payment as determined under 24 CFR 813.107 if the tenant is lower-income, or 30 percent of gross household income if the tenant is not lower-income.

2. The tenant is required to relocate temporarily, does not return to the building/complex, and either is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.
3. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

If the displacement occurs on or after the appropriate date described in A & B above, the lower-income person is not eligible for relocation assistance if:

- A. The person is evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the City of Carlsbad determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;
- B. The person moved into the property on or after the date described in A & B above after receiving written notice of the expected displacement; or
- C. City of Carlsbad determines that the displacement was not a direct result of the CDBG assisted activity and the State of New Mexico Department of Finance and Administration Local Government Division concurs with this determination.

## VII. Minimizing Displacement

The CDBG regulations regarding the demolition or conversion of lower-income dwelling units are designed to ensure that lower-income persons are provided with adequate, affordable replacement housing. Naturally, involuntary displacement should be discouraged whenever a reasonable alternative exists. Involuntary displacement is extremely disruptive and disturbing, especially to lower-income persons who do not have the means to locate alternative housing.

There are various ways that displacement can be minimized. The following are steps that will be taken to minimize the involuntary displacement of lower-income persons when CDBG funds are involved:

- A. Screening of Applications All CDBG applications will be reviewed to determine whether involuntary displacement is likely to occur. Those applications involving displacement will receive a lower priority recommendation for funding unless it can be shown that alternatives are not available.
- B. Acquisition of Property Applicants who apply for CDBG funds to acquire property for the

development of lower-income housing will be encouraged to purchase vacant land. In the case of in-fill and other projects where this is not feasible and the project involves potential displacement, the applicant shall agree to allow the displaced lower-income person(s) to occupy the new housing at an affordable rent.

Applicants who utilize CDBG funds to rehabilitate or convert a lower-income unit to a non-residential use will be required to supply replacement housing consistent with paragraph IV, as well as relocation assistance.

- C. Cost of Relocation Assistance The cost of any required relocation assistance and the provision of replacement housing will be borne by the applicant and may be paid for out of CDBG funds awarded to the project.

#### VIII. Definitions

- A. "Comparable replacement dwelling unit" means a dwelling unit that:
  - 1 Meets the criteria of 49 CFR 24.2(d)(1) through (6); and
  - 2 Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under 24 CFR 813.107 after taking into account any rental assistance the household would receive.
- B. "Lower-income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.
- C. "Standard condition" means units that at a minimum meet the Existing Housing Quality Standards of the Section 8 rental subsidy program.
- D. "Substandard condition suitable for rehabilitation" means units with code violations that can be brought to Section 8 Housing Quality Standards within reasonable monetary amounts.
- E. "Vacant occupiable dwelling unit" means a dwelling unit that is in a standard condition; a vacant dwelling unit that is in substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by City of Carlsbad covering the rehabilitation or demolition.

#### IX. Grievances

The City of Carlsbad will provide timely written answers to written complaints and grievances within 15 working days where practical. Action items:

- A. Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.
- B. Allow for appeal of a decision to a neutral authority.
- C. File a detailed record of all complaints or grievances and responses in one central location with easy public access.



## SECTION 3 PLAN REQUIRED ELEMENTS

The City of Carlsbad is committed to comply with Section 3 of the Housing and Urban Development Act of 1968. This Act encourages the use of small local businesses and the hiring of low income residents of the community.

The City of Carlsbad has appointed Angie Barrios-Testa as the Section 3 Coordinator, to advise and assist key personnel and staff on Section 3, to officially serve as focal point for Section 3 complaints, and as the on-site monitor of prime contractors and sub-contractors to insure the implementation and enforcement of their Section 3 plans. The approval or disapproval of the Section 3 plan is the ultimate responsibility of the City of Carlsbad. Documentation of efforts will be retained on file for monitoring by the state.

Therefore, the City of Carlsbad shall:

1. Hiring
  - a. Advertise for all City of Carlsbad positions in local newspapers
  - b. List all City of Carlsbad job opportunities with the State Employment Service
  - c. Give preference in hiring to lower income persons residing in the City of Carlsbad. This means that if two equally qualified persons apply and one is a resident of the City of Carlsbad and one is not, the resident will be hired
  - d. Maintain records of City of Carlsbad hiring as specified in the Annual CDBG Resolutions (Exhibit 1-Y). Note: Chart for Section 3 Plan MUST be filled out in its entirety and updated on an annual basis.
2. Contracting
  - a. The City of Carlsbad will compile a list of businesses, suppliers and contractors located in the City of Carlsbad.
  - b. These vendors will be contacted for bid or quotes whenever the City of Carlsbad requires supplies, services or construction.
  - c. Preference will be given to small local businesses. This means if identical bids/quotes are received from a small business located within the City of Carlsbad and one from outside the City of Carlsbad, the contract will be awarded to the business located within the community.

### 3. Training

The City of Carlsbad shall maintain a list of all training programs operated by the City of Carlsbad and its agencies and will direct them to give preference to City of Carlsbad residents. The City of Carlsbad will also direct all CDBG sponsored training to provide preference to City of Carlsbad residents.

### 4. CDBG Contracts

All CDBG bid proposals and contracts shall include the following Section 3 language.

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that the greatest extent feasible, opportunities for training and employment be given lower income residents of the project areas, and contracts for work in connection with the project be awarded to business concerns residing in the project area.
- b. The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR and all applicable rules and orders of the Department issued there-under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the subcontractor has first provided it with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department, issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.



The City of Carlsbad shall require each contractor to prepare a written Section 3 plan as a part of their bids on all jobs exceeding \$100,000. All Section 3 plans shall be reviewed and approved by the City's Equal Opportunity Section 3 Compliance Officer and retained for monitoring by the state.

The City of Carlsbad will maintain all necessary reports and will insure that all contractors and subcontractors submit required reports.

#### LOWER INCOME CLARIFICATION

A family who resides in City of Carlsbad and whose income does not exceed the income limit for the size of family as per the attached Section 8 Income Limit for City of Carlsbad. Information contained in our Section 3 Plan reflects the status of the City of Carlsbad employees regarding lower income considerations based on their salary paid by the City of Carlsbad.

#### Certification

This Federal Requirements Plan hereby incorporates all of the State of New Mexico CDBG requirements to include Citizen Participation, Fair Housing, Residential Anti-Displacement & Relocation as well as Section 3. The City of Carlsbad herewith certifies to follow the CDBG Federal Requirements Plan described above and adopt the plan by resolution annually.

PASSED AND ADOPTED BY THE Governing Body of the City  
of Carlsbad on this 24th day of September, 2019

ATTEST:

Nadine Mireles

Nadine Mireles, City Clerk

Plan Adoption Date: 9-24-19

Adoption Instrument: Resolution

Certified By: Dale W. Janway 9-25-2019  
Date

Dale W. Janway

Mayor

Copy to Local Government Division with attachments

# **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)





**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 or 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.

## AGENDA BRIEFING MEMORANDUM

SEP 24 2019

Council Meeting Date: 9-24-2019

DEPARTMENT: Municipal Services	BY: Angie Barrios-Testa, Director <i>ABT 9/12/19</i>	DATE: 9-12-2019												
<b>SUBJECT: Approve Resolution Adopting the Required Community Development Block Grant Annual Certifications and Commitments</b>														
<b>BACKGROUND, ANALYSIS AND IMPACT:</b> (Safety and Welfare/Financial/Personnel/Infrastructure/etc.)  <p>The City of Carlsbad was awarded a Community Development Block Grant (CDBG) project in 2018 administered through the NM Department of Finance and Administration Local Government Division. CDBG Project No. 18-C-NR-I-01-G-12 grant agreement has been in effect since January 2019 for the San Jose Senior Center Renovation project.</p> <p>In order to ensure compliance with federal regulations, the City is required to annually adopt by resolution its Citizen Participation, Fair Housing, Residential Anti-Displacement &amp; Relocation Assistance, and Section 3 plans. This annual resolution must be adopted for the life of the CDBG Grant and if the City wishes to continue participating in the CDBG funding program. This resolution supersedes Resolution No. 2018-60.</p>														
<b>DEPARTMENT RECOMMENDATION:</b> If it is the will of the City Council, adopt the Community Development Block Grant Annual Certifications and Commitments to ensure compliance with CDBG federal requirements, and to designate the Mayor signature authority for the resolution and related documents.														
<b>BOARD/COMMISSION/COMMITTEE ACTION:</b> <table border="0"> <tr> <td><input type="checkbox"/> P &amp; Z</td> <td><input type="checkbox"/> Lodgers Tax Board</td> <td><input type="checkbox"/> Riverwalk Rec Center Board</td> <td><input type="checkbox"/> APPROVED</td> </tr> <tr> <td><input type="checkbox"/> Museum Board</td> <td><input type="checkbox"/> San Jose Board</td> <td><input type="checkbox"/> Water Board</td> <td><input type="checkbox"/> DISAPPROVED</td> </tr> <tr> <td><input type="checkbox"/> Library Board</td> <td><input type="checkbox"/> N. Mesa Board</td> <td><input type="checkbox"/> Beautification Committee</td> <td></td> </tr> </table>			<input type="checkbox"/> P & Z	<input type="checkbox"/> Lodgers Tax Board	<input type="checkbox"/> Riverwalk Rec Center Board	<input type="checkbox"/> APPROVED	<input type="checkbox"/> Museum Board	<input type="checkbox"/> San Jose Board	<input type="checkbox"/> Water Board	<input type="checkbox"/> DISAPPROVED	<input type="checkbox"/> Library Board	<input type="checkbox"/> N. Mesa Board	<input type="checkbox"/> Beautification Committee	
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<b>Reviewed by:</b> <b>City Administrator:</b> <i>[Signature]</i> <b>Date:</b> <i>9/18/19</i>														