



VILLAGE OF CORRALES

RESOLUTION NO. 21-13

A RESOLUTION ADOPTING AMENDED AND REVISED PROCUREMENT REGULATIONS MANUAL FOR THE VILLAGE OF CORRALES

WHEREAS, the most recent procurement regulations of the Village of Corrales (the “Village”) were adopted by Resolution No. 99-06 on April 27, 1999; and amended by Resolution 14-23 on April 22nd, 2014 and

WHEREAS, since April 22, 2014 there have been a number of changes in the New Mexico Procurement Code (Section 13-1-21 through 13-1-199, NMSA 1978) and other state laws affecting procurement, which changes should be incorporated into the Village’s procurement regulations; and

WHEREAS, there have been presented to the Village Council, the governing body of the Village (“Governing Body”), a revised set of procurement regulations dated May 11, 2021, and incorporating appropriate amendments and revisions reflecting changes in State law since April 22, 2014, for the consideration of the Governing Body; and

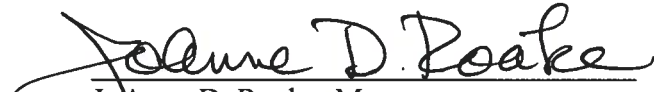
WHEREAS, the Governing Body finds that the amendment and revised procurement regulations dated May 11, 2021, should be adopted as the procurement regulations of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE VILLAGE OF CORRALES THAT:

1. The Village of Corrales procurement regulations adopted by Resolution 14-23 on April 22, 2014, are repealed.
2. The “Procurement Regulations of the Village of Corrales” dated May 11, 2021, and presented to the Governing Body in conjunction with this Resolution are hereby adopted as the Procurement Regulations of the Village.

PASSED, APPROVED, AND ADOPTED by the Governing Body of the Village of Corrales, New Mexico, this 25th day of May, 2021.

APPROVED:


JoAnne D. Roake, Mayor

ATTEST:


Aaron Gjullin, Village Clerk

PROCUREMENT REGULATIONS OF THE VILLAGE OF CORRALES

Adopted April 22, 2014

Revised May 11, 2021

TABLE OF CONTENTS

Section Title	Page
1. SCOPE AND APPLICATION OF PROCUREMENT REGULATIONS	1
2. DEFINITIONS.....	1
3. STATE PURCHASING DIVISION.....	15
3.1 Organization	15
3.2 Duties to and Requirements Imposed on Municipalities.....	15
3.3 State Purchasing Division Contracts or Price Agreements.....	15
4. PROCUREMENT PROCESS; DUTIES.....	15
4.1 Duties of Central Purchasing Office.....	15
4.2 Duties of Chief Procurement Officer.....	16
4.3 Procurement Process.....	16
5. EXEMPTIONS FROM THE PROCUREMENT CODE	18
5.1 Exemptions Relevant to the Village	18
6. COMPETITIVE SEALED BIDS	22
6.1 Competitive Sealed Bids Required.....	22
6.2 Invitation for Bids.....	22
6.3 Bid Form.....	23
6.4 Bidding Time.....	23
6.5 Bidder Identification and Address	23
6.6 Amendment to an Invitation for Bids	23
6.7 Bid Samples and Descriptive Literature	24
6.8 Public Notice	24
6.9 Pre-Bid Conferences	25
6.10 Receipt, Opening and Evaluation of Bids; Contract Negotiation.....	25
6.11 Modification or Withdrawal of Bids.....	26
6.12 Mistakes in Bids	26
6.13 Bid Award.....	27
6.14 Identical Low Bids.....	29
6.15 Multi-Step Sealed Bids.....	29
6.16 Bid Security	30
7. COMPETITIVE SEALED PROPOSALS	30
7.1 Conditions for Use.....	30
7.2 Request for Proposals	31
7.3 Time for Preparation of Proposals.....	32
7.4 Offeror Identification and Address	32
7.5 Amendments to the Request for Proposals.....	33
7.6 Public Notice	33

TABLE OF CONTENTS

(Continued)

Section Title	Page
7.7 Pre-Proposal Conference	34
7.8 Modification of Withdrawal of Proposals	34
7.9 Late Proposals.....	34
7.10 Receipt and Registration of Proposals	34
7.11 Evaluation and Classification of Proposals	35
7.12 Proposal Discussions and Negotiations	35
7.13 Mistakes in Proposals	36
7.14 Award and Notice	36
7.15 Disclosure and Public Inspection.....	37
8. PROCUREMENTS OF CERTAIN PROFESSIONAL SERVICES	37
8.1 Scope and Applicability.....	37
8.2 Competitive Sealed Proposals	38
8.3 Selection Procedure	38
8.4 Fewer than Three Offers.....	39
8.5 Negotiations.....	39
8.6 Contract Approval	39
8.7 Disclosure and Public Inspection.....	39
9. SPECIFICATIONS	40
9.1 General Requirements	40
9.2 Brand Name or Equal Specifications.....	40
10. MISCELLANEOUS BID AND PROPOSAL MATTERS.....	40
10.1 Cancellation of Procurement; Rejection of All Bids or Proposals	40
10.2 Rejection of Individual Bids or Proposals	42
10.3 Record Retention	42
10.4 “All or None” Bids	43
10.5 Irregularities in Bids or Proposals	43
10.6 Responsibility of Bidders and Offerors	43
10.7 Prequalification of Bidders	44
11. CONTRACT MATTERS.....	44
11.1 Uniform Contract Clauses	44
11.2 Contract Audit	45
11.3 Price Adjustments	45
11.4 Indemnification and Insurance	46
12. TYPES OF CONTRACTS.....	46
12.1 In General	46
12.2 Multi-Term Contracts	46

TABLE OF CONTENTS

(Continued)

Section Title	Page
12.3 Construction Management Services	48
12.4 Design and Build Project Delivery System	48
12.5 Water Storage Tank Service Contracts	50
13. COST OR PRICING DATA.....	50
13.1 When Required	50
13.2 Change Orders or Contract Modifications	50
13.3 Certification	51
13.4 Price Adjustment Provision	51
13.5 Cost or Price Analysis.....	51
13.6 Audit of Cost or Pricing Data	51
13.7 Additional Regulations	51
14. MULTIPLE SOURCE AWARDS.....	51
14.1 Limitations on Use.....	51
14.2 Determination Required.....	52
15. SMALL PURCHASES	52
15.1 Small Purchases Not Exceeding \$20,000	52
15.2 Small Purchases in General	52
15.3 Small Purchases of Professional Services	53
15.4 Examination of State Offeror List	53
15.5 No Artificial Division of Procurements.....	53
16. SOLE SOURCE OR EMERGENCY PROCUREMENTS.....	54
16.1 Sole Source Procurements	54
16.2 Emergency Procurements	55
16.3 Records of Sole Source and Emergency Procurements	56
16.4 Applicability of Other Laws	56
17. OTHER TYPES OF PROCUREMENTS	57
17.1 Procurement under Existing Contracts	57
17.2 Recycled Content Goods	57
17.3 Cooperative Procurement	57
17.4 Purchases from Anti-Poverty Program Businesses	58
17.5 Small Business Assistance.....	58
17.6 Procurements under Corrections Industries Act	59
17.7 Used Items	59

TABLE OF CONTENTS

(Concluded)

Section Title	Page
18. ETHICAL CONDUCT	60
18.1 Unlawful Employee Participation.....	60
18.2 Contemporaneous Employment Prohibited	60
18.3 Waiver.....	60
18.4 Use of Confidential Information.....	60
18.5 Bribes, Gratuities and Kickbacks.....	60
18.6 Contingent Fees	60
18.7 Campaign Contribution Disclosure	61
19. PROTESTS	63
19.1 Right to Protest	63
19.2 Filing of Protest	63
19.3 Procurement after Protest	63
19.4 Authority and Procedure to Resolve.....	64
19.5 Written Determination	65
19.6 Notice of Determination	66
19.7 Appeal to Village Council	66
19.8 Decision of the Village Council.....	66
19.9 Relief Prior to Award.....	67
19.10 Relief after Award	67
19.11 Relief Not Allowed.....	67
20. DEBARMENT OR SUSPENSION	67
20.1 Authority.....	67
20.2 Causes for Debarment or Suspension	68
20.3 Procedure	69
20.4 Determination	69
20.5 Notice.....	69
20.6 Continuation of Current Contracts.....	69
21. LOCAL PUBLIC WORKS PROJECT (CONSTRUCTION) MATTERS.....	71
21.1 Performance and Payment Bonds.....	71
21.2 Minimum Wage Rates	72
21.3 Prompt Payment.....	72
21.4 Public Works Mediation	73

Procurement Regulations of the Village of Corrales

SCOPE AND APPLICATION OF PROCUREMENT REGULATIONS. (§ 13-1-30)

- 1.1 These Procurement Regulations apply to all expenditures of the Village of Corrales (the “Village”) for procurement of tangible personal property, services and construction. These Procurement Regulations are adopted in accordance with the New Mexico Procurement Code (Sections 13-1-28 through 13-1-199, NMSA 1978) (hereinafter referred to as the “Procurement Code”).
- 12 If any part of these Procurement Regulations is inconsistent with any provision of the Procurement Code, then the Procurement Code shall prevail to the extent of such inconsistency. Cross-references in these Procurement Regulations, unless otherwise specified, are to the Procurement Code and other statutes of the State of New Mexico (the “state”).
- 13 If a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law and regulations are inconsistent with the provisions of these Procurement Regulations, compliance with applicable federal law and regulations shall constitute compliance with these Procurement Regulations and the Procurement Code.

2. DEFINITIONS.

- 21 General. Terms used in these Procurement Regulations shall have the meaning ascribed to them in Sections 13-1-28 through 13-1-199, NMSA 1978, as supplemented and amended from time to time, except as specifically modified or clarified herein or if a different meaning is clearly required by context.
- 22 Architectural Services. “Architectural services” means 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, but does not include work normally included within the scope of municipal zoning, land use planning, or Village planning. (§ 13-1-31)
- 23 Bid Sample. “Bid sample” means a sample furnished by a bidder that shows the characteristics of an item offered in the bid.
- 24 Blind trust. “Blind trust” means a trust managed by a person other than the employee-beneficiary in which the employee-beneficiary is not given notice of alterations in the property of the trust. (§ 13-1-32)

- 25 Brand-name specification. “Brand-name specification” means a specification limited to describing an item by manufacturer’s name or catalogue number. (§ 13-1-33)
- 26 Brand-name or equal specification. “Brand-name or equal specification” means a specification describing one or more items by manufacturer’s name or catalogue number to indicate the standard of quality, performance or other pertinent characteristics and providing for the substitution of equivalent items. (§ 13-1-34)
- 27 Business. “Business” means any corporation, partnership, individual, joint venture, association or any other private legal entity. (§ 13-1-35)
- 28 Campaign contribution. “Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of an individual who volunteers a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.
- 29 Catalogue price. “Catalogue price” means the price of items of tangible personal property in the most current catalogue, price list, schedule or other form that:
a. is regularly maintained by the manufacturer or vendor of an item; and
b. is either published or otherwise available for inspection by a customer. (§ 13-1-36)
- 210 Central Purchasing Office. The office of the Village Administrator shall be the central purchasing office of the Village
- 211 Change order. “Change order” means a written order signed and issued by the procurement officer or his/her designee directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order with or without the consent of the contractor. (§ 13-1-38)
- 212 Chief Procurement Officer. The Village Administrator shall be the chief procurement officer of the Village. In the event of a vacancy in the position of Village Administrator, the person designated to act as interim or acting Village Administrator shall be the chief procurement officer. If the Village Administrator or interim or acting Village Administrator lacks required training or certification under Section 13-1-95.2, NMSA 1978, or other applicable law, the Mayor may

appoint a qualified person to act as the Village's chief procurement officer.

- 213 Confidential information. "Confidential information" means any information, which is available to an employee because of the employee's status as an employee of a state agency or a local public body and which is not a matter of public knowledge or available to the public on request. (§ 13-1-39)
- 214 Construction. "Construction" has the meaning stated in Section 13-1-40, NMSA 1978. Construction does not include the routine maintenance, operation or repair of existing facilities. (§ 13-1-40)
- 215 Construction management and construction manager. A. "Construction management" means consulting services related to the process of management applied to a public works project for any duration from conception to completion of the project for the purpose of controlling time, cost and quality of the project. B. "Construction manager" means a person who acts as an agent of the Village for construction management, for whom the Village shall assume all the risks and responsibilities. (§ 13-1-40.1)
- 216 Contract. "Contract" means any agreement for the procurement of items of tangible personal property, services or construction. (§ 13-1-41)
- 217 Contract modification. "Contract modification" means any written alteration in the provisions of a contract accomplished by mutual action of the parties to the contract. (§ 13-1-42)
- 218 Contractor. "Contractor" means any business having a contract with a state agency or local public body. (§ 13-1-43)
- 219 Cooperative procurement. "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 with an external procurement unit. (§ 13-1-44)
- 220 Cost analysis. "Cost analysis" means 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. (§ 13-1-45)
- 221 Cost data. "Cost data" means 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. (§ 13-1-46)
- 222 Cost reimbursement contract. "Cost reimbursement contract" means 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. (§ 13-1-47)

- 223 Data. “Data” means recorded information regardless of form or characteristic. (§ 13-1-49)
- 224 Definite quantity contract. “Definite quantity contract” means a contract that requires the contractor to furnish a specified quantity of services, items of tangible personal property or construction at or within a specified time. (§ 13-1-50)
- 225 Designee. “Designee” means a representative of a person holding a superior position. (§ 13-1-51)
- 226 Determination. “Determination” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains. (§ 13-1-52)
- 227 Direct or indirect participation. “Director or indirect participation” means involvement through decision, approval, disapproval, recommendation, and formulation of any part of a purchase request, influencing the content of any specification, investigation, auditing or the rendering of advice. (§ 13-1-53)
- 228 Employee. “Employee” means an individual receiving a salary, wages or per diem and mileage from the Village whether elected or not and a non-compensated individual performing personal services as an elected or appointed official or otherwise for the Village. (§ 13-1-54)
- 229 Engineering services. “Engineering services” means any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such practice includes the performance of architectural work incidental to the practice of engineering. “Engineering services” does not include responsibility for the superintendence of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place. (§ 13-1-55)

- 230 External procurement unit. “External procurement unit” means any procurement organization not located in this state which, if in this state, would qualify as a state agency or a local public body. An agency of the United States government is an external procurement unit. (§ 13-1-56)
- 231 Financial interest. “Financial interest” means: A. holding a position in a business as officer, director, trustee or partner or holding any position in management; or B. ownership of more than five percent interest in a business. (§ 13-1-57)
- 232 Firm fixed price contract. “Firm fixed price contract” means a contract which has a fixed total price or fixed unit price. (§ 13-1-58)
- 233 Gratuity. “Gratuity” means a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, received or promised, unless consideration of substantially equal or greater value is exchanged. (§ 13-1-59)
- 234 Heavy road equipment. “Heavy road equipment” means any motor-driven vehicle or apparatus capable of use for earth moving or mixing components which has an aggregate value or price of over one thousand dollars (\$1,000). (§ 13-1-60)
- 235 Highway reconstruction. “Highway reconstruction” means the rebuilding, altering or repairing of any road, highway, bridge, parking area or related project. “Highway reconstruction” does not include routine maintenance. (§ 13-1-61)
- 236 Immediate family. “Immediate family” means a spouse, children, parents, brothers and sisters.
- 237 Indefinite quantity contract. “Indefinite quantity contract” means a contract which requires the contractor to furnish an indeterminate quantity of specified services, items of tangible personal property or construction during a prescribed period of time at a definite unit price or at a specified discount from list or catalogue prices. (§ 13-1-63)
- 238 Invitation or request for bids. “Invitation or request for bids” means all documents, including those attached or incorporated by reference, utilized for soliciting sealed bids. (§ 13-1-64)
- 239 Landscape architectural services. “Landscape architectural services” means services including not limited to consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications and administration of contracts where the dominant purposes of such services are: 1. the preservation or enhancement of land uses and natural features; 2. the location and construction of functional approaches for structures, pathways or walkways; or 3. the design of trails, plantings and landscape irrigation. Excluded from the provisions of this section are the services of architects, engineers and surveyors as defined in the

Procurement Code. (§ 13-1-66)

- 240 Local public works project. “Local public works project” means a project of the Village that uses architectural or engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more or landscape architectural or surveying services requiring professional services costing ten thousand dollars (\$10,000) or more, excluding applicable state and local gross receipts taxes. (§ 13-1-66.1)
- 241 Local Public Body. “Local public body” means, specifically, the Village of Corrales. (§ 13-1-67)
- 242 Multi-term contract. “Multi-term contract” means a contract having a term longer than one year. (§ 13-1-68)
- 243 Multiple source award. “Multiple source award” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one bidder or offeror. (§ 13-1-69)
- 244 Notice of request or invitation for bids. “Notice of or invitation for bids” means a document issued by a procurement officer which contains a brief description of the services, construction or items of tangible personal property to be procured, the location where copies of the invitation for bid may be obtained, the location where bids are to be received, the cost, if any for copies of plans and specifications, the date and place of the bid opening and such information as the procurement officer deems necessary. (§ 13-1-70)
- 245 Price Agreement. “Price agreement” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any. (§ 13-1-71)
- 246 Pendency of the procurement process. “Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.
- 247 Person. “Person” means an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture or other legal or commercial entity. (§ 13-1-70.1)
- 248 Price analysis. “Price Analysis” means the evaluation of pricing data without analysis of the separate cost components and profits. (§ 13-1-72)

- 249 Pricing data. “Pricing data” means factual information concerning prices for items identical to or substantially similar to those being procured. (§ 13-1-73)
- 250 Procurement. “Procurement” means: 1. purchasing, renting, leasing, lease purchasing or otherwise acquiring items of tangible personal property, services or construction; and 2. 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. (§ 13-1-74)
- 251 Procurement officer. “Procurement officer” means any person or a designee authorized by a state agency or a local public body to enter into or administer contracts and make written determinations with respect thereto. (§ 13-1-75)
- 252 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 by a determination issued by the Village’s central purchasing office. (§ 13-1-76)
- 253 Purchase order. “Purchase order” means the documents issued by the state purchasing agent or a central purchasing office that directs a contractor to deliver items of tangible personal property, services or construction. (§ 13-1-77)
- 254 Purchase request. “Purchase request” means the document by which a using agency requests that a contract be obtained for 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. (§ 13-1-78)
- 255 Qualified products list. “Qualified products list” means a list of items of tangible personal property described by model or catalogue number which, prior to the solicitation of competitive sealed bids or competitive sealed proposals, are items the state purchasing agent or a central purchasing office has determined will meet the applicable specifications. (§ 13-1-79)
- 256 Recycled content goods. “Recycled content goods” means supplies and materials composed in whole or in part of recycled materials, provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications. (§ 13-1-135.1)
- 257 Regulation. “Regulation” means any rule, order or statements of policy, including amendments thereto and repeals thereof, issued by a state agency or a local public

body to affect persons not members or employees of the issuer. (§ 13-1-80)

- 258 Request for proposals. “Request for proposals” means all documents, including those attached or incorporated by reference, used for soliciting proposals. (§ 13-1-81)
- 259 Responsible bidder. “Responsible bidder” means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that his or her financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids. (§ 13-1-82)
- 260 Responsible offeror. “Responsible offeror” means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal. (§ 13-1-83)
- 261 Responsive bid. “Responsive bids” means a bid that conforms in all material respects to the requirements set forth in the invitation for bids. Material respects of a bid include but are not limited to price, quality, quantity or delivery requirements. (§13-1-84)
- 262 Responsive offer. “Responsive offer” means an offer that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to, price, quality, quantity or delivery requirements. (§ 13-1-85)
- 263 Selection committee. “Selection committee” means a committee appointed by the Mayor, City Clerk, or his or her designee to evaluate and select all offerors to a request for proposals.
- 264 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. (§ 13-1-87)
- 265 Small business. “Small business” means a business, not a subsidiary or division of another business, having an average annual volume for the preceding three fiscal years which does not exceed one million five hundred thousand dollars (\$1,500,000). (§ 13-1-88)
- 266 Specification. “Specification” means a description of the physical or functional characteristics or of the nature of items of tangible personal property, services or

construction. "Specification" may include a description of any requirement for inspecting or testing, or for preparing items of tangible personal property, services or construction for delivery. (§ 13-1-89)

- 267 Surveying services. "Surveying services" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for: 1. the measuring and locating of lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volume; 2. the documenting of property boundaries and the platting and layout of lands and subdivisions thereof; 3. the application of photogram metric methods used to derive topographic and other data; 4. the establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogram metric methods, construction surveys for engineering and architectural public works; and 5. the preparation and perpetuation of maps, records, plats, field notes and property descriptions. (§ 13-1-65)
- 268 Tangible personal property. "Tangible personal property" means tangible property other than real property having a physical existence, including but not limited to supplies, equipment, materials and printed materials. (§13-1-93)
- 269 Village Council. "Village Council" means the governing body of the Village.

3. STATE PURCHASING DIVISION. (§ 13-1-95)

- 3.1 Organization. The New Mexico state purchasing division is a division of the general services department. The state purchasing agent is the head of the state purchasing division.
- 32 Duties to and Requirements Imposed on Municipalities.
- A. The state purchasing agent provides information to local public bodies concerning the development of specifications, quality control methods and other procurement information.
 - B. The state purchasing agent shall, upon the request of a central purchasing office of a municipality, procure a price agreement for requested services, construction or items of tangible personal property except as otherwise provided in the Procurement Code.
 - C. The Village may therefore utilize state purchasing division contracts for purposes of procuring a price agreement.
 - D. On or before January 1 of each year and each time a chief procurement officer is appointed, the Village shall provide to the state purchasing agent the name of the Village's chief procurement officer and information identifying the Village's central purchasing office. (§ 13-1-95.2)
 - E. The state purchasing agent is required to establish a certification program for chief procurement officers that includes initial certification and recertification every two (2) years. (§ 13-1-95.2)
- 33 State Purchasing Division Contracts or Price Agreements. The Village is not required to make purchases through the State Purchasing Division or the state purchasing agent, but the Village's central purchasing office may cooperate by agreement with the state purchasing agent in obtaining contracts or price agreements, and such contract or agreed prices shall apply to purchase orders subsequently issued under the agreement. (§ 13-1-135(C))

4. PROCUREMENT PROCESS: DUTIES.

- 4.1 Duties of Central Purchasing Office. The central purchasing office, under the direction of the chief procurement officer, shall be responsible for the control of all procurements by the Village and shall perform all duties required by the Procurement Code and related duties required by other statutes and these Procurement Regulations.

42 Duties of Chief Procurement Officer. (§ 13-1-95.2)

- A. The chief procurement officer shall manage the central purchasing office and shall be responsible for ensuring that all procurements by the Village are in accordance with the Procurement Code and these Procurement Regulations.
- B. The chief procurement officer shall 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 (as defined in the Procurement Code) to maximize the benefits to the Village from joint and cooperative procurement efforts.
- C. The chief procurement officer shall establish and maintain certification as required by Section 13-1-95.2(D), NMSA 1978 and applicable regulations of the State Purchasing Division or General Services Department. The Village shall pay any direct monetary costs associated with such certification.
- D. The chief procurement officer shall (i) make determinations, including determinations regarding exemptions, under the Procurement Code and these Procurement Regulations; (ii) issue all Village purchase orders and approve all small purchases under the Procurement Code and these Procurement Regulations, except any purchase orders or small purchases that may be made on a procurement card under a program approved by the Village Council; and (iii) approve all Village procurements subject to the Procurement Code and these Procurement Regulations.
- E. Unless the purchase is of a type or nature exempted from the Procurement Code under Section 13-1-98, NMSA 1978, the chief procurement officer shall not enter into a contract for the procurement of construction, goods or services until the contract has been approved by the Village Council.

43 Procurement Process.

- A. Initiation of procurement. A procurement may be initiated either by the using department or by the central purchasing office. If a procurement is initiated by the using department, a procurement request will be forwarded by the using department to the central purchasing office along with all proposed specifications, terms, and departmental requirements for the procurement and a list of potential bidders or offerors, if available and known to the department. The department's procurement request shall include (i) a statement of the department's need for the requested items, construction or service desired, and (ii) a statement of the quantity needed and a general statement of the quality desired.
- B. Issuance of procurement documents. All invitations for bids, requests for proposals, and other procurement solicitations shall be issued by the central

purchasing office with the concurrence of the using department. All purchase orders shall be issued by the central purchasing office and shall be signed by the chief procurement officer, except that persons having procurement cards may issue purchase orders and authorize small purchases under applicable regulations developed by the central purchasing office and approved by the Village Council.

C. Receipt of goods. (§ 13-1-157)

- 1) Using department responsibility. The using department is responsible for inspecting and accepting or rejecting deliveries.
- 2) Determination of acceptability. The using department shall determine whether the quantity is as specified in the purchase order or contract and whether the quality conforms to the specifications referred to or included in the purchase order or contract. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify to the central purchasing office that delivery has been completed and is satisfactory. Any invoice or packing slip, or a copy thereof, shall be promptly forwarded to the central purchasing office.
- 3) Unacceptable deliveries. If inspection reveals that the delivery does not conform to the quantity or quality specified in the purchase order or contract, the using agency shall immediately notify the central purchasing office. The central purchasing office shall notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery. In case the vendor fails to comply, the central purchasing office shall have no obligation to pay for the nonconforming items of tangible personal property or services not properly rendered.

D. Payment of purchases. (§ 13-1-158)

- 1) Payment upon certification of acceptability. Payment for any purchase of services, construction or items of tangible personal property shall be made only after the using department certifies that the services, construction or items of tangible personal property have been received and meet specifications, unless prepayment is specifically permitted under Section 13-1-98, NMSA 1978, by exclusion of the purchase from the Procurement Code (*see* Section 5 below).
- 2) Certification of acceptability. Unless otherwise provided in the applicable contract or otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen (15) days from the date the central purchasing office or using department receives

written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered and received, the central purchasing office or using agency shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.

- 3) Payment; late payment charges. Except as provided in Subsection D.4 of this Section 4.3, upon certification by the central purchasing office or the using department that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty (30) days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month. Late payment charges in a different amount may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico Public Regulation Commission.
- 4) Purchases funded by state or federal grants. For purchases funded by state or federal grants to local public bodies, if the Village has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within thirty (30) working days of receipt of funds from that funding agency.
- 5) Unacceptable deliveries or services. If the central purchasing office or the using department finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty (30) days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action.
- 6) Construction contracts. Payment deadlines for construction projects are governed by the Prompt Payment Act (§§ 57-28-1 *et seq.*, NMSA 1978) and Section 21.3 of these Procurement Regulations.

5. **EXEMPTIONS FROM THE PROCUREMENT CODE.**

- 5.1 Exemptions Relevant to the Village. Section 13-1-98 NMSA 1978, contains a list of exemptions from the provisions of the Procurement Code. Exemptions likely to be relevant to the Village include:

- A. Procurement of items of tangible personal property or services from a state agency, a local public body or an external procurement unit, except as otherwise provided in Sections 13-1-135 through 13-1-137, NMSA 1978 (cooperative procurements and sale, acquisition or use of property by a state agency or local public body);
- B. Printing and duplicating contracts involving materials which 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 and training materials in printed or electronic format from the publishers or copyright holders thereof;
- E. Travel or shipping by common carrier or by private conveyance or the cost of meals and lodging, subject to limitations of the Per Diem and Mileage Act (§ 10-8-1 *et seq.*, NMSA 1978), as implemented by the Village;
- F. Purchase of livestock at auction rings or the procurement of animals to be used for research and experimentation or exhibit;
- G. Contracts with businesses for public school transportation services;
- H. Procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;
- I. 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;
- J. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;
- K. The issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;
- L. Contracts entered into by the Village with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-2-26 and 33-2-27, NMSA 1978;

- M. 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;
- N. 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;
- O. Contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;
- P. Contracts with professional entertainers;
- Q. Contracts and expenditures for legal subscription and research services and litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;
- R. Contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection 3-33-14.1(L), NMSA 1978 (contracts entered into by a property owner) and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;
- S. Works of art for museums or for display in public buildings or places;
- T. Contracts entered into with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978] or operation and maintenance of a hospital pursuant to the Special Hospital District Act [Chapter 4, Article 48A NMSA 1978];
- U. Purchases of advertising in all media, including radio, television, print and electronic;
- V. Purchases of promotional goods intended for resale by the tourism department;
- W. Procurement of printing services for materials produced and intended for resale by the cultural affairs department;

- X. Procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000);
- Y. Procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act [13-1C-1 to 13-1C-7 NMSA 1978];
- Z. Purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;
- AA. Procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;
- BB. Contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978];
- CC. Purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock;
- DD. Contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act of 1984 and the federal Violence Against Women Act of 1994;
- EE. Procurement by or through the early childhood education and care department of early pre-kindergarten and pre-kindergarten services purchased pursuant to the Pre-Kindergarten Act [Chapter 32A, Article 23 NMSA 1978];
- FF. Procurement of services of commissioned advertising sales representatives for New Mexico magazine; and
- GG. Procurements exempt from the Procurement Code as otherwise provided by law.

6. COMPETITIVE SEALED BIDS.

- 6.1 Competitive Sealed Bids Required. Under Section 13-1-1-2, NMSA 1978, all Village procurement shall be achieved by competitive sealed bids except procurement achieved pursuant to the following sections of the Procurement Code:
- A. Competitive sealed proposals; (§ 13-1-111 through § 13-1-122)
 - B. Small purchases; (§ 13-1-125)
 - C. Sole source procurements; (§ 13-1-126)
 - D. Emergency procurements; (§ 13-1-127)
 - E. Procurement under existing contracts; (§ 13-1-129)
 - F. Purchases from antipoverty program businesses; (§ 13-1-130) and
 - G. The Educational Facility Construction Manager at Risk Act (§ 13-1-124.1 NMSA 1978).
- 62 Invitation for Bids. (§ 13-1-103) The central purchasing office shall issue all invitations for bids. The invitation for bids shall contain:
- A. The specifications for the services, construction or items of tangible personal property to be procured;
 - B. All contractual terms and conditions applicable to the procurement;
 - C. Term of the contract and conditions for renewal or extension, if any;
 - D. Evaluation criteria that will be used to determine acceptability of the bids, which may include inspection, testing, quality, workmanship, delivery and suitability for a particular purpose, and any criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price, all of which must be objectively measurable;
 - E. Instructions and information to bidders, including the location where the bids are to be received and the date, time and place of the bid opening;
 - F. Requirements for complying with any applicable in-state preference provisions as provided by law;

- G. A notice that the invitation for bids may be canceled and that any and all bids may be rejected in whole or in part when it is in the best interest of the Village; and
- H. A notice stating: “The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.”

The invitation for bids may incorporate documents by reference, provided that it specifies where those documents may be obtained.

- 63 Bid Form. The invitation for bids shall provide a form which shall include space in which the bid price is to be inserted and which the bidder shall sign and submit along with all other necessary submissions. A bidder may submit a reasonable facsimile of the bid form. Oral, telephonic and telegraphic bids or bids submitted by electronic mail are not acceptable as competitive sealed bids and will not be considered by the Village, but a bid that is electronically delivered to a third party and then delivered in a sealed envelope to the location where bids are to be received by the date and time stated in the invitation for bids will be accepted for consideration.
- 64 Bidding Time. The central purchasing office shall allow a reasonable time between publication of the invitation for bids and the date of opening of the bids (the “bidding time”). The bidding time shall not be less than ten (10) business days, unless a shorter time is determined to be in the best interests of the Village.
- 65 Bidder Identification and Address. Any business requesting an invitation for bids shall, at the time the request is made, provide to the central purchasing office the business’s current mailing address (physical address or post office box) and may in addition provide a reliable electronic mail address for receipt of communications from the Village.
- 66 Amendment to an Invitation for Bids.
 - A. An amendment to an invitation for bids may be used to (i) make any changes in the invitation for bids such as changes in quantity, purchase descriptions, delivery schedules, or the opening date; (ii) correct defects or ambiguities; or (iii) furnish to all bidders any information provided to one bidder if such information will assist the bidders or if the lack of such information would prejudice a bidder.

- B. An amendment to an invitation for bids shall be distributed to all prospective bidders known to have received the invitation for bids and shall require that all prospective bidders acknowledge its receipt.
- C. An amendment to an invitation for bids shall be identified as such and shall identify the portions of the invitation for bids that it amends.
- D. An amendment to an invitation for bids shall be distributed within a reasonable time to allow prospective bidders to consider it in preparing their bids, and in any event no later than five (5) business days before bids are due. If necessary to allow a reasonable time, the date and time for receipt and opening of the bids shall be extended by amendment to the invitation for bids.

67 Bid Samples and Descriptive Literature. Bid samples or descriptive literature may be required when necessary to evaluate required characteristics of the item bid. Bid samples, when required, shall be furnished free of expense to the Village and prior to the time set for opening of bids. Each sample must be labeled to clearly show the bid number and the name of the bidder. Samples not destroyed in testing will be returned upon request by mail, express or freight, collect.

68 Public Notice. (§ 13-1-104)

- A. The invitation for bids or a notice thereof shall be published in the Albuquerque Journal no later than ten (10) calendar days before the day that bids are due. The central purchasing office may, in its discretion, publish the invitation for bids or notice thereof in other publications or media.
- B. If the invitation for bids involves the anticipated expenditure of twenty thousand dollars (\$20,000) or more, the central purchasing office shall send copies of the notice or the invitation for bids to any businesses which have stated in writing an interest in submitting bids for particular categories of items of tangible personal property, construction or services. This requirement may be met by sending copies of the notice or the invitation for bids through electronic media. The Village may establish registration fees for different categories of tangible personal property, construction or services. Such fees, if established, must be used exclusively for purpose of furnishing copies of the notice or the invitation for bids to prospective bidders.
- C. For construction contracts, the term “prospective bidder” includes persons considering submission of a bid to the Village as a general contractor and also includes persons considering submission of a bid to a general contractor for work to be subcontracted pursuant to the construction contract. The Village shall make copies of invitations for bids for construction contracts available to prospective bidders. The Village may require prospective bidders who have requested documents for bid on a construction contract to pay a

deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. 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 documents for bid, which time limits shall be no less than ten (10) calendar days from the date of the bid opening. All forfeited deposits shall be credited to the Village's general fund.

- 69 Pre-Bid Conferences. Pre-bid conferences may be conducted to explain the procurement requirements, but are not required. Any pre-bid conference shall be announced to all prospective bidders known to have received the invitation for bids. The conference shall 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 in the pre-bid conference shall change the invitation for bids unless a change is made by written amendment to the invitation for bids.
- 6.10 Receipt, Opening and Evaluation of Bids; Contract Negotiations. (§ 13-1-105; § 13-1-107)
- A. Receipt. Each bid received by the central purchasing office shall be immediately stamped as received and labeled with the date and time of receipt. All bids shall be retained in a secure place, unopened, until the date and time of opening.
- B. Opening. Bids must 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 thereupon be open to public inspection. Bids must be accepted for consideration without alteration or correction except as authorized in the Procurement Code.
- C. Evaluation. Bids must be evaluated on the requirements set forth in 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 and defined by regulation. No criteria may be used in the bid evaluation that are not set forth in the invitation for bids.
- D. Negotiation. If the lowest responsible bid has otherwise qualified and is no more than ten percent (10%) higher than budgeted project funds, and if there is no change in the original terms and conditions, the Village and the lowest bidder may negotiate for a lower total bid in order to bring the procurement within the available funds and thus avoid rejection of all bids. Such

negotiation shall not be allowed if the lowest bid was more than ten percent (10%) higher than budgeted project funds.

6.11 Correction or Withdrawal of Bids. (§ 13-1-106)

- A. A bid may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written notice to the location designated in the invitation for bids as the place where bids are to be received. If a bid is withdrawn in accordance with this subparagraph, the bid security, if any, shall be returned to the bidder. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.
- B. Any bid or any withdrawal or modification of a bid received after the time and date for opening of bids is late. A late bid or a late withdrawal or late modification of a bid will not be considered unless it was timely submitted but receipt was delayed by action or inaction of Village personnel. All documents relating to a late bid or a late withdrawal or late modification of a bid shall be made a part of the appropriate procurement file.

6.12 Mistakes in Bids. (§ 13-1-106)

- A. After bid opening, no modification in prices or other provisions of the bid is permitted.
- B. After bid opening, a low bidder alleging a material mistake of fact which makes the bid nonresponsive may be permitted to withdraw the bid if (i) the mistake is clearly evident on the face of the bid, or (ii) 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 a mistake shall be made by the chief procurement officer and shall be supported by a determination setting forth the grounds for the decision and retained in the procurement file.
- C. Technical irregularities. A technical irregularity is a matter of form rather than substance, evident from the bid documents, or an insignificant mistake that can be waived or corrected without prejudice to other bidders. A technical irregularity shall not have any effect on price, quantity, quality, delivery or contractual conditions. Examples include, but are not limited to (i) failure of the bidder to return the number of signed copies requested in the invitation for bids, and (ii) failure of the bidder to sign the bid, but only if the unsigned bid is accompanied by other material clearly establishing the low bidder's intent to be bound. The Village may accept a low bid despite a technical irregularity upon the determination of the chief procurement officer retained in the procurement file.

- D. Mistake where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the low bid shall be corrected to the intended correct bid and may not be withdrawn. Examples include, but are not limited to (i) typographical errors, (ii) errors in extending unit prices, (iii) transposition errors, and (iv) arithmetic errors.
- E. All corrections or withdrawals allowed by the central purchasing office shall be supported by a determination of the chief procurement officer, documented in writing and retained in the appropriate procurement file.

6.13 Bid Award. (§ 13-1-108)

A. Acceptability evaluation.

- 1) The invitation for bids must include all evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any or all of the following prior to award: (i) inspection or testing of a product for such characteristics as quality or workmanship; (ii) examination of such elements as appearance, finish, taste or feel; or (iii) other examinations to determine whether it conforms with other purchase description requirements.
- 2) Purpose of acceptability evaluation. An acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another's but only to determine that a bidder's offering is acceptable as set forth in the invitation for bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive.
- 3) Brand-name or equal specification. Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. When bidding an "or equal" the burden of persuasion is on the supplier or manufacturer who has not been specified to convince the procurement officer that their product is, in fact, equal to the one specified. The chief procurement officer is given the responsibility and judgement for making a final determination on whether a proposed substitution is an "or equal".

B. Determination of lowest bidder.

- 1) Following determination of product acceptability, if required, the central purchasing office will evaluate the bids to determine which bidder offers the lowest cost to the Village in accordance with the evaluation criteria set forth in the invitation for bids. Only objectively measurable criteria that are set forth in the invitation for bids shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, discounts, transportation costs and ownership or life-cycle formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the Village has available concerning future use.
- 2) Prompt payment discounts. Prompt payment discounts shall not be considered in computing the low bid. Such discounts may be considered after award of the contract.
- 3) Trade discounts. Trade discounts shall be considered in computing the low bid. Such discounts may be shown separately, but must be deducted by the bidder in calculating the unit price quoted.
- 4) Quantity discounts. Quantity discounts shall be included in the price of an item. Such discounts may not be considered where set out separately unless the invitation for bids so specifies.
- 5) Transportation costs. Transportation costs shall be considered in computing the low bid. Such costs may be computed into the bid price or be listed as a separate item.
- 6) Total or life-cycle costs. Award may be determined by total or life-cycle costing if so indicated in the invitation for bids. Life-cycle cost evaluation may take into account operative, maintenance, and money costs, other costs of ownership and usage and resale or residual value, in addition to acquisition price, in determining the lowest bid cost over the period the item will be used.
- 7) Energy efficiency. An award may be determined by an evaluation consisting of acquisition price plus the cost of energy consumed over a projected period of use, if so indicated in the invitation for bids.

C. 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 persons present at the bid opening.

- D. Written notice of the award shall be sent to the successful (lowest responsible) bidder.
- E. Gross receipts taxes. Contracts solicited by competitive sealed bids shall require that the bid amount exclude applicable gross receipts taxes, but that the Village shall be required to pay any applicable gross receipts taxes, including any increase in the applicable taxes becoming effective after the date the contract is entered into. The applicable gross receipts taxes shall be shown as a separate amount on each billing or request for payment under the contract.

6.14 Identical Low Bids. (§ 13-1-110)

- A. Identical low bids are low responsive bids, from responsible bidders, that are identical in price after the application of the preferences contained in Sections 13-1-21 and 13-1-22, NMSA 1978, and which meet all the requirements set forth in the invitation for bids.
- B. When two or more identical low bids are received, the central purchasing office may:
 - 1) award pursuant to the multiple source award provisions of these Procurement Regulations;
 - 2) award to a resident business or a resident veteran business (as defined in Section 13-1-21, NMSA 1978) if the identical low bids are submitted by a resident business or resident veteran business and a nonresident business;
 - 3) award to a bidder offering recycled content goods if the identical low bids are for recycled content goods and virgin goods;
 - 4) award by lottery to one of the identical low bidders; or
 - 5) reject all bids and re-solicit bids or proposals for the required items of tangible personal property, construction or services.

6.15 Multi-Step Sealed Bids: (§ 13-1-109)

- A. Use. Multi-step sealed bids may be used when the central purchasing office makes a determination that it is impractical initially to prepare specifications to support an award based on price, or that specifications are inadequate or are too general to permit full and free competition without technical evaluation and discussion.

- B. Phased process. Multi-step bidding is a phased process which combines elements of both the competitive sealed proposal method, seeking necessary information or unpriced technical offers in the initial phase, followed by regular competitive sealed bidding, inviting bidders who submitted technically acceptable offers in the initial phase to submit competitive sealed price bids on the technical offers in the second phase. The contract shall be awarded to the lowest responsible bidder. If time is a factor, the central purchasing office may require offerors to submit a separate sealed bid during the initial phase to be opened only after the technical evaluation is complete.
- C. Public notice. Whenever multi-step sealed bids are used, public notice in accordance with Section 6.8 is required for the first phase. No public notice is required for the second phase.

6.16 Bid Security:

- A. Construction contracts. (§ 13-1-146; § 13-1-147) Bidders for construction contracts procured by competitive sealed bids must provide security when the price is estimated by the chief procurement officer to exceed twenty-five thousand dollars (\$25,000). 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 New Mexico or the equivalent in cash or cash equivalent in a form acceptable to the chief procurement officer. If the invitation for bids requires bid security and it is not provided by a bidder, the bid must be rejected. If a bidder is permitted to withdraw its bid before award no action shall be taken against the bidder or its surety.
- B. Non-construction contracts. (§ 13-1-148) 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 Village. However, such a bonding requirement shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.

7. **COMPETITIVE SEALED PROPOSALS.**

7.1 Conditions for Use. (§ 13-1-111)

- A. Competitive sealed proposals may be used:
 - 1) For procurement of professional services;
 - 2) For procurement of a design and build project delivery system with a maximum allowable construction cost of more than ten million dollars (\$10,000,000);

- 3) When the chief procurement officer makes a written determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the Village;
 - 4) For contracts for construction and facility maintenance, service and repairs.
- B. Competitive qualifications-based proposals, as described in Section 8 of these Procurement Regulations, shall be used for procurement of professional services of architects, engineers, landscape architects, construction managers and surveyors, except for small purchases as provided in Section 15 of these Procurement Regulations.
- C. Competitive sealed proposals shall be used for contracts for the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts pursuant to the Public Facility Energy Efficiency and Water Conservation Act (§§ 6-23-1 *et seq.*, NMSA 1978).
- D. In determining whether competitive sealed bidding is not practicable or not advantageous to the Village, the chief procurement officer may consider factors including, but not limited to:
- 1) Whether the contract needs to be other than a fixed-price type;
 - 2) Whether prior procurements indicate that competitive sealed proposals may result in a more beneficial contract;
 - 3) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
 - 4) Whether offerors may need to be afforded the opportunity to revise their proposals, including price;
 - 5) Whether the award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality or contractual factors to determine the most advantageous offer for the Village; and
 - 6) Whether the primary consideration in determining award may not be price.

72 Request for Proposals. (§ 13-1-112; § 13-1-114) The central purchasing office shall issue all requests for proposals. The request for proposals shall contain:

- A. The specifications for the services, construction or items of tangible personal property to be procured;
- B. All contractual terms and conditions applicable to the procurement;
- C. Term of the contract and conditions for renewal or extension, if any;
- D. All evaluation factors and the relative weight that will be given to the factors in evaluating proposals, which may include cost as a factor except as provided in Section 8 of these Procurement Regulations for professional services of architects, engineers, landscape architects, and surveyors;
- E. Instructions and information to offerors, including the location where the proposals are to be received, the date and time fixed for receipt of proposals, and any information regarding proposal review;
- F. A statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without such discussions;
- G. A notice that the request for proposals may be canceled and that any and all proposals may be rejected in whole or in part when it is in the best interest of the Village;
- H. A statement of how proposed costs should be submitted; and
- I. A notice stating: "The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks."

The request for proposals may incorporate documents by reference, provided that it specifies where those documents may be obtained.

- 73 Time for Preparation of Proposals. The central purchasing office shall allow a reasonable time between publication of the request for proposals and the date of opening of the proposals (the "proposal preparation time"). The proposal preparation time shall be at least twenty (20) calendar days, unless a shorter time is determined to be in the best interests of the Village, and in no case shall be less than ten (10) calendar days.
- 74 Offeror Identification and Address. Any business requesting a request for proposals from the Village shall, at the time the request is made, provide to the central purchasing office the business's current mailing address (physical address or post office box) and may in addition provide a reliable electronic mail address for receipt of communications from the Village.

75 Amendments to the Request for Proposals.

- A. An amendment to a request for proposals may be used (i) to make any changes in the request for proposals; (ii) to correct defects or ambiguities; or (iii) to furnish to all potential offerors any information provided to one potential offeror if such information will assist the offerors or if the lack of such information would prejudice a potential offeror.
- B. An amendment to a request for proposals shall be distributed to all potential offerors known to have received the request for proposals and shall require that all prospective offerors acknowledge its receipt.
- C. An amendment to a request for proposals shall be identified as such and shall identify the portions of the request for proposals that it amends.
- D. An amendment to a request for proposals shall be distributed within a reasonable time to allow prospective offerors to consider it in preparing their proposals, and in any event no later than five (5) business days before proposals are due. If necessary to allow a reasonable time, the date and time for receipt of the proposals shall be extended by amendment to the request for proposals.
- E. After submission of proposals, an amendment may be made to the request for proposals and need be distributed only to short-listed offerors. The short-listed offerors shall be permitted to submit new proposals or to amend those submitted. If in the opinion of the chief procurement officer a contemplated amendment will significantly change the nature of the procurement, the request for proposals shall be canceled and a new request for proposals may be issued.

76 Public Notice. (§ 13-1-113)

- A. The request for proposals or a notice thereof shall be published in the Albuquerque Journal no later than twenty (20) calendar days before the day that proposals are due, unless for good cause a shorter time no less than ten (10) calendar days is specifically approved by the chief procurement officer. The central purchasing office may, in its discretion, publish the invitation for bids or notice thereof in other publications or media.

- 77 Pre-Proposal Conferences. Pre-proposal conferences may be conducted to explain the procurement requirements, but are not required. Any pre-proposal conference shall be announced in the request for proposals or shall be announced to all prospective offerors known to have received the request for proposals. Nothing stated in the pre-proposal conference shall change the request for proposals unless, based on information gathered at the pre-proposal conference, a change is made by written amendment to the request for proposals.
- 78 Modification or Withdrawal of Proposals. A proposal may be modified or withdrawn by the offeror prior to the established due date. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or, if discussions have begun, it is the time and date by which best and final offers must be submitted by short-listed offerors.
- 79 Late Proposals. Any proposal or modification of a proposal received by the Village after the established due date is late. A late proposal or modification of a proposal will not be considered unless it was timely submitted but receipt was delayed by action or inaction of Village personnel.
- 7.10 Receipt and Registration of Proposals.
- A. Receipt. Each proposal received by the central purchasing office shall be immediately stamped as received and labeled with the date and time of receipt. All proposals shall be retained in a secure place, unopened, until after the date and time fixed for receipt.
 - B. Registration. Proposals shall not be opened publicly and shall not be open to public inspection until after award of a contract. After the date fixed for receipt of proposals, a register should be prepared which includes a general description of the service, items of tangible personal property or construction requested in the request for proposals and a list of the names of the offerors. Only the register of the proposals shall be made available to the public or to competing offerors until after award of the contract.
 - C. Confidential data. An offeror may request in writing nondisclosure of confidential data. Such data should accompany the proposal and should be readily separable from the proposal so as to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret under the Uniform Trade Secrets Act (§§ 57-3A-1 through 57-3A-7, NMSA 1978). The price of products offered or services proposed may not be designated as confidential data.

7.11 Evaluation and Classification of Proposals.

- A. Evaluation. The chief procurement officer or the Mayor shall appoint an evaluation committee consisting of three or more persons. The evaluation committee shall evaluate all proposals timely received, based on the evaluation factors and the relative weights set forth in the request for proposals. An appropriate numerical rating system is required.
- B. Classification. For the purpose of conducting discussions or negotiations, proposals shall initially be classified as:
 - 1) Responsive;
 - 2) Potentially responsive, that is, reasonably susceptible of being made responsive; or
 - 3) Non-responsive.

Non-responsive proposals and late proposals, if any, are disqualified and eliminated from further consideration. The central purchasing office shall promptly send a written determination in the form of a letter to each offeror whose proposal has been disqualified, stating the reasons for disqualification. A copy of each letter shall be retained in the procurement file.

7.12 Proposal Discussions and Negotiations. (§ 13-1-115)

- A. Discussions authorized. Discussions may be conducted with responsible offerors who submit responsive or potentially responsive proposals. Discussions are held to clarify technical or other aspects of the proposals. Proposals may be accepted and evaluated without discussion.
- B. Conduct of discussions. Proposals may be modified by the offerors during discussions, and any clarification of a proposal by an offeror shall be reduced to writing. This is not an opportunity for offerors to amend the substance of their proposals. If during discussions there is a need for substantial clarification or change in the request for proposals, then the request for proposals shall be amended and reissued to incorporate such clarification.
- C. Short list. All offerors who submit responsive proposals are eligible for the short list. However, if numerous acceptable proposals have been submitted, the central purchasing office may rank the proposals based on the numerical scores assigned by the evaluation committee and select the highest-ranked proposals for the short list.
- D. Negotiations. Competitive negotiations may be conducted among the short-listed offerors to (i) promote understanding of the Village's requirements and

short-listed offerors' proposals, (ii) facilitate arriving at a contract that will be most advantageous to the Village, and (iii) allow the relevant terms and conditions of a contract with the selected offeror to be negotiated prior to award of a contract.

- E. Conduct of negotiations. The chief procurement officer shall establish the schedule and procedures for negotiations with short-listed offerors. Short-listed offerors shall be accorded fair and equal treatment with respect to any negotiations and any clarification or non-substantive revision of their proposals. The chief procurement officer may request best and final offers from short-listed offerors, or may recommend award to one or more offerors based on the results of negotiations to obtain the best possible terms for the Village.

7.13 Mistakes in Proposals.

- A. Mistakes. Any mistake in a proposal may be corrected by the offeror, in writing, at any time prior to award. A mistake may be corrected during discussions and negotiations with the Village. An offeror may withdraw its proposal by submitting a written notice of withdrawal to the Village's central purchasing office at any time prior to award.
- B. Technical irregularities. A technical irregularity is a matter of form rather than substance, evident from the proposal documents, or an insignificant mistake that can be waived or corrected without prejudice to other offerors. A technical irregularity shall not have any effect on price, quantity, quality, delivery or contractual conditions. Examples include, but are not limited to (i) failure of the offeror to submit the number of signed proposals requested in the request for proposals, (ii) failure of the offeror to sign the proposal, but only if the unsigned proposal is accompanied by other material clearly establishing the offeror's intent to be bound, or (iii) failure of an offeror to acknowledge receipt of an amendment to the request for proposals, but only if it is clear from the proposal that the offeror received the amendment and intends to be bound by it, and the amendment had not effect on price, quality or quantity.
- C. All corrections or withdrawals allowed by the central purchasing office shall be supported by a determination of the chief procurement officer, documented in writing and retained in the appropriate procurement file.

7.14 Award and Notice. (§ 13-1-117)

- A. Award. The award shall be made to the responsible offeror whose proposal is most advantageous to the Village, taking into account the evaluation factors set forth in the request for proposals. The chief procurement officer shall make a written determination showing the basis on which the recommended

award was found to be most advantageous to the Village. The recommendation of award shall be submitted to the Village Council for final award and approval of a contract, unless exempted under the small purchase rules in Section 15 of these Procurement Regulations.

- B. Notice. The chief procurement officer shall promptly advise all offerors who submitted responsive proposals of the award by sending a written notice of the award via certified mail, return receipt requested. The notice of award shall include the expiration date and time of the protest period, if different from that published in the request for proposals or not included in the request for proposals.

7.15 Disclosure and Public Inspection.

- A. Disclosure. The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process and prior to award. Award in this context means the final Village signature on any contract or contracts resulting from the procurement.
- B. Public inspection. After award, any written determinations made in the course of the procurement, the evaluation committee report and each proposal, except for those portions for which the offeror has made a written request for confidentiality, shall be open to public inspection.
- C. Procedure relating to confidential data. If the Village receives a request to disclose material for which the offeror has requested confidentiality, the chief procurement officer shall review the material and make a written determination whether it qualifies for confidentiality under the Procurement Code and these Procurement Regulations. If the chief procurement officer determines that the material does not qualify for confidentiality and should be disclosed, the chief procurement officer shall so notify the offeror and allow the offeror a reasonable period of time within which to take legal action to prevent the disclosure. If the offeror does not take such legal action and notify the Village within the time allowed, the material will be disclosed. After award the proposal will be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

8. **PROCUREMENTS OF CERTAIN PROFESSIONAL SERVICES.**

- 8.1 Scope and Applicability. (§ 13-1-119) The provisions in this Section 8 apply to the procurement of services by architects, landscape architects, engineers or surveyors for local public works projects, unless the procurement is exempted from these requirements pursuant to § 13-1-98, NMSA 1978.

- 82 Competitive Sealed Proposals. For each proposed local public works project requiring the services of an architect, landscape architect, engineer or surveyor, the Village will issue a request for proposals for the required services, requesting statements of qualifications, performance data and other appropriate information from offerors as provided in Section 7.2 above, except that cost may not be included as a factor for evaluation of any proposal submitted.
- 83 Selection Procedure. For each proposed local public works project, the chief procurement officer or the Mayor shall name a local selection committee, which shall evaluate statements of qualifications and performance data submitted by at least three (3) businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services. The selection committee shall select, ranked in the order of their qualifications, no less than three (3) businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any other criteria, *except price*, determined to be appropriate by the central purchasing office or the chief procurement officer:
- A. Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;
 - B. Capacity and capability of the business, including any consultants, their representatives, qualifications and locations, to perform the work, including any specialized services, within the time limitations;
 - C. Past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;
 - D. Proximity to or familiarity with the area in which the project is located;
 - E. The amount of design work that will be produced by a New Mexico business within this state; and
 - F. The volume of work previously done for the entity requesting proposals which is not seventy-five percent (75%) complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated.

- 84 Fewer than Three Offers: If fewer than three (3) businesses have submitted a statement of qualifications for the professional services needed for a particular project, the selection committee may:
- A. Rank in order of qualifications those businesses which have submitted a statement of qualifications; or
 - B. Recommend termination of the selection process and the issuance of a new request for proposals for the proposed procurement. Any proposal received in response to the terminated solicitation is not public information and shall not be made available to competing offerors.
- 85 Negotiations. The chief procurement officer shall seek to negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering or surveying services at compensation determined in writing to be fair and reasonable. In making this decision, the chief procurement officer shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services. Should the chief procurement officer be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated, and the chief procurement officer shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the chief procurement officer shall formally terminate negotiations with that business, and the chief procurement officer shall then undertake negotiations with the third most qualified business. Should the chief procurement officer be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses that responded to the request for proposals shall be ranked in order of their qualifications and the chief procurement officer shall continue negotiations in accordance with this section until a contract is successfully negotiated with a qualified business or the procurement process is terminated and a new request for proposals is initiated.
- 86 Contract Approval. After reaching agreement on a proposed contract the chief procurement officer shall submit it for consideration by the Village Council, and upon approval by the Village Council shall publicly announce the business selected for award.
- 87 Disclosure and Public Inspection. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, the selection committee's final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected for contract award shall be so notified in writing within fifteen (15) days after an award is made.

9. SPECIFICATIONS.

9.1 General Requirements. (§ 13-1-164)

- A. Competition. All specifications shall be drafted so as to ensure maximum practicable competition and fulfill the requirements of the Village. If, in the opinion of the chief procurement officer, a proposed specification of a component is of a nature that would restrict the number of potential bidders or offerors and thereby restrict competition, the central purchasing office if practicable may draft the specifications without the component and procure the component through a separate invitation for bids or request for proposals or by entering into a sole source procurement. However, the central purchasing office shall not circumvent this section by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.
- B. Brand Name Specifications. Brand name specifications may be used only when the chief procurement officer determines that only the identified brand name item will meet the needs of the Village. If a brand name specification is used, the central purchasing office should attempt to identify as many sources as possible from which the item can be obtained so as to achieve whatever price competition is practicable, or a sole source procurement can be made.

9.2 Brand Name or Equal Specifications. (§ 13-1-167; § 13-1-168)

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

10. MISCELLANEOUS BID AND PROPOSAL MATTERS.

10.1 Cancellation of Procurement; Rejection of All Bids or Proposals. (§ 13-1-131)

- A. Prior to opening. Prior to the opening of bids or the date and time set for receipt of proposals, a solicitation may be canceled in whole or in part when the chief procurement officer makes a written determination that such action is in the Village's best interest for reasons including but not limited to:

- 1) The services, construction, or items of tangible personal property are no longer required;
- 2) The using agency no longer can reasonably expect to fund the procurement; or
- 3) Proposed amendments to the solicitation would significantly change the nature of the procurement.

When a solicitation is canceled prior to opening, notice shall be sent to all businesses solicited. The notice shall identify the solicitation, briefly explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar services, construction, or items of tangible personal property.

B. After opening. After opening but prior to award, all bids or proposals may be rejected in whole or in part when the chief procurement officer makes a written determination that such action is in the Village's best interest for reasons including but not limited to:

- 1) All of the bids or proposals are nonresponsive;
- 2) The services, construction, or items of tangible personal property are no longer required;
- 3) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- 4) The solicitation did not provide for consideration of all factors of significance to the Village or the department of the Village;
- 5) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- 6) All otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- 7) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

A notice of rejection shall be sent to all businesses that submitted bids or proposals. The notice should identify the solicitation, briefly explain the reason for cancellation and, where appropriate, explain that an opportunity

will be given to compete on any re-solicitation or any future procurements of similar services, construction, or items of tangible personal property.

102 Rejection of Individual Bids or Proposals. (§ 13-1-131)

- A. Rejection of bids. Bids may be rejected or the solicitation canceled when it is in the best interests of the Village. Reasons for rejecting a bid, including a small purchase quotation, include but are not limited to:
 - 1) A bid is not responsive or no bids are responsive; or
 - 2) The service, construction, or item of tangible personal property offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the invitation for bids.
- B. Rejection of proposals. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and the Village's requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting a proposal, including a small purchase offer, include but are not limited to:
 - 1) The proposal is not responsive;
 - 2) The proposed price is clearly unreasonable; or
 - 3) The proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.
- C. Written determination required. A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the chief procurement officer and made a part of the procurement file.

103 Record Retention. When bids or proposals are rejected, or a solicitation canceled after bids or proposals are received, any bids or proposals that have been opened shall be retained in the procurement file. Unopened bids or proposals shall be returned to the bidders or offerors on request, or, if no request is made, such bids or proposals may be destroyed after the time for filing a protest has passed.

104 “All or None” Bids.

- A. By the Village in a solicitation. A solicitation may require bidders to submit bids or offers on all items listed in the solicitation, or may identify certain groups of items in which all items must be bid. If the solicitation is properly so limited, a bidder's failure to bid all items identified as "all or none" items may render the bid nonresponsive.
- B. By the bidder or offeror. If the bidder restricts acceptance of the bid, or a portion thereof, by such a statement as "all or none," the bidder has qualified the offer, which may render the bid as nonresponsive.
- C. Conditions for acceptance. In instances as stated in both Subsections A and B of this Section 10.4, such a bid or offer may be accepted only if the chief procurement officer issues a determination setting forth the basis for accepting the bid or offer as being in the best interest of the Village. Also, in both instances, the bid or offer is only eligible for award if it is the overall low bid for the item or items so restricted.

105 Irregularities in Bids or Proposals. (§ 13-1-132) The central purchasing office may waive technical irregularities in the form of the bid of the low bidder or the proposal of a selected offeror so long as the waiver does not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offered.

106 Responsibility of Bidders and Offerors. (§ 13-1-133)

- A. If a bidder or offeror who otherwise would have been awarded a contract is found not to be a responsible bidder or offeror, the chief procurement officer shall make a written determination setting forth the basis of the finding. Failure of a bidder or offeror to promptly supply information in connection with inquiries regarding responsibility is grounds for a determination of non-responsibility.
- B. Standards for bidders and offerors. Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder or offeror has:
 - 1) Submitted a responsive bid or proposal;
 - 2) Adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services, construction, or items of tangible personal property described in the invitation for bids or the request for proposals;
 - 3) A satisfactory record of performance;

- 4) A satisfactory record of integrity;
- 5) Qualified legally to contract with the state; and
- 6) Supplied all necessary information and data in connection with any inquiry concerning responsibility.

C. Ability to meet standards. A bidder or offeror may demonstrate the availability of adequate financial resources, production or service facilities, personnel and experience by submitting, upon request:

- 1) Evidence that the bidder or offeror possesses the necessary items;
- 2) Acceptable plans to subcontract for the necessary items; or
- 3) A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

10.7 Prequalification of Bidders. (§ 13-1-134) A bidder may be prequalified by the central purchasing office as a bidder or offeror for particular types of services, construction or items of tangible personal property. Mailing lists of potential bidders or offerors shall include but shall not be limited to such prequalified businesses. Prequalification is not a finding of responsibility.

11. **CONTRACT MATTERS.**

11.1 Uniform Contract Clauses. (§ 13-1-170)

A. Contract charges in general. The Village may require that contracts include uniform clauses providing for termination of contracts, adjustments in prices, adjustments in time of performance or other contract provisions as appropriate, including but not limited to the following subjects:

- 1) The unilateral right of the Village to order in writing (i) changes in the work within the scope of the contract; and (ii) temporary stoppage of the work or the delay of performance;
- 2) Variations occurring between estimated quantities of work in a contract and actual quantities;
- 3) Liquidated damages;
- 4) Permissible excuses for delay or nonperformance;
- 5) Termination of the contract for default;

- 6) Termination of the contract in whole or in part for the convenience of the Village;
 - 7) Assignment clauses providing for the assignment by the contractor to the Village of causes of action for violation of state or federal antitrust statutes;
 - 8) Identification of subcontractors by bidders in bids, consistent with the Subcontractors Fair Practices Act (§§ 13-4-31 through 13-4-42, NMSA 1978); and
 - 9) Uniform subcontract clauses in contracts.
- B. Late payment charges. Contracts shall include a clause imposing late payment charges against the Village at the rate of 1.5 percent per month for amounts more than thirty (30) days in arrears, or as otherwise provided in Section 13-1-158, NMSA 1978, as amended from time to time.
- C. Right to inspect the plant. (§ 13-1-159) A contract or the solicitation therefor may include a provision permitting the Village, 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 by the Village.
- 112 Contract Audit. (§ 13-1-161) The Village may, at reasonable times and places, audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract unless a shorter period is specifically authorized in writing.
- 113 Price Adjustments. (§ 13-1-171) Adjustments in price shall be computed in one or more of the following ways as specified in the contract:
- A. By agreement on a fixed-price adjustment before commencement of performance or as soon thereafter as practicable;
 - B. By unit prices specified in the contract or subsequently agreed upon by the parties;
 - C. By the costs attributable to the events or conditions as specified in the contract or subsequently agreed upon by the parties;

- D. 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, which shall be promptly documented in the contract file by the central purchasing office;
 - E. In such other manner as the Village and the vendor may mutually agree; or
 - F. In the absence of agreement by the parties, by a unilateral determination reasonably computed by the chief procurement officer of the costs attributable to the events or conditions.
- 114 Indemnification and Insurance. Except as provided in the Tort Claims Act, Sections 41-4-1 through 41-4-27, NMSA 1978, no contract of the Village shall contain any provision whereby the Village agrees to indemnify or provide tort liability insurance for any contractor. No contract of the Village shall contain any provision whereby the Village agrees to indemnify or provide insurance for non-tort risks for any contractor.

12. TYPES OF CONTRACTS.

12.1 In General. (§ 13-1-149)

- A. Subject to the limitations in this Section 12 and in the Procurement Code, including Sections 13-1-150 through 13-1-154.1, NMSA 1978, any type of contract which will promote the best interests of the Village may be used, including but not limited to definite quantity contracts, indefinite quantity contracts and price agreements.
- B. Use of a cost-plus-a-percentage-of-cost contract is prohibited except for the purchase of insurance.
- C. 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.

12.2 Multi-Term Contracts. A multi-term contract is a contract having a term longer than one (1) year. (§ 13-1-68)

- A. Determination prior to use. (§ 13-1-151) Prior to the utilization of a multi-term contract, the chief procurement officer shall make a determination that:

- 1) The estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- 2) The contract will serve the best interests of the Village.

B. Maximum terms. (§ 13-1-150)

- 1) A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time not to exceed four (4) years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting.
- 2) A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount of twenty-five thousand dollars (\$25,000) or more, may be entered into for any period of time not to exceed ten (10) years, including all extensions and renewals, except that for a contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act [Chapter 6, Article 23 NMSA 1978], the term shall not exceed twenty-five years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
- 3) A contract for professional services may not exceed four (4) years, including all extensions and renewals, except that (i) services required to support or operate federally certified Medicaid, financial assistance and child support enforcement management information or payment systems; (ii) services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125; (iii) a multi-term contract for the services of 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 and (iv) services relating to the implementation, operation and administration of the Education Trust Act [Chapter 21, Article 21K NMSA 1978]; (v) a contract for services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act (§§ 6-23-1 et seq., NMSA 1978); and (vi) services relating to the design and engineering of a state public works project: for a period not to exceed the requisite time for project completion and a subsequent warranty period and upon approval of the secretary of finance and administration.

- C. Availability of funds. (§ 13-1-152) Payment and performance obligations for subsequent fiscal periods after the first year of a multi-term contract shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance of a multi-term contract in a subsequent fiscal period, the contract shall be cancelled

12.3 Construction Management Services. (§ 13-1-100.1) The Village may enter into a construction management contract for any local public works project if the chief procurement officer makes a determination that it is in the public's interest to use construction management services. Construction management services shall not duplicate and are in addition to the normal scope of separate architect or engineer contracts, the need for which may arise due to the complexity or unusual requirements of a project. Any contract for construction management services must be in accordance with the regulations of the State of New Mexico then in effect.

12.4 Design and Build Project Delivery System. (§ 13-1-119.1)

- A. A design and build project delivery system may be authorized for a specific project, other than a road or highway construction or reconstruction project, when the central purchasing office makes a determination in writing that it is appropriate and in the best interest of the Village to use the system on a specific project. A design and build project delivery system must be in accordance with the Procurement Code and applicable State of New Mexico regulations then in effect. The determination shall be issued only after the central purchasing office has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process: (1) the extent to which the project requirements have been or can be adequately defined; (2) time constraints for delivery of the project; (3) the capability and experience of potential teams with the design and build process; (4) the suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and (5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.
- B. When a determination has been made by the central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect and a contractor properly licensed in New Mexico for the type of work required.

- C. Except as provided in Subsections F and G of this section, for each proposed local public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following: (1) during phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in-house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated, and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria; and (2) during phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest-ranked firm.
- D. Except as otherwise provided, to ensure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate rules applicable to all using agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.
- E. A state agency shall make the decision on a design and build project delivery system for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a design and build project delivery system for a local public works project.
- F. The requirements of Subsections C and D of this section and the minimum construction cost requirement of Subsection A of this section do not apply to a design and build project delivery system and the services procured for the project if: (1) the maximum allowable construction cost of the project is four hundred thousand dollars (\$400,000) or less; and (2) the only requirement for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaption for a pre-engineered building or system.
- G. The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect, construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978.

- 12.5 Water Storage Tank Service Contracts. (§ 13-1-152.1) The Village may, by direct negotiation after receiving responses to requests for proposals, enter into a multiyear service contract for the engineering, repair and maintenance of a water storage tank and appurtenant facilities owned, controlled or operated by the Village, provided that the contract for services includes the following provisions:
- A. The Village is not required to make total payments in a single year that exceed the water utility charges received by the Village for that year;
 - B. The work must be performed under the review of a professional engineer licensed in New Mexico who certifies that the work will be performed in compliance with all applicable codes and engineering standards; and
 - C. If, on the date of commencement of the contract, the water storage tank or appurtenant facilities require engineering, repair or service in order to bring the tank or facilities into compliance with federal, state or local requirements, the contractor shall provide the engineering, repair or service and the cost of the work necessary to ensure such compliance shall be itemized separately and charged to the Village in payments spread over a period of not less than three (3) years from the date of commencement of the contract.

13. COST OR PRICING DATA.

13.1 When Required; Certification. (§ 13-1-138; § 13-1-139)

- A. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed twenty-five thousand dollars (\$25,000) and is to be awarded by a method other than competitive sealed bids.
- B. Cost or pricing data shall not be required when (i) the procurement is based on competitive sealed bid; (ii) the contract price is based on established catalogue prices or market prices; (iii) the contract price is set by law or regulation; (iv) the contract is for professional services; or (v) the contract is awarded pursuant to the Public Facility Energy Efficiency and Water Conservation Act (§§ 6-23-1 *et seq.*, NMSA 1978).

13.2 Change Orders or Contract Modifications. (§ 13-1-140; § 13-1-141)

- A. 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, whether or not cost or pricing data was required in connection with the initial award of the contract, when the change order or modification involves aggregate increases or aggregate decreases that are expected to exceed twenty-five thousand dollars (\$25,000).

- B. Notwithstanding the foregoing, submission of cost or pricing data related to change orders or contract modifications shall not be required when unrelated change orders or contract modifications for which cost or pricing data would not be required are consolidated for administrative convenience.
- 133 Certification. (§ 13-1-142) A contractor, actual or prospective, required to submit cost or pricing data shall certify that to the best of his or her knowledge and belief the cost or pricing data submitted was accurate, complete and current as of a specified date.
- 134 Price Adjustment Provision. (§ 13-1-143) Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the Village, including profit or fee, shall be adjusted to exclude any significant sums by which the Village reasonably finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date specified.
- 135 Cost or Price Analysis. (§ 13-1-144) A cost or price analysis may be conducted prior to the award of a contract other than one awarded by competitive sealed bids. A written record of such cost or price analysis shall be made part of the procurement file.
- 136 Audit of Cost or Pricing Data. (§ 13-1-160) The Village may, at reasonable times and places, audit the books and records of any person who has submitted costs or pricing data, to the extent that such books and records relate to such costs and pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required must maintain books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract unless a shorter period is specifically authorized in writing.
- 137 Additional Regulations. (§ 13-1-145) The Village may promulgate additional regulations setting forth principles to be used to determine the allowability of incurred costs for the purpose of reimbursing costs to a contractor.

14. MULTIPLE SOURCE AWARDS.

- 14.1 Limitations on Use. (§ 13-1-153) A multiple source award may be made when awards to two or more bidders or offerors are necessary for adequate delivery of goods or services. Multiple source awards shall not be made when a single award will meet the needs of the Village without sacrifice of economy or service. Multiple source awards shall be limited to the least number of suppliers necessary to meet the requirements of the Village.

- 142 Determination Required. (§ 13-1-154) The chief procurement officer must make a determination setting forth the reasons for a multiple source award.

15. **SMALL PURCHASES.** (§ 13-1-125)

15.1 Small Purchases.

- A. The Villages central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding sixty thousand dollars (\$60,000), excluding applicable state and local gross receipts taxes, in accordance with the applicable small purchase rules adopted by the Village.
- B. Notwithstanding the requirements of Subsection A of this section, the Villages central purchasing office may procure professional services having a value not exceeding sixty thousand dollars (\$60,000), excluding applicable state and local gross receipts taxes, except for the services of landscape architects or surveyors for state public works projects or local public works projects, in accordance with professional services procurement rules promulgated by the Village..
- C. Notwithstanding the requirements of Subsection A of this section, the Village may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000), excluding applicable state and local gross receipts taxes, by issuing a direct purchase order to a contractor based upon the best obtainable price.

- 152 Small Purchases in General. The central purchasing office may procure nonprofessional services, construction, or items of tangible personal property having a value over twenty thousand dollars (\$20,000) but not exceeding sixty thousand dollars (\$60,000), excluding applicable state and local gross receipts taxes, in accordance with the following procedures:

- A. The central purchasing office will solicit bids or quotes from at least three (3) businesses via written requests containing the specifications for the procurement. If three (3) written bids or quotes cannot be obtained, the central purchasing office shall document the reasons and include that documentation, along with the bids or quotations obtained, in the procurement file.
- B. The award for the procurement shall be made to the business offering the lowest acceptable bid or quote. If the lowest bid or quote is deemed unacceptable, the chief procurement officer shall make a written determination stating the reasons it is not acceptable, which shall be included in the procurement file.

- C. The contents of any bid or quote shall not be disclosed to any other business from which the same request for quotation is being solicited until the award is made and the Village has entered into a contract for the procurement.
 - D. The procurement file, including as a minimum the names of the businesses submitting quotations and the dates and amounts of the quotations shall be recorded and maintained as a public record.
- 153 Small Purchases of Professional Services. The central purchasing office may procure professional services having a value not exceeding sixty thousand dollars (\$60,000), excluding applicable state and local gross receipts taxes, except for the services of landscape architects or surveyors for local public works projects, in accordance with the following procedures:
- A. The central purchasing office is encouraged, but is not required, to solicit expressions of interest from three (3) or more potential offerors for the professional services required.
 - B. The central purchasing office shall negotiate a contract for the required services with the preferred contractor at a fair and reasonable price to the Village.
 - C. If more than one potential offeror is contacted, the contents of any written or oral offer from one business shall not be disclosed to any other business until the award is made and the Village has entered into a contract for the procurement.
 - D. The procurement file, including as a minimum the names of the businesses contacted and the dates and general terms of any offers received, shall be recorded and maintained as a public record.
- 154 Examination of State Offeror List. Before making any small purchase, the central purchasing office is encouraged, but not required, to examine the state purchasing office's current offeror list, if any, for the services, construction or items of tangible personal property needed.
- 155 No Artificial Division of Procurements. Procurement items shall not be artificially divided so as to constitute a small purchase or multiple small purchases.

16. SOLE SOURCE OR EMERGENCY PROCUREMENTS.

16.1 Sole Source Procurements.

- A. Conditions for use. (§ 13-1-126) A contract may be awarded without competitive sealed bids or competitive sealed proposals regardless of the estimated cost when the chief procurement officer 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.
- B. Due diligence. The chief procurement officer shall use due diligence in determining the basis for the sole source procurement, including reviewing available sources and consulting the using department, and shall include his or her written determination in the procurement file.
- C. Negotiations. The chief procurement officer or central purchasing office shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to the Village.
- D. Specifications. The central purchasing office shall not circumvent competition by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.
- E. Notice of intent to award. (§ 13-1-126.1) At least thirty (30) days before a sole source contract is awarded, the central purchasing office shall post notice of the intent to award the sole source contract on the Village web site. The notice shall identify at a minimum:
 - 1) The parties to the proposed contract;
 - 2) The nature and quantity of the service, construction or item of tangible personal property being contracted for; and
 - 3) The contract amount.
- F. Protest. Any qualified potential contractor who was not awarded a sole source contract may protest to the central purchasing office. The protest shall

be submitted in writing within fifteen (15) calendar days of the notice of intent to award a contract being posted by the central purchasing office.

- G. Additional notice prior to award. (§ 13-1-128) Prior to the award of a sole source procurement contract, the central purchasing office shall provide to the state department of information technology for posting on the sunshine portal, forward to the state legislative finance committee, and post on the Village web site:
- 1) The contractor's name and address;
 - 2) The amount and term of the contract;
 - 3) A listing of the services, construction or items of tangible personal property procured under the contract;
 - 4) A statement that the contract will be a sole source procurement contract; and
 - 5) The justification for the sole source procurement method.

162 Emergency Procurements. (§ 13-1-127)

- A. Conditions for use. The central purchasing office may make emergency procurements when there exists a threat to public health, welfare, safety or property requiring procurement under emergency conditions; provided that emergency procurements shall be made with such competition as is practicable under the circumstances.
- B. Definition of emergency condition. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, fires, epidemics, riots, acts of terrorism, equipment failures or similar events and includes the planning and preparing for an emergency response. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten (i) the functioning of government; (ii) the preservation or protection of property; or (iii) the health or safety of any person.
- C. Heavy road equipment. Emergency procurements shall not include the purchase or lease purchase of heavy road equipment.
- D. Due diligence. The central purchasing office shall use due diligence in determining the basis for the emergency procurement and for the selection of the particular contractor. The determination shall be in writing and included in the procurement file.

E. Notice after award. (§ 13-1-128) Within three (3) business days of awarding an emergency procurement contract, the central purchasing office shall post the following information on the Village web site:

- 1) The contractor's name and address;
- 2) The amount and term of the contract;
- 3) A listing of the services, construction or items of tangible personal property procured under the contract;
- 4) A statement that the contract was awarded as an emergency procurement; and
- 5) The justification for the emergency procurement method.

F. Annual reporting. Money expended for planning and preparing for an emergency response shall be accounted for and reported to the state legislative finance committee and the department of finance and administration within sixty (60) days after the end of each fiscal year.

163 Records of Sole Source and Emergency Procurements. (§ 13-1-128) The central purchasing office shall maintain, for a minimum of three (3) years, records of sole source and emergency procurements. The record of each such procurement is a public record and shall contain, as a minimum:

- 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;
- D. Whether the contract was a sole source or emergency procurement contract; and
- E. The justification for the procurement method.

164 Applicability of Other Laws. Notwithstanding the nature of a sole source or emergency procurement, other applicable laws apply. For example, and not by way of limitation, a construction contract over sixty thousand dollars (\$60,000) is subject to the state minimum wage rates under Section 13-4-11, NMSA 1978, and any construction contract over twenty-five thousand dollars (\$25,000) requires performance and payment bonds under Section 13-4-18, NMSA 1978. The central purchasing office shall advise emergency contractors that these requirements will

apply and that a minimum wage rate determination and delivery of required bonds must be accomplished at the earliest practicable opportunity.

17. OTHER TYPES OF PROCUREMENTS

17.1 Procurement under Existing Contracts (§ 13-1-129)

- A. The central purchasing office may contract for services, construction or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:
 - 1) At the price equal to or less than the contractor's current federal supply contract price (GSA), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the Village and the purchase order adequately identifies the contract relied upon; or
 - 2) With a business which has current exclusive or nonexclusive price agreement with the state purchasing agent or a central purchasing office (as determined in the Procurement Cod) for the item, services or construction meeting the same standards and specifications as the items to be procured if: (i) the quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and (ii) the purchase order adequately identifies the price agreement relied upon.
- B. The central purchasing office shall retain for public inspection and for the use of auditors a copy of each federal supply contract or price agreement relied upon to make purchases without seeking competitive bids or proposals.

172 Recycled Content Goods. (§ 13-1-135.1) Whenever its price, quality, quantity, availability and delivery requirements are met, the central purchasing office shall purchase recycled content goods through contracts established by the state purchasing division or other central purchasing offices.

173 Cooperative Procurement (§ 13-1-135)

- A. The central purchasing office with the approval of the Village Council may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of 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. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which the purpose will be accomplished. Any power exercised under a cooperative

procurement agreement entered into pursuant to this subsection shall be limited to the central purchasing authority common to the contracting parties, even though one or more of the contracting parties may be located outside this state. An approved and signed copy of all cooperative procurement agreements entered into pursuant to this subsection shall be filed with the state purchasing agent.

- B. Any cooperative procurement agreement providing for mutually held funds or for other terms and conditions involving public funds or property shall be entered into pursuant to the provision of the Joint Powers Agreement Act (Section 11-1-1 *et seq.*, NMSA 1978).
- C. The central purchasing office may cooperate by agreement with the state purchasing agent in obtaining contracts or price agreements, and such contract or price agreed prices shall apply to purchase orders subsequently issued under the agreement.

17.4 Purchases from Anti-Poverty Program Businesses. (§ 13-1-130)

- A. The central purchasing office may negotiate a contract for materials grown, processed or manufactured in New Mexico by small businesses, cooperatives, community self-determination corporations or other similar enterprises designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or private philanthropy.
- B. Prior to negotiation a contract under this Section 17.4, the chief procurement officer shall make a determination of the reasonableness of the price and the quality of the materials and shall determine that the public interest will best be served by the procurement.

17.5 Small Business Assistance. (§§ 13-1-184 through 13-1-186)

- A. It is the policy of the State to encourage small businesses to do business with municipalities.
- B. 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.
- C. The central purchasing office is authorized to make special provisions for progress payments to encourage procurement from small businesses, provided such provisions do not result in payments being made prior to receipt of the items of tangible personal property, construction or services being paid for.

- D. The central purchasing office may reduce bid bond, performance bond or payment bond requirements, except for construction contract performance and payment bonds, to encourage procurement from small businesses.

17.6 Procurements under Corrections Industries Act. (§ 13-1-189) The central purchasing office may, but is not required to, purchase items of tangible personal property and services offered pursuant to the provisions of the Corrections Industries Act (§§ 33-8-1 *et seq.*, NMSA 1978).

17.7 Used Items. (§ 13-1-155; § 13-1-156)

- A. Procurement of used items. The central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds five thousand dollars (\$ 5,000), shall request bids as though the items were new, adding specifications that permit used items under conditions to be outlined in the bid specifications, which shall include but are not limited to requiring a written warranty for at least ninety (90) days after date of delivery and an independent “certificate of working order” by a qualified mechanic or appraiser.

B. Trade or exchange of used items.

- 1) When trading in or exchanging used items of tangible personal property the estimated value of which exceeds five thousand dollars (\$ 5,000) as part-payment on the procurement of new items of tangible personal property, the central purchasing office shall (i) have an independent appraisal made of the items to be traded in or exchanged; or (ii) obtain two written quotes for purchase of the property at a specified price. An 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.

The award shall be based upon the net bid. Bidders or offerors shall compute their net bid or offer by deducting the appraised value or highest quote of the items to be traded in or exchanged from the gross bid or offer on the new items of tangible personal property to be procured. If an amount offered in trade is less than the appraised value or the highest quote but is found to be a fair reflection of the current market, representative of the condition of the items of tangible personal property and in the best interest of the agency, the bid or offer may be accepted. Documentation of the terms of acceptance shall be in writing, shall be made a part of the procurement file and shall be a public record.

18. ETHICAL CONDUCT.

18.1 Unlawful Employee Participation. (§ 13-1-190)

- A. Participation prohibited. No employee of the Village (as defined in Section 2.8) may 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. "Immediate family" for this purpose means a spouse, children, parents, brothers or sisters.
- B. Exception. An employee or a family member who holds a financial interest in a disclosed blind trust is not deemed to have a financial interest with regard to matters pertaining to that trust.

18.2 Contemporaneous Employment Prohibited. (§ 13-1-193) No employee of the Village who is participating directly or indirectly in the procurement process may become or be, while employed by the Village, an employee of any person or business contracting with the Village.

18.3 Waiver. (§ 13-1-194) The Village Council may grant a waiver from unlawful employee participation under Section 18.1 or contemporaneous employment under Section 18.2 if the Village Council determines that:

- A. The contemporaneous employment or financial interest of the employee has been publicly disclosed;
- B. The employee will be able to perform his or her procurement functions without actual or apparent bias or favoritism; and
- C. The employee participation is in the best interest of the Village.

18.4 Use of Confidential Information. (§ 13-1-195) No employee or former employee of the Village may knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

18.5 Bribes, Gratuities and Kickbacks. (§ 13-1-191) All Village contracts and solicitations therefore shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

18.6 Contingent Fees. (§ 13-1-192)

- A. Contingent fees prohibited. No person or business may be retained nor may a business retain a person or business to solicit or secure a contract with the Village upon an agreement or understanding that the compensation is contingent upon the award of the contract, except for retention of bona fide

employees or bona fide established commercial selling agents for the purpose of securing business.

- B. Exception in anticipation of grants or loans. Persons or businesses may be employed by a local public body, including the Village, to provide professional services to the local public body in anticipation of the receipt of federal or state grants or loans.

18.7 Campaign Contribution Disclosure. (§ 13-1-191.1)

- A. This section 18.7 applies to prospective contractors with the Village.
- B. A prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the Village during the two (2) years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two (2) years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$ 250) over the two-year period.
- C. The disclosure shall indicate the date, the amount, the nature and the purpose of the contribution. The disclosure statement shall be on the form developed and made available electronically by the Department of Finance and Administration to all state agencies and local public bodies. The Village shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor for each competitive sealed proposal, sole source or small purchase contract. The form shall be filed with the Village as part of the competitive sealed proposal, or in the case of a sole source or small purchase contract, on the date on which the contractor signs the contract.
- D. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.
- E. A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

F. A solicitation or proposed award for a proposed contract may be canceled pursuant to Section 13-1-181, NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182, NMSA 1978 if:

- 1) A prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or
- 2) A prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

G. As used in this Section 18.7:

- 1) "Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal and, specifically, includes the Mayor and members of the Village Council;
- 2) "Family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (i) a prospective contractor, if the prospective contractor is a natural person; or (ii) an owner of a prospective contractor;
- 3) "Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals;
- 4) "Prospective contractor" means a person or business that is subject to the competitive sealed proposal process or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract; and
- 5) "Representative of the prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

19. PROTESTS.

19.1 Right to Protest. (§ 13-1-172)

- A. Who may protest. Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract by the Village may protest to the central purchasing office.
- B. What may be protested. Protestants may file a protest on any phase of a solicitation or award, including specification preparation, bid solicitation, award, cancellation of solicitation, bid rejection or other matters arising from a solicitation or award of a contract.

19.2 Filing of Protest.

- A. Time of protest. A protest must be submitted to the Village within fifteen (15) calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence.
- B. Content of protest. A protest must be in writing and addressed to the chief procurement officer or the central purchasing office. The protest shall, as a minimum:
 - 1) Include the name and mailing address of the protestant;
 - 2) Include the solicitation number, if any;
 - 3) Contain a statement of the grounds for the protest;
 - 4) Include supporting exhibits, evidence 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 or relief requested from the central purchasing office.
- C. Pleadings. No formal pleading is required to initiate a protest. The protest and any other submittals should be concise, logically arranged, and direct.

19.3 Procurements after Protest. (§ 13-1-173)

- A. Contract not awarded. In the event of a timely protest, if no contract has been awarded, the central purchasing office shall not proceed further with the procurement unless the chief procurement officer makes a written determination that the award of the contract is necessary to protect the substantial interests of the Village, including the basis for the determination.

For purposes of this Section 19.3, the point in time at which a contract is awarded is that point at which a legally enforceable contract is created.

- B. Contract awarded. A procurement shall not be halted after a contract has been awarded merely because a protest has been filed. After a contract has been awarded, the chief procurement officer, with the agreement of the Mayor, may halt a procurement in exceptional circumstances for good cause shown.

19.4 Authority and Procedure to Resolve. (§ 13-1-174)

- A. Authority. The chief procurement officer or a designated hearing officer has the authority to take any action reasonably necessary to resolve a protest, in accordance with these Procurement Regulations. The Village and the officers of the Village have no authority to award money for damages or attorneys' fees.
- B. Notice. The central purchasing office shall give notice of the protest to the contractor if award has been made and to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest or appeal is denied. The central purchasing office shall provide a copy of the notice to the using department. Notice shall be sent by first-class mail or by electronic mail within five (5) business days after receipt of the protest.
- C. Parties. The protestant and every bidder or offeror who receives notice pursuant to the preceding paragraph will automatically be a party to any further proceedings before the Village. In addition, any person or business may move to intervene at any time during the course of the proceedings, and intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Intervenor shall accept the status of the proceedings at the time of their intervention, including all prior rulings and previously established time schedules. The Village, the central purchasing office, and Village employees are not parties.
- D. Information and documents. The chief procurement officer or designated hearing officer shall provide that information and documents relevant to the subject matter of the protest are made available to all parties. The chief procurement officer or designated hearing officer may order that parties serve all documents on other parties at the same time they are submitted to the central purchasing office, or may make them available to the parties by other means. However, confidential data, proposals submitted where the contract has not yet been awarded, and other non-public materials shall not be distributed to other parties unless by order of a court of competent jurisdiction.

- E. Responses and replies. Any party, and the using department, may file a response to the protest within fifteen (15) calendar days after notice of the protest is mailed by the central purchasing office. All responses shall be filed with the central purchasing office and a copy shall be contemporaneously served on all parties by mail or other reliable means. The protestant may file a reply to any response within fifteen (15) calendar days from the date of filing of the response. All responses and replies shall include supporting evidence, documents, exhibits, and affidavits. No other filings shall be allowed, except by order of the chief procurement officer or designated hearing officer.
- F. Hearing. Any party may request a hearing before the chief procurement officer or designated hearing officer, such request to be submitted no later than the deadline for filing the last permissible response or reply. The chief procurement officer or designated hearing officer may schedule a hearing, whether or not a request for hearing has been received. Generally, a hearing should be held if the chief procurement officer or designated hearing officer determines that substantial material factual issues are present that cannot be resolved satisfactorily through examination of written documents in the record. If a hearing is held, it shall be as informal as reasonably practicable, but the proceedings shall be recorded and the recording shall be retained in the procurement file until the protest is fully resolved, including any appeals. The chief procurement officer or designated hearing officer is not in any event required to adhere to formal rules of evidence or procedure.
- G. Post-hearing briefs. If a hearing is held, the chief procurement officer or designated hearing officer may, in his or her discretion, permit the parties to file post-hearing briefs within five (5) business days following the hearing.

19.5 Written Determination. (§ 13-1-175)

- A. The chief procurement officer or designated hearing officer shall promptly issue a determination on the protest, which should include:
 - 1) A brief statement of the proceedings and the documents submitted by the parties;
 - 2) Copies of relevant documents and pleadings, to the extent deemed useful for the determination;
 - 3) A statement setting forth findings and fact and conclusions of law, which shall be fully responsive to the allegations of the protest;
 - 4) The decision of the chief procurement officer or designated hearing officer and a statement of the relief granted, if any; and

- 5) A statement informing all parties of the right to appeal to the Village Council as provided in Section 19.7.
- B. All documents and pleadings submitted in the matter shall be retained in the procurement file.
- 19.6 Notice of Determination. (§ 13-1-176) A copy of the determination made by the chief procurement officer or designated hearing officer shall be immediately sent to the protestant and all other parties by first class mail or electronic mail.
- 19.7 Appeal to Village Council.
- A. Any aggrieved party may appeal the determination of the chief procurement officer or designated hearing officer to the Village Council, the governing body of the Village, by filing a notice of appeal with the Village clerk and the central purchasing office within fifteen (15) calendar days after the determination was sent to the parties.
 - B. The aggrieved party shall mail or deliver a copy of the notice of appeal to all other parties and shall certify in the notice of appeal that such service was made.
 - C. The Village Council may decide to consider the appeal, or may decline to hear the appeal. If the Village Council declines to hear the appeal, then the determination of the chief procurement officer or designated hearing officer shall be deemed to be the final decision of the Village, effective on the date of the Village Council's decision declining to hear the appeal, and shall be appealable to the district court in accordance with Sections 13-1-183 and 39-3-1.1, NMSA 1978.
 - D. If the Village Council decides to consider the appeal, a hearing shall be set before the Village Council no later than sixty (60) days after the date the notice of appeal was filed.
 - E. The Village Council may receive additional testimony and evidence and may affirm, reverse or modify the decision of the chief procurement officer or designated hearing examiner. The Village Council may adopt, in whole or in part, the findings of fact and conclusions of law entered by the chief procurement officer or designated hearing examiner, or may adopt findings of fact and conclusions of law modifying or reversing those entered below.
- 19.8 Decision of the Village Council. The Village Council, upon declining to consider an appeal or promptly after the hearing on the appeal, shall issue and mail to the parties a written decision, which shall be the final decision of the Village, appealable to the district court in accordance with Sections 13-1-183 and 39-3-1.1, NMSA 1978.

19.9 Relief Prior to Award. (§ 13-1-181) If, prior to award, there is 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.

19.10 Relief after Award. (§ 13-1-182)

A. If, after an award, there is a determination that a solicitation or award of a contract is in violation of law, but that the business awarded the contract did not act fraudulently or in bad faith, then:

- 1) The contract may be ratified, affirmed or revised to comply with law, provided that the chief procurement officer makes a written determination that doing so is in the best interest of the Village: or
- 2) 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.

B. If, after an award, there is 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.

19.11 Relief Not Allowed. When a protest is sustained and the protestant should have been awarded the contract but was not, the central purchasing office with the approval of the Village Council may award protestant the reasonable costs incurred in connection with the solicitation, including bid preparation costs. No other award of money damages or attorneys' fees is allowed, except as specifically provided in Section 19.10(A) (2).

20. DEBARMENT OR SUSPENSION.

20.1 Authority. (§ 13-1-177)

A. The chief procurement officer, after reasonable notice to the business involved, has the authority to recommend to the Village Council the suspension or debarment of a business for cause from consideration for award of contracts, other than contracts for professional services.

B. Debarment shall be for a period of not more than three (3) years, and suspension shall be for a period of not more than three (3) months.

20.2 Causes for Debarment or Suspension. (§ 13-1-178)

- A. The causes for debarment or suspension occurring within three (3) years of the date final action on a procurement is taken include but are not limited to the following:
- 1) Criminal conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;
 - 2) Civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;
 - 3) Conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving stolen property or for violation of federal or state tax laws;
 - 4) Conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;
 - 5) Criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;
 - 6) Civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;
 - 7) Civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act (§§ 57-12-1 *et seq.*, NMSA 1978);
 - 8) Violation by a bidder, offeror or contractor of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the chief procurement officer to be so serious as to justify suspension or debarment action, including (i) willful failure to perform in accordance with one or more contracts; or (ii) a history of failure to perform or of unsatisfactory performance of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

- 9) Any other cause that the chief procurement officer determines to be so serious and compelling as to affect responsibility as a contractor; or
- 10) For a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code.

B. As used **in this Section 20.2**, the terms “bidder,” “offeror” and “contractor” include principals, officers, directors, owners, partners and managers of the bidder, offeror or contractor.

20.3 Procedure.

- A. If the chief procurement officer determines to recommend debarment or suspension of a business to the Village Council, the chief procurement officer shall present to the Village Clerk a written recommendation for debarment or suspension, along with all relevant documents or other information supporting the proposed debarment or suspension. A copy of the recommendation and supporting documents shall be sent or delivered to the business at the same time they are presented to the Village Clerk.
- B. Upon presentation of a recommendation for debarment or suspension to the Village Clerk, the Village Council shall set the matter for hearing within sixty (60) days, and shall notify the central purchasing office and the affected business of the date, time and place of the hearing.
- C. At hearing, the Village Council shall accept testimony and evidence by and on behalf of the chief procurement officer and the affected business, and shall render a decision whether to debar or suspend the business and, if so, for what period of time.

20.4 Determination. (§ 13-1-179) As soon as practicable after the hearing, the Village Council shall adopt written findings of fact and conclusions of law supporting and declaring its determination of the matter, and stating the reasons for the action taken by the Village Council. The determination of the Village Council shall include notice that it is the final decision of the Village on the matter, appealable in accordance with Sections 13-1-183 and 39-3-1.1, NMSA 1978.

20.5 Notice. (§ 13-1-180) The Village Clerk shall promptly send notice of the Village Council’s decision to the affected business, and shall include with such notice a statement informing the recipient of its right to appeal to the district court in accordance with Sections 13-1-183 and 39-3-1.1, NMSA 1978.

20.6 Continuation of Current Contracts. (§ 13-1-180.1)

- A. Notwithstanding the debarment, suspension or proposed debarment of a person, the central purchasing office may continue contracts or subcontracts

In existence at the time that the person is debarred, suspended or proposed for debarment unless the Village Council directs otherwise.

- B. Unless the Village Council issues a written determination based on compelling reasons holding otherwise, a person that has been debarred or suspended or whose debarment has been proposed shall not, after the date that the person is debarred, suspended or proposed for debarment:
 - 1) Incur financial obligations, including those for materials, services and facilities, unless the person is specifically authorized to do so under the terms and conditions of the person's contract; or
 - 2) Extend the duration of the person's contract by adding new work, by exercising options or by taking other action.
- C. Unless pursuant to written authorization of the Village Council based on compelling reasons, the central purchasing office shall not consent to enter a subcontract subject to the Procurement Code with a person that has been debarred, suspended or proposed for debarment.
- D. A person that has entered into a Village contract subject to the Procurement Code shall not subcontract with another person that has been debarred, suspended or proposed for debarment without the written authorization of the chief procurement officer. A person that wishes to subcontract with another person that has been debarred, suspended or proposed for debarment shall make a request to the central purchasing office that includes the following:
 - 1) The name of the proposed subcontractor;
 - 2) Information about the proposed subcontractor's debarment, suspension or proposed debarment;
 - 3) The requester's compelling reasons for seeking a subcontract with the proposed subcontractor; and
 - 4) A statement of how the person will protect the interests of the Village considering the proposed subcontractor's debarment, suspension or proposed debarment.

The chief procurement officer will determine whether to grant the request based on the information provided by the requester, other information available to the chief procurement officer, and any direction of the Mayor or Village Council.

21. LOCAL PUBLIC WORKS PROJECT (CONSTRUCTION) MATTERS.

21.1 Performance and Payment Bonds. (§ 13-4-18)

- A. When a construction contract is awarded in excess of twenty-five thousand dollars (\$25,000), performance and payment bonds as described in this Section 21.1 shall be delivered to the Village and shall become binding on the parties upon the execution of the contract.
- B. If a contractor fails to deliver the required performance and payment bonds, the contractor's bid shall be rejected and its bid security shall be enforced to the extent of actual damages.
- C. Performance bonds. The contractor shall deliver a performance bond satisfactory to the Village as determined by the chief procurement officer, executed by a surety company authorized to do business in New Mexico and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the Village, in an amount equal to one hundred percent (100%) of the price specified in the contract; provided, however, that the Village Council on the recommendation of the chief procurement officer may reduce the amount of the performance bond required prior to solicitation to not less than fifty percent (50%) of the contract price if it is determined to be less costly or more advantageous to the Village to self-insure a part of the performance of the contractor.
- D. Payment bonds. The contractor shall deliver a payment bond satisfactory to the Village as determined by the chief procurement officer, executed by a surety company authorized to do business in this state and said surety to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or the local governing authority, in an amount equal to one hundred percent (100%) of the price specified in the contract, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract; provided, however, that the Village Council on the recommendation of the chief procurement officer may reduce the amount of the payment bond required prior to solicitation of not less than fifty percent (50%) of the contract price if it is determined that it is in the best interest of the Village to do so. Factors to be considered in order to make such a determination include, but are not limited to:
 - 1) The value and number of subcontracts to be awarded by the contractor; and
 - 2) The value of the contract.

- E. The Village Council on the recommendation of the chief procurement officer may require a performance bond, payment bond or other security in addition to the bonds described above, or in circumstances other than those described above, including for contracts under twenty-five thousand dollars (\$25,000), in the Village Council's discretion.

21.2 Minimum Wage Rates. (§ 13-4-11)

- A. Every construction contract for public works in excess of sixty thousand dollars (\$60,000) must contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics. Minimum wage rates are determined by the labor relations division of the New Mexico department of workforce solutions.
- B. The minimum wage rates established for the project must be posted by the contractor in a prominent and easily accessible place at the work site.

21.3 Prompt Payment. (§§ 57-28-1 through 57-28-8)

- A. Prompt payment generally. All construction contracts must provide that payment for amounts due shall be made within twenty-one (21) calendar days after the Village receives an undisputed request for payment. If the Village receives an improperly completed invoice, the Village shall notify the sender of the invoice within seven (7) business days after receipt, stating in what way the invoice is improperly completed, and the Village has no duty to pay on the improperly completed invoice until it is resubmitted as complete.
- B. Grant-funded projects. The Village may make payment within forty-five (45) calendar days after submission of an undisputed request for payment if:
 - 1) The construction contract specifically provides in a clear and conspicuous manner for a payment later than twenty-one (21) days after submission of an undisputed request for payment; and
 - 2) **Each page** of the plans, including bid plans and construction plans, bears a legend stating, in clear and conspicuous type, the number of days allowed for payment in language substantially similar to the following:

“Notice of Extended Payment Provision: This contract allows the owner to make payment within _days after submission of an undisputed request for payment.”
- C. Limitation on retainage. When making payments, the Village may not retain, withhold, hold back or in any other manner not pay amounts owed to the contractor for work performed.

- D. Final payment. Ten (10) business days after certification of project completion, the Village shall pay any amounts remaining due to the contractor under the terms of the contract upon presentation of the following:
- 1) A properly executed release and duly certified voucher for payment;
 - 2) A release, if required, of all claims and claims of lien against the Village arising under and by virtue of the contract other than such claims of the contractor, if any, as may be specifically excepted by the contractor from the operation of the release in stated amounts to be set forth in the release; and
 - 3) Proof of completion.

21.4 Public Works Mediation. (§§ 13-4C-1 through 13-4C-11)

- A. Mediation required. The Public Works Mediation Act (§§ 13-4C-1 through 13-4C-11, NMSA 1978) requires that all disputes related to the performance of a local public works project shall be addressed by mediation under that Act, and the procedures of the Public Works Mediation Act must be exhausted before seeking judicial relief in a court of law.
- B. Exception for arbitration. A dispute that arises under an arbitration clause of a contract for a public works project that includes a clause in the contract requiring arbitration is exempt from the provisions of the Public Works Mediation Act.
- C. Federal funds involved. When a public works project involves the expenditure of federal funds, the mediation process shall be conducted in accordance with mandatory applicable federal law and regulations, which shall prevail over any inconsistent provisions in the Public Works Mediation Act.

