

2022 PROCUREMENT CODE AMENDMENTS

Chapter 9 PROCUREMENT CODE

1-9-1: PURPOSE AND APPLICABILITY:

- A. Purpose: The purpose of the procurement code is to provide for the fair and equitable treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards in order to provide a procurement system of quality and integrity.
- B. Applicability: The procurement code applies to all expenditures by the city for the procurement of tangible personal property, services and construction.
- C. Expenditure Of Federal Funds: 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. (Ord. C2004-15, 11-9-2004)

1-9-2: DEFINITIONS: Whenever the following words or terms are used in this chapter, they shall have such meanings herein ascribed to them, unless the context makes such meaning repugnant thereto:

ARCHITECTURAL SERVICES: Services related to the art and science of designing and building structures for human habitation or use and includes planning, providing preliminary studies, designs, specifications, working drawings and providing for general administration of construction contracts.

CENTRAL PURCHASING OFFICE: The office or officer within a state agency or local public body responsible for the control of procurement of items of tangible personal property, services, or construction. For the city, the central purchasing office is the office of the purchasing agent.

CHIEF PROCUREMENT OFFICER (CPO): CHIEF PROCUREMENT OFFICER (CPO): 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.

CITY: The City of Gallup.

CITY OF GALLUP RESIDENT BUSINESS: For the purpose of qualifying for the city resident business preference as specified in section [1-9-26](#) of this chapter, the following definition shall apply: a business enterprise that has a fixed office or distribution point located in and a street address within the corporate limits of the city; and has a current business registration certificate

from the city; and files and pays applicable gross receipts tax on the state of New Mexico CRS report at the combined state of New Mexico and city of Gallup rate for a period of ninety (90) calendar days.

CONSTRUCTION: The process of building, altering, improving or demolishing any public structure or building or public improvement of any kind to public real property. Construction shall not include the routine maintenance or repair of existing facilities.

CONTRACT: Any agreement for the procurement of items of tangible personal property, services or construction.

CONTRACT MODIFICATION: Any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract.

CONTRACTOR: Any business having a contract with a state agency or a local public body.

COOPERATIVE PROCUREMENT: 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.

COST ANALYSIS: The evaluation of cost data and profit for the purpose of arriving at costs actually incurred by a contractor, estimates of costs to be incurred by a contractor and a profit to be allowed to a contractor.

COST DATA: Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred by a contractor or which have been actually incurred by a contractor in performing the contract.

COST REIMBURSEMENT CONTRACT: A contract which provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.

DATA: Recorded information, regardless of form or characteristic.

DEFINITE QUANTITY CONTRACT: A contract which requires the contractor to furnish a specified quantity of services, items of tangible personal property or construction at or within a specified time.

DESIGNEE: A duly authorized representative.

DETERMINATION: A written documentation of a decision of the purchasing agent which must include findings of fact that are necessary to support a decision. This section requires that the purchasing agent comply with the basic mandates of due process of law in that the decision must be in writing and must include findings of fact which are required to support the decision reached. In any litigation, the determination will form a major portion of the record upon which the court will base its decision.

DIRECT OR INDIRECT PARTICIPATION: Any type of involvement in the approval, disapproval, recommendation, formulation of any part of a purchase request or influencing the content of any specification, investigation, auditing or the rendering of advice.

EMPLOYEES: Any individuals receiving salary, wages or per diem and mileage from the city,

except elected officials and non-compensated individuals, e.g., appointed committee and board members.

EXTERNAL PROCUREMENT UNIT: Any procurement organization not located in this state which, if in this state, would qualify as a state agency or a local public body.

FINANCIAL INTEREST: An interest held by an individual, his spouse or dependent minor children that is:

A. An ownership interest in business; or

B. Any employment or prospective employment for which negotiations have already begun.

HEAVY ROAD EQUIPMENT: Any motor driven vehicle or apparatus capable of use for earth moving or mixing components which has an aggregate value or price over one thousand dollars (\$1,000.00).

IMMEDIATE FAMILY: Refers only to spouse, children, parents, brothers and sisters and is not necessarily consistent with other state statutes regarding nepotism or other conflicts of interest involving relations.

INVITATION FOR BIDS (IFB): All documents, including those attached or incorporated by reference, utilized for soliciting bids.

LOCAL PUBLIC BODY: Every political subdivision of the state and the agencies, instrumentalities and institutions thereof.

NEW MEXICO RESIDENT BUSINESS: A state of New Mexico "resident business" as defined under New Mexico Statutes Annotated sections [13-1-21](#) through [13-1-22](#).

NEW MEXICO RESIDENT CONTRACTOR: A state of New Mexico "resident contractor" as defined under New Mexico Statutes Annotated section [13-4-2](#).

PRICE AGREEMENT: A definite or indefinite quantity contract and the contract must require that the city issue a purchase order in order to obtain tangible personal property, services or construction under the definite quantity or indefinite quantity contract.

PRICE ANALYSIS: The evaluation of pricing data without analysis of the separate cost components and profit.

PROCUREMENT: The buying, renting, leasing, lease-purchasing or otherwise acquiring of any goods, supplies, services or construction. It includes all functions that pertain to procurement, including, but not limited to, preparation of specifications, selection and solicitation of sources, preparation and award of contracts and contract administration.

PROFESSIONAL SERVICES: The services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and system analysts, certified and/or registered public accountants, lawyers, psychologists, planners, researchers and persons or businesses providing similar services, which may be designated as such by a determination issued by the purchasing agent or the central purchasing office.

PURCHASE ORDER: The document issued by the central purchasing office directing a contractor to deliver items of tangible personal property, services or construction.

PURCHASE REQUISITION: The document submitted by a using agency to request that the central purchasing office obtain a specified service, construction or item of tangible personal property.

PURCHASING AGENT: The person or designee authorized to enter into or administer contracts and make written determinations with respect thereto.

RAPID PROCUREMENT: Purchases of perishable food products and other goods, services, and construction where advertising and the solicitation of offers are not feasible.

REGULATION: Any rule, order or statement of policy, in whole or in part, and as may subsequently be amended or repealed, issued by a city department or agency, to affect persons that are members or employees of the issuer.

REQUEST FOR PROPOSALS: All documents, including those attached or incorporated by reference, used for soliciting proposals.

RESPONSIBLE BIDDER: A bidder who submits a responsive bid and supplies, when required, sufficient information and data to prove that the bidder can perform as promised in the bid.

RESPONSIBLE OFFEROR: An offeror who meets the same qualifications as required for a responsible bidder, except that the responsible offeror has submitted a responsive proposal to a request for proposals.

RESPONSIVE BID: A bid which conforms, in all material respects, to the requirements established in the invitation for bids.

RESPONSIVE OFFER: Similar to a responsive bid except that the offer conforms, in all material respects, to requirements set forth in the request for proposals.

SERVICES: The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

SMALL BUSINESS: A business, not a subsidiary or division of another business, having an average annual volume for the preceding three (3) fiscal years which does not exceed one million five hundred thousand dollars (\$1,500,000.00). (Ord. C2004-15, 11-9-2004)

1-9-3: CENTRAL PURCHASING OFFICE:

A. Duties: The central purchasing office shall be responsible for the procurement function for the city, and shall perform all duties required by this chapter and all other relevant statutes including recommending procurement regulations to the director of the administrative services division, establishing programs for the development and use of procurement specifications and quality control methods, and prescribing forms to be used by the city departments to requisition and

report on the procurement of tangible goods, services and construction. The central purchasing office shall also cooperate and coordinate with the state purchasing agent, the central purchasing office of other local public bodies and the purchasing office of external procurement units to maximize the benefits to the city from joint and cooperative procurement efforts.

B. Centralized Purchasing: The central purchasing office shall perform all procurement functions of the city, except:

~~1. The city council may expressly retain the power to exercise the power of the central purchasing office regarding the procurement of professional services or other procurement, as it sees fit;~~

2. When otherwise expressly authorized by statute, ordinance or regulation of the city. (Ord. C2004-15, 11-9-2004)

1-9-4: RELEVANT EXEMPTIONS:

A. Printing and duplicating contracts involving materials which are required to be filed in connection with proceedings before administrative agencies, public safety agencies or judicial and legal agencies.

B. Purchases of publicly provided or publicly regulated utilities and refuse collection services.

C. Purchases of books and periodicals from the publishers or copyright holders thereof.

D. Travel or shipping by common carrier or by private conveyance or to meals and lodging.

E. Purchase of animals to be used for exhibit.

~~F. Purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;~~

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 entered into by a local public body with a private independent contractor for the operation of a jail, pursuant to New Mexico Statutes Annotated sections 33-3-26 and 33-3-27.

I. Art objects or artifacts or for their creation.

J. Advertising in all media, including radio, television, print, and electronic

K. Purchase of promotional goods intended for resale by the tourism department

L. Procurement of items of tangible personal property or services by the city from a state agency, local public body, or external procurement unit.

M. Contracts with professional entertainers. (Ord. C2004-15, 11-9-2004)

1-9-5: GENERAL PROCUREMENT:

A. Exceptions: All procurement of goods, services or construction shall be achieved by competitive sealed bids, except:

1. When competitive sealed proposals are authorized;
2. For small purchases;
3. For sole source procurements;
4. For emergency procurements;
5. For existing contracts;
6. For purchases from antipoverty program businesses;
7. For rapid procurement.

B. Invitations For Bids: The central purchasing office shall prepare or review and approve all invitations for bids, which shall contain:

1. The specifications for the services, construction or items of tangible personal property to be procured;

2. All contractual terms and conditions applicable to the procurement;
3. The location where bids are to be received;
4. Date, time and place of the bid opening;
5. A notice that states, "Violations of the procurement code may involve criminal penalties for such conduct as illegal bribes, gratuities and kickbacks, civil penalties and/or appropriate administrative remedies".

C. Bidders: Any business requesting an invitation for bid shall, at the time the request is made, provide its current mailing address to the central purchasing office.

D. Amendments To Invitation For Bids: The central purchasing office may amend the invitation for bids in compliance with this chapter and regulations to:

1. Make any changes in the invitation for bids, such as changes in quantity, purchase descriptions, specifications, delivery schedules and opening dates;
2. Correct defects or ambiguities; or
3. Furnish to other bidders information given to one bidder, if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

The amendment shall be sent to all bidders known to have received a copy of the bid, within a reasonable time to allow bidders to consider them in preparing their bid.

E. Bidding Time:

1. "Bidding time" means the period of time between public notice of the invitation for bids or request for proposals and the date of bid opening.
2. The central purchasing office shall allow a reasonable bidding time for preparation of bids or request for proposals, except when a shorter time is determined to be in the best interest of the city. The bidding time shall be not less than ten (10) calendar days unless a lesser time is deemed to be in the best interest of the city.

F. Public Notice: Public notice of invitation for bids or request for proposals shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. ~~made when an expenditure involves more than fifty thousand dollars (\$50,000.00).~~ Such public notice may include publication in a newspaper of general circulation, mailing, or posting through an electronic medium accessible to the public.

1. The central purchasing office may authorize additional publications at its discretion.

2. Vendor registration:

- a. The city may establish registration fees for different categories of services, construction or items of tangible personal properties.
 - b. Such fees must be related to the actual direct cost of furnishing copies of the notice or invitation for bids to prospective bidders. The fees shall be used exclusively for the purpose of furnishing such copies.
3. The city or the central purchasing office may require prospective bidders who have requested documents for bid on a construction project to pay a deposit for a copy of the documents for bid. If specified in the bid documents, the deposit, less delivery charges, shall be refunded, if the documents for bid are returned in usable condition within the time limits specified in the bid documents.

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

H. Receipt And Acceptance Of Bids:

1. Bids must be accepted for consideration without alteration or correction, except as authorized in this chapter.
2. Bids are to be evaluated on the requirements set forth on the invitation for bids. Any criteria which will affect the bid price, such as discounts, transportation costs, total or life cycle costs, must be objectively measurable. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.
3. Each bid received by the central purchasing office shall be received electronically via electronic procurement platform in place ~~shall be stamped "received" and labeled with date and time of filing. All bids shall be retained by the central purchasing office in a secure place until the date and time for opening.~~
4. If the lowest responsible bid has otherwise qualified and if there is no change in the original terms and conditions, the lowest bidder may negotiate with the purchaser for a lower total bid, in order to avoid rejection of all bids, for the reason that the lowest bid was up to ten percent (10%) higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent (10%) over budgeted project funds.

I. Correction Or Withdrawal Of Bids:

1. A bid which contains a mistake, when discovered before the bid opening, may be modified or

withdrawn by a bidder prior to the opening, by delivery of a written or telegraphic notice to the central purchasing office.

2. After the bid opening, no modification in prices or other provisions of bids are permitted. However, a low bidder alleging a material mistake of fact which makes his bid nonresponsive may be permitted to withdraw his bid, if:
 - a. The mistake is clearly evident on the face of the bid; or
 - b. The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

The decision to permit or deny withdrawal of a bid on the basis of mistake is a decision to be made by the purchasing agent or designee and shall be supported by a determination setting forth the grounds for the decision.

J. Bid Opening: Bids are to be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and each bid item (if appropriate) and other relevant information as may be specified by the central purchasing office, together with the name of each bidder, shall be recorded in the procurement file and each bid shall be open to public inspection.

K. Late Bids: Any bids received after the time and date for opening of bids at the place designated for opening will be deemed late and will not be considered for award.

Exception: A late bid may be considered for award if it is the only bid received and postmarked prior to the bid opening date and time. Any decision to allow consideration of a late bid shall be made in writing by the purchasing agent and made a part of the appropriate procurement file.

L. Bid Award:

1. Following award, a record showing the basis for the award shall be made part of the procurement file and the central purchasing office shall make part of the bid file the names of all people present at the bid opening.
2. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or applicable local option tax; but the city shall be required to pay the applicable tax, including any increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax shall be shown as a separate amount on each billing or request for payment made under the contract.

M. Multistep Sealed Bidding: When the central purchasing office makes a determination that it is impractical to initially prepare specifications to support an award based on price, an invitation for

bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids. Thus, multistep sealed bidding is a 2-phase process, consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the central purchasing office or designee; and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered. This is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsible bidder and at the same time, obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and conduct discussions to evaluate and determine the acceptability of technical offers.

N. Identical Low Bids:

1. Definition: "Identical low bids" are low responsive bids from responsible bidders which are identical in price after the application of the preferences referred to in sections [1-9-26](#) and [1-9-27](#) of this chapter.
2. Award: When two (2) or more identical low bids are received, the central purchasing office may:
 - a. Award pursuant to the multiple source award provisions of this chapter and the procurement regulations;
 - b. Award to a city resident business if identical low bids are submitted by a city resident business and a non-city resident business;
 - c. Award to a New Mexico resident business if the identical low bids are submitted by a New Mexico resident business and a nonresident business;
 - d. Award to a New Mexico resident manufacturer if the identical low bids are submitted by a New Mexico resident manufacturer and a New Mexico resident business;
 - e. Award by lottery to one of the identical low bidders; or
 - f. Reject all bids and resolicit bids or proposals for the required services, construction or items of tangible personal property.

O. Bid Security:

1. When Applicable: Bidders for construction contracts procured by competitive sealed bid must provide bid security when the price is estimated by the purchasing agent to exceed twenty five thousand dollars (\$25,000.00). The bid security shall be equal to at least five percent (5%) of the amount of the bid and shall be a bond provided by a surety company authorized to do business in this state or the equivalent in cash or otherwise supplied in a form satisfactory to the city.
2. Rejection Of Bids:
 - a. When the invitation for bids requires bid security, failure to provide such security is grounds

for rejection.

b. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or its surety.

3. Bid And Performance Bonds And Other Security:

a. Bid security, performance bonds or other security may be required for contracts for items of tangible personal property or services, as the central purchasing office deems necessary to protect the city.

b. Any such bonding requirements shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.

c. See small business provisions regarding reduction of security¹. (Ord. C2004-15, 11-9-2004)

1-9-6: COMPETITIVE SEALED PROPOSALS:

A. Conditions For Use: Competitive sealed proposals may be used when:

1. Procuring professional services (See section [1-9-7](#) of this chapter);
2. When the central purchasing office or designee makes a determination that the use of competitive sealed bidding is either not practicable or advantageous to the city;
3. Design-build projects are authorized as per New Mexico Statutes Annotated subsection 13-1-119.1;
4. For a qualifications based selection process for architects, engineers, landscape architects, and surveyors see section [1-9-8](#) of this chapter.

B. Request For Proposals: Competitive sealed proposals are solicited through a request for proposals and shall include the same material as is included in an invitation for bids. The request should include the following:

1. The specifications for the services or items of tangible property to be procured;
2. All contractual terms and conditions applicable to the procurement;
3. Instructions and information to offerors, including the location, date, time and place where proposals are to be received;
4. All of the evaluation factors, including price, if applicable;

5. A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably assured of being selected for award, but that proposals may be accepted without such discussions;
6. A statement of when and how price should be submitted; and
7. A notice that states, "Violations of the procurement code may involve criminal penalties for such conduct as illegal bribes, gratuities and kickbacks, civil penalties and/or appropriate administrative remedies".

The request for proposals may incorporate documents by reference; provided, that the request specifies where such documents can be obtained. The request for proposals may require written acknowledgment of the receipt of all amendments issued. The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the request for proposals.

C. Public Notice:

1. Public notice shall be given in the same manner as provided in subsection [1-9-5F](#) of this chapter.
2. A copy of the RFP shall be made available for public inspection and notice thereof posted at the purchasing office.

D. Receipt And Registration Of Proposals:

1. Proposals and modifications shall be received electronically via electronic procurement platform in place; ~~should be time stamped upon receipt and held in a secure place until the established by~~ due date.
2. Proposals shall not be opened publicly. After the date established for receipt of proposals, a register of proposals should be prepared, which includes the name of each offeror, a description sufficient to identify the service or item of tangible personal property offered, the names of the required witnesses and such other information as may be specified by the purchasing agent.
3. The proposals themselves shall not be open to public inspection until after award of the contract.
4. Offerors may request, in writing, nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposals, in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

- #### E. Evaluation Of Proposals:
- Proposals shall be evaluated on the basis of demonstrated competence and qualification for the type of goods or services required and shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems or a weighted scale shall be used to indicate relative importance of evaluation factors to be used in

the scoring of proposals. Price may be a weighted factor. For the purpose of conducting discussions, proposals shall be initially classified as:

1. Acceptable;
2. Potentially acceptable; that is, reasonably assured of being made acceptable; or
3. Unacceptable; offerors whose proposals are unacceptable shall be notified promptly.

F. Negotiations:

1. Offerors submitting proposals can be afforded an opportunity for discussion and revision of proposals. The city reserves the right to short list offerors.
2. Revision may be permitted after submission of proposals but prior to award and for the purpose of obtaining the best and final offers in response to a request for proposals. Negotiations may be conducted with responsible offerors found to be reasonably likely to be selected for award.
3. Discussions may be held to promote understanding of the city's requirements and offerors proposals and to facilitate arriving at a contract that will be most advantageous to the city.
4. The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

G. Award: The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the city, taking into consideration the evaluation factors set forth in the request for proposals. The purchasing agent or designee shall make a written determination showing the basis on which the award was found to be most advantageous to the city, based on the factors set forth in the request for proposals. (Ord. C2004-15, 11-9-2004)

1-9-7: PROCUREMENT OF PROFESSIONAL SERVICES:

A. Regulations: The central purchasing office may procure professional services whose cost does not exceed ~~sixty fifty~~ thousand dollars (~~\$60,000.00~~) (~~\$50,000.00~~) in accordance with regulations promulgated by the city.

B. Award: Award shall be made in accordance with the provisions of subsection [1-9-6G](#) of this chapter. The city may negotiate with any responding offeror with the intent of obtaining best and final offers.

C. Procurement File: All proposals submitted must be recorded and placed in the procurement file for audit purposes. (Ord. C2004-15, 11-9-2004)

1-9-8: QUALIFICATIONS BASED PROPOSALS; ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS:

A. Interviews: When the costs of architect, engineer, landscape architect, surveyor or construction management services are expected to exceed ~~sixty fifty~~ thousand dollars **(\$60,000.00)** ~~(\$50,000.00)~~, a selection committee shall evaluate statements of qualifications and performance data submitted by at least three (3) businesses in regard to the particular project. The selection committee may conduct interviews with those businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

B. Criteria:

1. The selection committee shall select, ranked in order of their qualifications, those businesses deemed to be the most highly qualified to perform the required services after considering the evaluation criteria, except for price, established by the using department.
2. Notwithstanding other provisions of this subsection, prices may be requested under separate, sealed cover with the proposal, but shall not be considered in the evaluation criteria, nor opened prior to the final ranking by the evaluation committee.
3. If fewer than three (3) businesses have submitted a statement of qualifications for a particular project, the selection committee may select the highest ranked business from among those businesses which have submitted a statement of qualifications; or recommend termination of the selection process pursuant to subsection [1-9-9A](#) of this chapter and send out new notices of the resolicitation. Proposals received in response to a terminated solicitation are not public information and shall not be made available to competing offerors.

C. Contract Negotiations:

1. Should the city be unable to negotiate a satisfactory contract with the business determined to be the first and most qualified, at a price determined to be fair and reasonable to both parties, and taking into account the scope, complexity and professional nature of the services, negotiations with that business shall be terminated. The city shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, negotiations shall be formally terminated and negotiations with the third most qualified business shall commence. Should negotiations fail with the first, second or third most qualified business, additional businesses, if any, shall be ranked in order of qualifications.

2. Negotiations shall continue until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposal is initiated.

D. Architect; Engineer; Landscape Architect; Surveyor Contracts:

1. All contracts between the city and an architect for the construction of new buildings or for the remodeling or renovation of existing buildings shall contain the provision that all designs, drawings, specifications, notes and other work developed in the performance of the contract are the sole property of the city.
2. All documents, including drawings and specifications, prepared by the architect, engineer, landscape architect or surveyor are instruments of professional service. If the plans and specifications developed in the performance of the contract shall become the property of the city upon completion of the work, the city agrees to hold harmless, indemnify and defend the architect, engineer, landscape architect or surveyor against all damages, claims and losses, including defense costs, arising out of any reuse of the plans and specifications without the written authorization of the architect, engineer, landscape architect or surveyor. (Ord. C2004-15, 11-9-2004)

1-9-9: MISCELLANEOUS BID AND PROPOSAL MATTERS:

A. Rejection Or Cancellation Of Bids Or Request For Proposals:

1. Reasons For; Determination: An invitation for bids, a request for proposals or any other solicitations may be canceled or any or all bids or proposals may be rejected in whole or in part, when it is in the best interest of the city. A determination containing the reasons therefor shall be made part of the procurement file. Except as otherwise provided in this chapter, if no bids are received or if all bids received are rejected in accordance with the provisions of this chapter and the items of tangible personal property, construction or services are still desired, the purchasing agent may, upon issuing a determination, procure the items of tangible personal property, construction or services in the open market at the best obtainable price.

2. Records:

- a. When bids or proposals are rejected or a solicitation canceled after bids or proposals are received, the bids or proposals which have been opened shall be retained in the procurement file.

~~b. Unopened bids or proposals shall be returned to the bidders or offerors upon request or, if no such request is made, such bids or proposals may be destroyed after the time for filing a protest has passed.~~

B. Irregularities In Bids Or Proposals: The central purchasing office may waive technical

irregularities in the form of the bid or proposal of the low bidder or offeror which do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offered.

C. Responsibility Of Bidders And Offerors:

1. If a bidder or offeror who otherwise would have been awarded a contract is found not to be a responsible bidder or offeror, a determination that the bidder or offeror is not a responsible bidder or offeror, setting forth the basis of the finding shall be prepared by the central purchasing office.
2. Failure of a bidder or offeror to promptly supply information connected with inquiries with respect to responsibility is grounds for a determination of non-responsibility.

D. Prequalification Of Bidders:

1. Businesses may be prequalified by the central purchasing office for particular types of services, construction or items of tangible personal property.
2. Any mailing lists of potential bidders or offerors shall include, but not be limited to, such prequalified businesses.
3. Regulations should be adopted determining the prerequisites for prequalification.
4. The fact that a business has been prequalified by the central purchasing office does not represent a finding of responsibility. (Ord. C2004-15, 11-9-2004)

1-9-10: SPECIFICATIONS:

A. Requirement:

1. All specifications shall be drafted to ensure maximum competition. (Ord. C2004-15, 11-9-2004; and. 2006 Code)
2. Brand name specification may be used only when the central purchasing office determines that the identified brand name item will satisfy the needs of the city.
3. The central purchasing office shall attempt to identify as many sources as possible from which the designated brand name items can be obtained and shall achieve whatever price competition is practicable. A sole source procurement may be made in accordance with section [1-9-17](#) of this chapter.

B. Brand Name Or Equal Specifications:

1. Normally, brand names or equal specifications shall include a description of the particular design, function or performance characteristics required. However, if the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, such a detailed description is not necessary.
2. Where brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of the brand name is for the purpose of describing a standard of quality, performance and characteristics desired and not intended to limit or restrict competition.

C. Purchase Requests:

1. The using agency's requests for procurement must contain a statement of need, the general characteristics of the item of tangible personal property, construction or service desired and a statement of the quantity desired and quality desired.
2. The central purchasing office may consolidate procurements. (Ord. C2004-15, 11-9-2004)

1-9-11: CONTRACT MATTERS:

A. Uniform Contract Clauses: The city may require, by regulation, that contracts include uniform clauses providing for termination, price adjustment, adjustment in time or performance, etc. The following are specifically allowed to be included as uniform contract clauses:

1. Unilateral right of the city to order, in writing, changes in the work within the scope of the contract and temporary stoppage of the work or delay of performance.
2. Variations occurring between estimated quantities of work in a contract and actual quantities.
3. Liquidated damages.
4. Permissible excuses for delay or nonperformance.
5. Termination for default.
6. Termination in whole or in part for convenience of the city.
7. Assignment clauses providing for the assignment by the contractor to the city of causes of action for violation of state or federal antitrust statutes.
8. Indemnification of subcontractors.
9. Uniform subcontract clauses.

B. Price Adjustments: Adjustments in price shall be computed in one or more of the following ways, as specified in the contract:

1. By agreement on a fixed price adjustment before commencement of performance or as soon thereafter as is practicable.
2. By unit price, as specified in the contract or subsequently agreed upon.
3. By the cost attributable to the events or conditions, as specified in the contract or subsequently agreed upon.
4. By a provision for both upward and downward revision of stated contract price upon the occurrence of specified contingencies, if the contract is for commercial items sold in substantial quantities to the general public with prices based upon established catalogue or list prices in a form regularly maintained by the manufacturer or vendor and published or otherwise available for customer inspection. In the event of revision of the stated contract price, the contract file shall be promptly documented by the central purchasing office.
5. In any other manner agreed upon by the parties.
6. In the absence of agreement by the parties, by unilateral determination reasonably computed by the city of the costs attributable to the events or conditions. (Ord. C2004-15, 11-9-2004)

1-9-12: TYPES OF CONTRACTS:

A. In General:

1. Types Permitted: Except as provided in this chapter, any type of contract is allowed, including, but not limited to, definite quantity and indefinite quantity contracts and price agreements, which will promote the best interests of the city.
2. Cost Plus Percentage Contract: However, a cost plus a percentage of cost contract is prohibited, except for the purchase of insurance.
3. Cost Reimbursement Contract: A cost reimbursement contract may be used when such contract is likely to be less costly or it is impracticable to otherwise obtain the services, construction or items of tangible personal property required.

B. Multi-term Contracts:

1. Prerequisites: Prior to the utilization of a multi-term contract, the central purchasing office shall determine that:

- a. The estimated requirements over the period of a contract are reasonably firm and continuing; and
 - b. The contract will serve the best interests of the city.
2. Term Of Contract: A multi-term contract may be entered into for any period of time, not to exceed:
- a. Four (4) years for items of tangible personal property, construction or services (except for professional services), if the contract amount is less than twenty-five thousand dollars (\$25,000.00);
 - b. ~~Ten Eight (10) (8)~~ years, including all extensions and renewals for items of tangible personal property, construction or services (except for professional services), if the contract amount is more than twenty five thousand dollars (\$25,000.00); and
 - c. A contract for professional services may not exceed a term of four (4) years, including all extensions and renewals, except that a multi-term contract for the services of bond counsel, financial advisors, trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding.
3. Availability Of Funds: Payment and performance of obligations for any succeeding fiscal periods are subject to the availability and appropriation of funds.
4. Cancellation: If funds are not appropriated or otherwise made available to support continuation of the multiterm contract, the contract shall be canceled. (Ord. C2004-15, 11-9-2004)

1-9-13: COST OR PRICING DATA:

- A. When Applicable: A prospective contractor shall submit cost or pricing data when the contract is expected to exceed twenty five thousand dollars (\$25,000.00) and is to be awarded by a method other than competitive sealed bids and when such data is required to be provided by the central purchasing office.
- B. When Not Required: Cost or pricing data is not required when:
1. The procurement is based on competitive sealed bid;
 2. The contract price is based on established catalog or market prices;
 3. The contract price is set by law or regulation; or

4. The contract is for professional services.

C. Change Orders Or Contract Modifications:

1. When required by the central purchasing office, a contractor shall submit cost or pricing data prior to the execution of any change order or contract modification, regardless of whether or not the pricing data was required in connection with the initial award of the contract, if the change order or modification involves aggregate increases or decreases that are expected to exceed twenty-five thousand dollars (\$25,000.00).

2. However, the submission of cost or pricing data relating to change orders or contract modifications shall not be required when unrelated to change orders or contract modifications for which cost or pricing data would not be required or consolidated for administrative convenience.

D. Certification: The contractor, whether actual or prospective, shall submit certification of the cost or pricing data that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a specified date.

E. Price Adjustment Provision: Whenever cost or pricing data is required, the certification shall contain a provision stating that the price to the city (including profit or fee) shall be adjusted to exclude any significant sums by which the city reasonably finds that such a price was increased because the contractor furnished cost or pricing data that was inaccurate, incomplete or not current as of the date specified.

F. Cost Or Price Analysis: A cost or price analysis may be conducted prior to the award of a contract other than one awarded by competitive sealed bidding. A written record of such cost or price analysis shall be made part of the procurement file.

G. Cost Principles: The city may promulgate regulations setting forth principles to determine the allowability of incurred costs for the purpose of reimbursing costs to a contractor. (Ord. C2004-15, 11-9-2004)

1-9-14: MULTIPLE SOURCE AWARD:

A. Limitations On Use:

1. A multiple source award may be made when awards to two (2) or more bidders or offerors are necessary for adequate delivery of goods or services.
 2. Multiple source awards shall not be made when a single award will meet the needs of the city without sacrifice of economy or service.
- B. Determination Required: The central purchasing office shall make a determination setting forth the reasons for a multiple source award. (Ord. C2004-15, 11-9-2004)

1-9-15: MISCELLANEOUS PROCUREMENT MATTERS:

- A. Receipt Of Goods: The municipal warehouse will be the central receiving point for all goods, except where the nature of the goods or the quantities involved dictates otherwise.
- B. Payment Of Purchases:
1. No payment shall be made unless the central purchasing office or using agency certifies that the services, construction or items of personal property have been received and meet specifications; or
 2. Unless prepayment is permitted by virtue of exclusion from this chapter, section [1-9-4](#), or by the nature of the procurement (e.g., special orders, custom fabrications).
 3. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.
- C. Right To Inspect Plant: A contract or solicitation thereof may include a provision allowing the city, at reasonable times, to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded.
- D. Audits:
1. The city may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books or records relate to such cost or pricing data.
 2. Vendors supplying cost or pricing data must maintain books and records that relate to such data for three (3) years from the date of final payment under the contract, unless a shorter

period is authorized in writing.

3. The same provisions relate to an audit of the books and records of any contractor or subcontractor under a negotiated contract or subcontract other than a firm fixed price contract. (Ord. C2004-15, 11-9-2004)

1-9-16: SMALL PURCHASES:

- A. Limits: The central purchasing office shall procure services (except for professional services; see section [1-9-7](#) of this chapter) or items of tangible personal property having a value not exceeding ~~forty five~~ ~~thousand~~ thousand dollars (~~\$40,000.00~~) (~~\$15,000.00~~) in accordance with the applicable small purchase regulations.
- B. Dividing Purchases: Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. (Ord. C2004-15, 11-9-2004)

1-9-17: SOLE SOURCE OR EMERGENCY PROCUREMENT:

A. Sole Source Procurement:

1. A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the central purchasing office makes a determination, after conducting a good faith review of available sources and consulting the using agency, that there is only one source for the required service, construction or item of tangible personal property.
2. If such a situation exists, the central purchasing office shall conduct negotiations, as appropriate, in order to obtain the most advantageous terms for the city.
3. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need.

B. Emergency Procurements:

1. An emergency is a situation creating a threat to public health, safety, welfare or property arising by reason of flood, epidemic, riot, equipment failure or other similar events. The emergency condition must create an immediate and serious need for items of tangible

personal property, services or construction that cannot be met through normal procurement methods and the lack of such services or construction seriously threaten:

- a. The functioning of government;
 - b. The preservation or protection of property; or
 - c. The health or safety of any person.
2. The central purchasing office or designee may authorize emergency procurement when an emergency exists; provided, that emergency procurements are to be made with such competition as is practicable under the circumstances.
 3. A written determination of the basis of the emergency procurement and the selection of a particular contractor shall be included in the procurement file.

C. Records:

1. The central purchasing office shall maintain records of all sole source or emergency procurements.
2. The record shall contain:
 - a. The contractor's name and address;
 - b. The amount and term of the contract;
 - c. A listing of the services, construction or items of tangible personal property procured under the contract; and
 - d. The conditions necessitating the purchase.

D. Construction Emergency Or Sole Source Procurements: Notwithstanding the requirements of subsections A and B of this section, sole source and emergency procurement, other sections of statute apply when acquiring construction contracts. If the central purchasing office declares a sole source or emergency construction contract, the office must:

1. Obtain a state wage rate determination, pursuant to New Mexico Statutes Annotated section 13-4-11, if the construction contract is more than ~~sixty twenty~~ thousand dollars ~~(\$20,000.00)~~ **(\$60,000.00)**.
2. Obtain performance and labor/material payment bonds, pursuant to New Mexico Statutes Annotated section 13-4-18, if the construction contract is more than twenty-five thousand dollars (\$25,000.00). The central purchasing office may require those bonds if a project is less than twenty-five thousand dollars (\$25,000.00), at their discretion. (Ord. C2004-15, 11-9-2004)

1-9-18: RAPID PROCUREMENT:

- A. The rapid procurement procedure is for purchases of perishable food products and other goods, services and construction for any amount not to exceed twenty-five thousand dollars (\$25,000.00), where advertising and the solicitation of offers are not feasible and would involve delays resulting in unnecessary increases in cost and time which are detrimental to the best interest of the city.
- B. Examples of said purchases include, but are not limited to, purchases of used, discontinued or unique items that may be available for a limited or one time offer.
- C. Rapid procurement may be utilized by the purchasing office under the following conditions:
1. The requesting department submits written documentation to the purchasing office justifying the need for rapid procurement.
 2. The purchasing agent makes a written determination granting approval or denying the request for a rapid purchase.
 3. The purchasing office solicits three (3) written ~~or fax~~ quotes or if three (3) quotes cannot be obtained, documentation regarding efforts made to obtain three (3) quotes are made a part of the file.
 4. All documents regarding a rapid purchase shall be made a part of the appropriate procurement file. (Ord. C2004-15, 11-9-2004)

1-9-19: OTHER TYPES OF PROCUREMENTS:

- A. Procurement Under Existing Contracts: The central purchasing office may contract for services, professional services, construction or items of tangible personal property without use of competitive sealed bids or competitive sealed proposals, as follows:
1. When procuring at a price equal to or less than a federal supply contract price or catalog price, whichever is lower and the purchase order adequately identifies the contract relied upon; or
 2. With a business which has a current contract or price agreement with a state of New Mexico agency or governmental body, or an external procurement unit for the items, services or construction which meet the same standard of specifications as the items that are to be procured, if the following conditions are met:

- a. The quantity purchased does not exceed the quantity which may be purchased under the applicable contract; and
 - b. The purchase order adequately identifies the contract relied upon by number, if applicable, or by other appropriate reference; and
 - c. The central purchasing office shall retain a copy of the contract or current price agreement relied upon for public inspection and for the use of auditors; or
3. Utilize a solicitation awarded by the city to the same vendor within the previous twelve (12) months, for the same goods or services and at the same price, terms and conditions, and with the concurrence of the vendor. Copies of the original contract shall become a part of the procurement record.

B. Cooperative Procurement:

1. The city may participate in, sponsor or administer a cooperative procurement agreement for procurement of any services, professional services, construction or items of tangible personal property with a state agency, local public body or external procurement unit, in accordance with a joint powers agreement, or piggyback off another state agency, local public body, or external procurement unit's contract.
2. The central purchasing office may cooperate with the state purchasing agent in obtaining contracts or price agreements and such contracts or price agreements shall apply to purchase orders issued subsequently under the agreement.

C. Purchases From Antipoverty Program Businesses:

1. The central purchasing office may negotiate a contract for materials grown, processed or manufactured in this state by small businesses, cooperatives, communities, self-determination corporations or such other enterprises designed and operated to alleviate antipoverty conditions and aided by state or federal antipoverty programs or private philanthropy.
2. Prior to negotiating a contract under this section, the central purchasing office shall make a determination of the reasonableness of the price and the quality of the materials and that the public interest will best be served by such a procurement.

D. Small Business Assistance Purchases:

1. It is the policy of the state to encourage municipalities to do business with small businesses.
2. The central purchasing office shall take all reasonable action to ensure that small businesses are solicited on each procurement for which they appear to be qualified.
3. The central purchasing office may make special provisions for progress payments to

encourage procurement from small businesses.

4. The central purchasing office may reduce bid bond, performance bond or payment bond requirements to encourage procurement from small businesses.

E. Procurements Pursuant To Corrections Industries Act: The city may purchase items of tangible personal property and services offered, pursuant to the provisions of the corrections industries act. (Ord. C2004-15, 11-9-2004)

1-9-20: USED ITEMS:

A. Request Bids: The central purchasing office, when procuring used items of tangible personal property, the estimated cost of which exceeds fifteen thousand dollars (\$15,000.00), shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications, including, but not limited, to:

1. Requiring a written warranty for at least ninety (90) days after date of delivery; and
2. An independent "certificate of working order" by a qualified mechanic or appraiser.

B. Trade In Or Exchange Of Used Items:

1. The central purchasing office, when trading in or exchanging used items of tangible personal property, the estimated value of which exceeds fifteen thousand dollars (\$15,000.00), as part payment on the procurement of new items of tangible personal property, shall:

- a. Have an independent appraisal made of the items to be traded in or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged and the location where the items to be traded in or exchanged may be inspected; or
- b. Have two (2) written quotes for purchase of the property at a specified price.

2. Award shall be based upon the net bid. Bidders or offerors shall compute their net bid or offer by deducting the appraised value or highest quote of the items to be traded in or exchanged from the gross bid or offer on the new items of tangible personal property to be procured.

- a. If an amount offered in trade is less than the appraised value or the highest quote but is found to be a fair reflection of the current market, representative of the condition of the items of tangible personal property and in the best interest of the agency, the bid or offer may be accepted.

b. Documentation of the terms of acceptance shall be in writing, shall be made a part of the procurement file and shall be a matter of public record. (Ord. C2004-15, 11-9-2004)

1-9-21: ETHICAL CONDUCT:

A. Employee Participation:

1. No city employee can participate directly or indirectly in a procurement 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, unless a waiver is granted as per subsection E of this section.
2. This prohibition does not apply if the financial interest is held in a blind trust.

B. Bribes, Gratuities: All contracts and solicitations shall contain notice that violations of the procurement code may involve criminal penalties for such conduct as illegal bribes, gratuities and kickbacks, civil penalties and appropriate administrative remedies.

C. Contingent Fees:

1. No person or business may be retained nor may a business retain a person or business to solicit or secure contracts upon an agreement or understanding that the compensation is contingent upon the award of the contract.
2. The only exception is obtaining professional services in anticipation of the receipt of federal or state grants or loans.

D. Contemporaneous Employment: No city employee who is participating directly or indirectly in the procurement process can become or while employed by the city be an employee of any person or business contracting with the city, unless a waiver is granted as per subsection E of this section.

E. Waivers: The purchasing agent or city manager may grant a waiver from unlawful employee participation or contemporaneous employment with the concurrence of the executive director of administrative services and notice provided to the city council, if it determines that:

1. The contemporaneous employment financial interest has been disclosed;
2. The employee will be able to perform his procurement functions without actual or apparent

bias or favoritism; and

3. The employee's participation is in the best interest of the city.

F. Use Of Confidential Information: No city employee or former employee may knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person. (Ord. C2004-15, 11-9-2004)

1-9-22: PROTESTS:

A. Rights:

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.
2. The protest must be submitted in writing within seven (7) calendar days after knowledge of the facts or occurrences giving rise thereto.

B. Contents: The protest shall:

1. Include the name and address of the protestant;
2. Identify the contracting activity and the number of the solicitation, if any, and if a contract has been awarded, the contract number, if any;
3. Contain a statement of the grounds for protest;
4. 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
5. Specify the ruling requested from the central purchasing office.

C. Procurements After Protest: In the event of a timely protest, the central purchasing office shall not proceed further with the procurement unless the central purchasing office determines that the award of the contract is necessary to protect substantial interests of the city.

D. Authority To Resolve: The purchasing agent, central purchasing office or designee has the authority to take any action reasonably necessary to resolve a protest. This authority shall be exercised in accordance with this chapter and regulations promulgated by the central

purchasing office, but shall not include the authority to award money for damages or attorney fees.

E. Written Determination: The purchasing agent, central purchasing office or designee shall make a written determination on the merits of the protest as expeditiously as possible. The determination shall:

1. State the reasons for the action taken; and
2. Inform the protestant to the right to judicial review of the determination pursuant to section [1-9-25](#) of this chapter.

F. Notice Of Determination: A copy of the determination shall be mailed immediately to the protestant, the using agency that requested the procurement and other bidders or offerors involved in the procurement. (Ord. C2004-15, 11-9-2004)

1-9-23: REMEDIES:

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

B. Relief After Award:

1. No Fraud Or Bad Faith: If, after an award, the central purchasing office makes a determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith, then:

- a. The contract may be ratified, affirmed and revised to comply with law; provided, that a determination is made that doing so is in the best interest of the city, or
- b. The contract may be terminated and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination.

2. Fraud Or Bad Faith: If, after an award, the central purchasing office makes a determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be canceled. (Ord. C2004-15, 11-9-2004)

1-9-24: DEBARMENT OR SUSPENSION:

A. Authority:

1. The central purchasing office, after reasonable notice to the business involved, has the authority to recommend to the city council the suspension or debarment of a business for cause, in consideration for award of contracts other than contracts for professional services.
2. Debarment shall not exceed a period of three (3) years and suspension shall not exceed three (3) months. The authority to debar or suspend shall be exercised by the governing authority of the city. There must be notice and an opportunity for a hearing.

B. Causes For Debarment Or Suspension; Time Limit: The causes for debarment or suspension occurring within three (3) years of a procurement include, but are not limited to, the following:

1. Conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;
2. Conviction of a bidder, offeror or contractor under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;
3. Conviction of a bidder, offeror or contractor under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation by a bidder, offeror or contractor of contract provisions, as set forth in this subsection, of a character which is reasonably regarded by the central purchasing office to be so serious as to justify suspension or debarment action:
 - a. Willful failure to perform in accordance with one or more contracts; provided, that this failure has occurred within a reasonable time preceding the decision to impose debarment; or
 - b. A history of failure to perform, or of unsatisfactory performance of, one or more contracts; provided, that the failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and, provided further, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
5. Any other cause occurring within three (3) years of a procurement which the central purchasing office determines to be so serious and compelling as to affect responsibility as a contractor; or
6. For a willful violation by a bidder, offeror or contractor of the provisions of this chapter within three (3) years of a procurement.

C. Determination: The city council shall issue a written determination which shall:

1. State the reasons for the actions taken; and

2. Inform the business involved of its rights to judicial review pursuant to section [1-9-25](#) of this chapter.

D. Notice: A copy of the determination shall be immediately mailed to the debarred or suspended business. (Ord. C2004-15, 11-9-2004)

1-9-25: JUDICIAL REVIEW:

All actions authorized by this chapter for judicial review shall be filed pursuant to the following provisions:

A. Time Limit: All actions for judicial review must be filed within thirty (30) days of receipt of notice of the determination.

B. Venue: Venue for all action shall lie in the eleventh judicial district court for McKinley County. (Ord. C2004-15, 11-9-2004)

1-9-26: RESIDENT BUSINESS BIDDERS PREFERENCE:

A. New Mexico Resident Business Bidders Preference: The city grants a preference to New Mexico resident bidders for public purchases of goods or services in accordance with New Mexico Statutes Annotated sections 13-1-21 and 13-1-22.

B. City Resident Business Preferences:

1. Local suppliers of goods and services (city resident businesses) pay city taxes to support the community and should be given preference to suppliers outside the city limits.

2. Any city resident business preference should not be so costly as to be against the public interest and should have monetary limits.

3. Gallup is a home rule city and is not denied by general law or charter the authority to grant city resident business preferences.

C. Application Of City Resident Business Preference: When evaluating bids preferences shall be accorded a "city resident business", as defined in section [1-9-2](#) of this chapter, under the following conditions:

1. Whenever the city procures tangible goods or services, a city resident business bid shall be multiplied by the applicable factor as listed below when compared to the bid of a non-city resident business:

Dollar Amount	X	Factor
\$0.00 - \$15,000.00		0 .90
15,000.01 - 25,000.00		0 .91
25,000.01 - 50,000.00		0 .92
50,000.01 - 75,000.00		0 .93
75,000.01 -5,000,000.00		0 .94

If the bid receiving the preference is made lower than the otherwise lowest responsive bid because of the preference, the contract shall be recommended for award to the bidder receiving the preference.

2. This section does not apply for any bid price greater than five million dollars (\$5,000,000.00).
3. No city resident business preference shall be given any person or entity whose place of business, as evidenced by a current city business registration certificate, is located outside the city who establishes a telephone service or mailing address inside the city.
4. No preference of any type shall be given when the expenditure of federal funds designated for a specific purchase is involved; or if otherwise prohibited by law or regulation.
5. Bidders shall be entitled to only one preference, whichever is greater (resident business or New Mexico resident preference) when evaluating bids.

D. Public Works Contracts: New Mexico and city resident business bidder preferences do not apply to any public works (construction) bids or proposals unless the contractor has also registered as a New Mexico resident contractor in accordance with New Mexico Statutes Annotated section 13-4-2. (Ord. C2004-15, 11-9-2004)

1-9-27: NEW MEXICO RESIDENT CONTRACTOR:

For public works (construction) projects New Mexico resident contractors shall have their bid

multiplied by a factor of .95 when compared to the bids of nonresident contractors, pursuant to New Mexico Statutes Annotated section 13-4-2. (Ord. C2004-15, 11-9-2004)

1-9-28: SALE, EXCHANGE AND GIFT OF PROPERTY:

- A. Value Less Than Two Thousand Five Hundred Dollars: The city may sell surplus personal property for cash at a public or private sale without notice where it is shown that such property does not exceed the value of two thousand five hundred dollars (\$2,500.00). The following shall apply:
1. Personal property may not be sold unless it is declared surplus property by a department head and approved by the purchasing agent.
 2. Prices will be determined by the current market value or prior auction sale price of such personal property. A written record of the sale shall be made for the auditor's inspection.
- B. Value More Than Two Thousand Five Hundred Dollars: Surplus personal property having a value of more than two thousand five hundred dollars (\$2,500.00) and unclaimed personal property shall be sold either at public auction or by sealed bids. Notice of the sale shall be published two (2) times in a newspaper of general circulation. Published notices shall be at least seven (7) days apart and the final notice shall be at least seven (7) days prior to the advertised date of sale. The terms of the sale are:
1. Items may be inspected in accordance with the provisions of the notice of sale;
 2. Sold to the highest bidder "as is, where is";
 3. Full settlement to be made prior to the removal of any item. Upon settlement, the item becomes the responsibility of the purchaser;
 4. Any or all bids may be rejected; and
 5. A minimum acceptable sale price may be established for any item of surplus property and if established, shall be stated in the notice of sale.
- C. Minimum Price Established: If a minimum acceptable sale price has been established for an item of surplus personal property and no bid equaling or exceeding this amount has been received, then the central purchasing office may negotiate the sale of such item at a sale price acceptable to the purchasing agent.
- D. Exchange Or Donate: The city may sell, at a private or public sale, exchange or donate real or

personal property to the state, to any of its political subdivisions or to the federal government if such sale, exchange or gift is in the best interests of the public and is approved by the city council. (Ord. C2004-15, 11-9-2004)

[Footnote 1:](#) See subsection [1-9-19D](#) of this chapter.