



LAS CRUCES PUBLIC SCHOOL DISTRICT

PURCHASING PROCEDURES

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**LAS CRUCES PUBLIC SCHOOL DISTRICT
PURCHASING PROCEDURES**

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LAS CRUCES PUBLIC SCHOOL DISTRICT
PURCHASING PROCEDURES

Las Cruces Public School District (LCPS) PURCHASING PROCEDURES are subject to Sections 13-1-1 to 13-1-199 of Chapter 13 of the New Mexico Statutes Annotated 1978, more commonly referred to as the New Mexico Procurement Code (Code). Pursuant to Section 13-1-97 of the Code, LCPS Board Policy DJ: Procurements authorizes the LCPS Superintendent and Purchasing Director to establish purchasing procedures in adherence to the Code.

The LCPS PURCHASING PROCEDURES FLOWCHART and related RFB PROCEDURES FOR SCHOOL PRINCIPALS AND CONTROL AGENTS and RFP PROCEDURES FOR SCHOOL PRINCIPALS AND CONTROL AGENTS incorporated herein as ATTACHMENT A, B and C summarize the process established by the Superintendent and Purchasing Director that is consistent with the Code and shall, along with the detailed understandings and procedures herein, including ATTACHMENT D, be recognized as the PURCHASING PROCEDURES and PROCESS from which all LCPS purchases are authorized.

DURATION: The PURCHASING PROCEDURES herein described is permanent and may be updated as necessary by the Superintendent and Purchasing Director to reflect changes to the Code, other regulation, other law or condition applicable to LCPS.

EFFECTIVE DATE: The PURCHASING PROCEDURES are effective as of January 1, 2006.

OBJECTIVE: The purposes of the PURCHASING PROCEDURES are to:

- (1) provide for the fair and equitable treatment of all persons involved in LCPS purchases:
- (2) to maximize the purchasing value of LCPS funds:
- (3) to provide safeguards for maintaining a procurement process of quality and integrity, and
- (4) to have the force and effect of law to implement, interpret or make statute law specific as it applies to the Code, Sections 13-1-28 through 13-1-199 NMSA 1978 and the purposes stated therein.

STANDARDS AND SPECIFICATIONS COMMITTEE: LCPS endeavors to maximize efficiency and effectiveness through its procurement practice. To achieve such goal, the LCPS STANDARDS AND SPECIFICATIONS COMMITTEE is hereby created as a standing committee responsible for reviewing, developing and adopting product and service standards, specifications and other requirements that, when used in the PURCHASING PROCEDURE, will ensure that purchased products or services maximize the efficiency and effectiveness of LCPS operations, instruction, and administration. This committee shall consist of representatives from the LCPS administrative, operational and instructional areas plus other representation outside LCPS that is deemed pertinent. The Superintendent and Purchasing Director shall identify members that will serve on the committee and shall schedule meetings from time to time for conducting reviews and for the development and adoption of standards and specifications.

PURCHASING PROCEDURES

- A. GRANT APPLICATIONS:** For any LCPS application for grant that incorporates the purchase of goods, services, or construction, such items are subject to the PURCHASING PROCEDURES before or during the application process and not after grant award. Descriptive information of products or services to be purchased under a grant shall be provided to the LCPS Purchasing Department. The PURCHASING PROCEDURES shall then be administered for such products or services for the purpose of establishing price agreements from which grant funds, when approved, may make timely purchase.
- B. RECOGNITION OF NEEDS REQUIRING FUND EXPENDITURE:** While LCPS staff members perform their duties and responsibilities, it may become necessary to purchase needed goods/services from a source outside LCPS. A need to expend public funds for purchasing products or services outside LCPS is justified after considering other alternatives that will meet the need. Such alternatives may include but are not limited to (1) adjustment to operational or instructional procedures, (2) using volunteers, (3) selecting from LCPS surplus property, (4) using donated time/materials, (5) relocating existing goods/services/programs, etc. In all cases, a determination to expend funds is to be based on meeting needs at minimal cost.
- C. DEVELOPMENT OF SPECIFICATIONS OR SCOPE OF SERVICES:**
Notwithstanding the requirement stated in Section D. herein, the development of product or service requirements to fulfill a need are conditioned herein by this section.
- (1) In purchasing a product or service, requirements must be based upon fulfilling needs and needs only. Prohibited requirements are those that can be considered extravagant, wasteful or otherwise unnecessary regardless of fund availability. Some product requirements to consider in meeting a need include, but are not limited to, such traits as product size, capacity, color, material contents, performance criteria, expected longevity, features, etc. Some service requirements to consider in meeting a need include, but are not limited to, the providers' personnel and capital resources, response time offered by provider, approach to providing services, licensing possessed by the provider, level and extent of services provided, industry rating/rank, etc.
 - (2) Whenever practical, requirements must allow for maximum competition among prospective product and service providers. With the exception of products or services that incorporate requirements established by the LCPS Standards and Specifications Committee identified herein, requirements that are restrictive or specific to only one or few suppliers must be reasonably justifiable upon review and written approval by the Superintendent, Purchasing Director or designee. Such written documentation must be filed in the Purchasing Department for audit review.
- D. REVIEW OF SPECIFICATIONS AND STANDARDS:** The standards and specifications for products or services established under this section must be adhered to in all related procurements. A listing established by the Standards and Specifications Committee shall be maintained by the Purchasing Director for incorporation into any related bid or proposal solicitations. Whenever a related procurement deviates from the committee's established standards and specifications, the end user must apply through the Purchasing Department and receive approval from the committee prior to administering the PURCHASING PROCEDURES.

E. VENDOR OR CONTRACTOR SELECTION PROCESSES

Selection of product and service providers shall be based upon the lowest and best price, including any shipping costs, obtained through the PURCHASING PROCEDURES.

(1) CAVEATS TO LOWEST AND BEST PRICE BASIS

There are three conditions within the PURCHASING PROCEDURES where the lowest and best price basis for source selection may be waived. The three conditions are as follow:

a. PURCHASES COSTING \$5,000.00 OR LESS

Within this cost limitation, the PURCHASING PROCEDURES requires that purchases be based only upon the best obtainable price. Pricing may be obtained from internet pages, newspaper ads, competitive quote solicitations, catalogs, etc. in an effort to establish best obtainable price. This informal process may or may not result with the lowest and best price due to conditions such as time constraints or limited personnel needed to find lower prices, limit to known sources or alternate products, etc.

b. EXEMPTIONS FROM REQUIRED BID OR PROPOSAL SOLICITATIONS

The PURCHASING PROCEDURES provide for certain purchases to be transacted without competitive bid or proposal solicitations resulting in source selections which may or may not be the lowest price. Such procurements are incorporated herein by reference to sections of the Code as follows:

Purchase is Exempt from the Code Requirements	:	Sections 13-1-98 - 13-1-98.2
Purchase from a Sole Source	:	Section 13-1-126
Purchase Due to Emergency Condition	:	Section 13-1-127
Purchase from Existing Contract	:	Section 13-1-129
Purchase from an Anti Poverty Program Businesses	:	Section 13-1-130
Purchase from New Mexico Correction Industries	:	Section 13-1-189

c. WAIVER BY SUPERINTENDENT

For a purchase that is more than \$5,000 and is not exempt from bid or proposal solicitation requirements identified in Section E.(1)b. above, the PURCHASING PROCEDURES allows a purchase to be transacted without required solicitations upon determination by the Superintendent that the best interests of the School District are served by waiving the solicitation requirement. Such waiver by the Superintendent is limited to \$20,000 on a product purchase or non-professional service contract, and, \$50,000 on a professional service contract. The Superintendent's determination shall be in writing and, within seven (7) calendar days from date of determination, shall be provided to the LCPS Board of Education with copy forwarded to the Purchasing Department for inclusion in its audit files.

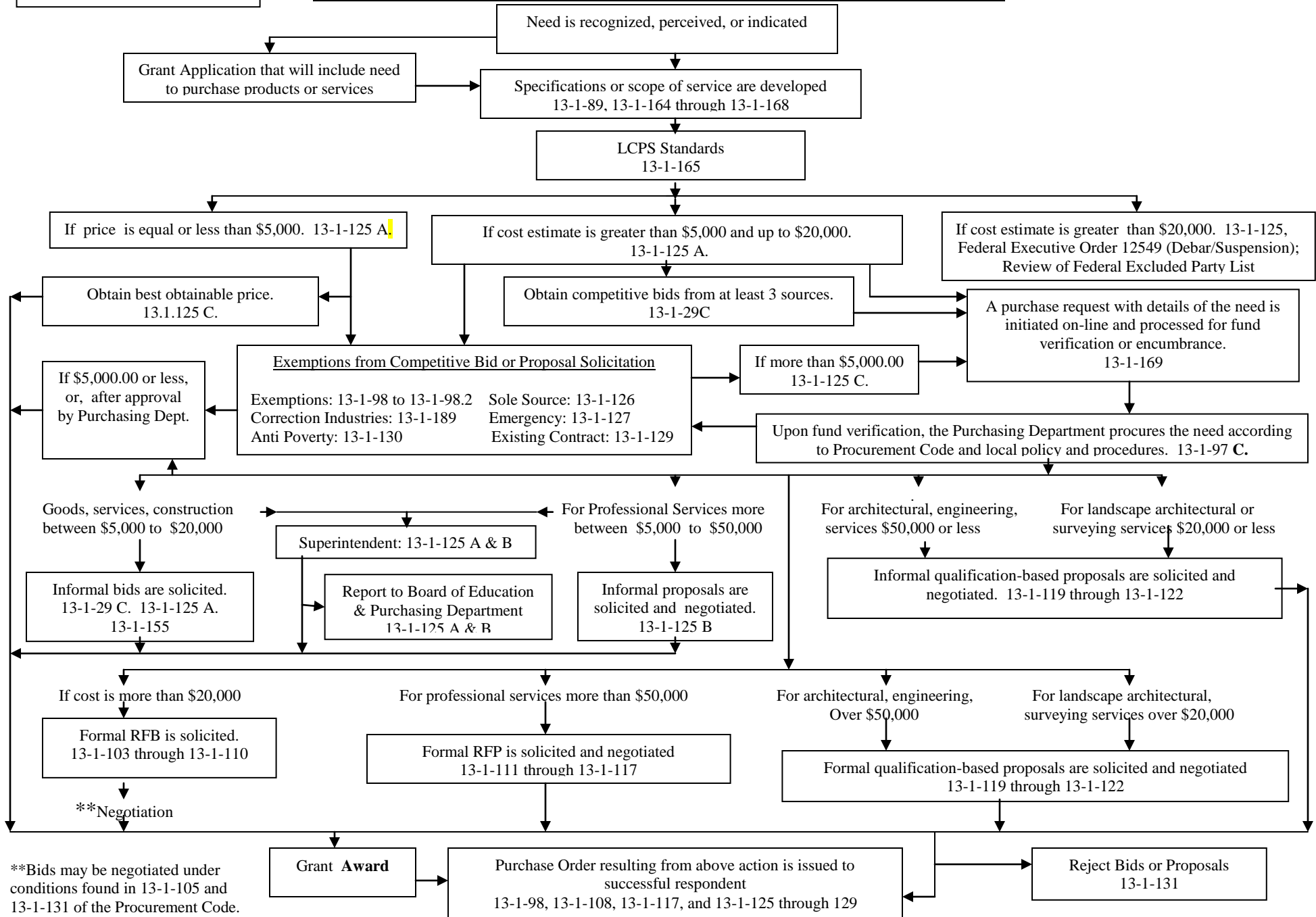
(2) PROCEDURES FOR CODE ADHERANCE

Notwithstanding the caveats provided in Section E.(1) above, the understandings, conditions and procedures incorporated herein as ATTACHMENT D entitled LCPS PURCHASING PROCESS: REQUIREMENTS AND PROCEDURES FOR OBTAINING LOWEST AND BEST PRICE are consistent with the Code and shall apply to LCPS purchases of tangible goods or services. ATTACHMENT D ensures that LCPS purchases are:

- a. based upon lowest and best price, and
- b. are within the mandates of the Code.

ATTACHMENT A

LCPS PURCHASING PROCESS FLOWCHART



**Bids may be negotiated under conditions found in 13-1-105 and 13-1-131 of the Procurement Code.

ATTACHMENT B

LAS CRUCES SCHOOL DISTRICT NO. 2 RFB PROCEDURES FOR SCHOOL PRINCIPALS AND CONTROL AGENTS

Requests for bids (RFB) are necessary to establish evidence of compliance to State bidding laws referenced in the LCPS Purchasing Process Flowchart herein, and, to ensure that the School District funds are expended efficiently. To ensure that bid solicitations are legal, fair to bidders and that the specific needs of Principals and Control Agents are met, bid solicitations should be conducted under the following guidelines:

1. Bidders need specific details of needed items or services in order to provide accurate cost information. Bid requests may include descriptive information equal to a specific brand name/model number and any optional features that is useful to potential bidders in understanding the quality of products being sought.
2. By law, bidders must be treated fairly. To avoid bidder protests, bid comparisons should be “apples-to-apples”. To ensure bid responses can be compared equally, bid requests must provide details such as quantities, delivery and installation requirements, sizes, colors, capacities, etc., that assist bidders in clearly understanding the needs and in providing their lowest cost bids that meet those needs.
3. By State law, bids received are final and are prohibited from negotiation. The practice of “shopping bids” by allowing bidders to re-submit bids after they receive results of previous bid solicitation for the same items or service is strictly prohibited.
4. Bid awards must be based on lowest bid received that meet the requirements of the bid request. Bid requirements that affect the quality, quantity, or price of the needed items/services are material considerations as defined by law and cannot be waived or changed in any way in considering bid awards.

AMOUNT PROCEDURES

\$5000.00 or Less* Principal or Control Agent is authorized to issue and sign purchase orders for needed supplies or services. By law, the cost of the purchase order must be at the best obtainable price as determined by the Principal or Control Agent. Retention of records justifying “best obtainable price” is advised for any possible audit inquiry.

\$5000.01 - \$20,000.00 Bids/Quotes for the needed goods/services must be obtained from at least three sources. Bids/Quotes may be solicited by either the Principal/Control Agent or by the Purchasing Department. Subsequent bid awards are entered as purchase requests onto the on-line p.o. system to supplier(s) submitting the lowest bid or that meets the material requirements of the needed goods or services.

- A. If Principal or Control Agent solicit the bids: Copies of bids received must be submitted to the Purchasing Department, then, the Principal/Control Agent initiates related purchase request into the on-line p.o. system to the lowest bidder. Upon successful electronic routing through all approving authorities, the purchase request will route to the Purchasing Department. The Purchasing Department may:
- a. Print the request as a purchase order and issue it to the lowest bidder or vendor that meets the material requirements of the needed goods or services selected by the Principal/Control Agent, or,
 - b. Request additional bids from other sources. Upon consideration of all bids, the Purchasing Department will issue purchase order(s) to supplier(s) that provide the lowest price meeting specifications or that meets the material requirements of the needed goods/services.
- B. If Purchasing Dept. solicits the bids: First, the Principal/Control Agent initiates purchase request into the on-line p.o. system. For each item ordered, the purchase request must include complete and detailed descriptive information that can be used by the Purchasing Dept. in requesting bids. Upon successful electronic routing through all approving authorities, the purchase request will route to the Purchasing Department. Based on information provided on the purchase request, the Purchasing Dept. may then request and receive bids and award subsequent p.o.’s to the lowest bidder or vendor meeting the material requirements of the needed goods or services.

***NOTE:** *STUDENT ACTIVITY ACCOUNTS ARE EXEMPT FROM THIS DOLLAR THRESHOLD REQUIREMENT.*

\$20,000.01+ The Principal/Director and Purchasing Department follow the same procedure described for purchases over \$5,000. The bid solicitation must be published as legal notice pursuant to law. Award is based on the lowest responsive bid received. Upon recommendation from the Purchasing Department, the School District’s Board of Education must approve the purchase prior to the Purchasing Department issuing any related purchase orders. Purchasing Department will comply with Federal E.O. 12549 - Debarment/Suspension.

NOTE: All bid or proposal requirements applicable to purchases of tangible goods, services and construction up to \$20,000.00 and contracts for professional services up to \$50,000.00 may be waived upon written determination by the Superintendent that such waivers serve the best interest of the School District. The determination shall be reported to the LCPS Board of Education and shall be filed in the procurement records located in the Purchasing Department.

***IT IS UNLAWFUL TO DIVIDE PURCHASES INTO TWO (2) OR MORE ORDERS TO CIRCUMVENT THE LIMITS OF THE PROCUREMENT CODE AND PROCEDURAL REQUIREMENTS STATED ABOVE.**

ATTACHMENT C

LAS CRUCES SCHOOL DISTRICT NO. 2 RFP PROCEDURES FOR SCHOOL PRINCIPALS AND CONTROL AGENTS

Requests for proposals (RFP) are necessary to establish evidence of compliance to State laws referenced in the LCPS Purchasing Process Flowchart herein, and, to ensure that the School District funds are expended efficiently. To ensure that proposal solicitations are legal, fair and that the specific needs of Principals and Control Agents are met, proposal solicitations should be conducted under the following guidelines:

- (1) RFP is a solicitation for suggestions or recommendations that may include costs for addressing a need requiring:
 - a. Professional Services: "Professional services" means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the Superintendent, Purchasing Director or designee.
 - b. Tangible products or non-professional services when the Superintendent or Purchasing Director makes a determination that the use of a RFB is either not practicable or not advantageous to LCPS.
- (2) The RFP method differs from the RFB method in three important ways:
 - a. the RFP process permits discussions and changes to proposals, including price, with competing offerors. If more than one business is contacted, the contents of the written or oral offer of one business shall not be disclosed to another business during the negotiation process. ; and
 - b. the RFP process allows comparative, judgmental evaluations based on multiple criteria, that may include price, to be made when selecting among acceptable proposals for award.
 - c. the RFP award is based upon the highest ranked proposal considering the criteria included within the RFP which may or may not be the lowest price proposed by competing offerors..
- (3) Evaluation and award resulting from a RFP solicitation with estimated cost less than \$50,000.00 shall be based upon a 50/50 weighted criteria as follows:
 - a. 50% of evaluation shall weigh on the contents of the proposed offer that not including cost;
 - b. 50% of evaluation shall weigh on cost.

AMOUNT PROCEDURES

\$5,000.00 or Less* The Principal, Control Agent or Purchasing Department shall provide a copy of LCPS CONTRACT SERVICE AGREEMENT to potential offeror(s) along with information describing need. Responding oral or written offers(s) shall be evaluated and awarded based upon 50/50 criteria per (3) above. Principal or Control Agent is authorized to issue and sign purchase orders for needed services or products based upon results of proposal evaluation. If purchase is for services, an executed copy of LCPS CONTRACT SERVICE AGREEMENT shall be issued along with purchase order to the selected offeror. Retention of records advised for any possible audit inquiry.

\$5000.01 - \$50,000.00* A purchase order may be initiated onto the on-line purchasing system for obtaining the needed goods or services. In collaboration with the Purchasing Department, the Principal or Control Agent shall identify pertinent details impacting on the needs. Based upon such information, the Purchasing Department shall obtain written proposals from at least three sources reasonably capable of providing the needed services or goods. Responding offers(s) shall be evaluated and awarded based upon 50/50 criteria per (3) above. The Superintendent, Purchasing Director or designee shall be responsible for negotiating a fair and reasonable price with the respondent submitting the highest ranked proposal. An executed copy of the LCPS CONTRACT SERVICE AGREEMENT along with the purchase order shall be issued by the Purchasing Department to the selected offeror. Procurement documents shall be maintained within the Purchasing Department for audit purposes. If the procurement exceeds \$20,000.00, the Purchasing Department will comply with Federal E.O. 12549 -Debarment/Suspension.

NOTE: All bid or proposal requirements applicable to purchases of tangible goods, services and construction up to \$20,000.00 and contracts for professional services up to \$50,000.00 may be waived upon written determination by the Superintendent that such waivers serve the best interest of the School District. The determination shall be reported to the LCPS Board of Education and shall be filed in the procurement records located in the Purchasing Department.

\$50,000.01+ The Principal/Director and Purchasing Department follow the same procedure described for purchases over \$5,000. The bid solicitation must be published as legal notice pursuant to law and distributed to all firms who have requested solicitations in writing to the Purchasing Department. Award is based on the highest ranked proposal received at a negotiated cost. The School District's Board of Education must approve the purchase prior to the Purchasing Department executing any LCPS CONTRACT SERVICE AGREEMENT AND purchase order. Procurement documents shall be maintained by the Purchasing Department

***IT IS UNLAWFUL TO DIVIDE PURCHASES INTO TWO (2) OR MORE ORDERS TO CIRCUMVENT THE LIMITS OF THE PROCUREMENT CODE AND PROCEDURAL REQUIREMENTS STATED ABOVE.**

**LCPS PURCHASING PROCEDURES:
REQUIREMENTS AND PROCEDURES FOR OBTAINING
LOWEST AND BEST PRICE**

A. DEFINITIONS:

- (1) All definitions listed in the Code are included herein by reference.
- (2) Bidding Time: the period of time between the date of distribution of an RFB and the time and date set for receipt of bids.
- (3) Descriptive Literature: information available in the ordinary course of business that shows the characteristics, construction, or operation of an item.
- (4) Determination: the written documentation of a decision of Superintendent, Purchasing Director or designee that includes findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
- (5) Bid Sample: a sample furnished by a bidder that shows the characteristics of an item offered in the bid
- (6) Formal RFB: request for a sealed bid relating to a purchase of tangible personal property, construction, or nonprofessional service costing more than \$20,000.
- (7) Formal RFP: a request for sealed proposal for purchasing (1) professional services costing more than \$50,000, or, (2) when determined by the Superintendent or Purchasing Director to be impractical to solicit bids, for tangible personal property, construction, or nonprofessional service costing more than \$20,000.
- (8) Identical low bids: low responsive bids, from responsible bidders, which are identical in price after the application of the preferences referred to in Section J. of these procedures and which meet all the requirements and criteria set forth in a formal RFB
- (9) Informal RFB : a “request for bid” relating to a purchase of tangible personal property, construction, or nonprofessional service costing with cost estimate of \$20,000 or less and issued to a minimum of three sources that most likely have the resources needed for providing products or services that meet the requirements specified in the bid solicitation.
- (10) Informal RFP: a “request for proposal” for purchasing (1) professional services with cost estimate of \$50,000 or less, or, (2) when determined by the Superintendent or Purchasing Director to be impractical to solicit bids, tangible personal property, construction, or nonprofessional service with cost estimate of \$20,000 or less. This solicitation is issued to a minimum of three sources that most likely have the resources needed for providing products or services that meet the requirements specified in the proposal solicitation.
- (11) Lowest and Best Price: the basis for awarding a contract resulting from a RFB or RFP that is determined as follows:
 - a. Resulting from RFB: the lowest bid price received meeting specifications
 - b. Resulting from RFP: the lowest negotiated price received from the respondent submitting the highest ranked proposal.
- (12) Practicable and Advantageous: same as ordinary dictionary meanings. The term “practicable” denotes what may be accomplished or put into practical application; “advantageous” denotes a judgmental assessment of what is in LCPS best interest. The use of competitive sealed bids may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in LCPS best interest.

- (13) RFB (*Request for Bid*): a request for pricing issued to businesses for the purchase of tangible property, construction, or nonprofessional service whereby a contract may be awarded to the business submitting the lowest pricing that meets the *bid specifications* incorporated within the RFB.
- (14) RFP (*Request for Proposal*): a request for a suggestion or recommendation, including price, for addressing a need for (1) professional services, or, (2) when determined by the Superintendent or Purchasing Director to be impractical to solicit bids, for nonprofessional services, tangible property or construction. Contract resulting from the RFP is based upon the highest ranking proposal considering several weighted criteria incorporated within the RFP, one of which is price.

B. INSPECTION OF PUBLIC RECORDS: The inspection of public records is governed by the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12, NMSA, 1978. To the extent that any provision of these procedures conflicts with the Inspection of Public Records Act, as interpreted by New Mexico courts, that act shall control. Furthermore, no obligation to keep data confidential which is contained in these procedures is intended to create any liability that would not otherwise exist under New Mexico law.

C. DOLLAR AMOUNTS: Whenever a dollar amount appears in these procedures, such amount is exclusive of applicable gross receipts and local option taxes as the term is defined in Section 7-9-3 (Q) NMSA 1978.

D. INDEMNIFICATION AND INSURANCE:

- (1) Except as provided for in the Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978, no contract governed by these procedures shall contain any provision whereby LCPS agrees to indemnify or provide tort liability insurance for any contractor.
- (2) No contract governed by these procedures shall contain any provision whereby LCPS agrees to indemnify or provide a contractor with insurance for non-tort risks.
- (3) Any indemnification or insurance provision in any contract executed in violation of this section shall be void and of no effect.

E. SEVERABILITY: If any provision in these procedures, or any application thereof, to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of these procedures which can be given effect without the invalid provision or application.

F. EXCEPTIONS TO INFORMAL/FORMAL RFB AND RFP REQUIREMENTS: All purchases shall be achieved by formal RFB or formal RFP requirements herein except purchases achieved pursuant to the following Code references:

- (1) Purchase is Exempt from the Code : Sections 13-1-98 - 13-1-98.2
- (2).Purchase is from a Sole Source : Section 13-1-126
- (3).Purchase is Due to Emergency Condition : Section 13-1-127
- (4) Purchase is from Existing Contract : Section 13-1-129
- (5) Purchase is from Anti Poverty Program Businesses : Section 13-1-130
- (6) Purchase is from New Mexico Correction Industries: Section 13-1-189

G. PURCHASES EXEMPT FROM THE CODE: Sections 13-1-98 - 13-1-98.2 of the Code identify and exempt certain purchases of tangible goods and services from the requirements of the Code. Pursuant to this statute, such purchases are exempt from the LCPS PURCHASING PROCEDURES requirements for purchases based upon lowest and best price, RFB, and RFP.

H. SOLE SOURCE PROCUREMENTS: The provisions of Sections H.(1) through H(2) of these procedures apply to all sole source procurements unless emergency conditions exist as defined in Section I. of these procedures.

(1) SOLE SOURCE PROCUREMENT OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:

- a. Conditions for use. A contract may be awarded without formal/informal RFB or RFP, regardless of the estimated cost, when the Superintendent, Purchasing Director, or designee makes a written determination, after conducting a good-faith review of available sources and consulting the end user, that there is only one source for the required items of tangible personal property, construction or nonprofessional services. In cases of reasonable doubt, competition should be solicited.
- b. Request by end user. Any request by an end user that a procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need.
- c. Negotiations. The Superintendent, Purchasing Director or designee shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the state.

(2) RECORDS OF SOLE SOURCE PROCUREMENTS: The Purchasing Department shall maintain records of sole source procurements for a minimum of three years. The record of each such procurement shall be a public record and shall contain:

- a. the contractor's name and address;
- b. the amount and term of the contract;
- c. a listing of the services, construction, or items of tangible personal property procured under the contract; and
- d. the justification for the procurement method which shall include any written determinations and written approvals required by any provision of Sections H(1) a. of these procedures.

I. EMERGENCY PROCUREMENTS: The provisions of Sections I.(1) through I.(6) of these procedures apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

(1) DEFINITION OF EMERGENCY CONDITIONS: An emergency condition is a situation which creates a threat to public health, welfare, safety or property such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- a. the functioning of government;
- b. the preservation or protection of property; or
- c. the health or safety of any person.

(2) SCOPE OF EMERGENCY PROCUREMENTS: Emergency procurements shall be

limited to those services, construction, or items of tangible personal property necessary to meet the emergency. Such procurement shall not include the purchase or lease-purchase of heavy road equipment.

- (3) **AUTHORITY TO MAKE EMERGENCY PROCUREMENTS:** The Superintendent, Purchasing Director or designee may make or authorize others to make emergency procurements when an emergency condition arises.
- (4) **PROCEDURE:** Any reasonable procedure shall be used to assure that the required services, construction, or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.
- (5) **WRITTEN DETERMINATION REQUIRED:** A written determination of the basis for the emergency procurement shall be included in the Purchasing Department files.
- (6) **RECORDS OF EMERGENCY PROCUREMENTS:** The Purchasing Department shall maintain records of emergency procurements for a minimum of three years. The record of each such procurement shall be a public record and shall contain:
 - a. the contractor's name and address;
 - b. the amount and term of the contract;
 - c. a listing of the services, construction, or items of tangible personal property procured under the contract; and
 - d. the justification for the procurement method.

J. PROCUREMENT UNDER EXISTING CONTRACTS AUTHORIZED: LCPS may contract for services, construction, or items of tangible personal property without the use of formal/informal RFB or RFP as follows:

- (1) at a price equal to or less than the contractor's current federal supply contract (GSA), providing the contractor has indicated in writing a willingness to extend the contract's pricing, terms and conditions to LCPS and the purchase order adequately identifies the contract relied upon; or
- (2) with a business which has a current price agreement with the State of New Mexico or other 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 total 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.
- (3) **COPIES OF CONTRACTS AND PRICE AGREEMENTS:** The Purchasing Department shall retain for public inspection and for the use of auditors a copy of each contract or current price agreement relied upon to make purchases without seeking competitive bids.

K. PURCHASE IS FROM ANTI POVERTY PROGRAM BUSINESSES : Without regard to the requirements of the PURCHASING PROCEDURES that bases purchases on lowest and best price, the Superintendent, Purchasing Director or designee may negotiate a contract for materials grown, processed or manufactured in this New Mexico 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. Prior to negotiating a contract under this section, the Superintendent, Purchasing Director or designee shall make a determination of the reasonableness of the price and the quality of the materials and that the public interest will best be served by the procurement.

L. PURCHASE IS FROM NEW MEXICO CORRECTION INDUSTRIES: Pursuant to Section 13-1-189 of the Code, purchase of tangible goods and services available from the New Mexico Corrections Industries may be made without adherence to the PURCHASING PROCEDURS requirements for purchasing at lowest and best price, RFB and RFP.

M. SMALL PURCHASES: The provisions of Sections M (1) through M(5) of these procedures apply to the procurement of nonprofessional services, construction or items of tangible personal property having a value of twenty thousand dollars (\$20,000) or less, and, to the procurement of professional services having a value of fifty thousand dollars (\$50,000) or less.

- (1) The exceptions and methods thereof of procurement set forth in Sections F through L of these procedures provide alternatives to the formal RFB and formal RFP methods. If the exception and methods thereof set forth in Sections F through L of these procedures are not used, the formal RFB or formal RFP methods shall apply.
- (2) **DIVISION OF PURCHASES:** Procurement requirements shall not be artificially divided so as to constitute a small purchase under Sections M (1) through M(5) of these procedures.
- (3) **SMALL PURCHASES OF \$5,000 OR LESS:** A LCPS school principal or other authorized control agent may purchase services, construction or items of tangible personal property having a value not exceeding five thousand dollars (\$5,000) by issuing a direct purchase order to a contractor based upon the best obtainable price.
 - b. For purchases \$5,000.00 or less, pricing may be obtained from internet pages, newspaper ads, competitive quote solicitations, catalogs, etc. in an effort to establish best obtainable price. Retention of records justifying “best obtainable price” is advised for any possible audit inquiry.
- (4) **SMALL PURCHASES OVER \$5000 UP TO \$20,000.** Informal RFB required: Insofar as it is practical for small purchases of nonprofessional services, construction or items of tangible personal property having a value over five thousand dollars (\$5,000) up to twenty thousand dollars (\$20,000), at least three written bids/quotes may be solicited and received from three separate businesses to be filed in the Purchasing Department. The Purchasing Department shall solicit and receive bids over \$20,000. If three written bids cannot be obtained, the reasons shall be documented and included in the Purchasing Department files. Such notations as “does not carry” or “did not return my phone call” do not qualify as a valid bid. Awards are based upon lowest bid meeting specifications
 - a. **Disclosure.** Prior to award, the contents of any response to an informal bid shall not be disclosed to any other business from which the same informal bid is also being solicited.
 - b. Any and all awards resulting from bid solicitations shall be made to the business offering the lowest bid meeting specifications.
 - c. **Records.** The names of the businesses submitting bids and the date and the amount of each bid shall be recorded and maintained as a public record by the Purchasing Department.

(5) SMALL PURCHASES OF PROFESSIONAL SERVICES:

- a. Application. The Purchasing Department may informally procure professional services having a value up to fifty thousand dollars (\$50,000), except for the services of architects, engineers, landscape architects, or surveyors, for local public works projects, as that term is defined in Section 13-1-91, NMSA, 1978, of the Code.
- b. Examination of offeror list. The Purchasing Department may solicit from at least three businesses for written offers before selecting a contractor.
- c. Negotiations and Award. The Superintendent, Purchasing Director or designee shall be responsible for negotiation of a contract for the required services at a fair and reasonable price to LCPS. Award shall be based on 50/50 criteria reflecting proposal content and cost respectively.
- d. Disclosure. If more than one business is contacted, the contents of the written or oral offer of one business shall not be disclosed to another business during the negotiation process.

N. FORMAL RFB:

The provisions of this section shall apply to every purchase of goods, construction and non-professional services over \$20,000.

(1) GENERAL

- a. The formal RFB document includes the following:
 1. instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening;
 2. the specifications for the services, construction or items of tangible personal property to be purchased;
 3. if purchase is for nonprofessional services, a copy of LCPS CONTRACT SERVICE AGREEMENT enclosed herein as ATTACHMENT E. Otherwise, the formal RFB document shall contain pertinent contractual terms and conditions applicable to the purchase such as delivery requirements, term of the contract and conditions of renewal extension, if any. Contracts resulting from a formal RFB shall contain a clause allowing for late payment charges against LCPS in the amount and under the conditions set forth in Section 13-1-158 NMSA, 1978, of the New Mexico Procurement Code.
 4. a notice that the formal RFB 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 LCPS; and
 5. a notice that reads substantially as follows: The New Mexico Procurement Code, Sections 13-1-28 through 13-1-199, NMSA, 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.
 6. Request for Debarment/Suspension Certification in compliance with Federal Executive Order (E.O.) 12549 Debarment and Suspension.
 7. Incorporations by reference (OPTIONAL). The formal RFB may incorporate documents by reference, provided that the formal RFB specifies where such documents can be obtained.
 8. Evaluation criteria. The formal RFB shall set forth the evaluation criteria that will be used to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable. No criteria may be used in bid evaluation that are not set forth in the formal RFB.

9. Bid form. The formal RFB shall provide a form which shall include space in which the bid price shall 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 bids are invalid and shall not be considered. Bids sent via fax, except construction bids or bids requiring bid bonds, will be accepted and be considered if received by the date and time shown on the formal RFB. Bids sent via fax to a third party and delivered in a sealed envelope to the location where bids are to be received by the date and time shown in the bid, will be accepted for consideration.
10. Bid samples and descriptive literature (OPTIONAL)
 - a. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the item bid.
 - b. Bid samples, when required, shall be furnished free of expense to LCPS.
11. Bidding time. In each case, bidding time shall be set to provide bidders a reasonable time to prepare their bids. In no case shall the bidding time be shorter than the time required for publication under Section N(1)c. of these procedures.
- b. Public notice of formal RFB: The formal RFB or notice thereof shall be published once not less than ten calendar days prior to the date set for the opening of bids in a newspaper of general circulation in the Las Cruces, NM vicinity.
 1. These requirements of publication are in addition to any other procedures that may be adopted by the LCPS Purchasing Director to notify prospective bidders that bids will be received, including but not limited to publication in trade journals, if available.
- c. Bidder lists. The LCPS Purchasing Director shall send copies of the notice or formal RFB involving the expenditure of more than twenty thousand dollars (\$20,000) to all businesses which, through written request to the LCPS Purchasing Director or designee, have signified an interest in submitting proposals or bids, as applicable.
- d. Public availability. A copy of the formal RFB shall be made available for public inspection at the LCPS Purchasing Department.
- e. Pre-bid conferences (OPTIONAL): A Pre-bid conference relating to a formal RFB may be conducted to explain the requirements for responding to the formal RFB. The conference shall be announced by incorporation within the formal RFB and public notice issued per Section N(1)c. above. The conference should be held long enough after the formal RFB has been issued to allow bidders to become familiar with the RFB requirements, but sufficiently before bid opening to allow consideration of the conference results in preparing bids. Nothing stated at the pre-bid conference shall change the formal RFB unless a change is made by written amendment as provided in these procedures.
- f. Amendments to the Formal RFB:
 1. Form. An amendment to the formal RFB shall be identified as such and shall require that bidders acknowledge its receipt. The amendment shall refer to the portions of the formal RFB it amends.
 2. Distribution. Amendments shall be sent to all prospective bidders known to have received the formal RFB.

3. Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders 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 telephone, fax, e-mail or by other means and confirmed in the amendment.
4. Use of Amendments. Amendments should be used, but not limited to, for the following:
 - a. To make any changes in the formal RFB such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;
 - b. To correct defects or ambiguities; or
 - c. To furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.
- g. Pre-opening modification or withdrawal of bids:
 1. Procedure. 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 formal RFB as the place where bids are to be received.
 2. Disposition of bid security. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.
 3. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.
- h. Late bids, late withdrawals and late modifications:
 1. Definition. Any bid or any withdrawal or modification of a bid received after the date and time set for opening of bids at the place designated for opening is late.
 2. General rule. No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of LCPS personnel directly serving the procurement activity.
 3. Records. All documents relating to late bids, late modifications, or late withdrawals shall be made a part of the appropriate procurement file.
- i. Bid opening:
 1. Receipt. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening.
 2. No bids received. Except as provided in Section N.(1)a.4. of these procedures, if no bids are received or if all bids received are rejected in accordance with the provisions of Section N.(1)a.4. of these procedures, a new formal RFB shall be issued. If upon re-bidding with no change in specifications from the first formal RFB, the bids received are unacceptable, or if no bids are secured, the LCPS Purchasing Director may purchase the items of tangible personal property, construction or services in the open market at the best obtainable price.

3. Opening and recording. Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time and place designated in the formal RFB. The name of each bidder, the amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the LCPS Purchasing Director shall be recorded. The record shall be open for public inspection. Each bid, except those portions for which a bidder has made a written request for confidentiality, shall also be open to public inspection. Any data which a bidder believes should be kept confidential shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.
- j. Mistakes in bids:
1. Consideration for award. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in N.(1)g.2. of these procedures.
 2. General principles. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may **not** be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible but only to the extent authorized in N.(1)g.2. of these procedures.
 3. Mistakes discovered before opening. A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in Section N.(1)f. of these procedures.
 4. Confirmation of erroneous bid. When the LCPS Purchasing Director or designee knows or has reason to conclude that a mistake has been made in the low bid, the LCPS Purchasing Director or designee should request the low bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the low bid or a bid unreasonably lower than the other bids submitted. If the low bidder alleges a mistake, the bid may be corrected or withdrawn if the conditions set forth in Section N.(1)i.2. of these procedures.
 5. Mistakes discovered after opening. This subsection sets forth procedures to be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening.
 - a. Technical irregularities. Technical irregularities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, when there is no effect on price, quality or quantity. The LCPS Purchasing Director or designee may waive such irregularities or allow the low bidder to correct them if either is in the best interest of LCPS. Examples include the failure of the low bidder to:
 - 1) sign the bid, or
 - 2) acknowledge receipt of an amendment to the formal RFB, but only if:
 - (a) it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms; or
 - (b) the amendment involved had no effect on price, quality or quantity.

- b. Mistakes where intended correct bid is evident. If the mistake and the intended correct bid are clearly evident on the face of a bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of a bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. It is emphasized that mistakes in unit prices cannot be corrected.
 - c. Mistakes where intended correct bid is not evident. A low bidder alleging a material mistake of fact which makes the bid non-responsive may be permitted to withdraw the bid if:
 - 1) a mistake is clearly evident on the face of the bid document but the intended correct bid is not; or
 - 2) the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.
 - d. Written determination. When a bid is corrected or withdrawn, or a correction or withdrawal is denied, the Purchasing Director or designee shall prepare a written determination showing that the relief was granted or denied in accordance with this section.
- k. Bid evaluation and award:
- 1. General. A contract solicited by formal RFB shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. A purchase order is considered written notice. The formal RFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bid. No bid shall be evaluated for any requirement or criterion that is not disclosed in the formal RFB. The formal RFB shall require that the bid amount exclude the applicable taxes but that LCPS shall be required to pay the tax including any increase in the tax becoming effective after the contract is entered into.
 - 2. Product acceptability. The formal RFB shall set forth 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:
 - a. inspection or testing of a product for such characteristics as quality or workmanship;
 - b. examination of such elements as appearance, finish, taste or feel; or
 - c. other examinations to determine whether it conforms with other purchase description requirements.
 - 3. 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 formal RFB. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive.
 - 4. 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 LCPS Purchasing Director or designee that their product is, in fact, equal to the one

- specified. The LCPS Purchasing Director or designee is given the responsibility for making a final determination on whether a proposed substitution is “equal”.
5. Determination of lowest bidder. Following determination of product acceptability as set forth in Section N.(1)j.2. through N.(1)j.4 of these procedures if any is required, bids will be evaluated to determine which bidder offers the lowest cost to LCPS in accordance with the evaluation criteria set forth in the formal RFB. Only objectively measurable criteria that are set forth in the formal RFB 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 LCPS has available concerning future use.
 - a. 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.
 - b. 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 offered.
 - c. Quantity discounts. Quantity discounts shall be included in the unit price of an item. Such discounts may not be considered where set out separately unless the formal RFB so specifies.
 - d. Transportation costs. Transportation costs shall be considered in computing the low bid. Such costs shall be computed into the unit bid price.
 - e. Total or life-cycle costs. Award may be determined by total or life-cycle costing if so indicated in the formal RFB. Lifecycle 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.
 - f. Energy efficiency. Award may be determined by an evaluation consisting of acquisition price plus the cost of energy consumed over a projected period of use.
 6. Restrictions. Nothing in Section N.(1)j.5. of these procedures shall be deemed to permit contract award to a bidder submitting a higher quality item than designated in the formal RFB unless the bidder is also the lowest bidder as determined under Section N.(1)j.5. of this section. Further, except as provided in this subsection, Section N.(1)j.5. of these procedures does not permit negotiations with any bidder. If the low est responsive bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest responsible bidder may negotiate with the LCPS Purchasing Director or designee for a lower total bid to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.

O. STATUTORY PREFERENCES: Statutory preferences to be applied in determining low bidder. The Code provides certain statutory preferences to resident businesses, resident manufacturers, and for recycled content goods (Sections 13-1-21 and 13-1-22 NMSA 1978). The Code further provides a preference to resident construction contractors (Sections 13-4-1 through 13-4-3 NMSA 1978) which must be applied in determining the lowest bidder.

P. IDENTICAL LOW BIDS:

- (1) Award. When two or more identical low bids are received, the Purchasing Director may:
 - a. award pursuant to the multiple source award provisions of Sections 13-1-153 and 13-1-154, NMSA 1978;
 - b. award to a bidder offering recycled content goods if the identical low bids are for recycled content goods and virgin goods;
 - c. award by lottery to one of the identical low bidders; or
 - d. reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property.

Q. MULTI-STEP FORMAL RFB:

- (1) General. Multi-step bidding is a variant of the formal RFB method. This method may be utilized when the Purchasing Director or designee 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.
- (2) Phased process. Multi-step bidding is a phased process which combines elements of both the formal RFB method, seeking necessary information or un-priced technical offers in the initial phase; and 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 final phase. The contract shall be awarded to the lowest responsible bidder. If time is a factor, the Purchasing Director or designee may require offerors to submit a separate sealed bid during the initial phase to be opened after the technical evaluation.
- (3) Public notice. Whenever multi-step sealed bids are used, public notice for the first phase shall be given in accordance with Section N.(1) c. of these procedures. Public notice is not required for the second phase.

R. FORMAL RFP:

- (1). GENERAL DISCUSSION: Use of formal RFP. When LCPS procures professional services that are not related to a design and build project delivery system in accordance with Section 13-1-119.1 NMSA 1978, of the Code, or, when the Superintendent or Purchasing Director or designee makes a determination that the use of competitive sealed bids is either not practicable or not advantageous to LCPS, a procurement shall be effected by formal RFP.
 - a. Proposals offer flexibility. The key element in determining advantageousness is the need for flexibility. The formal RFP method differs from the formal RFB method in two important ways:
 1. it permits discussions and changes to proposals including price from competing offerors; and
 2. it allows comparative judgmental evaluations to be made when selecting among acceptable proposals for award of a contract.
- (2) Determinations by category. The Superintendent or Purchasing Director or designee may make determinations by category of services or items of tangible personal property that it is either not practicable or not advantageous to procure by formal RFB in which case formal RFPs shall be utilized. The Superintendent or Purchasing Director or designee may modify or revoke such determinations at any time.
- (3) Architects, engineers, landscape architects and surveyors. The provisions of Sections R.(1) through R.(13) n. of these procedures do not apply to the procurement of

professional services of architects, engineers, landscape architects and surveyors. Except that when procuring such professional services, LCPS shall comply with Sections 13-1-119 through 13-1-120, NMSA, 1978, and Section 13-1-122, NMSA, 1978, of the Code.

(4) Professional services are defined in ATTACHMENT C, Section (1) a. pursuant to Section 13-1-76, NMSA, 1978, of the Code. The definition acknowledges the difficulty of any attempt made to recognize and list each and every service that could conceivably fall within the definition of “professional services”. Instead, the definition provides in relevant part that “...other persons or businesses providing similar professional services to those listed may be designated as such by a determination issued by the Superintendent, Purchasing Director or designee. In instances where “...other persons or businesses providing similar professional services...”, as cited in Section 13-1-76, NMSA 1978, of the Code is not clearly defined, end users shall submit a written request to the Superintendent, Purchasing Director or designee for issuance of a determination and a finding that the service is to be designated as a professional service.

(5) The Formal RFP:

a. Initiation. At a minimum the formal RFP shall include the following:

1. instructions and information to offerors including the location, date and time proposals are to be received, and for responding to questions;
2. a notice that reads substantially as follows: The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA, 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-back
3. the scope of work describing conditions impacting upon the need for services or items of tangible personal property to be procured;
4. a statement of submission requirements that will be used for evaluation including how proposed costs should be submitted;
5. all of the evaluation factors and the relative weights to be given to the factors in evaluating proposals; factors should be consistent with submission requirements.
6. a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, and that proposals may be accepted without such discussions;
7. a notice that the formal RFP 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 LCPS; and
8. all contractual terms and conditions applicable to the procurement. For service contracts, the formal RFP shall include copy of LCPS CONTRACT SERVICE AGREEMENT.

b. Incorporation by reference. The formal RFP may incorporate documents by reference, provided that the document specifies where such documents can be obtained.

c. Proposal preparation time. Thirty (30) calendar days between the date of issue and the proposal due date is the recommended minimum proposal preparation time. A longer preparation time may be required for complex procurements or for procurements that require substantial offeror resources to prepare an acceptable proposal.

(6) Public Notice of Formal RFP:

a. The formal RFP or a notice thereof shall be published not less than ten (10) calendar days prior to the date set for the receipt of proposals at least once in a newspaper within the Las Cruces, NM, vicinity. It is recommended, however, that the time period between the published date and the date set for receipt of proposals be no less than twenty (20) days. .

- b. The Purchasing Director shall be responsible for distributing the formal RFP or notice to prospective offerors who have submitted written request to receive bids or proposals for the services or tangible property being solicited.
 - c. A copy of the formal RFP shall be made available for public inspection at the Purchasing Department.
 - d. Additional notice. The requirements of Subsections a., b. and c. of this section are in addition to any other procedures which may be adopted by the Purchasing Director to notify prospective offerors that proposals will be received, including but not limited to publication in professional journals, if available.
- (7) PRE-PROPOSAL CONFERENCES: Pre-proposal conferences may be conducted in similarly as presented in Section N(1) d. of these procedures. Any such conference should be held prior to submission of initial proposals.
- (8) AMENDMENTS TO THE FORMAL RFP:
- a. Prior to submission of proposals, amendments to the formal RFP may be made in accordance with Section N(1) e. of these procedures.
 - b. After submission of proposals, amendments to the formal 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 Purchasing Director or designee, a contemplated amendment will significantly change the nature of the procurement, the formal RFP shall be canceled in accordance with Sections S.(1) through S.(4) and a new formal RFP issued.
- (9) MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the established due date in accordance with Section N.(1)f. of these procedures. 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.
- (10) 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. (See Section R.(9) of these procedures for the definition of “established due date.”). They may be considered only in accordance with Section N.(1) g. of these procedures.
- (11) RECEIPT AND OPENING OF PROPOSALS:
- a. Receipt. Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. See Section R.(9) of these procedures for the definition of “established due date.”)
 - b. Opening. Proposals shall not be opened publicly and shall not be open to public inspection until after an offeror has been awarded the 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 nonconfidential portion of the proposal.
- (12) EVALUATION OF PROPOSALS:
- a. Evaluation factors: The evaluation shall be based on the evaluation factors and the relative weights set forth in the formal RFP.
 - b. Evaluation committee. The Superintendent, Purchasing Director or designee shall appoint an evaluation committee prior to the due date for receipt of proposals. The size of the committee should be manageable and include both user and technical support representatives as applicable.
 - c. Classified proposals. For the purpose of conducting discussions under Section S.(13)

of these procedures, proposals shall be initially classified as:

1. responsive;
 2. potentially responsive, that is, reasonably susceptible of being made responsive; or
 3. non-responsive.
- d. Disqualification. Non-responsive proposals are eliminated from further consideration. A written determination in the form of a letter must be sent promptly to the eliminated offeror setting forth the grounds for the elimination, and made a part of procurement file.

(13) PROPOSAL DISCUSSIONS AND NEGOTIATIONS WITH INDIVIDUAL OFFERORS:

- a. Discussions authorized. Proposals may be accepted and evaluated without discussion, or, discussions may be conducted with responsible offerors who submit acceptable or responsive, potentially acceptable or potentially responsive proposals. This authorization shall not be construed by offerors as an opportunity to amend the substance of their proposals.
- b. Purposes of discussions. Discussions are held to clarify technical or other aspects of the proposals.
- c. Conduct of discussions. If during discussions there is a need for any substantial clarification or change in the formal RFP, the formal RFP shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror.
- d. Short list. All responsible offerors who submit acceptable proposals are eligible for the short list. If numerous acceptable proposals have been submitted, however, the evaluation committee may rank the proposals and select the highest ranked proposals for the short list. Those responsible offerors who are selected for the short list are the short-listed offerors” or “finalist offerors”.
- e. Competitive negotiations. Competitive negotiations may be held among the short-listed offerors to:
 1. promote understanding of LCPS requirements and short-listed offerors’ proposal; and
 2. facilitate arriving at a contract that will be most advantageous to LCPS taking into consideration the evaluation factors set forth in the formal RFP and amendments thereof;
 3. Except for circumstances and situations otherwise approved by the Superintendent, Purchasing Director or designee, negotiations of the relevant terms and conditions as well as any other important factors in a formal RFP and proposed contract are negotiated prior to award of a contract, not after award.
- f. Conduct of competitive negotiations. Short-listed offerors shall be accorded fair and equal treatment with respect to any negotiations and revisions of proposals. The Purchasing Director or designee should establish procedures and schedules for conducting negotiations. If during discussions there is a need for any substantial clarification of or change in the formal RFP, the formal RFP shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the short-listed offeror.
- g. 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.

- h. **BEST AND FINAL OFFERS:** The Purchasing Director or designee may establish a common date and time for short-listed or finalist offerors to submit best and final offers. Best and final offers shall be submitted only once; provided, however, the Purchasing Director or designee may make a written determination that it is in the LCPS best interest to conduct additional discussions or change the LCPS requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award. Short-listed offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediately previous offer will be construed as their best and final offer.
- i. **MISTAKES IN PROPOSALS:**
 - 1. Modification or withdrawal of proposals. Proposals may be modified or withdrawn as provided in Section R.(9) of these procedures.
 - 2. Mistakes discovered after receipt of proposals. This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals.
 - a. Confirmation of proposal. When the Purchasing Director or designee knows or has reason to conclude before award that a mistake has been made, the Purchasing Director or designee should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in Subsection (3) of this section are met.
 - b. During negotiations; prior to best and final offers. Once negotiations are commenced or after best and final offers are requested, any short-listed or finalist offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.
 - 3. Technical irregularities. Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Purchasing Director or designee may waive such irregularities or allow an offeror to correct them if either is in the best interest of LCPS. Examples include the failure of an offeror to:
 - a. return the number of signed proposals required by the RFP;
 - b. sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the offeror's intent to be bound; or
 - c. acknowledge receipt of an amendment to the RFP, but only if:
 - 1. it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or
 - 2. the amendment involved had no effect on price, quality or quantity.
 - 4. Correction of mistakes. If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.
 - 5. Withdrawal of proposals. If discussions are not held, or if the best and final offers

upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if:

- a. the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or
 - b. the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
6. Determination required. When a proposal is corrected or withdrawn, or correction or withdrawal is denied under Subsections (3) through (5) of this section, the Purchasing Director or designee shall prepare a written determination showing that the relief was granted or denied in accordance with this section.
- j. **AWARD: PROFESSIONAL SERVICES:**
1. Procedure. An award shall be made to the responsible offeror whose proposal is highest ranked, taking into consideration the evaluation factors set forth in the formal RFP. The Purchasing Director or designee shall make a written determination showing the basis on which an award was found to be most advantageous to LCPS based on the factors set forth in the formal RFP.
 2. Notice of awards. The Purchasing Director or designee shall promptly provide all offerors who submitted proposals written notice of the award.
- k. **AWARD: ALL TANGIBLE PERSONAL PROPERTY OR SERVICES: (INCLUDES SOFTWARE, HARDWARE, NON-PROFESSIONAL SERVICES, etc)**
1. Procedure: The award shall be made to the responsible offeror whose proposal is the highest ranked, taking into consideration the evaluation factors set forth in the formal RFP. The Purchasing Director or designee shall make a written determination in the form of an evaluation committee report showing the basis on which the recommended award was found to be most advantageous to LCPS based on the factors set forth in the RFP.
 - (2) Notice of awards. The Purchasing Director or designee shall promptly provide all offerors who submitted proposals written notice of the award.
- l. **PUBLIC INSPECTION:**
1. General. After award, any written determinations made pursuant to these procedures, the evaluation committee report and each proposal, except those portions for which the offeror has made a written request for confidentiality, shall be open to public inspection. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7, NMSA, 1978. The price of products offered or the cost of services proposed may not be designated as confidential information.
 2. Confidential data. If a request is received for disclosure of data, for which an offeror has made a written request for confidentiality, the Purchasing Director or designee shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the data will be so disclosed. After award the proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.
- m. **PAYMENTS FOR PURCHASES: Contract Clause.** All contracts resulting from a Formal RFP shall contain a clause allowing for late payment charges against LCPS in the amount and under the conditions set forth in Section 13-1-158, NMSA, 1978.

S. CANCELLATION OF SOLICITATIONS OR REJECTION OF BIDS OR

PROPOSALS: The provisions of Sections S.(1) through R.(4) of these procedures shall govern the cancellation of any solicitations whether issued by the Purchasing Department under formal RFB or RFP, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

(1) **POLICY:** Any bid or proposal solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of LCPS

(2) CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS:

a. Prior to opening:

1. As used in this section, “opening” means the date and time set for opening of bids or receipt of proposals.
2. Prior to opening, a solicitation may be canceled in whole or in part when Superintendent, Purchasing Director or designee makes a written determination that such action is in LCPS 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 using agency no longer can reasonably expect to fund the procurement; or
 - c. proposed amendments to the solicitation would significantly change the nature of the procurement.
3. 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 re-solicitation or any future procurements of similar services, construction, or items of tangible personal property.

b. After opening.

1. After opening but prior to award, all bids or proposals may be rejected in whole or in part when the Superintendent, Purchasing Director or designee makes a written determination that such action is in the LCPS best interest for reasons including but not limited to:
 - a. all of the bids and proposals are non-responsive;
 - 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.
- c. A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Section S(2) a.3.

(3) REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:

a. Reasons for rejection.

1. Bids. As used in this section, “bid” includes both formal and informal RFB.

Reasons for rejecting a bid shall include but are not limited to:

- a. the business that submitted the bid is non-responsible as determined under Section .(T) of these procedures;
- 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 RFB.

2. Proposals. As used in this section, “proposal” includes both formal and informal RFP offers. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and an end user’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 non-responsible as determined under Section T. of these procedures;
- 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 Superintendent, Purchasing Director or designee and made a part of the Purchasing Department files. Further, a copy of the determination shall also be sent to the non-responsive offeror.

(4) “ALL OR NONE” BIDS: When the term “all or none” is used:

- a. by the LCPS purchaser 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 non-responsive.
- b. by the bidder or offeror, and not the purchaser. 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 non-responsive.
- c. in instances as stated in both Subsections a. and b. of this section, such a bid or offer may be accepted only if the Superintendent, Purchasing Director or designee issues a determination setting forth the basis for accepting the bid or offer as being in the best interest of LCPS. 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.

T. RESPONSIBILITY OF BIDDERS AND OFFERORS: A determination of responsibility or non-responsibility shall be governed by Sections T.(1) through T.(5)

(1) STANDARDS FOR BIDDER RESPONSIBILITY: Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder has:

- a. submitted a responsive bid;
 - b. 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 formal or informal RFB;
 - c. a satisfactory record of performance;
 - d. a satisfactory record of integrity;
 - e. qualified legally to contract with LCPS; and
 - f. supplied all necessary information and data in connection with any inquiry concerning responsibility.
- (2) **STANDARDS FOR OFFEROR RESPONSIBILITY:** Factors to be considered in determining whether the standard of responsibility has been met include whether an offeror has:
- a. submitted a responsive proposal;
 - b. adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services or items of tangible personal property described in the proposal;
 - c. a satisfactory record of performance;
 - d. a satisfactory record of integrity;
 - e. qualified legally to contract with LCPS; and
 - f. supplied all necessary information and data in connection with any inquiry concerning responsibility.
- (3) **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:
- a. evidence that the bidder or offeror possesses the necessary items;
 - b. acceptable plans to subcontract for the necessary items; or
 - c. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- (4) **INQUIRY BY PROCUREMENT OFFICER:** Before awarding a contract, the Purchasing Director or designee must be satisfied that the bidder or offeror is responsible. Therefore, a bidder or offeror shall supply information and data requested by the Purchasing Director or designee concerning the responsibility of the bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information or data in connection with such an inquiry is grounds for a determination that the bidder or offeror is not responsible.
- (5) **DETERMINATION REQUIRED:**
- a. If a bidder or offeror who otherwise would have been awarded a contract is found to be non-responsible, a written determination, setting forth the basis of the finding, shall be prepared by Purchasing Director or designee. The written determination shall be made part of the procurement file, and a copy of the determination shall be sent to the non-responsible bidder or offeror.

U. PROTESTS: The provisions of Sections U.(1) through U.(12) of these procedures apply to all protests filed with the Superintendent, Purchasing Director or designee.

- (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 Superintendent, Purchasing Director or designee.
- (2) **FILING OF PROTEST:**
- a. Protest must be written. Protests must be in writing and addressed to the

- Superintendent, Purchasing Director or designee.
- b. Contents. The protest shall:
 1. include the name and address of the protestant;
 2. include the solicitation number;
 3. contain a statement of the grounds for 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 requested from the Superintendent, Purchasing Director or designee.
 - c. Pleadings. No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.
 - d. Time limit. Protests shall be submitted within fifteen 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.
- (3) PROCUREMENTS AFTER PROTEST:
- a. In the event of a timely protest, as defined in Section U(2) d. of these procedures, the Superintendent, Purchasing Director or designee shall not proceed further with the procurement unless the Superintendent, Purchasing Director or designee makes a written determination that the award of the contract is necessary to protect substantial interests of LCPS. Such written determination should set forth the basis for the determination. As used in Sections U(3) b of these procedures, the point in time in which a contract is awarded is that point at which a legally enforceable contract is created unless the context clearly requires a different meaning.
 - b. 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 Superintendent, Purchasing Director or designee may, in its sole discretion, halt a procurement in exceptional circumstances or for good cause shown.
- (4) PROCEDURE:
- a. Upon the filing of a timely protest, the Superintendent, Purchasing Director or designee shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.
 - b. The protestant and every business that receives notice pursuant to Subsection(4) a. of this section will automatically be parties to any further proceedings the before the Superintendent, Purchasing Director or designee. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Interveners shall accept the status of the proceedings at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously established time schedules.
 - c. The Superintendent, Purchasing Director or designee may take any action reasonably necessary to resolve a protest. Such actions include, but are not limited to, the following:
 1. issue a final written determination summarily dismissing the protest;
 2. obtain information from the staff of the Superintendent, Purchasing Director or Designee

3. require parties to produce for examination information or witnesses under their control;
 4. require parties to express their positions on any issues in the proceedings;
 5. require parties to submit legal briefs on any issues in the proceeding;
 7. regulate the course of the proceedings and the conduct of any participants;
 8. receive, rule on, exclude or limit evidence;
 9. take official notice of any fact that is among the traditional matters of official or administrative notice;
 10. conduct hearings; and
 11. take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses.
- (5) DISCOVERY: Upon written request of any party, or upon its own motion, the Superintendent, Purchasing Director or designee may require parties to comply with discovery requests.
- (6) HEARINGS:
- a. Hearings will be held only when the Superintendent, Purchasing Director or designee determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. Any party may request a hearing, but such requests shall be deemed denied unless specifically granted.
 - b. Hearings, when held, should be as informal as practicable under the circumstances, the Superintendent, Purchasing Director or designee has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the Superintendent, Purchasing Director or designee required to adhere to formal rules of evidence or procedure.
- (7) RESOLUTION:
- a. The Superintendent, Purchasing Director or designee shall promptly issue a written determination relating to the protest. The determination shall:
 1. state the reasons for the action taken; and
 2. inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183 NMSA 1978.
 - b. A copy of the written determination shall be sent immediately by certified mail, return receipt requested, to each of the parties, or, may be emailed or faxed by request for confirmation that the determination has been received.
- (8) RELIEF:
- a. Prior to award. If, prior to award, the Superintendent, Purchasing Director or designee makes a written determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled.
 - b. After award.
 1. No fraud or bad faith. If, after an award, the Superintendent, Purchasing Director or designee makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith:
 - (a) the contract may be ratified, affirmed or revised to comply with law, provided that a written determination is made that doing so is in the best interest of LCPS; or
 - (b) the contract may be terminated and the business awarded the contract shall be

compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

2. Fraud or bad faith. If, after an award, the Superintendent, Purchasing Director or designee makes a written 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.
- c. Relief not allowed. Except as provided in Section U.(8) b.1.(b). of these procedures, the Superintendent, Purchasing Director or designee shall not award money damages or attorneys' fees.

(9) DESIGNEE:

- a. Designation. At any point during a protest proceeding, the Superintendent, Purchasing Director or designee may appoint a designee as defined in Section 13-1-51, NMSA, 1978 to preside over the proceeding. The designee will have all of the powers described in Sections U.(1) through U.(12) of these procedures except the power to issue a written determination. The designee only has authority to recommend a resolution the Superintendent, Purchasing Director or designee.
- b. Who may be designated. Any person, other the Superintendent, Purchasing Director or designee or other person not directly involved in the procurement may serve as a designee.
- c. Recommended written determination. A designee shall present a recommended written resolution to the Superintendent, Purchasing Director or designee and mail a copy to each of the parties. No party may appeal from the recommended resolution of the designee.
- d. Action by the Superintendent, Purchasing Director or designee. The Superintendent, Purchasing Director or designee shall approve, disapprove or modify the recommended resolution of the designee in writing. Such approval, disapproval or modification shall be the written determination required by these procedures.

(10) FINAL DETERMINATION:

- a. The written determination issued pursuant to these procedures shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183, NMSA, 1978.

(11) COPIES OF COMMUNICATIONS:

- a. Copies to be provided to parties. Each party to a protest proceeding shall certify that it has provided every other party with copies of all documents or correspondence addressed or delivered to the Superintendent, Purchasing Director or designee.
- b. Ex parte communications. No party shall submit to the Superintendent, Purchasing Director or designee, ex parte, any material, evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest.

(12) COUNTING DAYS: In computing any period of time of these procedures, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included.

V. RECEIPT; INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES: The end user is responsible for inspecting and accepting or rejecting deliveries.

- (1) the end user shall determine whether the quantity is as specified in the purchase order or contract;
- (2) within 10 calendar days of receipt of items or service, the end user shall determine whether the quality conforms to the specifications referred to or included in the purchase

order or contract;

- (3) if inspection reveals that the delivery does not meet or conform to the quantity or quality specified in the purchase order or contract, the end user 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 end user shall promptly notify the Purchasing Department.
- (4) after the end user applies the procedures in this section, the Purchasing Department staff shall seek remedy from the vendor and, if not successful, shall have no obligation to pay for the nonconforming items of tangible personal property;
- 5) if the delivery does conform to the quantity and quality specified in the purchase order or contract, the end user shall certify through the LCPS electronic receiving system that delivery has been completed and is satisfactory.

LAS CRUCES SCHOOL DISTRICT
CONTRACTED SERVICES AGREEMENT

[TITLE]

This Agreement is entered into as of the [] day of [], 200[], between Las Cruces School District No. 2 Board of Education ("the School District") and [service provider's name] ("the Contractor").

1. Independent Contractor. Subject to the terms and conditions of this Agreement, the School District hereby engages the Contractor as an independent contractor to perform the services set forth herein, and the Contractor hereby accepts such engagement.
2. Non-appropriation of Funding. If the School District's performance under this Agreement depends upon the appropriation of funds, and if the School District does not appropriate the funds necessary for performance, then the School District may provide written notice to Contractor and cancel this Agreement without further obligation except for payment due as mutually agreed for work in progress or completed by the Contractor.
3. Duties, Term, and Compensation. The Contractor's duties, term of engagement, compensation and provisions for payment thereof shall be as set forth in SUPPLEMENT A herein which may be amended only upon written, mutual agreement between the parties.
4. Expenses. Unless otherwise agreed in writing by the School District, the Contractor's out-of-pocket expenses that are incurred in connection with the performance of the duties hereunder shall be considered inclusive within the terms of SUPPLEMENT A. Expenses for the time spent by Contractor in traveling to and from School District facilities shall not be reimbursable.
5. Written Reports. The School District may request that updates on project plans and/or written progress reports be provided by Contractor on a monthly basis. A final written report shall be due at the conclusion of the project and shall be submitted to the School District at such time. The final report shall be in such form and setting forth such information and data as is reasonably requested by the School District.
6. Inventions. Any and all inventions, discoveries, developments and innovations conceived by the Contractor during this engagement relative to the duties under this Agreement shall be the exclusive property of the School District; and the Contractor hereby assigns all right, title, and interest in the same to the School District. Any and all inventions, discoveries, developments and innovations conceived by the Contractor prior to the term of this Agreement and utilized by the Contractor in rendering duties to the School District are hereby licensed solely to the School District for use in its operations.
7. Confidentiality. The Contractor acknowledges that during the engagement the Contractor will have access to and become acquainted with various information, records and specifications owned or licensed by the School District and/or used by the School District in connection with the operation of its business including, without limitation, the School District's processes, methods, staff/student data, accounts and procedures, etc.. The Contractor agrees that the Contractor will not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of this Agreement or at any time thereafter, except as required in the course of this engagement with the School District. All files, records, documents, blueprints, specifications, information, letters, notes, media lists, original artwork/creative, notebooks, and similar items relating to the mission of the School District, whether prepared by the Contractor or otherwise coming into the Contractor's possession, shall remain the exclusive property of the School District. The Contractor shall not retain any copies of the foregoing without the School District's prior written permission. Upon the expiration or earlier termination of this Agreement, or whenever requested by the School District, the Contractor shall immediately deliver to the School District all such files, records, documents, specifications, information, and other items in the Contractor's possession or under the Contractor's control.

8. Conflicts of Interest; Non-hire Provision. The Contractor represents that Contractor is free to enter into this Agreement, and that this engagement does not violate the terms of any agreement between the Contractor and any third party. Further, the Contractor, in rendering the Contractor's duties shall not utilize any invention, discovery, development, improvement, innovation, or trade secret in which Contractor does not have a proprietary interest. During the term of this agreement, the Contractor shall devote as much of the Contractor's productive time, energy and abilities to the performance of the Contractor's duties hereunder as is necessary to perform the required duties within the time period outlined in this agreement or otherwise, in a timely and productive manner. The Contractor is expressly free to perform services for other parties while performing services for the School District. The Contractor shall not, directly or indirectly hire any employee of the School District, and no School District employee may be simultaneously employed by the Contractor during the effective period of this agreement.
9. Right to Injunction. The parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the School District under the Agreement are of a special, unique, unusual, and extraordinary character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated by damages in any legal action, and the breach by the Contractor of any of the provisions of this Agreement will cause the School District irreparable injury and damage. The Contractor expressly agrees that the School District shall be entitled to injunctive and other equitable relief in the event of, or in prevention of, a breach of any provision of this Agreement by the Contractor. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that the School District may have for damages or otherwise. The various rights and remedies of the School District under this Agreement or otherwise shall be construed to be cumulative, and no one of the them shall be exclusive of any other or of any right or remedy allowed by law.
10. Termination. The School District may terminate this Agreement at any time by 10 working days' written notice to the Contractor. In addition, if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of the School District, is guilty of serious misconduct in connection with performance hereunder, or materially breaches provisions of this Agreement, the School District at any time may terminate the engagement of the Contractor immediately and without prior written notice to the Contractor.
11. Independent Contractor. This Agreement shall not render the Contractor an employee, partner, or agent of with the School District for any purpose. The Contractor is and will remain an independent contractor in the Contractor's relationship to the School District. The School District shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor shall have no claim against the School District hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.
12. Insurance. The Contractor shall not commence work under this Contract until he has obtained all insurance required under this paragraph and such insurance has been approved by the Owner:
 - a. Comprehensive General Liability Insurance:
 1. Property damage: Not less than \$100,000 each occurrence,
 2. Medical expense: Not less \$300,000 each occurrence,
 3. Bodily injury (excludes medical expense): Not less than \$400,000 any one person, and
 4. Maximum per occurrence (excluding medical expense): Not less than \$750,000 each occurrence.
 - b. Workers' Compensation Insurance (if applicable) in statutory form covering all contractor's employees.
13. Successors and Assigns. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.
14. Choice of Law. The laws of the state of New Mexico shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

15. Arbitration. Any controversies arising out of the terms of this Agreement or its interpretation shall be settled in accordance with the rules of the American Arbitration Association. The parties agree that any arbitration proceeding shall be conducted in Las Cruces, New Mexico, and any subsequent judicial filing or review will be filed in the Third Judicial District of New Mexico or in the federal courts of New Mexico. Furthermore, any judgments upon award shall be entered in the courts of New Mexico.
 16. Headings. Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.
 17. Waiver. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.
 18. Assignment and Subcontract. The Contractor shall not assign any of the Contractor's rights under this Agreement, or delegate the performance of any of the Contractor's duties hereunder, without the prior written consent of the School District.
 19. Background Checks. The Contractor shall be responsible for complying to the provisions of §22-10A-5 NMSA 1978 requiring two fingerprint cards from employees having unsupervised access to students. The cards shall be submitted to the School District for obtaining the employees' Federal Bureau of Investigation record. Convictions of felonies or misdemeanors contained in the Federal Bureau of Investigation record, if supported by independent evidence, may form the basis for the employment decisions for good and just cause. Records and any related information shall be privileged and shall not be disclosed to any person not directly involved in employment decision of Contractor's employee with unsupervised access to students.
 20. Notices. Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as follows:
 - If to the Contractor: [name]
 [street address]
 [city, state, zip]
 - If to the School District: Superintendent
 Las Cruces School District
 505 S. Main St.; Suite 249
 Las Cruces, NM 88001
- Any party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.
21. Modification or Amendment. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.
 22. Entire Understanding. This document and any supplement attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
 23. Non-enforceability of Provisions. If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

DUTIES, TERM, AND COMPENSATION

DUTIES: The Contractor will [describe here the work or service to be performed].

Any change to the work must be within the scope of work described herein.

Contractor will report directly to [name] and to any other party designated by [name] in connection with the performance of the duties under this Agreement and shall fulfill any other duties reasonably requested by the School District and agreed to by the Contractor.

TERM: This engagement shall commence upon execution of this Agreement and shall continue in full force and effect through [date] or earlier upon completion of the Contractor's duties under this Agreement. The work may be temporarily stopped or delayed due to unforeseen circumstances upon written approval by the Owner. The Agreement may be extended thereafter by mutual agreement, unless terminated earlier by operation of and in accordance with this Agreement.

COMPENSATION: (Choose A or B)

A. As full compensation for the services rendered pursuant to this Agreement, the School District shall pay the Contractor at the hourly rate of [dollar amount] per hour, with total payment not to exceed [dollar amount] without prior written approval by an authorized representative of the School District. Such compensation shall be payable within 30 days of receipt of Contractor's monthly invoice for services rendered supported by reasonable documentation. After the thirtieth day from the date written certification of acceptance is issued by the School District, 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.

B. As full compensation for the services rendered pursuant to this Agreement, the School District shall pay the Contractor the sum not to exceed [dollar amount], to be paid [time and conditions of payment]. The total payment shall not exceed [dollar amount] without prior written approval by an authorized representative of the School District. Such compensation shall be payable within 30 days of receipt of Contractor's monthly invoice for services rendered supported by reasonable documentation. 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.

LAS CRUCES SCHOOL DISTRICT
CONTRACT SERVICES AGREEMENT
(TITLE)

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

Contractor

Signed: _____

Print Name: _____

Date: _____

Las Cruces School District No 2

Finance Department: _____ Date: _____

Principal/Administrative Head : _____ Date: _____

Purchasing Department: _____ Date: _____