

CITY OF CARLSBAD

PROCUREMENT POLICY

1. PURPOSE

1.1 To ensure an efficient and cost-effective method of procurement for the City of Carlsbad, for the acquisition of tangible personal property, services or construction, within regulations adopted by the Governing Body of the City of Carlsbad and the State of New Mexico.

2. PROCUREMENT FROM LOCAL SOURCES

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 it is practical, feasible and financially advantageous to the City of Carlsbad, in accordance with the New Mexico State Procurement Code.

3. PURCHASING OFFICE

3.1 Definition; Central Purchasing Office

- a) "Central purchasing office" means that office within a state agency or a local public body responsible for the control of procurement of items of tangible personal property, services or construction. **(NMSA 13-1-37)**

3.2 Definition; Procurement

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

3.3 The Purchasing Office shall be responsible for the control of procurement for the municipality and shall perform all duties required by the State of New Mexico 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 and cooperative procurement agencies to maximize the benefits to the municipality from such joint and cooperative efforts.

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. CHIEF PROCUREMENT OFFICER

4.1 Definition; Chief Procurement Officer

- a) "Chief procurement officer" means that person within a state agency's or local public body's central purchasing office who is responsible for the control of procurement of items of tangible personal property, services or construction. "Chief procurement officer" includes the state purchasing agent. **(NMSA 13-1-38.1)**

4.2 The Purchasing Manager is hereby designated as the Chief Procurement Officer for the City of Carlsbad.

4.3 The Chief Procurement Officer shall be registered and certified by the State of New Mexico Purchasing Division on a biennial basis. **(NMSA 13-1-95.2)**

4.4 Only a Certified Procurement Officer is authorized by the New Mexico State Procurement Code **(NMSA 13-1-97 (c)** to approve purchases for the City of Carlsbad, including but not limited to the following:

- 1) Make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;
- 2) Issue purchase orders and authorize small purchases pursuant to the Procurement Code; and
- 3) Approve procurement pursuant to the Procurement Code.

4.5 Additional Purchasing Department staff may also receive certification upon completion of training and by passing the CPO examination. In the absence of the Chief Procurement Officer, additional CPO's will be authorized to perform the same functions with the same authority as the Purchasing Manager. 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.

4.6 The Chief Procurement Officer shall supervise the Purchasing Office and is responsible for enforcement of procurement policies and procedures for the City of Carlsbad.

4.7 The Chief Procurement Officer 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.

4.8 The Chief Procurement Officer shall annually review procurement policies and procedures to ensure compliance with all applicable state laws.

5. REQUIREMENTS AND RESPONSIBILITIES OF EMPLOYEES WITH PURCHASING AUTHORITY

- 5.1 Each City employee who has purchasing authority and/or privileges or participates in any facet of the procurement process, shall be certified by the City of Carlsbad Purchasing Office prior to participating in the procurement process.
- 5.2 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 State of New Mexico Procurement Code, City Procurement Policy and Governmental Conduct Act.
- 5.3 A grade of 70% or higher will be required to pass the exam. Employees may take the exam multiple times if needed.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 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. **(NMSA 10-6-4.2)**

- 5.11 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, unless the contract is made after public notice and through a competitive process. **(NMSA 10-6-7) (b)**

6. APPLICATION OF THE NEW MEXICO PROCUREMENT CODE

- 6.1 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. **(NMSA 13-1-30) (a)**
- 6.2 The purposes of the Procurement Code are to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity. **(NMSA 13-1-29) (c)**
- 6.3 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. **(NMSA 13-1-30) (b)**
- 6.4 All purchases are subject to the New Mexico 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 22-11-4 7 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 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 NMSA1978] NMSA1978] or operation and maintenance of a hospital pursuant to the Special Hospital District Act [4-48A-1 NMSA 1978];

7. PURCHASES UNDER \$20,000

7.1 Definition; Purchase Requisition

- 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)

7.2 Definition; Purchase Order

- a) "Purchase order" means the document issued only by the central purchasing office 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.

7.3 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. Purchase requisitions that are incomplete or contain errors will be rejected and returned to the originator for corrections.

7.4 A copy of each purchase order will be provided to the vendor when placing the order.

7.5 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.

7.6 Purchases of less than \$5,000 are considered small purchases. The City may procure services, construction or items of tangible personal property having a value not exceeding \$4,999.99, excluding applicable state and local gross receipts taxes, by issuing a direct purchase order to a contractor based upon the best obtainable price.

7.7 Purchases of \$5,000.00 up to \$19,999.99 must have three written quotes attached to the requisition. Requisitions over \$10,000.00 must be reviewed by the Finance Director, or designee, for budget verification. The Finance Director will then forward the requisition to the City Administrator for approval.

7.8 Requisitions SHALL NOT be artificially divided as to:

- a) Constitute a small purchase (under \$5,000) or
- b) Avoid the Bid/RFP process

7.9 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.

- 7.10 In the event two vendors have the same quote, written justification shall be provided by the requestor as to how one vendor was chosen. Determinations can be made by local availability, items in stock, vendor delivery time table, shipping charges or a coin toss. A coin toss will be the last resort.

8. PURCHASES OVER \$20,000

- 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 and release to the public. The Chief Procurement Officer shall prepare an Agenda Briefing Memorandum (ABM) and submit to the City Administrator for presentation to 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. **(NMSA 13-1-104 (a))**

- 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)
- f) Bid and/or performance bond (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 Department Director and Chief Procurement Officer.

- 8.6 When conducting a Request for Proposals, the Chief Procurement Officer or other designated CPO shall oversee the RFP selection committee and provide

guidance and instructions to the committee and ensure that the evaluation process and scoring is conducted fairly and accurately. The CPO should under no circumstances be part of the evaluation committee and should remain impartial throughout the selection process.

- 8.7 Upon completion of an RFP evaluation, the Chief Procurement Officer shall tabulate the evaluation scores to determine an awardee based on the highest score and/or other factors as is in the best interest of the City.
- 8.8 The Chief Procurement Officer will prepare an Agenda Briefing Memorandum to request that the City Council award the bid or RFP to the selected contractor.. The ABM will be submitted to the City Administrator for approval and inclusion on the City Council agenda.
- 8.9 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, corresponding 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 the City 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.
- 8.10 The bid award date shall be the date which the City Council formally approves the recommendation for award at the bi-monthly scheduled City Council meeting.
- 8.11 Once the City Council has approved the award of a bid or RFP, the Chief Procurement Officer or City Agent will post the award notice on the City's website and mail a letter to all participants notifying them of the award.
- 8.12 If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then new invitations for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are secured, the central purchasing office may purchase the tangible personal property, construction or services in the open market at the best obtainable price. **(NMSA 13-1-131)**

9. REQUEST FOR PROPOSALS

- 9.1 Competitive sealed proposals or Requests for Proposals (RFP) require advance planning. The Chief Procurement Officer shall prepare an Agenda Briefing Memorandum (ABM) and submit to the City Administrator for presentation to 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. **(NMSA 13-1-104 (a))**
- 9.3 Prior to the time and date for submission of proposals, only the Chief Procurement Officer or designated agent may communicate with the proposers. The Chief Procurement Officer will field all questions and consult if needed with City staff with technical expertise. Only the Chief Procurement Officer 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 Chief Procurement Officer. The CPO 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 Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. This section shall not apply to architects, engineers, landscape architects and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978. **(NMSA 13-1-115)** All negotiations will be conducted under the direction of the City Administrator.
- 9.6 The 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.
- 9.7 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 and will be made available by public records request to the City Clerk's Office.
- 9.8 This section may not apply to architects, engineers, landscape architects and surveyors who submit proposals. See Section 15. Re; Professional Services
- 9.9 If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then new invitations for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are secured, the central purchasing office may purchase the tangible personal property, construction or services in the open market at the best obtainable price. **(NMSA 13-1-131)**

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 actual bid amount. (**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.

11. RIGHT TO PROTEST

- 11.1 Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the state purchasing agent or a central purchasing office. The protest shall be submitted in writing within fifteen calendar days after knowledge of the facts or occurrences giving rise to the protest.
(NMSA 13-1-172)
- 11.2 In the event of a timely protest under **Section 145 [13-1-172 NMSA 1978]** of the Procurement Code, the state purchasing agent or a central purchasing office shall not proceed further with the procurement unless the state purchasing agent or a central purchasing office makes a determination that the award of the contract is necessary to protect substantial interests of the state agency or a local public body.
- 11.3 The state purchasing agent, a central purchasing office or a designee of either shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder or offeror. This authority shall be exercised in accordance with regulations promulgated by the secretary, a local public body or a central purchasing office which has the authority to issue regulations but shall

not include the authority to award money damages or attorneys' fees.
(NMSA 13-1-174)

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

- a) state the reasons for the action taken; and
- b) inform the protestant of the right to judicial review of the determination pursuant to **Section 156 [13-1-183]**

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

12. PROCUREMENT UNDER EXISTING CONTRACTS

12.1 Definition; Cooperative Procurement

- a) "Cooperative procurement" means procurement conducted by or on behalf of more than one state agency or local public body, or by a state agency or local public body with an external procurement unit. **(NMSA 13-1-44)**

12.2 The City of Carlsbad is authorized to participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external procurement units involved.
(NMSA 13-1-135)

Cooperative purchasing agreements include the following:

- a) State of New Mexico Pricing Agreements
- b) In-State Purchasing Cooperative Organizations
- c) National Purchasing Cooperative Organizations
- d) GSA contracts from Federal supply schedules limited to the purchase of IT, security, and law enforcement products and services. **40 U.S.C. § 502 (c)**

13. SOLE SOURCE AND EMERGENCY PURCHASES

13.1 The only exceptions to the requirements listed herein are Sole Source Purchases and Emergency Purchases.

13.2 Definition; Sole Source Procurement

a) A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the state purchasing agent or a central purchasing office determines, in writing, that:

1) there is only one source for the required service, construction or item of tangible personal property;

2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and

3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract. **(NMSA 13-1-126)**

13.3 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, but may be renewed for an additional year if the circumstances creating the sole source condition remain unchanged.

13.4 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 able to provide the good or service, the sole source shall be revoked and quotes obtained from any known vendors. **(NMSA 13-1-126.1)**

13.5 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. **(NMAC 13-1-127)**

13.6 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.

13.7 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.

- 13.8 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. **(NMAC 13-1-128)**
- 13.9 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. **(NMAC 13-1-128)**

14. PROCUREMENT OF NON-PROFESSIONAL SERVICES

14.1 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)**

- 14.2 Purchases for services of less than \$5,000 shall be considered a small purchase.
- 14.3 Purchases of services of more than \$5,000 but less than \$19,999.99 require 3 valid written quotes.
- 14.4 Purchases for services of \$10,000 or more require budget approval by Finance Director, or designee, and approval of City Administrator.
- 14.5 Purchases for services over \$20,000.00, which are based upon identified criteria and is not awarded based exclusively on price, are subject to competitive sealed proposal (RFP) or must be procured through an existing contract as described in Section 12 or other applicable procurement methods.

15. PROCUREMENT OF PROFESSIONAL SERVICES

15.1 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)**

- 15.2 Professional Services under \$60,000.00 are considered a small purchase and are exempt from formal procurement. The City may procure professional services in an amount not to exceed \$60,000 by issuing a direct purchase order to the contractor based upon the best obtainable price. **(NMSA 13-1-125)**
- 15.3 Professional Services of more than \$60,000.00 will follow the Request for Proposal process as defined in Section 9, or may be procured utilizing existing cooperative contracts as described in Section 12 or other applicable procurement methods. .
- 15.4 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.

16. CAPITAL ASSET PURCHASES

16.1 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.

16.2 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.

16.3 All fixed assets are required to be placed on City inventory and will be tagged with a City asset tag.

17. APPLICATION OF GROSS RECEIPTS TAX

- 17.1 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, construction materials and equipment leases including software subscription services.
- 17.2 The City is exempt from gross receipts tax on all tangible personal property with the exception of the items listed in 17.1

18. INSURANCE REQUIREMENTS

- 18.1 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.

19. PAYMENTS FOR PURCHASES

- a) No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code [13-1-28 through 13-1-199 NMSA 1978]. **(NMSA 13-1-158)**
- 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 services, construction or items of tangible personal property. **(NMSA 13-1-158)**
- 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 a 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. **(NMSA 13-1-158)**
- 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 the payment is requested for services or construction completed or items of tangible personal property delivered to the site, provide the contractor a letter of exception explaining the defect of objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action. **(NMSA 13-1-158)**
- 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 of the state corporation commission [public regulation commission]. **(NMSA 13-1-158)**

20. PAYMENTS FOR PUBLIC WORKS CONSTRUCTION

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.
(NMSA 57-28-5)

21. CRIMES INVOLVING PUBLIC FUNDS

21.1 The following acts involving use of public funds are considered crimes in the State of New Mexico and carry the following criminal penalties:

- a) Demanding or receiving a bribe by public officer or public employee.
- b) Requesting a thing of value in exchange for official action
- c) Taking an official act for the primary purpose of directly enhancing his own financial interest or financial position
- d) Willful violation of financial disclosure requirements
- e) Paying or receiving public money for services not rendered
- f) Making or permitting a false public voucher
- g) Unlawful interest in public contracts where the value received by him is more than \$50
- h) Tampering with public records
- i) Knowingly and willingly:
 - Obtaining personal benefits incompatible with the public interest.
 - Accepting honoraria
 - Using confidential information for private gain
 - Unlawful contracting
 - Unlawful speculation in claims against the 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
- j) 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