8.6 AMENDMENTS TO THE REQUEST FOR PROPOSALS
A) Prior to submission of proposals, amendments to the RFP may be made only as
follows:
   i) Form. An amendment to the RFP shall be identified as such and shall require that
      offerors acknowledge its receipt. The amendment shall refer to the portions of the
      RFP it amends.
   ii) Distribution. Amendments shall be sent to all prospective offerors known to have
       received the RFP.
   iii) Timeliness. Amendments shall be distributed within a reasonable time to allow
       prospective offerors to consider them in preparing their bids. If the time and date
       set for receipt of bids will not permit such preparation, the time shall be increased
       to the extent possible in the amendment or, if necessary, by telegram or telephone
       or by other electronic means and confirmed in the amendment.
   iv) Use of amendments. Amendments should be used to:
       a) make any changes in the RFP, such as changes in scope of services, opening
          dates, etc.;
       b) correct defects or ambiguities; or
       c) furnish to other offerors information given to one offeror if such information
          will assist the other offerors in submitting offers or if the lack of such
          information would prejudice the other offerors.
B) After submission of proposals, amendments to the RFP shall 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 procurement officer, a
   contemplated amendment will significantly change the nature of the procurement, the
   RFP shall be cancelled and a new RFP issue.

8.7 MODIFICATION OR WITHDRAWAL OF PROPOSALS
Proposals may be modified or withdrawn prior to the established due date only in
accordance with this policy. 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-list offerors.

8.8 LATE PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS
Any proposal, withdrawal, or modification received after the established due date at the
place designated for receipt of proposals is late, and may only be considered in
accordance with this Policy.

8.9 RECEIPT AND OPENING OF PROPOSALS
A) Proposals and modifications shall be time-stamped upon receipt and held in a secure
   place until the established due date.
B) Proposals shall not be opened publicly and shall not be open to public inspection until
   after an offeror has been selected for award of a contract. An offeror may request in
   writing nondisclosure of confidential data. Such data shall accompany the proposal
and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

8.10 COMPETITIVE SEALED PROPOSALS: EVALUATION FACTORS
The request for proposals shall state the relative weight to be given to the factors in evaluating proposals. Numerical rating systems are required for procurements of information systems resources.

8.11 COMPETITIVE SEALED PROPOSAL: NEGOTIATIONS
A) Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. This section shall not apply to architects, engineers, landscape architects and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.

8.12 COMPETITIVE SEALED PROPOSALS: DISCLOSURE; RECORD
The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

8.13 COMPETITIVE SEALED PROPOSALS: AWARD
The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the request for proposals.

9.0 PROCUREMENT OF PROFESSIONAL SERVICES

9.1 PROCUREMENT OF PROFESSIONAL SERVICES; SELECTION AND AWARD
The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the County, taking into consideration the evaluation factors set forth in the request for proposals.

9.2 PROCUREMENT OF PROFESSIONAL SERVICES; PROFESSIONAL TECHNICAL ADVISORY ASSISTANCE
A) The County shall have appointed to it or have the appointment waived by the appropriate New Mexico professional society listed in Subsection D of this section, an individual to serve as a professional technical advisor. The professional technical advisor shall be a senior member of an architectural, engineering, surveying or landscape architectural business with experience appropriate to the type of local
public works project proposed and shall be a resident licensed architect, professional engineer, surveyor or landscape architect in the state who possesses at least ten years of experience in responsible charge as defined in the Architectural Act (Chapter 61, Article 15 NMSA 1978), the Engineering and Surveying Practice Act (Chapter 61, Article 23 NMSA 1978) or the Landscape Architects Act (Chapter 61, Article 24B NMSA 1978), respectively.

B) The professional technical advisor to the County shall serve as an agent of the County and shall be indemnified and held harmless. He may be reimbursed as provided in the Per Diem and Mileage Act (10-8-1 to 10-8-8 NMSA 1978) for per diem and mileage in connection with his service as a professional technical advisor and shall receive no other compensation, perquisite or allowance.

C) The duties and responsibilities of the professional technical advisor shall include but may not be limited to the following activities:

i) Advise the local public body in the development of requests for proposals for engineering, surveying, architectural or landscape architectural services procured by the local public body;

ii) Advise the local public body in giving public notice of requests for proposals:

iii) Advise in the evaluation and selection of professional businesses to perform services for the local public body, based upon demonstrated competence and qualification for the type of professional services required; and

iv) Assist in contract negotiations.

D) Professional technical advisors shall be obtained through the professional technical advisory board, a consortium of the consulting engineers council of New Mexico and the professional engineers in private practice division of the New Mexico society of professional engineers; the New Mexico professional surveyors; the New Mexico society of architects; or the New Mexico chapter of the American society of landscape architects.

E) No individual or firm whose principal officer, director or employee serves as a professional technical advisor to a local public body shall be permitted to submit a proposal to the local public body during the period in which the individual, principal, officer, director or employee serves as a professional technical advisor to the local public body; however, nothing in this section shall prohibit an individual or firm from submitting a proposal to any County in which the individual or a principal, officer, director or employee is not serving as a professional technical advisor.

9.3 CONTRACTS FOR THE DESIGN AND INSTALLATION OF MEASURES FOR THE CONSERVATION OF NATURAL RESOURCES

The County may solicit competitive sealed proposals for a contract that provides for both the design and installation of measures the primary purpose of which is to conserve natural resources, including guaranteed utility savings contracts entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act (6-23-1 NMSA 1978).
9.4 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS; ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS; ADDITIONAL REQUIREMENTS
In addition to compliance with the requirements of Sections 13-1-112 through 13-1-114 and 13-1-116 through 13-1-118 NMSA 1978, a County, when procuring the services of architects, landscape architects, engineers or surveyors for public works projects, shall comply with Sections 13-1-120 through 13-1-124 NMSA 1978.

9.5 PUBLIC WORKS PROJECT DELIVERY SYSTEM; DESIGN AND BUILD PROJECTS AUTHORIZED
A) Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the Procurement Officer makes a determination in writing that it is appropriate and in the best interest of the County to use the system on a specific project with a maximum allowable construction cost of the more than ten million dollars ($10,000,000). The determination shall be issued only after the Procurement Officer 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:
   i) The extent to which the project requirements have been or can be adequately defined;
   ii) Time constraints for delivery of the project;
   iii) The capability and experience of potential teams with the design and build process;
   iv) The suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and
   v) 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 Procurement Officer 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 County 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:
   i) 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
ii) 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 provided in Subsections F and G of this section, 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) The County shall make the decision on a design and build project delivery system for a County public works project. A state agency shall not make the decision on a design and build project delivery system for a County 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 services procured for the project if:
   i) The maximum allowable construction cost of the project is four hundred thousand dollars ($400,000) or less; and
   ii) The only requirements for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaptation for a preengineered building 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.

9.6 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS: ARCHITECTS; ENGINEERS; LANDSCAPE ARCHITECTS; SURVEYORS; SELECTION PROCESS

A) For each proposed County or construction management contract, the architect, engineer, landscape architect, construction management and surveyor selection committee, or local selection committee, as appropriate, shall evaluate statements of qualifications and performance data submitted by at least three 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.

B) The appropriate selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by the using agency authorizing the project:
   i) Specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;
ii) 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;

iii) 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;

iv) Proximity to or familiarity with the area in which the project is located;

v) The amount of design work that will be produced by a New Mexico business within this state;

vi) The volume of work previously done for the entity requesting proposals which is not seventy-five percent 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; and

vii) Notwithstanding any other provisions of this subsection, price may be considered in connection with construction management contracts, unless the services are those of an architect, engineer, landscape architect or surveyor.

C) Notwithstanding the requirement of Subsections A and B of this section, if fewer than three businesses have submitted a statement of qualifications for a particular project, the appropriate committee may:

i) Rank in order of qualifications and submit to the secretary or local governing authority of the public body for award those businesses which have submitted a statement of qualifications; or

ii) Recommend termination of the selection process pursuant to Section 13-1-131 NMSA 1978. Any proposal received in response to the terminated solicitation is not public information and shall not be made available to competing offerors.

D) 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 appropriate 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 days after an award is made.

9.8 COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS: AWARD OF ARCHITECT; ENGINEERING, LANDSCAPE ARCHITECT AND SURVEYING CONTRACTS

The designee of a local public body shall 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 designee of a local public body 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 designee of a local public body 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. The designee of a local public body shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee of a local public body shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the designee of a local public body shall formally terminate negotiations with that business. The designee of the local public body shall then undertake negotiations with the third most qualified business. Should the designee of a local public body by unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the secretary or his designee or the designee of a local public body shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated. The representative of a local public body shall publicly announce the business selected for award.

9.9 ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL AND SURVEYING CONTRACTS
A) All contracts between a local public body and an architect for the construction of new buildings or for the remodeling or renovation of existing buildings shall contain the provision that all designs, drawings, specifications, notes and other work developed in the performance of the contract are the sole property of the local public body.
B) All documents, including drawings and specifications, prepared by the architect, engineer, landscape architect or surveyor are instruments of professional service. If the plans and specifications developed in the performance of the contract shall become the property of the contracting agency upon completion of the work, the contracting agency agrees to hold harmless, indemnify and defend the architect, engineer, landscape architect or surveyor against all damages, claims and losses, including defense costs, arising out of any reuse of the plans and specifications without the written authorization of the architect, engineer, landscape architect or surveyor.

10.0 BID SECURITY

10.1 BID SECURITY: REQUIREMENTS
Bid security shall be required of bidders for construction contracts procured by competitive sealed bid when the price is estimated by the procurement officer to exceed twenty-five thousand dollars ($25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety company authorized to do business in this state; or the equivalent in cash, or otherwise supplied in a form satisfactory to the County.
10.2 DIRECTED SURETYSHIP PROHIBITED: PENALTY
A. Except to the extent necessary to ensure that a surety company meets the requirements of Subsection A of Section 13-4-18 NMSA 1978, an employee of the state or its political subdivisions, or a person acting or purporting to act on behalf of that employee, shall not require a bidder or an offeror in a procurement for a construction contract pursuant to the Procurement Code (13-1-28 NMSA 1978) to make application or furnish financial data for a surety bond or to obtain a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid or proposal.
B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

10.3 BID SECURITY: REJECTION OF BIDS
A. When the invitation for bids requires bid security, noncompliance by the bidder requires that the bid be rejected.
B. If a bidder is permitted to withdraw its bid before award, no action shall be made against the bidder or the bid security.

10.4 BID AND PERFORMANCE BONDS: ADDITIONAL REQUIREMENTS
A. Bid and performance bonds or other security may be required for contracts for items of tangible personal property or services as the Procurement Officer deems necessary to protect the interests of the County. Any such bonding requirements shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.
B. As to performance and payment bonds for construction contracts, see the requirements of Section 13-4-18 NMSA 1978.

10.5 BONDING OF SUBCONTRACTORS
A subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor’s contract for work to be performed on a project is fifty thousand dollars ($50,000) or more.

11.0 MULTIPLE SOURCE AWARD

11.1 MULTIPLE SOURCE AWARD: LIMITATIONS ON USE
A Multiple Source Award may be made pursuant to Section 13-1-110 NMSA 1978 of the Procurement code when awards to two or more bidders or offerors are necessary for adequate delivery or service. Multiple source awards shall not be made when a single award will meet the needs of the County without sacrifice of economy or service. Awards shall be limited to the least number of suppliers in one geographical area necessary to meet the requirements of the County. A multiple source award shall be based upon the lowest responsible bid or proposal received in each geographical area.
11.2 MULTIPLE SOURCE AWARD: DETERMINATION REQUIRED
The Procurement Officer shall make a determination setting forth the reasons for a multiple source award.

12.0 REJECTION OR CANCELLATION OF BIDS OR PROPOSALS

12.1 CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS
A) Prior to opening:
   i) As used in this section, "opening" means the date set for opening of bids or receipt of proposals.
   ii) Prior to opening, a solicitation may be canceled in whole or in part when the Procurement Officer makes a written determination that such action is in the state's best interest for reasons including, but not limited to:
       a) the services, construction, or items of tangible personal property are no longer required;
       b) the County no longer can reasonably expect to fund the procurement; or
       c) proposed amendments to the solicitation would significantly change the nature of the procurement.
   iii) When a solicitation is canceled prior to opening, notice shall be sent to all businesses solicited. The notice shall:
       a) identify the solicitation;
       b) briefly explain the reason for cancellation; and
       c) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar services, construction, or items of tangible personal property.

B) After opening.
   i) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the state purchasing agent or central purchasing office makes a written determination that such action is in the state's best interest for reasons including but not limited to:
       a) all of the bids and proposals are nonresponsive;
       b) the services, construction, or items of tangible personal property are no longer required;
       c) ambiguous or otherwise inadequate specifications were part of the solicitation;
       d) the solicitation did not provide for consideration of all factors of significance to the using agency;
       e) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
       f) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
       g) 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.
ii) A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Paragraph (3) of Subsection A of this section.

12.2 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:
A) Reasons for rejection.
   i) Bids. As used in this section, "bid" includes both competitive sealed bids and small purchase quotations. Reasons for rejecting a bid shall include but are not limited to:
      a) the business that submitted the bid is nonresponsible; or
      b) the bid is not responsive; or
      c) 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 IFB.
   ii) Proposals. As used in this section, "proposal" includes both competitive sealed proposals and small purchase offers. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and the County's stated 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 proposals include but are not limited to:
      a) the business that submitted the proposal is nonresponsible; or
      b) the proposal is not responsive; or
      c) the proposed price is clearly unreasonable; or
      d) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.

B) Written determination required. A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the Procurement Officer and made a part of the procurement file. In the case of procurements for information system resources, a written determination which contains the reasons for the rejection of an individual proposal shall be prepared by the Procurement Officer and shall be included as an attachment to the evaluation committee report as a part of the procurement file. Further, a copy of the determination shall also be sent to the nonresponsive offeror.

12.3 REJECTION OR CANCELLATION OF BIDS OR REQUESTS FOR PROPOSALS: NEGOTIATIONS
An invitation for bids, a request for proposals or any other solicitation may be cancelled or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state agency or a local public body. A determination containing the reasons for cancellation shall be made part of the procurement file. If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then a new invitation for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are secured, the Procurement Officer may purchase the
tangible personal property, construction or services in the open market at the best obtainable price.

12.4 IRREGULARITIES IN BIDS OR PROPOSALS
The Procurement Officer may waive technical irregularities in the form of the bid or proposal of the low bidder or offeror which do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offer.

12.5 RESPONSIBILITY OF BIDDERS AND OFFERORS
If a bidder or offeror who otherwise would have been awarded a contract is found not to be a responsible bidder or offeror, a determination that the bidder or offeror is not a responsible bidder or offeror, setting forth the basis of the finding, shall be prepared by the Procurement Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the bidder or offeror is not a responsible bidder or offeror.

12.6 PREQUALIFICATION OF BIDDERS
A business may be pre-qualified by a 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 offers shall include but shall not be limited to such prequalified businesses.

13.0 CONSTRUCTION CONTRACTS

13.1 CONSTRUCTION CONTRACTS: CENTRAL PURCHASING OFFICE
The award and execution of contracts for major construction, including but not limited to roads, bridges, airports, buildings and dams, shall be made by the Board of County Commissioners of the County of Catron. The procurement officer responsible for the procurement shall give notice to prospective bidders pursuant to Section 13-1-10 NMSA 1978.

13.2 CONSTRUCTION CONTRACTS: CONSTRUCTION MANAGEMENT SERVICES
A) A construction management services contract may be entered into for any construction or County public works project when the County makes a determination that it is in the public's interest to utilize 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 as requested by the County.

B) To insure 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 regulations, which shall be adopted by the County and shall be followed by the County when procuring construction management services as authorized in Subsection A of this section.

C) A local public body shall make the decision on a construction management services contract for a County public works project. A state agency shall not make the decision on a construction management services contract for a County public works project.

13.3 CONSTRUCTION CONTRACT: RIGHT TO INSPECT PLANT
A contract or a solicitation therefore may include a provision permitting the County, 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.

14.0 PROCUREMENT UNDER EXISTING CONTRACTS
A) Notwithstanding the requirements of Sections 13-1-102 through 13-1-118 NMSA 1978, the Procurement Officer may contract for services, construction or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:
   i) At a 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 County and the purchase order adequately identifies the contract relied upon; or
   ii) With a business which has a current exclusive or nonexclusive price agreement with the state purchasing agent or a central purchasing office for the item, services or construction meeting the same standards and specifications as the items to be procured if the following conditions are met:
       a) The quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and
       b) The purchase order adequately identifies the price agreement relied upon.

B) The Procurement Officer shall retain for public inspection and for the use of auditors a copy of each federal supply contractor state purchasing agent price agreement relied upon to make purchases without seeking competitive bids or proposals.

15.0 COOPERATIVE PROCUREMENT

15.1 COOPERATIVE PROCUREMENT: AUTHORIZED
A) The County may either participate in, sponsor or administer a cooperative procurement agreement for the procurement of any services, construction or items of tangible personal property with any other state agency, local public body or external procurement unit in accordance with an agreement entered into and approved by the governing authority of each of the state agencies, local public bodies or external
procurement units involved. 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. A cooperative procurement agreement entered into pursuant to this subsection is limited to the procurement of items of tangible personal property, services or construction.

B) Notwithstanding the provisions of Subsection A of this section, a cooperative procurement agreement providing for mutually held funds or for other terms and conditions involving public funds or property included in Section 11-1-4 NMSA 1978 shall be entered into pursuant to the provisions of the Joint Powers Agreements Act (110101 to 11-1-7 NMSA 1978)

C) The County 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.

15.2 COOPERATIVE PROCUREMENT: RECYCLED CONTENT GOODS
A) The Procurement Officer shall, whenever its price, quality, quantity, availability and delivery requirements are met, purchase recycled content goods through contracts established by the purchasing division of the general services department or with other central purchasing offices.

B) For purposes of this section, “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.

16.0 SALE, ACQUISITION OR USE OF PROPERTY BY THE COUNTY
The County may sell property to, acquire property from or cooperatively use any items of tangible personal property or services belonging to a state agency or another local body or external procurement unit:

A) In accordance with an agreement entered into with the approval of the state board of finance or the data processing and data communications planning council; or

B) Subject to the provisions of Sections 3-46-1 through 3-46-45; 3-54-1 through 3-54-3; 3-60-1 through 3-60-37 and 3-60A-1 through 3-60A-48 NMSA 1978.

17.0 COST OR PRICING DATA

17.1 COST OR PRICING DATA: REQUIRED
When the Procurement Officer, 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.
17.2 COST OR PRICING DATA: NOT REQUIRED
The cost or pricing data relating to the award of a contract shall not be required when:
A) The procurement is based on competitive sealed bid;
B) The contract price is based on established catalogue prices or market prices;
C) The contract price is set by law or regulation;
D) The contract is for professional services; or
E) The contract is awarded pursuant to the Public Building Energy Efficiency Act
   (Chapter 6, Article 23 NMSA 1978).

17.3 COST OR PRICING DATA: CHANGE ORDERS OR CONTRACT MODIFICATIONS
When required by the County, a contractor shall submit cost or pricing data prior to the
executive 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).

17.4 COST OR PRICING DATA: CHANGE ORDERS, CONTRACT MODIFICATIONS, EXCEPTIONS
The submission of cost or pricing data relating to the execution of a change order or
contract modification 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.

17.5 COST OR PRICING DATA: CERTIFICATION REQUIRED
A contractor, actual or prospective, required to submit cost or pricing data shall certify
that to the best of its knowledge and belief the cost or pricing data submitted was
accurate, complete and current as of a specified date.

17.6 COST OR PRICING DATA: PRICE ADJUSTMENT PROVISION REQUIRED
Any contractor 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 local public body, including profit or fee, shall be adjusted to exclude any
significant sums by which the local public body 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.
17.7 COST OR PRICE DATA: ANALYSIS
A cost analysis or a price analysis, as appropriate, may be conducted prior to the award of a contract other than one awarded by competitive sealed bidding. A written record of such cost or price analysis shall be made a part of the procurement.

17.8 COST PRINCIPLES: REGULATIONS
The Procurement Officer has the authority to issue regulations may promulgate regulations setting forth principles to be used to determine the permissibility of incurred costs for the purpose of reimbursing costs to a contractor.

17.9 AUDIT OF COST OR PRICING DATA
A) The County may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data, to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain books and records that relate to such cost or pricing data for three years from the date of final payment under the contract unless a shorter period is otherwise authorized in writing.

B) The County shall be entitled to 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 years from the date of final payment under the prime contract and by the subcontractor for a period three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

18. CONTRACT AUDIT
The County shall be entitled to 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 years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract unless a shorter period is otherwise authorized in writing.

19. TYPES OF CONTRACTS
Subject to the limitations of Sections 13-1-150 to 13-1-154 NMSA 1978 of the Procurement Code, any type of contract, including but not limited to definite quantity contracts, indefinite quantity contracts and price agreements, which will promote the best interests of the state agency or a local public body may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited except for the purchase of insurance. 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.

19.1 MULTI-TERM CONTRACTS: SPECIFIED PERIOD
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 deemed to be in the best interests of the County not to exceed four 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.

If the amount of the contract is twenty-five thousand dollars ($25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Building Energy Efficiency and Water Conservation Act (Public Facility Energy Efficiency and Water Conservation Act, Chapter 6, Article 23 NMSA 1978), the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. A contract for professional services may not exceed for four years, including all extensions and renewals, except for the following:
A) Services required to support or operate federally certified Medicaid, financial assistant and child support enforcement management information or payment systems;
B) Services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997,Chapter 125;
C) 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
D) Services relating to the implementation, operation and administration of the Education Trust Act (21-21K-1 to 21-21K-7 NMSA 1978).

19.2 MULTI-TERM CONTRACTS: DETERMINATION PRIOR TO USE
Prior to the utilization of a multi-term contract, the Procurement Officer shall make a determination that:
a. The estimated requirements cover the period of the contract and are reasonably firm and continuing; and
b. The contract will serve the best interests of the County.
19.3 MULTI-TERM CONTRACTS: CANCELLATION DUE TO UNAVAILABILITY OF FUNDS
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.

20. PROCUREMENT OF USED ITEMS

20.1 PROCUREMENT OF USED ITEMS: APPRAISAL REQUIRED: COUNTY ROAD EQUIPMENT EXCEPTION FOR AUCTIONS
A central purchasing office, when procuring used items of tangible personal property the estimated cost of which exceeds five thousand dollars ($5,000), for use in construction and maintenance of county streets, roads and highways, subject to the following provisions:
A) The commercial auction company shall have been in business for at least three years preceding the date of purchase and shall conduct at least five auctions annually;
B) The value of each piece of equipment shall be appraised prior to the auction by a qualified disinterested appraiser retained and paid by the county, who shall make a written appraisal report stating the basis for the appraisal, including the age, condition and comparable sales, and starting that the appraiser has exercised his independent judgment without prior understanding or agreement with any person as to a target value or range of value;
C) An independent “certificate of working condition” shall be obtained prior to the auction from a qualified mechanic who shall have made a detailed inspection of each major working or major functional part and certified the working condition of each;
and
D) The price paid, including all auctions fees and buyer’s surcharges shall not exceed the appraised value.

20.2 TRADE OR EXCHANGE OF USED ITEMS: APPRAISAL REQUIRED
A) A central purchasing office, 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, shall:
i) Have an independent appraisal made of the items to be traded or exchanged. The appraisal shall be in writing, shall be made part of the procurement file and shall be a public record. The invitation for bids or request for proposals shall contain notice to prospective bidders or offerors of the description and specifications of the items to be traded in or exchanged, the appraised value of the items to be traded in or exchanged and location where the items to be traded in or exchanged may be inspected; or
ii) Have two written quotes for purchase of the property at a specified price.
B) 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 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.

20.3 RECEIPT: INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES
The using agency is responsible for inspecting and accepting or rejecting deliveries. The using agency 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 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 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 County shall have no obligation to pay for the nonconforming items of tangible personal property. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify to the County that delivery has been completed and is satisfactory.

21. PAYMENTS PURCHASES
A) No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the Procurement Officer or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code (13-1-28 NMSA 1978).
B) Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the Procurement Officer or using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the Procurement Officer or using agency shall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.
C) Except as provided in Subsection D of this section, upon certification by the Procurement Officer or the using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within thirty days of the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency.
D) If the Procurement Officer or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, within thirty days of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contract may proceed to provide remedial action.

E) Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission (public regulation commission).

22. BRAND-NAME SPECIFICATION

22.1 BRAND-NAME SPECIFICATION: USE
A brand-name specification may be used only when the Procurement Officer makes a determination that only the identified brand-name item or items will satisfy the needs of the County.

22.2 BRAND-NAME SPECIFICATION: COMPETITION
The Procurement Officer shall seek to identify sources from which the designated brand-name items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 13-1-126 NMSA 1978 of the Procurement Code.

22.3 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED CHARACTERISTICS
Unless the Procurement Officer makes a determination that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand-name or equal specifications shall include a description of the particular design, function or performance characteristics which are required.

22.4 BRAND-NAME OR EQUAL SPECIFICATION: REQUIRED LANGUAGE
Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of 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.

23. UNIFORM CONTRACT CLAUSES
A) The County may require by regulation 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:

i) The unilateral right of the County to order in writing:
   a) Changes in work within the scope of the contract; and
   b) Temporary stoppage of the work of the delay of performance;

ii) Variations occurring between estimated quantities of work in a contract and actual quantities;

iii) liquidated damages;

iv) permissible excuses for delay or nonperformance;

v) termination of the contract for default;

vi) termination of the contract in whole or in part for the convenience of the County;

vii) assignment clauses providing for the assignment by the contractor to the County of causes of action for violation of state or federal antitrust statutes;

viii) identification of subcontractors by bidders in bids; and

ix) uniform subcontract clauses in contracts.

B) The County shall require by regulation that contracts include a clause imposing late payment charges against the County in the amount and under the conditions stated in Section 13-1-158 NMSA 1978.

24. PRICE ADJUSTMENTS

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 form commercial items sold in substantial quantities to the general public with prices based upon established catalogue or list prices in a form regularly maintained by the manufacturer or vendor and published or otherwise available for customer inspection. In the event of revision of the stated contract price, the contract file shall be promptly documented by the Procurement Officer.

E) In such other manner as the contracting parties may mutually agree; or

F) In the absence of agreement by the parties, by a unilateral determination reasonably computed by the County of the costs attributable to the events or conditions.

25. PROCUREMENT PROTEST

25.1 RIGHT TO PROTEST

Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract may protest to the Procurement Officer. The protest shall be submitted in writing.

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within fifteen calendar days after knowledge of the facts or occurrences giving rise to the protest.

25.2 PROCUREMENTS AFTER PROTEST
In the event of a timely protest under Section 13-1-172 NMSA 1978 of the Procurement Code, the Procurement Officer shall not proceed further with the procurement unless the Procurement Officer makes a determination that the award of the contract is necessary to protect substantial interests of the County.

25.3 AUTHORITY TO RESOLVE PROTESTS
The Procurement Officer or designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved bidder or offeror. This authority shall be exercised in accordance with regulations promulgated by County but shall not include the authority to award money damages or attorneys’ fees.

25.4 PROTEST: DETERMINATION
The Procurement Officer or designee of shall promptly issue a determination relating to the protest. The determination shall:
A) State the reasons for the action taken; and
B) Inform the protestant of the right to judicial review of the determination pursuant to the Procurement Code.

25.5 PROTEST: NOTICE OF DETERMINATION
A copy of the determination issued under 13-1-175 NMSA 1978 of the Procurement Code shall immediately be mailed to the protestant and other bidders or offerors involved in the procurement.

26.0 AUTHORITY TO DEBAR OR SUSPEND
The Procurement Officer, after reasonable notice to the business involved, shall have authority to recommend to the Board of County Commissioners of the County of Catron the suspension or debarment of a business for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three years, and a suspension shall not exceed three months. The authority to debar or suspend shall be exercised by the Board of County Commissioners in accordance with regulations which shall provide for reasonable notice and a fair hearing prior to suspension or debarment.

26.1 CAUSES FOR DEBARMENT OR SUSPENSION: TIME LIMIT
The causes for debarment or suspension occurring within three years of a procurement include but are not limited to the following:
A) Conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
B) Conviction of a bidder, offeror or contractor under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property;
C) Conviction of a bidder, offeror or contractor under state or federal anti-trust statutes arising out of the submission of bids or proposals.
D) Violation by a bidder, offeror or contractor of contract provisions, as set forth in this subsection, of a character which is reasonably regarded by the state purchasing agent or a central purchasing office to be so serious as to justify suspension or debarment action:
   i) Willful failure to perform in accordance with one or more contracts, provided that this failure has occurred within a reasonable time preceding the decision to impose debarment; or
   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.
E) Any other cause occurring within three years of a procurement which the state purchasing agent or a central purchasing office determines to be so serious and compelling as to affect responsibility as a contractor; or
F) For a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code (13-1-28 NMSA 1978) within three years of procurement.

26.2 DEBARMENT OR SUSPENSION: DETERMINATION.
The Board of County Commissioners of the County of Catron shall issue a written determination to debar or suspend. The determination shall:
A) State the reasons for the action taken, and
B) Inform the debarred or suspended business involved of its rights to judicial review pursuant to Section 156 (13-1-183 NMSA 1978) of the Procurement Code.

27. EXECUTION OF CONTRACT

27.1 REMEDIES PRIOR TO EXECUTION OF CONTRACT
If prior to the execution of a valid, written contract by all parties and necessary approval authorities, the procurement officer makes a determination that a solicitation or proposed award of the proposed contract is in violation of law, then the solicitation or proposed award shall be cancelled.
27.2 RATIFICATION OR TERMINATION AFTER EXECUTION OF
CONTRACT
If after the execution of a valid, written contract by all parties and necessary approval
authorities, procurement officer makes a determination that a solicitation or award of the
contract was in violation of law and if the business awarded the contract did not act
fraudulently or in bad faith:
A) The contract may be ratified, affirmed and revised to comply with law, provided that
a determination is made that doing so is in the best interests of the County; or
B) The contract may be terminated, and the contractor shall be compensated for the
actual expenses reasonably incurred under the contract plus a reasonable profit prior
to termination.

27.3 JUDICIAL REVIEW
All actions authorized by the Procurement code (13-1-28 NMSA) for judicial review of a
determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

28. ASSISTANCE TO SMALL BUSINESS

28.1 ASSISTANCE TO SMALL BUSINESS: POLICY
It shall be the policy of this County to encourage small businesses to do business with the
County.

28.2 ASSISTANCE TO SMALL BUSINESS: DUTIES OF THE PURCHASING
AGENT
A) Purchasing agent shall issue publications designed to assist small businesses in
learning how to do business with the state agencies and local public bodies.
B) Purchasing agent shall compile, maintain and make available source lists of small
businesses for the purpose of encouraging procurement by the state agencies and local
public bodies from small businesses.
C) Purchasing shall take all reasonable action to ensure that small businesses are
solicited on each procurement for which they appear to be qualified.
D) Purchasing agent may develop training programs to assist small businesses in
learning how to do business with the County.
E) Purchasing agent or a central purchasing office may make special provisions for
progress payments as such office or officer may deem reasonably necessary to
encourage procurement from small businesses in accordance with regulations
promulgated by the County Commission.

28.3 ASSISTANCE TO SMALL BUSINESS: BID BONDS; REDUCTION
The procurement officer may reduce bid bond, performance bond or payment bond
requirements authorized by the Procurement Code (13-1-28 NMSA 1978) to encourage
procurement from small businesses.
29. ANTIPOVERTY PROGRAM BUSINESS
A) Without regard to the bid requirements of Section 75 of the Procurement Code, the procurement officer may negotiate a contract for materials grown, processed, or manufactured in this state by small businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or through private philanthropy.
B) Prior to negotiating a contract under this section, the procurement officer shall make a determination of the reasonableness of the price and quality of the materials and that the public interest will best be served by the procurement.

30. PUBLIC ACQUISITION OF AMERICAN-MADE MOTOR VEHICLES REQUIRED
The County shall only acquire motor vehicles assembled in North America except for gas-electric hybrid vehicles until these vehicles are assembled in North America. For the purposes of this section, “motor vehicle” means a light duty vehicle under 8500 pounds.

31. PROCUREMENTS PURSUANT TO THE CORRECTIONS INDUSTRIES ACT
A) The County may purchase items of tangible personal property and services offered pursuant to the provisions of the Corrections Industries Act (33-8-1 NMSA 1978).
B) The corrections industries commission shall prepare a catalogue containing an accurate and complete description of all items of tangible personal property and services available. A copy of the catalogue shall be provided to each state agency and local public body. The catalogue shall contain an approximate time required for delivery of each item of tangible personal property and service.
C) The procurement officer shall purchase available items of tangible personal property and services from the catalogue unless a determination is made that:
   i) An emergency exists requiring immediate action to procure the items of tangible personal property or service;
   ii) The specifications for the items of tangible personal property or service, including quality, quantity and delivery requirements, cannot be met within a reasonable time by the corrections department; or
   iii) The price to be paid to the corrections department for the items of tangible personal property or service is higher than the bid price of comparable items of tangible personal property or services.

32. BRIBES, GRATUITIES AND KICKBACKS

32.1 UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED
A) Except as permitted by the University Research Park Act (2-28-2 to 21-28-25 NMSA 1978), it is unlawful for any County employee, as defined in the Procurement Code
(13-1-28 NMSA 1978), to 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.
B) An employee or any member of any employee’s immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest with regard to matters pertaining to that trust.

32.2 BRIBES, GRATUITIES AND KICKBACKS: CONTRACT REFERENCE REQUIRED
All contracts and solicitations therefore shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

32.3 CONTINGENT FEES PROHIBITED
It is unlawful for a person or business to be retained or for a business to retain a person or business to solicit or secure a contract 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 agencies for the purpose of securing business and persons or businesses employed by the County which are providing professional services to the County in anticipation of the receipt of federal or state grants or loans.

32.4 CONTEMPORANEOUS EMPLOYMENT PROHIBITED
It is unlawful for any County employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed.

32.5 WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT AND UNLAWFUL EMPLOYEE PARTICIPATION PERMITTED
The County may grant a waiver from unlawful employee participation pursuant to Section 153 (13-1-190 NMSA 1978) of the Procurement Code, or contemporaneous employment pursuant to Section 166 (13-1-193 NMSA 1978) of the Procurement Code, upon making a determination that:
A) The contemporaneous employment of financial interest of the employee has been publicly disclosed;
B) The employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
C) The employee participation is in the best interests of the County.

32.6 USE OF CONFIDENTIAL INFORMATION PROHIBITED
It is unlawful for any County employee or former employee to knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.
33. CIVIL PENALTY
Any person, firm or corporation that knowingly violates any provision of the Procurement Code is subject to a civil penalty of not more than one thousand dollars ($1,000) for each procurement in violation of any provision of the Procurement Code. The attorney general or the district attorney in the jurisdiction in which the violation occurs is empowered to bring a civil action for the enforcement of any provision of the Procurement Code. Any penalty collected under the provisions of this section shall be credited to the general fund of the political subdivision in which the violation occurred and on whose behalf the suit was brought.

34. RECOVERY OF VALUE TRANSFERRED OR RECEIVED; ADDITIONAL CIVIL PENALTY
An amount equal to the value of anything transferred or received in violation of the provisions of the Procurement code by a transferor and transferee may be imposed as a civil penalty upon both the transferor and transferee. The civil penalty provided for in this section is imposed in addition but pursuant to the terms and conditions of the Procurement Code.

35. KICKBACKS: ADDITIONAL CIVIL PENALTY
Upon a showing that a subcontractor made a kickback to a prime contractor or a higher-tier subcontractor in connection with the award of a subcontract or order there under, it is conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County. An amount equal to the kickback is imposed as a civil penalty by County upon the recipient and upon the subcontractor making such kickbacks in addition but pursuant to the terms and conditions of Section 169 (13-1-196 NMSA 1978) of the Procurement Code.

36. PENALTIES
Any business or person that willfully violates the Procurement Code is guilty of:
A) a misdemeanor if the transaction involves fifty thousand dollars ($50,000) or less; or
B) a fourth degree felony if the transaction involves more than fifty thousand dollars ($50,000).

37. SEVERABILITY
If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in this Resolution is, for any reason, held to be unconstitutional, invalid or void, the remaining portion shall not be affected since it is the express intention of the Catron County Board of County Commissioners to pass such article, section, subsection, paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.
38. EFFECTIVE DATE
This effective immediately upon its adoption by the Board of County commissioners.

39. REPEAL OF FORMER POLICY
The Catron County Purchasing Policy adopted August 20, 1991, Resolution 2013-52 adopted May 9, 2013 and any other policy or resolution in conflict with the above provisions, are repealed with the adoption of this Resolution,

APPROVED, ADOPTED, AND PASSED on this 13th day of June 2013.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF CATRON

Attest:

[Signature]
Richard McGuire
Commissioner, District I

Keith Riddle
Catron County Clerk

[Signature]
Glyn Griffin, Chairman
Commissioner, District II

[Signature]
Van J. "Bucky" Allred
Commissioner, District III

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