



**EL PASO COUNTY**  
**Contracts and Procurement Policy Manual**  
**March 1, 2022**

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# 1 INTRODUCTION

## 1.1 PURPOSE OF PROCUREMENT POLICIES MANUAL

County government was created by its taxpayers and exists to serve its taxpayers.

The public must have confidence that public funds are expended prudently on its behalf and not for the personal benefit of County employees, officials, or their friends. The deliberate elements of actual or perceived conflict of interest, fraud, and abuse can be destructive to the public trust. The policies incorporated within should:

- Provide a combined centralized and decentralized procurement program encompassing nationally approved principles and practices.
- Be reviewed at least annually to ensure the efficacy of procurement statutes and to incorporate periodic modifications.
- Promote and encourage ethical management and efficiency in County procurement procedures.

This policy shall apply to the procurement of and subsequent payment for all goods and services required or used by the County, regardless of the source of funds. Expenditures related to public utility services, litigation, outside legal counsel, city and state licensing fees, postage, intergovernmental agreements and ongoing principal and interest payments for Board of County Commissioners (BoCC) approved debt are not subject to this procurement policy. When any procurement involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state laws or regulations. The purpose of this manual is to establish policies that will be used to accomplish the following:

- Simplify, clarify, and modernize El Paso County's procurement practices
- Establish consistent procurement procedures within all County departments and offices
- Bolster public confidence in public procurement procedures
- Ensure the fair and equitable treatment of all persons dealing with the County procurement system
- Foster effective broad-based competition within the free enterprise system
- Provide increased economy in County procurement activities

- Maximize the procurement value of County funds
- Safeguard the quality and integrity of the procurement system
- Ensure that expenditures of public funds (including federal, state, local, and grant funds) comply with the terms and conditions of the funding source (**Note:** If federal or state requirements conflict with the provisions of this manual, nothing in the manual shall prevent the County from complying with the terms and conditions of the federal or state requirements.)

The El Paso County, Colorado, Contracts and Procurement Division presents this manual to promote understanding by employees, vendors, contractors, and the public regarding the procurement of goods or services on behalf of the County.

These policies are set forth in accordance with resolutions approved by the El Paso County Board of County Commissioners (BoCC).

Because the County contracts diverse services and commodities to support its operation, it uses a combined centralized and decentralized procurement system. These policies set forth the following elements of a centralized/decentralized procurement function:

**Centralized:** These policies are to be followed by anyone who has the authority to act as an agent of the County in the procurement of all goods and services regardless of the dollar value. This authority lies within the Contracts and Procurement Division.

**Decentralized:** These policies are for the benefit of County personnel responsible for the procurement of goods and services for their departments in an amount up to \$40,000, unless authorized for additional amounts.

**Public Procurement:** Procurement in the public sector is the process through which a government acquires goods and services. The terms “acquisition,” “procurement,” “purchasing” and “contracting” are often used interchangeably. One of the most important rules of public procurement is that each procurement action results in a legal contract between the County and the supplier. Each procurement action is a legal action. Public procurement activities are governed by common law, the Uniform Commercial Code (UCC), government procurement laws and ordinances, and case law. Thus, those persons making procurement decisions are subject to legal requirements (and exposure) well beyond what other County officials may routinely experience.

The Contracts and Procurement Manager is the public purchasing official for the County, responsible for providing direction and assistance in the acquisition of goods and services necessary for its operations, ensuring compliance with the policies which govern the County's purchasing process and developing procedures that maximize the efficiency of the process and the value of dollars spent.

The Contracts and Procurement Manager will use professional judgement in determining the appropriate action when an acquisition need is determined to be urgent. The Contracts and Procurement Manager may modify standard timelines and activities that will allow the acquisition of the necessary commodity(s) to be completed within the time requirements without compromising the principles of public procurement.

The Contracts and Procurement Division may assist in the procurement of goods and services in excess of \$5,000 subject to applicable policies, procedures, and fiscal restraints. Purchases in excess of \$40,000 will be made by the Contracts and Procurement Division,

## 1.2 MISSION

The Contracts and Procurement Division's mission is to assist all County departments, offices, employees, and officials in the procurement of materials, supplies, equipment, and services at the lowest possible cost, consistent with the quality and delivery required. All purchases by an employee, acting as an authorized agent of the County, must be made in an open, fair, legal, and ethical manner to promote competition and best serve the taxpayers.

## 1.3 FUNCTIONS

The functions to be performed by the Contracts and Procurement Division and its personnel are as follows:

- Provide a professional procurement operation comprised of qualified personnel
- Utilize nationally recognized accepted practices
- Recommend County-wide procurement policies and procedures for the sourcing, soliciting, negotiation, and acquisition of materials, equipment, supplies, and services
- Act as County spokesperson on all matters pertaining to procurement
- Consolidate purchases, when possible, of like or common items to obtain the maximum economic benefits

- Purchase all equipment, supplies, and services for County use in such a manner that the maximum value will be obtained for the money expended (**Note:** Purchases shall be made from qualified manufacturers and firms whose reputations, financial positions, and price structures are sufficiently adequate for consideration as logical sources of goods and services.)
- Arrange for the disposal or negotiate the sale of surplus materials and equipment, including obsolete stock and scrap
- Study markets to analyze prices paid for materials and equipment, generally define how to obtain savings through improved specifications and supervision of sources of supply, and recommend changes in quantities to be ordered when conditions warrant
- Expedite deliveries of needed material and equipment
- Provide a timely procurement service to all County agencies
- Promote better customer and supplier relations

#### 1.4 RELATIONS WITH OTHER COUNTY DEPARTMENTS

The Contracts and Procurement Division shall continuously familiarize itself with the particular requirements of the other County departments and offices, including elected officials, and be receptive to suggestions or comments. Whenever it is practical to do so, County requirements for supplies and services shall be purchased through price agreements and requirements contracts. The County will benefit from quantity discounts, fewer procurement transactions, and minimal paperwork. Each procurement specialist shall work with County departments, offices, and elected officials to attempt to estimate needs to establish price agreements and contracts.

The Contracts and Procurement Division may support all County agencies with grant-related administration (i.e., analyzing, fact-finding, drafting, plan of work, and submission, where applicable).

#### 1.5 PRINCIPLES

The El Paso County Contracts and Procurement Division will strive to accomplish the following:

- To consider first what is in the best interests of the County in all transactions.
- To comply with the established policies of the County.
- To be receptive to competent counsel from colleagues.
- To strive consistently for knowledge of goods, services, and industries.

- To establish practical procedures for the conduct of the office.
- To subscribe to and work for honesty, truth, and transparency in buying and selling and to denounce all forms or manifestations of bribery and favoritism.
- To be courteous and prompt to all internal and external customers.
- To guide and assist county employees and officials in the performance of their duties.
- To participate in professional organizations engaged in activities designed to enhance the development and standards of public procurement.
- To comply with federal, state, and grant requirements, when applicable

#### 1.6 CODE OF ETHICS

As a political subdivision of the State of Colorado, anyone who makes purchases for the County is an agent of the County and is required to follow the State Procurement Code of Ethics. It is the policy of the County that all County procurement actions be performed in good faith. Additionally, the Contracts and Procurement Division and the State of Colorado are members of the National Institute of Governmental Procurement, Inc. (NIGP), a national organization of procurement professionals. The NIGP's Code of Ethics, issued by the Universal Public Procurement Certification Council (UPPCC). As members of NIGP, the Contracts and Procurement Division believes that the following NIGP ethical principles should govern the conduct of every person employed by a public sector procurement or materials management organization.

A procurement professional:

- Will seek or accept a position of employment only when fully in accord with the professional principles applicable thereto, and when confident of possessing the qualifications to serve under those principles to the advantage of my employer;
- Believes in the dignity and worth of the services rendered by their employment and the societal responsibilities assumed as a trusted public servant;
- Shall be governed by the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of their employer and the public served;
- Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and intolerable;

- Will identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved;
- Believes that individuals that possess UPPCC certification should at no time or under any circumstances accept directly or indirectly, gifts, gratuities, or other things of value from suppliers, which might influence or appear to influence purchasing decisions;
- Will keep their governmental organization informed, through appropriate channels, on problems and progress of applicable operations by emphasizing the importance of the facts;
- Will handle all personnel matters on a merit basis. Politics, religion, ethnicity, gender, and age carry no weight in personnel administration in the agency being directed or served;
- Shall not seek or dispense personal favors that are in conflict with their profession. They will handle each administrative problem objectively and empathetically without discrimination; and,
- Subscribes to and supports the professional aims and objectives of the Universal Public Procurement Certification Council.

#### 1.7 **VENDOR ETHICS**

No firm owned by a person officially connected with or employed by the County or an immediate family member (spouse, children and their spouses, step-children and their spouses, brothers and brothers-in-law, sisters and sisters-in-law; parents and parents-in-law, grandparents and grandparents-in-law, grandchildren and their spouses and members of the immediate household) will be allowed to sell to the County goods or services of any kind without express prior written consent of the BoCC, as required by law.

Gifts or gratuities of other than nominal value or as permitted by Article XXIX of the Colorado Constitution (Amendment 41), which might obligate a person officially connected with or employed by the County in any manner shall be politely and firmly refused. Any vendor or bidder who offers items may be disqualified indefinitely.

Officials and employees of the County who are offered anything in excess or in violation of the spirit of this policy (gifts, gratuities, prizes, bribes, etc.) by any vendor conducting or seeking to conduct business with the County shall submit a written report regarding the offer to the Contracts and Procurement Manager.

## 1.8 EMPLOYEE AND ELECTED OFFICIALS' ETHICS

Officials and employees of the County must exercise sound judgment in avoiding conflicts of interest or the appearance of impropriety in dealing with vendors. It is unethical for any person officially connected with or employed by the County to:

- Participate directly or indirectly in a procurement in which he/she or any member of his/her immediate family/household has a financial interest;
- Participate directly or indirectly in a procurement in which he/she or any member of his/her immediate family/household is negotiating or has an arrangement concerning prospective employment;
- Accept or receive any gift, gratuity, compensation, reward, or anything other than the nominal value from any supplier or contractor for the sale of goods or services to the County. Donations to the County proper would not be included in these provisions;
- Use the Contracts and Procurement Division or County procurement tools to obtain goods or services for his/her own private use;
- Extend favoritism to any vendor or take any action that will give one supplier an unfair advantage over another;
- Indicate County preference to suppliers or contractors for any product, service or source of supply unless authorized to negotiate purchases on behalf of the County;
- Knowingly use confidential information regarding any potential procurement for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

## 1.9 CONDUCT WHEN DEALING WITH VENDORS

Gifts or gratuities of other than nominal value or as permitted by Article XXIX of the Colorado Constitution (Amendment 41), which might obligate a person officially connected with or employed by the County in any manner shall be politely and firmly refused. Items of negligible value used as obvious forms of advertisement, such as pencils, calendars, notepads, and key rings, shall not be considered gifts or gratuities. Any provider, vendor, or bidder who offers items listed below, may be declared irresponsible bidders, and may be debarred from bidding or proposing. A County employee or elected official who accepts a gift, entertainment, etc. shall be subject to disciplinary action per County Personnel Policy, unless it is a gift or gratuity permitted under Article XXIX of the Colorado Constitution (Amendment 41) and therefore, is subject to those obligations.

Elected officials and employees of the County who are offered anything in excess or in violation of the spirit of this policy, or Article XXIX of the Colorado Constitution (gifts, meals, entertainment, special personal price considerations, fees, commissions, gratuities, prizes, bribes, etc.) by any provider, vendor, or bidder conducting or seeking to conduct business with the County shall submit a written report regarding the offer to the Contracts and Procurement Manager.

No elected official or employee of the County (excluding employees in the Contracts and Procurement Division) shall negotiate contracts directly or indirectly with a provider or vendor for supplies or services, except where an emergency exists after normal working hours. Procurement personnel must actively participate in all negotiations.

No supply or service shall be purchased or accepted for the private use of an employee or official. Collusion is strictly prohibited at all levels of government.

Vendors contact with employees should be through or with the knowledge of Contracts and Procurement Division personnel. The intent is to prevent vendors from bypassing the procurement policies and procedures in an attempt to influence employees.

All questions from vendors regarding any aspect of a County acquisition, from initial requisition through final acceptance of the purchase, shall be addressed to the Contracts and Procurement Division.

When the Contracts and Procurement Division or a Department's Procurement liaison is interacting with vendors/suppliers on behalf of the County, it is important to consider the following:

- Suppliers should be dealt with fairly and equitably.
- "Meet or beat" pricing among bidders should not be requested or accepted.
- Equal assistance should be given to all suppliers and potential vendors.
- Ensure solicitation activities are competitive.
- No supplier preference should be given.
- Goods or services should not be called proprietary or sole source unless it is determined that they are, and that determination can be properly documented.
- No favoritism of any kind is permitted.
- Internal customers and external suppliers should be treated with professional courtesy.

The ability to make purchases on behalf of the County does not entitle the purchaser to any kind of special personal privileges from the vendor, and no purchase for the County should be, in any way, tied to any personal purchases at any time.

It is important to remember that perception is everything. Even if a procurement decision is sound, the method of determination should be documented and will be open to public inspection. If a decision is perceived to be less than fair to all competitors, then the perception becomes the reality to the unsuccessful bidders. It is important that purchases or awards are made based on competition or the best value for the County, that the reason(s) for those purchases or awards is documented and defensible, and that a decision is based on fact and is made in the best interest of the County.

#### **1.10 DETERMINATION OF RESPONSIBILITY**

A determination of responsibility or non-responsibility shall be governed by this policy. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor or vendor has the following:

- Has the appropriate financial, material, equipment, facility, and personnel resources and expertise necessary to indicate capability to meet all contractual requirements (or the ability to obtain such capabilities)
- Has a satisfactory record of documented past performance, including conduct and cooperation
- Has adequate financial resources to perform the contract (or the ability to obtain them)
- Has the ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and government business commitments
- Has a satisfactory record of integrity and business ethics
- Has the necessary organization, years of experience, accounting and operational controls, and technical skills (or the ability to obtain them)
- Is qualified and eligible to receive an award under applicable laws and regulations
- Has the ability to meet or exceed the requirements outlined in the solicitation including, but may not be limited to, years of experience of the vendor in the requested field of discipline, years of experience of personnel in the requested field of discipline, appropriate documentation of requested references in the requested field of discipline, etc.

#### 1.10.1 **Written Determination of Non-Responsibility Required**

The prospective contractor or vendor shall supply information concerning the responsibility of such specifications / requirements as stated in the solicitation or upon request of the Contracts and Procurement Division. If the contractor fails to supply the requested information, the Contracts and Procurement Division shall base the determination of responsibility upon any available information and/or may find the prospective contractor non-responsible based on this information.

If a bidder or offeror is found non-responsible, the Contracts and Procurement Division shall prepare a written determination of non-responsibility setting forth the basis of the finding. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the procurement files.

#### 1.11 **PRE-QUALIFICATION**

Certain County public improvement projects in excess of \$150,000 may require that the prospective contractor be pre-qualified. On such public improvement projects, prospective contractors may be asked to submit a financial statement in accordance with the general provisions of the public improvement documents. All prospective contractors shall fill out and return a pre-qualification questionnaire. Pre-qualification may be required for other County contracts and shall be determined on an individual basis by the Contracts and Procurement Manager and using department.

#### 1.12 **SUSPENSION OR DEBARMENT**

Suspension or debarment of a vendor is a consequence that should be addressed with serious consideration. The Contracts and Procurement Manager shall have the authority to suspend or debar any vendors or contractors for the following:

- Defaulting on an awarded contract (debarment)
- Routinely performing unsatisfactory work (suspension or debarment)
- Violating contract terms and conditions without cure or remedy (suspension or debarment depending on severity)
- Having pending litigation against the County (may only be suspended pending results of litigation)

- Defaulting on the payment of any taxes, license fees or other monies due the County (suspension)
- Being convicted of fraud or criminal acts while performing as a contractor on any contracts, even those not associated or written by the County (debarment)
- If documentation substantiates a consistent past performance record of habitually or continuous unsatisfactory performance, safety violations, repeated violations of contract provisions, or delinquent performance by a contractor (suspension)

The Contracts and Procurement Manager may debar vendors from bidding or performing as a subcontractor on any County contracts for a minimum period of three months up to a maximum of three years. However, if a vendor under suspension fails to correct or cure the deficiency for which they have been suspended during the suspension period, the Contracts and Procurement Manager may convert the suspension into a debarment. Prior to formally suspending or debarring any vendor, the Contracts and Procurement Manager shall review and investigate all reasons and evidence supporting such a decision and shall inform the suspended or debarred vendor in writing of such decision.

The suspended or debarred vendor may, at the conclusion of the suspension or debarment period, submit a formal request to be removed from such status. Upon receipt of this request, the Contracts and Procurement Manager will be required to investigate current and past performance to determine responsibility.

### **1.13 PROCUREMENT RECORDS AND INFORMATION**

#### **1.13.1 Public Access to Procurement Information**

Requests for procurement records are available through the Contracts and Procurement Division and the Public Information Office in accordance with applicable state statute.

#### **1.13.2 Copies of Procurement Information**

Copies of procurement information, subject to public access, are available to the public upon written request. A per page charge will be collected for more than 10 pages from the requesting party and shall be paid to the County prior to obtaining the copies.

### 1.13.3 Retention of Procurement Records

All procurement records shall be retained and disposed of in accordance with the State of Colorado's records retention guidelines and schedules. All procurement records are kept in the Contracts and Procurement Division.

## 2 ADMINISTRATIVE MATTERS

### 2.1 ESTABLISHMENT OF THE CONTRACTS AND PROCUREMENT DIVISION

The Contracts and Procurement Division operates under the County Administrator. This Division shall be administered by the position of County Contracts and Procurement Manager, in accordance with CRS 2002 (as amended), 30-11-107(n).

### 2.2 AUTHORITY

The BoCC of El Paso County, by Board resolution in 1976, established the Contracts and Procurement Division. As a political subdivision of the State of Colorado, the Contracts and Procurement Division operates in accordance with the laws of the Procurement Code of the Colorado Revised Statutes. This statute states that there must be open and fair competition according to Colorado Revised Statutes (C.R.S.), Title 24.

Because of the significant legal consequences associated with a procurement action, the authority to take such action is tightly controlled. The BoCC designated a Contracts and Procurement Manager to oversee the operation of the Contracts and Procurement Division. Within the Contracts and Procurement Division, procurement specialists have been granted the authority to act as agents of the County in the procurement of goods and services. Each procurement specialist has the knowledge and ability to handle any purchase for any County department or office.

### 2.3 APPLICABILITY

Policies set forth in this manual shall apply to all publicly funded purchases entered into by the County. Contracts funded, in whole or in part, with federal assistance monies shall comply with state and federal requirements.

Policies set forth in this manual shall apply to all employees and officials acting as agents of the County for the purpose of procurement of goods or services. Any employee or official who expends County funds or enters into a contractual agreement a) for personal use; b) without the written appropriate approval; c) without being authorized to act as an agent of the County; or d) without following the procedures as set forth by the BoCC and the Contracts and Procurement Division will be subject to disciplinary action(s).

**2.4 CHANGES TO THE MANUAL**

All policy changes shall be made by BoCC approved resolution(s) and incorporated herein. Grammar, punctuation, or minor changes made for clarification, easier interpretation revision changes to comply with changes in federal and state laws may be made by the Contracts and Procurement Manager providing no policy(s) is affected by the change(s).

**2.5 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE**

Unless otherwise stated within specific provisions of this manual, the principles of law and equity—including the Uniform Commercial Code (UCC) and any law relative to a contract, department fraud, misrepresentation, duress, coercion, mistake, or bankruptcy—shall supplement the provisions as stated.

**2.6 PURCHASE ORDER/CONTRACT SIGNATORY AUTHORITIES AND APPROVAL THRESHOLDS**

Only the BoCC has the authority, or may designate the authority, to commit funds or enter into contractual agreement. Any individual making a purchase or otherwise obligating the County without a valid purchase order may be held personally responsible.

The Board of County Commissioners, by resolution, has authorized spending limits as follows:

- COUNTY DEPARTMENTS and OFFICES: Not to exceed \$5,000
- DEPARTMENT PROCUREMENT LIAISON: Not to exceed \$40,000
- CONTRACTS AND PROCUREMENT DIVISION: >\$40,000.01–\$150,000
- BOARD OF COUNTY COMMISSIONERS' APPROVAL: >\$150,000.01

The BoCC, the County Administrator, and other appropriate County officials shall be kept apprised of procurement activities. The BoCC may approve or reject recommendations made for approval at its discretion.

The Contracts and Procurement Division has requested each County Department and office designate a Procurement Liaison for its area. Authority has been granted for each designated department Procurement Liaison to obtain quotes and purchase up to \$40,000 on a minor purchase order or established contract for items that have been approved in the County Budget. Remember, a purchase order is a contract and legal document. This authority excludes documents requiring signatures (i.e., contracts and agreements). If a Waiver of Competition is necessary for any reason, it must go through the Contracts and Procurement Division.

Any department or office requiring assistance for any purchase, regardless of the estimated cost, should contact the Contracts and Procurement Division.

#### **2.7 COUNTY REPRESENTATIVE FOR CONTRACTS & PROCUREMENT REQUIREMENTS**

Each department and office shall appoint a responsible and qualified employee and alternate to assume the duties of Procurement Liaison between their department/office and the Contracts and Procurement Division. The person, hereinafter referred to as the Procurement Liaison, shall be responsible for the proper initiation of all purchasing matters concerning their department/office.

#### **2.8 MINORITY BUSINESS ENTERPRISES**

No provision is made in these policies for preferences or set-asides for minority, veterans-owned, or women-owned businesses unless mandated by the funding source. It is, however, the policy of the Contracts and Procurement Division to make a special effort to solicit and encourage small, minority-owned, or women-owned business participation for County purchases or contracts.

#### **2.9 LOCAL BUSINESS PREFERENCES**

No provision is made in these policies for dollar percentage or other types of preferential considerations for local vendors or contractors. It is, however, the policy of the Contracts and Procurement Division to solicit bids and encourage participation from local suppliers when such competitive local sources exist

and when no sacrifice or loss in price or quality would result. In the event of a tie bid between a local vendor and an out of county vendor, award will be made to the local vendor if all factors are determined to be equal.

#### **2.10 EQUAL OPPORTUNITY**

The Contracts and Procurement Division shall be responsible for ensuring the procurement of (or contracting for) products, commodities, and services are in a manner that affords all responsible businesses a fair and equal opportunity to compete.

#### **2.11 ENGLISH ONLY PROVISION**

Unless otherwise requested, all documentation must be in English for the submission of bids or proposals, interviews or presentations that are required as part of the solicitation process, and presentations to the public.

#### **2.12 CONFLICT OF INTEREST**

Contracts or purchase orders will not be awarded to consultants, engineers, architects, or other professionals for contract administration services if they were paid for actual design or specification preparation of the subject project by the County, nor is a contractor or any affiliated firm of that contractor, allowed to bid on contracts in which they are being paid for contract oversight, without written consent or approval from the Contracts and Procurement Manager. In no event shall the consultant or contractor have authority for approving change orders or obligating the County financially. A contract or purchase order will not be awarded to any supplier or firm with a determined or perceived conflict of interest.

#### **2.13 CONFLICT OF INTEREST (EMPLOYEE-OWNED BUSINESS OR ELECTED OFFICIAL OWNED)**

El Paso County shall not contract for goods or services for any department or office if the contract is with an employee of that department/office.

Furthermore, contracting for goods or services with an employee, elected official, member of his/her immediate family, or a company that is owned in whole or part by an employee, elected official, or a member of his/her immediate family, or a company in which an employee, elected official, or a member

of his/her immediate family has a financial interest (see Definitions) is permitted providing strict adherence to the following requirements:

- The Contracts and Procurement Division shall be notified immediately in writing of such an ownership interest or financial interest.
- No contract for goods or services shall be written to an employee-owned or elected official owned business if there is an appearance that the County employee-owned or elected official owned business has an advantage over other competitors.
- No solicitation of business by the employee or elected official shall take place during his/her normal duty hours.
- All purchases or contracts involving employee-owned or elected official owned businesses, regardless of estimated cost, shall be completed by the Contracts and Procurement Division.

#### 2.14 **PROTESTS AND CLAIMS**

The El Paso County Contracts and Procurement Division recognizes two types of grievances. These are protests and claims.

- A protest is filed prior to an award of a solicitation.
- A claim is filed after the award (or rejection) of a solicitation.

When submitting a protest or a claim to the Contracts and Procurement Division, the aggrieved party bears the burden of complying with all applicable procedures. An interested party may obtain a copy of the procedure upon request.

The Contracts and Procurement Division must receive a protest or a claim in writing within seven business days from the day when the supplier knew or should have known of the facts giving rise to the aggrieved issue. Protests or claims received after the seven business days will not be formally addressed.

Before a protest or claim is submitted, it is recommended that the aggrieved party contact the Contracts and Procurement Manager to discuss the issue and attempt to resolve it in an informal manner. It is the policy of the Contracts and Procurement Division to try to resolve all controversies by mutual agreement between the parties involved. However, if the issue cannot be resolved, the following constitute the applicable procedures to submit a protest or claim.

## 2.15 PROTEST AND CLAIMS PROCEDURE

A protest or claim may be submitted on any phase of the solicitation up to and including the date/time of bid or proposal opening and through the date of award. Protests and claims consist of written objections by an interested party to a solicitation for bids/proposals by the County or cancelation of the solicitation. Matters regarding County policies and procedures are not subject to this policy.

Reasons for protests or claims may include, but are not limited to:

- The preparation of the specifications
- Insufficient time to respond
- Restrictive bonding requirements
- Excessive or restrictive qualification requirements
- Evaluation criteria

When submitting a protest or claim, the party must include the following:

- Solicitation number and title
- Date of the protest or claim
- Description of the aggrieved issue
- Submission of one original and two copies of the protest
- The protest or claim must be delivered to the Contracts and Procurement Manager.

The Contracts and Procurement Manager will send a copy of the protest or claim to the County Attorney and the Department/Office affected by the protest. The Contracts and Procurement Manager will review the issue with the appropriate staff, which shall include the County Attorney. Within seven business days, the Contracts and Procurement Manager will reply, in writing, to the aggrieved party. The Contracts and Procurement Manager is the only person authorized to respond to the protest. The reply shall state the reasons for the decision reached. Specific findings of fact are not required, but if made, shall not be binding in any subsequent proceeding. The decision of the Contracts and Procurement Manager is final.

### 3 METHODS OF SOURCE SELECTION

#### 3.1 PROCUREMENT METHODS NOT REQUIRING FORMAL SOLICITATION

##### 3.1.1 Small Purchases

All purchases and contracts shall be procured competitively if the aggregate total is equal to or more than \$5,000, with the exception of purchases or contracts made using exemptions outlined in Section 3.1.2. The applicable exceptions must be cited with a Waiver of Competition (for those purchases over \$5,000) and placed in the file for audit purposes.

Expenditures for the procurement of supplies, equipment, materials, or services having an estimated value of less than \$150,000 may be made on the open market by informal procurement methods, without public notice, and while following formal procurement methods. Procurement requirements shall not be artificially divided to constitute a small purchase under this policy (C.R.S. 24-103-204). The types of informal procurement methods are as follows:

- **Single Quote:** A single quote may be obtained to purchase goods in an amount under \$5,000. The department/office should request that the vendor provide a written quote containing all details of the purchase, (e.g., date of delivery, freight costs, discounts, warranty). It is suggested that when time allows, you obtain competitive quotes either written or by any acceptable electronic method to ensure that you are getting the best value for the County.
- **Request for Quotes (Department Procurement Liaison):** A Request for Quotes should be used to purchase goods in excess of \$5,000, up to and including the amount of \$40,000. The Request for Quotes must be obtained from at least three qualified vendors. A “no bid” shall meet the requirement of a responsive bid. In the event of a no bid non-responsive vendor, the department/office will note the vendor as non-responsive after the deadline has passed and continue on with the process unless there is only one responsive vendor at which time, they will proceed with the Waiver of Competition process. The department/office will then receive and tabulate the vendor responses. Award shall be made to the vendor offering the lowest responsive bid based upon meeting County specifications. If awarded to other than the lowest responsive bid, justification must be provided and sent to the Contracts and Procurement Division for approval prior to issuing a purchase order.

The department/office Procurement Liaison shall then complete a minor Purchase Order. A department/office may also request the Procurement Specialist assigned to its department/office to issue a Request for Quotes on its behalf.

- **Request for Quotes (Contracts and Procurement Division):** A Request for Quotes should be used to purchase goods in excess of \$40,000, up to and including the amount of \$150,000. The Request for Quotes must be obtained from at least three qualified vendors. A “no bid” shall meet the requirement of a responsive bid. In the event of a no bid non-responsive vendor, the Procurement Specialist will note the vendor as non-responsive after the deadline has passed and continue on with the process unless there is only one responsive vendor at which time, they will proceed with the Waiver of Competition process. The Procurement Specialist will then receive and tabulate the vendor responses. Award shall be made to the vendor offering the lowest responsive bid based upon meeting County specifications. If awarded to other than the lowest responsive bid, justification must be provided.

The Procurement Specialist shall then forward a copy of the tabulation and original Request for Quotes to the department/office requesting approval of the Quote. The Procurement Specialist, upon approval of the department/office, will complete a Purchase Order.

Quotes are valid for one-year and are completed per the calendar year. For example: if you have a quote that goes into effect on June 25<sup>th</sup>, it will only be valid through December 31<sup>st</sup> of that year and then another quote will need to be completed.

- **Request for Solicitation (Contracts and Procurement Division):** A Request for Solicitation can be completed for any amount at any time and will be completed by the Contracts and Procurement Division.

### 3.1.2 Waiver of Competition

The Contracts and Procurement Manager may elect to waive the competitive bidding process under certain conditions for those items that are required to go to the Board of County Commissioners. There are items on the list below that do not require Board of County Commissioner approval, i.e. – utilities, training, P&I payments for debt, etc. and they have been segregated below:

- A needed product or service is available from only one supplier (i.e., sole source);
- A particular product is wanted for experiment or trial;
- Additional products are required to complete an ongoing task, or a particular product or service is required to maintain interchangeability or compatibility as a part of an existing integrated system;
- Although there exists more than one responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the County, will otherwise injure the County's financial interests, or will substantially impede the County's administrative functions or the delivery of services;
- A Cooperative or Piggyback contract is used;
- A particular product is required to enable use by a specific individual;
- The purchase of a used item is advantageous, and the item is available only on short notice and subject to prior sale;
- Purchases made from another contract or agreement written by another federal, state, county, city government agency, or cooperative for identical goods or services (**Note:** The agreement or contract must have been formally competed or renewed within the last 12 months by the federal, state, county, city government agency, or other quasi-government agency.);
- Purchases directly from Federal, State, county, other local government units, or other quasi-government agency;
- Professional services up to \$150,000 annually with justification approved by the Contracts and Procurement Manager;
- Used items;
- Emergencies;
- Litigation;
- Outside legal counsel;
- Proprietary purchases (items produced and marketed by a person or company having the exclusive right to manufacturer and sell it. May result from a trade secret or patent.) Must have Contracts and Procurement Manager's approval;
- State mandated forms and programs;
- Intergovernmental agreements and Memorandums of Understanding (IGA's and MOU's);
- Aid to agencies;

- Manufacturer's specified commodities and services (with Contracts and Procurement Manager's approval);
- Economic Development Marketing

Items that are not required to go before the Board of County Commissioners:

- Public utility services;
- City and state licensing fees;
- Postage;
- Ongoing principal and interest payments for BoCC approved debt;
- Annual software licenses;
- Annual software maintenance agreements;
- Advertising;
- Fees to banks;
- Membership fees;
- Training courses, materials, and books;
- Refunds to Vendors;
- Employee Reimbursement;
- Subscriptions for magazines, books, or periodicals;
- Travel costs (airlines, hotels, mileage, etc.);
- Certificates of Participation and/or bond payments;
- Interdepartmental costs;
- Enterprise Zone payments;
- Client Assistance;
- Risk Management claims; and
- Settlements.

Circumstances may arise that may require the Contracts and Procurement Manager to include items not already included on this list. This will be done on a case-by-case basis and the Contracts and Procurement Manager acknowledges that the list is not all inclusive.

The Contracts and Procurement Manager shall require competition wherever practicable and, except for small purchases, the basis and reasons for each waiver shall be documented as public record.

- Under no circumstance shall the invoice or payment precede any quote, purchase order, or contract.

Waivers of Competition are valid for one-year and are completed per the calendar year unless it is a Multi-Year Waiver. For example: if you have a Waiver that goes into effect on May 14<sup>th</sup>, it will only be valid through December 31<sup>st</sup> of that year and then another waiver or solicitation or cooperative will need to be completed or found. The Multi-Year Waiver of Competition will be valid for five-years or until the contract terms out.

### 3.1.3 Sole Source Procurement

A sole-source (non-competitive) procurement is permissible if a requirement is available from only a single supplier. A requirement for a particular proprietary item does not justify sole source procurement if there is more than one potential bidder or offeror for that item or service.

A circumstance that could necessitate a sole source procurement is as follows:

- The purchase of technical equipment for which there is no competitive product, and which is available only from one supplier (Quote and Letter must accompany the request)

Sole source refers to the supplier as well as a product or service. Thus, the ability to meet a delivery date or to provide on-call repairs will not create a sole source that is a single-supplier condition. Justification for a sole-source purchase depends upon a needed item or service being available from only a single supplier under the prevailing conditions. If the item or service can be obtained from more than one source, price competition shall be solicited or a select source procurement will be completed.

Justifications shall completely explain the rationale used in determining “sole source,” as well as the determination that the awarded price is “fair and reasonable,” using an element of price analysis justifying the total cost. A quote and letter of Sole Source on company letterhead, signed by a person of authority from the supplier must accompany this request for any dollar amount over \$5,000. The quote is valid for one year only and must be completed every year.

The Contracts and Procurement Manager or designee can determine use of a sole source to be in the best interest of the County based on documented justification by the requesting department head, elected official, or designee. This determination must be recorded.

#### 3.1.4 **Select Source Procurement**

A select-source justification exists if the purchases for goods and/or services are directed to a single vendor based on warranty, prior experience/knowledge of the project, shortened timeframe, analysis process, or other factors that justify the selection of the vendor in the best interest of the County.

Some circumstances that could necessitate a select source procurement are as follows:

- The purchase of professional services from a vendor who is uniquely qualified to provide such services
- The purchase of a component or replacement part for which there is not a commercially available product, and which can be obtained only from the manufacturer
- The purchase of an item where compatibility is the overriding consideration
- The purchase of a used item which becomes immediately available and is subject to prior sale
- The use of other than OEM (original equipment manufacturer) parts would void a still valid warranty

Any request by a County department/office that a purchase be restricted to one potential supplier shall be accompanied by a written explanation from the County department's head/official on the Waiver of Competition form as to why no other supplier will be suitable or acceptable to meet the need. This written justification and approval form will be placed in the procurement file for audit purposes. A quote must accompany this request for any dollar amount over \$5,000. The quote is valid for one year only and must be completed every year.

#### 3.1.5 **Proprietary Procurement**

A proprietary purchase exists when a vendor holds the patent on the product. Any request by a County department/office that a purchase be restricted to one potential vendor shall be accompanied by a written explanation from the County department's head/official on the Waiver of Competition form as to why no other vendor will be suitable or acceptable to meet the need. This written justification and approval form

will be placed in the procurement file for audit purposes. A letter from the vendor on company letterhead, signed by a person of authority and a quote must accompany this request for any dollar amount over \$5,000. The quote is valid for one year only and must be completed every year.

### 3.1.6 **Standardization Procurement**

A standardized purchase exists when the County has determined a particular product will be the product of choice of the County and that product can only be purchased from a specified vendor. I.e. – if the County were to standardize with Dell computers, then only Dell computers can be purchased. Any request by a County department/office that a purchase be restricted to one potential vendor shall be accompanied by a written explanation from the County department's head/official on the Waiver of Competition form as to why no other vendor will be suitable or acceptable to meet the need. This written justification and approval form will be placed in the procurement file for audit purposes. A quote must accompany this request for any dollar amount over \$5,000. The quote is valid for one year only and must be completed every year.

### 3.1.7 **Emergency Purchases**

An emergency condition is a situation that creates a threat to public health, welfare, safety, or substantial financial loss such as may arise by reason of natural disasters, epidemics, riots, equipment failures, or other such reason as determined by the Contracts and Procurement Division. The existence of such condition creates an immediate and serious need for supplies, equipment, materials, and services that cannot be met through normal procurement methods, and the lack of such would threaten the function of County government or the health, safety, or welfare of County residents. County departments/office may make emergency procurements when an emergency condition arises, and the need cannot be met through normal procurement methods. An emergency procurement shall be limited only to a quantity of those supplies, equipment, materials, or services necessary to meet the emergency.

Emergency Purchases will comply with the Colorado state statutes.

If the emergency occurs outside of normal business hours, the individual authorizing the emergency purchase will inform the Contracts and Procurement Division of any such purchase made no later than the first working day following the purchase. If the expense is \$5,000.01 or more and the emergency occurs during normal business hours (i.e., 8:00AM–5:00PM, Monday–Friday), the Contracts and

Procurement Division shall be contacted (in person or by telephone) for guidance on the appropriate action needed to handle the purchasing emergency.

During any disaster the County will utilize (if applicable) pre-existing contracts; these contracts may be cooperatives contracts or agreements with the City of Colorado Springs, State of Colorado or other cooperative agencies that help support the emergency purchasing.

If the follow-up review of an emergency purchase indicates that the purchase was not an emergency, the purchase may be disallowed for payment, and a determination to take the appropriate disciplinary action may be made.

Proper purchase requisition procedures (including proper documentation) and approval limits remain the same for the authorization of the expenditures; however, formal IFB/RFP procedures may not apply. The Contracts and Procurement Manager may authorize a purchase if it is \$150,000 or above; however, the purchase order must be placed on the next scheduled formal agenda for approval by the BoCC.

Emergency procurements shall be limited only to a quantity of those supplies, services, or construction items necessary to meet the emergency. A written explanation from the County department's head/official on the Waiver of Competition form as to what the emergency was, must be completed for any dollar amount over \$5,000. This written justification and approval form will be placed in the procurement file for audit purposes.

**Note:** In the event of a disaster, the Pikes Peak Regional Office of Emergency Management or Emergency Coordination Center (PPROEM/ECC) procedures for the emergency operations center will become effective.

When FEMA becomes applicable for acquisition requirements during an emergency, FEMA's policies will supersede any others.

By relieving the budget constraints, the BoCC allows the PPROEM/ECC the flexibility to obtain goods and services required to react to the emergency or disaster situation.

### 3.1.8 **Equipment Leases**

All lease agreements for capital equipment shall be reviewed by the Contracts and Procurement Manager. Leases in the total amount, or with a value of \$150,000 or less, shall be signed only by the Contracts and Procurement Division Manager and approved as to form by the Office of the County Attorney after appropriate review and negotiation of terms and conditions. The Contracts and Procurement Division Manager may elect to seek additional proposals from third-party leasing companies. Lease agreements signed by unauthorized parties may be voided and may result in personal liability. Lease agreements with a value of greater than \$150,000 must be presented to the BoCC for approval and signature.

Equipment leases and purchase options should never be used to circumvent the requirements for competition. The soundest and safest approach is that any leases of equipment be subject to the requirements for competition that apply to outright purchases. Leases with the option to purchase should not be considered unless there is written justification from the department head or elected official why it is beneficial to pursue the approval. The department head must submit the justification for approval by the Contracts and Procurement Division.

### 3.1.9 **Use of State, Other Governmental Entity, or Cooperative Awards**

The County may purchase from state, other governmental entity, or cooperative contracts awarded for goods or services required when the award specifically states this is permissible.

The County may not, however, use the prices on a state, other governmental entity, or cooperative contract as a means of negotiation with other vendors. Typically, the prices under these contracts have been negotiated with the anticipation that the volume will be increased because other government agencies having similar requirements will use them. These contracts are already in place and using them is a timesaving and normally cost-savings measure because they eliminate the requirement for formal solicitation. Also, there are usually tightly negotiated terms and conditions that prove to be beneficial for all governmental agencies.

When a particular commodity or service is available on a state or other governmental contract, designated liaison may purchase directly from the contract, referencing the contract or award number, at the price negotiated by the state or other governmental entity. The Contracts and Procurement Division may be

able to negotiate your specific requirements with the vendor under the terms and conditions of the original contract.

#### **3.1.10 Use of County-Wide Annual Agreements**

The best use of the taxpayers' money is a key element in the procurement of goods and services for the County. When County departments and offices, including elected officials, have requirements for similar goods or services—and when it is in the best interest of all departments and offices, including elected officials, involved—cooperative procurement is a viable and useful tool. Quantity and delivery discounts may realize a considerable savings for all departments and offices involved, including elected officials.

The Contracts and Procurement Division for the benefit of the entire County establishes Annual County-wide Agreements each year. These agreements are advertised and competed to ensure the best overall price for the County. Since these agreements have been competed in an open market, County departments/offices may place orders against these agreements without having to obtain additional competitive quotes.

#### **3.1.11 Technology, Vehicle, and Facilities Purchases**

All technology related purchases must be approved by the Chief Information Officer, all vehicle related purchases (with the exception of the Sheriff's Office) must be approved by the Fleet Division Manager, and all requests for purchases and professional services involving County facilities, i.e., leases and real estate transactions; utilities service; remodeling and changes to offices and work areas to include design and construction; repair and maintenance; and custodial service, must be submitted and approved by both the Facilities Management Director and the Chief Information Officer, regardless of the dollar amount, prior to submitting any request to the Contracts and Procurement Division.

#### **3.1.12 Capital Projects**

Needed Capital Projects – capital projects that need to be addressed and do not fall within a major maintenance or replacement program must be coordinated with the following:

- All Capital Projects, any acquisition, new build, or rental of space needs, regardless of dollar amount, must be coordinated with the appropriate supporting department such as Facilities &

- Infrastructure Management (FSIM), Community Services Department (CSD), Digital, Strategy, and Technology (DST) and Procurement.
- Any communication between the vendor must be conducted through the point of contact listed in the Agreement.

### 3.2 PROCUREMENT METHODS REQUIRING FORMAL SOLICITATIONS

The contracting or procurement of goods and/or services exceeding an annual requirement of \$150,000 must be competitively solicited.

#### 3.2.1 Pre-Solicitation Requirements: Preparation of Specifications

The purpose of a specification is to serve as a basis for obtaining a supply item or service that is adequate and suitable for the County's needs in a cost-effective manner, taking into account the costs of ownership and operation, as well as initial acquisition costs. It is the policy of the Contracts and Procurement Division that specifications permit maximum practicable competition consistent with this purpose.

All specifications prepared by people other than County staff, including consultants, architects, engineers, and designers, shall not be restrictive and shall allow for maximum competition.

Specifications shall emphasize functional or performance criteria, while limiting design or other detailed physical descriptions to those necessary to meet the need of the using agency.

In developing specifications, accepted commercial standards should be used, and unique requirements should be avoided in an effort to maximize competition.

Brand name or equal specifications may be prepared when it is in the best interest of the County and when the item to be procured is best described by the use of such a specification. Brand name or equal specifications shall be used only to designate a standard. Or equal references shall further state those substantially equivalent products which will be considered for award.

Since use of a brand-name specification is restrictive, it may be used only when the brand name or items will satisfy the using departments/offices need as determined to be in the best interest of the County. The Contracts and Procurement Manager shall identify sources from which the designated brand name or item

may be obtained and shall solicit such sources. If only one source can supply the requirement, the procurement shall be made under provisions of the sole-source policy.

A qualified products list may be developed when testing or examination of the materials or equipment is required prior to the issuance of the solicitation.

User departments/offices prepare specifications. The Contracts and Procurement Division will assist user departments/offices so that the specifications will be as accurate and complete as possible.

Assistance by a vendor in writing specifications should be avoided whenever possible because it may inhibit competition. If a vendor participates in developing or writes specifications, they are prohibited from submitting a bid/proposal in response to the solicitation.

### **3.2.2 Form of Specifications**

Specifications shall be clear and accurate descriptions with sufficient detail to provide for suitable purchases and shall include the following at a minimum:

- Functions and standards characteristics
- Materials and method description(s)
- Preparation for shipment, delivery point
- Quality assurance and acceptance tests (where applicable)
- Warranties and service support requirements

Using departments/offices and the Contracts and Procurement Division shall issue product, supply, and service specifications that are not restrictive. This may include the use of life cycle costing or best-value analysis in determining the lowest responsive responsible bidder, provided the specifications indicate the procedure and evaluative factors are used. Performance specifications may be used if they include the evaluation criteria to be used in making the recommendation for award.

### **3.2.3 Bid Security - Construction**

The bid security is submitted as a guarantee that the offer will be maintained in full force and in effect for a period of not less than 60 days after opening of the offers or as specified in the solicitation.

Construction solicitations in excess of \$50,000 should require the submission of bid security in an amount equal to at least five percent of the bid or proposal cost at the time of the submission. The Contracts and Procurement Manager may set bid security requirements in an amount of not more than five percent of the contract amount for other types and dollar amounts of contracts if deemed necessary. The Contracts and Procurement Manager may determine it is necessary to require bid security on construction solicitations less than \$50,000. If a bidder fails to accompany the offer with the required bid security, the offer may be rejected as non-responsive.

Acceptable bid security shall be limited to the following:

- A one-time bid bond underwritten by a company licensed to issue bonds in the State of Colorado
- A bank cashier's check made payable to El Paso County
- A bank certified check made payable to El Paso County
- An irrevocable letter of credit in a form acceptable to the County

#### 3.2.4 **Review and Approval**

The Contracts and Procurement Division will review submitted specifications to ensure that all necessary information is included and that there are not requirements that unnecessarily restrict or limit competition. The Contracts and Procurement Division is responsible for final approval of the specifications.

#### 3.2.5 **Adequate Competition**

It is the responsibility of the Contracts and Procurement Division to ensure that an adequate number of bidders are solicited for every requirement for achieving optimum competition. This responsibility includes selecting other advertising methods or vehicles when sources may be limited.

The Statement of Work (SOW) or specifications of the solicitation is critical for the success of the procurement. Basic considerations include the contractual terms and conditions which must be written to protect the interest of the County; openness of specifications; requirements for transportation and delivery; and instructions as to how the bidder is to submit the offer. A solicitation should seek full and open competition for all purchases and provide fair and equal opportunity for all qualified persons or firms to compete.

### 3.2.6 **Public Notice**

Public notice includes a general description of the supplies or services to be purchased or sold, as well as the time, place, and due date.

Each solicitation is advertised on the County's website and on an electronic procurement notice system for a minimum of 4 weeks, unless waived by the Contracts and Procurement Manager with written justification.

If it becomes necessary to correct an inadequate, deficient, or ambiguous solicitation, the invitation may be canceled, a new invitation shall be issued, or an addendum may be attached.

### 3.2.7 **Cancellation or Rejection of Bids or Proposals**

The provisions of this policy shall govern the cancellation of any solicitation issued by the Contracts and Procurement Division under competitive sealed bidding, competitive sealed proposals, small purchases, or any other source selection method, as well as rejection of bids or proposals in whole or in part, whether rejected for being non-responsive or non-responsible.

Solicitations should only be issued when there is a valid procurement need. Solicitations should not be issued to obtain estimates or to "test the water." A solicitation is to be canceled only when there are valid and compelling reasons to believe that the cancellation is in the County's best interest.

### 3.2.8 **Cancellation or Rejection of All Bids or Proposals**

If a solicitation is canceled prior to opening, bids/proposals that have been received shall be returned unopened to the bidders with a notice of cancellation.

After opening, but prior to award, any or all bids or proposals may be rejected in whole or in part when the Contracts and Procurement Manager and the using department/office determine in writing that such action is in the County's best interest for the following reasons:

- The supplies, equipment, materials, or services being procured are no longer needed.

- Ambiguous or otherwise inadequate specifications were part of the solicitation.
- The solicitation did not provide for consideration of all factors of significance to the County.
- Prices exceeded funds available, and it would not be appropriate to adjust quantities or qualities to come within available funds.
- All otherwise acceptable bids or proposals received are at clearly unreasonable prices or terms.
- 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.

### **3.2.9 Notice of Cancellation**

When a solicitation is canceled, notice of cancellation shall be published. The notice of cancellation shall identify the solicitation, explain the reason for the cancellation, and explain that an opportunity will be given to compete on any re-solicitation (if appropriate).

### **3.2.10 Documentation of Cancellation**

The reasons for cancellation or rejection shall be made a part of the solicitation files.

### **3.2.11 Disposition of Documents**

When bids or proposals are rejected or a solicitation canceled after bids or proposals are received, the bids or proposals that have been opened shall be retained in the procurement files or, if unopened, returned to the bidders or offeror upon request or otherwise disposed of.

## **4 COMPETITIVE SEALED BIDDING–INVITATION FOR BIDS**

An Invitation for Bids (IFB) is one of the formal solicitations used by the Contracts and Procurement Division in accordance with proper procurement methods to solicit bids from vendors for merchandise, equipment, supplies, materials, and, in some cases, for construction and services. The Contracts and Procurement Division will strive to attain economic benefits for El Paso County and shall continually seek to foster competition and obtain new sources of supply.

Bid procedures shall be open and unrestricted; however, the County shall not be obligated to solicit bids from every supplier for every requirement.

Upon receipt of department authorization to proceed with a formal solicitation, the Contracts and Procurement Division prepares the solicitation package.

All technical questions from vendors must be addressed through the Contracts and Procurement Division. The Procurement Specialist will be responsible to assure all questions/issues are brought to the requesting department for clarifications or answers, then relayed to vendors in a timely manner. It is important that information is given to all interested vendors to ensure fair and open competition. After proposals are submitted, all vendor contact shall continue to be made through the Contracts and Procurement Division.

#### **4.1 SOLICITATION TIME**

The minimum time for solicitation of bids shall be 4 weeks from the date the solicitation is posted publicly on the electronic website and the County's website. When special requirements exist, the Contracts and Procurement Manager may lengthen or shorten the solicitation time. Complicated procurements may have a time period that is longer than the standard 4 weeks. Solicitation times of fewer than 4 weeks shall be documented by the Procurement Specialist detailing why a reduced solicitation period was required.

#### **4.2 WAIVER OF PUBLIC NOTICE**

The Manager may authorize the waiver of public notice for requirements in excess of \$150,000 upon written determination that circumstances call for quick procurement action. Supplies or equipment may be needed promptly for backup to ensure against downtime; a significant price increase on a needed item may be imminent; or the scope of an ongoing task may be unexpectedly expanded. In these kinds of situations, the Manager will make special effort to obtain written competition or sealed bids but may waive the public notice.

#### **4.3 INVITATION FOR BIDS – CONTENT**

The IFB shall, at a minimum, include the following:

- Instructions and information to bidders concerning the bid submission requirements, including the time, and closing date, the address of the office to which bids are to be delivered
- The project description furnished by the requesting Department
- Basis of award, delivery, or performance schedule and inspection and acceptance requirements
- The contract terms and conditions, including warranty and bonding or security requirements as applicable

#### 4.3.1 **Pre-Bid Conferences**

Pre-bid conferences may be conducted for the purpose of explaining the procurement requirements. Notice of a pre-bid conference shall be stated in the IFB. The conference should be held long enough after the solicitation has been issued and advertised to allow bidders to become familiar with the solicitation requirements, but with adequate time before bid opening to allow consideration of the conference results in preparing the bid. The pre-bid conference may be mandatory if determined necessary to ensure familiarity of the project prior to bidding by all bidders. Nothing stated at such conference shall change the IFB unless the change is made by published addendum. If there is inadequate attendance at the mandatory pre-bid conference an alternate or additional pre-bid conference may be scheduled, by published addendum.

#### 4.3.2 **Addenda to Invitations for Bids**

At any time after the initial publication of the IFB, but not later than three days prior to a public bid opening, addendums to the original IFB may be required for clarifications or changes to the original IFB.

The addendum form shall be submitted with the vendor's response to the IFB, signed by the authorized representative of the vendor, and made a part of the bid. Failure to acknowledge the addendum with a bid may be a reason to reject the bid. If the addendum alters the information required on the bid form, a revised bid form will be provided as a part of the addendum and will be required as the vendor's bid submission.

#### 4.3.3 **Multiple or Alternate Bids**

Bidders are only allowed to submit alternate (or substitute) bids in addition to the primary bid if requested in the solicitation, as long as it meets the full form, fit, and function of the IFB specifications. The alternate

bid must be clearly identified separately from the primary submitted bid. The County shall be the sole judge of equivalence.

If the solicitation prohibits multiple or alternate bids, the multiple or alternate bids shall be rejected, and a clearly indicated base bid will be considered for award as though it were the only bid or offer submitted by the bidder.

#### 4.3.4 **Receipt of Bids**

Bids are received electronically through an electronic procurement notice system via a secure electronic lockbox and will not be opened until the date and time specified in the solicitation.

#### 4.3.5 **Public Bid Opening**

**Bid Opening:** The bid opening shall be held on the date and time specified in the solicitation. All bids received on or before the date and time specified will be opened publicly and read aloud either virtually or in-person at the specified location, date, and time. The bids will be read aloud by the procurement specialist and results tabulated.

**Late Bids:** Any bid received after the time and date stated in the solicitation will not be allowed in the electronic lockbox. The County shall not be responsible for late bids.

**Type of Bid Formats Accepted / Not Accepted:** Telephone bids, emailed bids, or facsimile bids will not be accepted for formal solicitations.

**Post Bid Opening:** After the bid opening, the Procurement Specialist will verify all information received on the bid forms for accuracy. If a mathematical error is detected or any other information is unclear, the Procurement Specialist may contact the authorized representative of the vendor to make the correction. The Procurement Specialist may also ask for clarification on any of the information submitted as part of the bid, including warranty and delivery, manufacturer/make/model, or alternate bids. A vendor will not be allowed to change the submitted bid. Clarifications will be requested to allow for a fair evaluation of information received. The Procurement Specialist will then tabulate the bid results listing bids from low responsive bid to highest bid, including alternate bids received.

Award Posting: After award, tabulation results will be posted publicly. All documents submitted with the bid become public information immediately after a decision or award relating to the bid has been made, except for those items identified as proprietary information, trade secrets, or other information protected under the Colorado Open Records Act.

#### 4.3.6 **Confidential Data**

The Procurement Specialist shall examine all bids to determine the validity of any requests for nondisclosure of trade secrets or other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Procurement Specialist shall inform the bidder in writing what portions of the bid will be disclosed. The Procurement Specialist may confer with the County Attorney's Office for validation of the confidentiality of the documents.

#### 4.3.7 **One Bid Received**

If only one responsive bid is received in response to the IFB, an award may be made to the single bidder if the Procurement Specialist finds that 1) the price(s) submitted are fair and reasonable, 2) other prospective bidders had reasonable time to respond, or 3) there is not adequate time for re-solicitation. Otherwise, the bid may be rejected, and new bids may be solicited; the proposed solicitation may be canceled; or, if the Contracts and Procurement Manager determines that the price of the one bid is not fair and reasonable and that re-solicitation would likely be futile, negotiations may be entered into with the lone bidder.

**Note:** If new bids are solicited, the prices originally submitted shall not be released to the public in order to maintain the integrity of the procurement.

#### 4.3.8 **Extension of Time for Bid Acceptance**

Evaluation and acceptance of bids should be done in a timely and efficient manner. Vendors may have a time limit for prices quoted and delivery of the goods/services. If so, it must be stated in the submitted bid. After opening the bids, the Procurement Specialist may request an extension of time for the evaluation of the bids provided that no other change is permitted. The reasons for requesting such extensions shall be documented.

#### 4.3.9 **Bid Evaluation**

All products or services shall be evaluated against the requirements stated in the County's solicitation. In addition to price, the following factors may be considered in evaluating any bid response: delivery date after receipt of order, cash discounts, warranties (type/length), future availability, results of product testing, local service, cost of maintenance agreements, future trade-in value or availability of re-purchase agreement, availability of training courses, financial terms, space limitations, esthetics, adaptability to environment, cost of operation (if any), or safety and health features relating to regulatory codes or requirements.

#### 4.3.10 **Bid Evaluation - Product Acceptability**

The IFB may require the submission of bid samples, descriptive literature, technical data, or other material necessary to determine product acceptability. The acceptability evaluation is not conducted for the purpose of determining whether a bidder's item is superior to another, but only to determine whether a bidder's offering will meet the County's needs as set forth in the IFB. Any bidder's offering that does not meet acceptability requirements will be rejected as non-responsive.

#### 4.3.11 **Best Value**

A procurement method that emphasizes value over price. The best value might not be the lowest cost. Generally achieved through the Request for Proposals method, but still applicable to the IFB. An assessment of the return that can be achieved based on the total life-cycle cost of the item; may include an analysis of the functionality of the item; can use cost-benefit analysis to define the best combinations of quality, services, time, and cost considerations over the useful life of the acquired item.

#### 4.3.12 **Award**

A recommendation for award in the form of a purchase order/contract shall be to the lowest responsive and responsible bidder whose bid meets the requirements and the criterion set forth in the IFB and is determined to be in the best interest of the County. A recommendation for award is a collaborative effort

between the requesting department/office and the Procurement Specialist assisting with the IFB. Evaluation of all the information submitted by the vendor must be documented.

The Procurement Specialist may determine to make whole or partial awards or may reject all bids if prices are determined to be unreasonably high or unrealistically low. If insufficient funds are available to award a contract, the solicitation may be canceled or the Contracts and Procurement Division in coordination with the using department may choose to re-scope the project and re-solicit bids, as may be determined to be in the best interest of the County.

#### 4.3.13 **Lowest Bid**

A recommendation for award based on the lowest bid must be made if that bid meets all the specifications as outlined in the IFB, with no exceptions. If the lowest bidder takes exception(s) to the specifications—but is within tolerance and meets the form, fit, and function of the merchandise required, as well as delivery date required, warranty, and all other IFB requirements—it is considered the low bid and should be recommended for award.

However, the lowest-dollar bidder is not required to be recommended for award if it:

- Does not meet all the specifications as outlined in the IFB.
- Takes exception to any of the specifications that is not acceptable (as defined above).
- Cannot meet acceptable delivery requirements.
- Has additional costs that make the overall total cost higher than the next low bid.
- Has an unacceptable warranty limitation(s).
- Has past documented history by the requesting department/office, by reference(s) or in the Contracts and Procurement Division file of poor quality, delivery or other information that would affect the operation of the requesting department/office.

#### 4.3.14 **Lowest Responsive Bid**

Evaluation of all the bids received must indicate that the best value will be realized by the County upon award. When the low-dollar bid has been eliminated due to one of the above referenced factors, the next low-dollar bid will be evaluated in accordance with the same procedures. The bidder who submits a bid

that, when all factors have been evaluated, may meet all the requirements, but is not the lowest dollar-bid, may be recommended for award of the bid as the lowest responsive bid.

#### 4.3.15 Award Process

A department/office must submit a completed and signed Recommendation for Award form to the Contracts and Procurement Division recommending the lowest responsive, responsible bidder.

If there is a tie bid—and quality and service are equal—the bid goes to the local bidder. If there is no local bidder or more than one local bidder, the Contracts and Procurement Division will draw lots to determine the award.

The Contracts and Procurement Division issues an award notification to the successful bidder and may notify unsuccessful bidders. Upon award of the purchase order/contract, the award will be publicized. If the bid is not awarded to the lowest responsive, responsible bidder, the Contracts and Procurement Division secures well-documented and fully substantiated written reasons for this decision from the department/office.

The Contracts and Procurement Division will proceed to work with the successful bidder to obtain all contract or agreement documents in place before award is made and services or merchandise are provided to the County.

If the successful bidder fails to execute a contract within 10 business days of receiving the notification of award, the Procurement Specialist may take any bid deposit and consider it as liquidated damages for failure to execute the contract, not as a penalty.

The County department/office will submit the signed Recommendation for Award with a purchase requisition to the Contracts and Procurement Division. The Procurement Specialist will prepare the purchase order and/or contract. This may be issued with the award notification if a performance bond or insurance certificate is not required of the bidder. The contract and/or purchase order will be held until any performance bond or insurance certificate is received from the bidder. The County reserves the right to cancel the award of any contract at any time before all parties execute the contract, without any liability against the County.

#### **4.3.16 Modification or Withdrawal of Bids**

Bids may be modified or withdrawn by written correspondence to the Contracts and Procurement Office prior to the date/time set for bid opening. The bidder, prior to the specified bid opening date/time, may withdraw a bid if the bidder's representative appears at the Contracts and Procurement Division, or the Contracts and Procurement Manager receives a written request for withdrawal at the Contracts and Procurement Division. At the bid opening, but prior to the actual opening of the bids, a bidder may withdraw a bid to correct a mathematical error, to sign a document, or to correct clerical errors and resubmit to the Contracts and Procurement Division.

#### **4.3.17 Withdrawal of Bid after Opening, but Prior to Award**

No bid may be withdrawn or negated unless the bidder or contractor can establish that the bid contains mistakes, despite the exercise by the bidder of reasonable care. All documents relating to the modification or withdrawal of bids shall be made part of the appropriate procurement file.

#### **4.3.18 Minor Informalities/Irregularities in Bids**

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the bid that can be corrected or waived without being prejudicial to other bidders. The defect or variation is considered immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the services being acquired.

If the Manager determines that the bid submitted contains a minor informality or irregularity, the Manager shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the County. In no event will the bidder be allowed to change the bid amount or have the ability to submit Mandatory Required documents.

Examples of minor informalities or irregularities include, but are not limited to, the following:

- Bidder fails to sign the bid, either electronically or via a wet signature, but only if the unsigned bid is accompanied by other material evidence that indicates the bidder's intention to be bound by the unsigned bid (e.g., bid bond, signed cover letter that references the bid number or title and amount of bid)
- Bidder fails to acknowledge an addendum (**Note:** This may be considered a minor informality only if the addendum that was not acknowledged is insignificant and involves only a matter of form or has no effect [or a negligible effect] on price, quantity, quality, or delivery of the item or services bid upon.)

#### 4.3.19 Mistakes in Bids - Confirmation of Bid

When it appears from a review of the bid that a mistake has been made, the Contracts and Procurement Division may request the bidder to confirm the bid in writing. Situations in which the confirmation should be requested include obvious, apparent errors of the bid or a bid unreasonably lower than the other bids submitted. If the bidder confirms a mistake, the bid may be withdrawn.

Bidders may request in writing to the Contracts and Procurement Manager that they be allowed to correct a mistake in their bid; however, the mistake has to be apparent and substantiated by evidence provided by the bidder that the mistake was valid. The Contracts and Procurement Manager will evaluate the request and make a determination in writing as to whether the correction of the mistake is allowed.

Further, bidders will not be allowed to make a correction(s) other than apparent typographical errors if the correction(s) would displace another bidder.

#### 4.3.20 Mistakes Where Intended Correct Bid is Evident

If the mistake and the intended correct bid are clearly evident to the Contracts and Procurement Division, the bid shall be corrected by the bidder to the intended correct bid and may not be withdrawn. Examples include typographical errors, errors in extending unit prices, or transposition errors.

#### 4.3.21 **Mistakes Where Intended Correct Bid is not Evident**

A bidder may be permitted to withdraw a bid if the bidder submits proof of evidentiary value in accordance with provisions above.

#### 4.3.22 **Mistakes Discovered Before Opening**

A bidder is entitled to make correction to mistakes that the vendor has discovered prior to bid opening by withdrawing or correcting the bid as outlined above.

#### 4.3.23 **Determination Required**

Any decision to permit or deny corrections or withdrawal of a bid under this section shall be supported by a written determination by the Manager or Manager's designee.

#### 4.3.24 **Mistakes After Award of Contract**

When a mistake in a contractor's bid is not discovered until after award of a contract, the mistake may be corrected by contract change order if correcting the mistake would be favorable to the County without changing the specifications. If the mistake is not in the favor of the County, the County will have the following options:

- Rescind the contract via termination
- Deny the Contractor's request to correct the mistake or to revise the contract by deleting the item(s) involved in the mistake
- Increase the price of the contract by allowing the correction of the mistake, as long as the correction or increase in price does not exceed the price of the next lowest bidder

**Note:** Partial corrections will not be allowed in order to stay below the next lowest bidder's price.

In all cases, the burden of proof rests with the contractor. The alleged mistake must be proven by clear and convincing evidence that a mistake was indeed made. The Manager shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence including, but not limited to, the following:

- Contractor's file copy of bid
- Contractor's original worksheets, including supporting data used to prepare bid
- Subcontractor or supplier quotes
- Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended

If there is not clear and convincing evidence to support the alleged mistake, then no action will be taken.

#### 4.3.25 **Late Bids**

The Manager may permit late bids and rule on any situation that is beyond the control of both the County and the vendor regarding the acceptability of the bid.

#### 4.3.26 **Procurement of Services/Construction by Purchase Order**

If the Contracts and Procurement Manager deems it to be in the best interest of the County, services or construction that are simple and typically involve no more than one or two trades may be procured through the use of a purchase order approved by the Contracts and Procurement Division, and they shall be subject to the rules governing that method of procurement.

The normal rules for allowing such services to be ordered under a purchase order are as follows:

- Less than 60 days performance with a defined completion date.
- Less than \$150,000 and competition was obtained to determine fair price.
- Vendor or contractor signs the purchase order acknowledging full acceptance of the terms.

#### 4.4 **TWO-STEP (MULTI-STEP) SEALED BIDDING**

Two-step (or multi-step) sealed bidding is a process consisting of a technical phase, composed of one or more steps in which offeror are required to submit unpriced technical offers to be evaluated by the County, and a pricing phase in which those bidders whose technical offers are determined to be acceptable during the technical phase have their price considered. It is designed to obtain the benefit of competitive sealed bidding by award of a contract to the lowest responsive, responsible offeror and, at the same time, obtain

the benefits of the competitive sealed first step procedure through the solicitation of technical offers and the conduct of discussions to determine the acceptability of technical offers.

#### 4.4.1 **Conditions for Use of Two-Step Sealed Bidding**

The two-step (or multi-step) sealed bidding method may be used when it is not practical to prepare initially a definitive purchase or contract description, which will be suitable to permit an award based on price.

#### 4.4.2 **Procedure for Phase One of Two-Step (Multi-Step) Sealed Bidding**

Two-step (or multi-step) sealed bidding shall be initiated by the issuance of an Invitation for Bid (IFB). The solicitation shall state:

- That an unpriced technical offer is requested.
- Whether prices are to be submitted at the same time as unpriced technical offers; if they are, such prices shall be submitted in a separate sealed envelope.
- That it is a two-step (or multi-step) sealed bid procurement and prices will be considered only in the phase designated for pricing purposes and only from those offerors whose unpriced technical offers are found to be acceptable in the initial phase.
- The criteria to be used in evaluating the unpriced technical offer.
- That the County, to the extent the Contracts and Procurement Manager and using department /office finds necessary, may conduct oral or written discussions of the unpriced technical offers.
- That offerors may designate those portions of the unpriced technical offers, which contain trade secrets or other proprietary data, which are to remain confidential.
- That the item or contract being procured shall be furnished generally in accordance with the offerors technical offer as found to be acceptable and shall meet the requirements set forth in the invitation for bids.

#### 4.4.3 **Addenda to the Invitation**

After receipt of unpriced technical offers, addenda to the IFB shall be distributed only to offerors who submitted unpriced technical offers. If, in the opinion of the Contracts and Procurement Manager, an addendum that significantly changes the nature of the procurement, the invitation shall be canceled and a new IFB issued.

#### **4.4.4 Receipt of Unpriced Technical Offers**

Unpriced technical offers shall not be opened publicly but shall be witnessed by one or more members of the Procurement staff. Such offers shall not be disclosed to unauthorized persons. Offerors may request nondisclosure of trade secrets and other proprietary data identified in writing.

#### **4.4.5 Evaluation of Unpriced Technical Offers**

The unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the IFB. The unpriced technical offers shall be categorized as: a) acceptable, b) potentially acceptable, that is, may be made acceptable, or c) unacceptable. The Procurement Specialist shall record, in writing, the basis for finding an offer unacceptable and make it a part of the procurement file. The Procurement Specialist may initiate phase two if it is determined that there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without entering into technical discussions. If the Procurement Specialist and using department/office find that such is not the case, the Procurement Specialist shall issue an addendum to the invitation or engage in technical discussions, whatever is deemed appropriate.

#### **4.4.6 Discussion of Unpriced Technical Offers**

Discussion of its unpriced technical offer may be conducted by the Procurement Specialist and using department/office with any offeror who submits an acceptable or potentially acceptable technical offer.

#### **4.4.7 Notice of Unacceptable Unpriced Technical Offer**

When the Procurement Specialist and the end-user's department/office determines an offerors unpriced technical offer to be unacceptable, the offeror shall not be allowed to amend technical offers.

#### **4.4.8 Mistakes During Two-Step (multi-step) Process**

Mistakes may be corrected, or bids withdrawn during phase one or any time prior to step two.

#### 4.4.9 Procedure for Continuing Two-Step (Multi-Step) Process

Upon completion of phase one, the Procurement Specialist shall a) open prices submitted in phase one (if prices were required to be submitted) from offerors whose unpriced technical offers were found to be acceptable, or b) if prices have not been submitted, technical discussions have been held, or addenda to the IFB have been issued, invite each acceptable offeror to submit a price proposal.

#### 4.4.10 Conduct

The next phase shall be conducted as any other competitive sealed bid except that no public notice of the IFB to submit price proposals needs to be given because such notice was previously given. After award, the unpriced technical offer of the successful offeror shall be disclosed as follows:

The Procurement Specialist and using department shall examine written requests of confidentiality for trade secrets and proprietary data in the technical offer of the offeror to determine the validity of such requests. If the parties do not agree as to the disclosure of data, the Procurement Specialist shall inform the bidder in writing that portion of the unpriced technical offer that will be disclosed. Unpriced technical offers that are not awarded the contract shall not be made available to public inspection unless the Contracts and Procurement Manager determines in writing that public inspection of such offers is necessary to assure confidence in the integrity of the procurement process, provided, however, that the provisions of above shall apply with respect to the possible disclosure of trade secrets and proprietary data.

#### 4.5 REQUEST FOR PROPOSALS (RFP) – FORMAL

Requests for Proposals for goods and/or services must allow a minimum of four weeks for response unless a waiver for the response time is approved by the Manager for requirements in excess of \$150,000.

The RFP is an objective and equitable method of contracting for goods or services, whereby proposals are solicited from qualified firms. Following submission of offers, changes in proposals and prices may be allowed and the offer deemed by the County to be most advantageous in terms of criteria as designated

in the RFP as determined to be in the best interest of the County may then be accepted. An RFP should not be used when the goods, services, or equipment to be contracted is standard, routine, for common items or if there is an industry standard associated with the service or commodity to be contracted.

A determination will be made to use the RFP method if it is considered to be advantageous to the County. Factors to be considered in determining whether the RFP method should be used include:

- If contract exceeds the value of \$150,000
- If the requirement is highly technical, unusual, is not a standard item, little or no clear standards or specifications available to use in the solicitation
- If it may be necessary to conduct oral or written discussions with offerors concerning technical and price aspects of their proposals
- If it may be necessary to afford offerors the opportunity to revise their proposals
- If it may be necessary to base an award on a comparative evaluation as stated in the RFP of differing price, quality, and contractual factors in order to determine the most advantageous offering to the County
- If the primary consideration(s) in determining award may be factors other than price(s)
- If it may be necessary for the County to negotiate the cost proposal, in its best interest

#### **4.5.1 Proposal Preparation Time**

Proposal preparation time should be set to provide offerors 30 calendar days under normal circumstances to prepare and submit their proposals. The Contracts and Procurement Manager may modify this requirement to require less time on less complicated requirements.

#### **4.5.2 Public Notice-Advertisement**

Public notice shall be given by advertising the RFP in the same manner provided for the IFB.

#### **4.5.3 Pre-Proposal Conference**

Pre-proposal conferences may be conducted for the purpose of maximizing competition and explanation of the procurement requirements. Notice of a pre-proposal conference shall be stated in the RFP. Any such conference should be held after the final advertisement and approximately 10 calendar days prior to

the proposal due date. The pre-proposal conference may be listed as mandatory if determined necessary to ensure familiarity of the project prior to submission of proposals. Nothing stated at such conference shall change the RFP unless the change is made by published addendum. If there is inadequate attendance at a mandatory pre-proposal conference, an alternate or additional conference may be scheduled, by published Addendum.

#### 4.5.4 **Addenda to RFP**

Addenda to RFPs may be made prior to submission of proposals in the same manner provided for in the IFB.

#### 4.5.5 **Modification or Withdrawal of Proposal**

Proposals may be modified or withdrawn by any offeror prior to the established due date and time.

#### 4.5.6 **Receipt of Proposals**

The time and date for receipt of proposals will be included in the RFP solicitation and must state a specific time on a certain date. Proposals must be received by the date and time, or they are considered late and will not be accepted. The list of the names of proposers or the number of proposals received shall be released publicly through a public forum, either virtually or in person, or with the written authorization of the Contracts and Procurement Manager.

#### 4.5.7 **Late Proposals**

Late proposals shall be handled in the same manner as "Late Bids" as described in the Competitive Sealed Bidding section of this manual.

#### 4.5.8 **Single Proposal Received**

If only one proposal is received in response to an RFP, the Procurement Specialist has the following options:

- Determine if there was sufficient time allotted for offerors to submit a proposal; if not, the solicitation may be amended to extend the receipt of proposal date and the only proposal received may be returned unopened to the only offeror.
- Proceed with the evaluation of the proposal from the single offeror; if the offer meets the requirements of the County as stated in the RFP, and the cost is determined to be fair and reasonable through negotiations, an award may be made.
- If the evaluation determines that the only offeror does not meet County needs, or negotiations do not result in a fair and reasonable offer, then the solicitation may be canceled and resolicited at a later date.

Note: If the solicitation is canceled, the proposal may be returned to the offeror and the canceled solicitation file shall be documented as to why it was canceled.

#### 4.5.9 Evaluation Process

The RFP evaluation process shall be conducted in a fair and objective manner that requires the evaluation committee to evaluate all proposals on the specific criteria in the RFP.

Complete confidentiality is an ethical and legal requirement and is vital to fair and equitable evaluation. Evaluators are required to sign a non-disclosure statement prior to the review of proposals. During the entire RFP process, the Procurement Specialist serves as the sole contact for vendors and provides all RFP procedures and communication. Technical issues will be addressed by the appropriate staff and relayed to vendors by the Procurement Specialist. After proposals are submitted, all vendor contact shall be made through the Contracts and Procurement Division. Vendor information, number of proposals received, results and other evaluation proceedings shall be kept confidential until a fully executed contract is established. Requests for this information shall be made in writing and its release will be in accordance with the Colorado statute (C.R.S. 24-72-203 and 24-72-204) for access to Public Records, and with County administrative policy.

Evaluation Committee members will be selected by the using department/office in coordination with the Procurement Specialist. The Procurement Specialist will facilitate the evaluation process. A BoCC member should recuse him/herself from the final approval of a contract award if the member is also an evaluator. Committee members shall score each proposal individually and independently. However, after the individual scores are tabulated by the Procurement Specialist, group discussions are encouraged to

discuss technical views to arrive at a better understanding of technical proposals during the evaluation process. The results of the scoring by the evaluating committee shall be totaled to determine the overall highest rated proposal.

If interviews are part of the evaluation, the RFP should contain language that allows for interviews. The Evaluation Committee, prior to entering into discussions with any offerors, will make competitive evaluation criteria to be used with every interview.

The RFP shall clearly define all evaluation criteria. Numerical rating systems or weights may be used but are not mandatory to be listed in the RFP. The weights or points must be assigned prior to evaluating proposals. The evaluators shall not consider criteria that are not specified in the RFP when evaluating proposals. Selection for the award shall be conclusive based on scoring criteria as specified in the RFP. The evaluation committee will evaluate all proposals received for completeness and the proposer's ability to meet all the specifications as outlined in the RFP. The committee may then short list for interviews the specific firms whose proposals best meet all the criteria required.

#### **4.5.10 Competitive Range Determination/Short List**

The Evaluation Committee, through the Procurement Specialist, shall determine which proposals' ranking/scores are in the competitive range for the purpose of conducting written or oral discussions/interviews. The competitive range shall be determined on the basis of criteria stated in the RFP. The determination should include all proposals that have a reasonable chance of being selected for award. The evaluation team solely determines the top proposals to create a short list.

If the RFP initially solicits unpriced technical proposals, they shall be evaluated to determine which are acceptable to the County or could, after discussion, be made acceptable. After necessary discussion of these technical proposals is completed, the Evaluation Committee shall request the price proposals from all offerors who submitted an acceptable technical proposal and make the award to the lowest responsible offeror, or, where applicable, negotiate for a Best and Final Offer.

#### **4.5.11 Oral Presentation Interviews**

Firms submitting a proposal in response to an RFP may be required to give an oral presentation of their proposal in an interview session with the evaluation committee. Additional technical information may be

requested from any firm by the evaluation committee prior, during or after the interview for clarification purposes, but in no way will change the original proposal submitted. Interviews are at the option of the evaluation committee and may or may not be conducted.

#### 4.5.12 **Best and Final Offers**

The evaluation selection committee may issue to one or all offerors still within the competitive range a request for best and final offers. Offerors should be reminded that Best and Final Offers are not mandatory. They are only an opportunity to revise if necessary.

If they chose not to submit a best and final offer, then their original proposal as submitted will be considered.

After receipt of best and final offers, the evaluation selection committee shall evaluate them accordingly and recommend award be made to the offeror whose best and final offer is most advantageous to El Paso County, considering price and the other factors included in the RFP.

#### 4.5.13 **Negotiations**

When applicable, negotiations may be conducted after oral presentations and interviews with the selected firm in order to reach understanding and agreement. If an agreement cannot be reached, the County may enter into negotiations with the next highest ranked firm. When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges a mistake, the proposal may be corrected or withdrawn in accordance with rules governing mistakes in bids.

#### 4.5.14 **Award of Contract**

Award shall be made to the responsible offeror whose proposal is determined to be most advantageous, and in the best interest of the County, based on the evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. The County reserves the right to enter into contractual negotiations with the highest ranked firm selected by the evaluation committee. If a mutual contractual relationship cannot be established that will meet the County's needs, then the County reserves the right to enter into negotiations with the second highest ranked firm and so on.

#### 4.5.15 Vendor Debriefing

Vendors submitting an unsuccessful proposal may, within five (5) business days of mailing or emailing of the notice of intended contract award, request a meeting for debriefing and discussion of their proposals. All offerors are allowed to schedule a debriefing with the Procurement Specialist to go over the weaknesses and strengths of their proposal. The strengths and weaknesses of other proposals will not be discussed. Debriefing will not include any comparisons of the vendor's unsuccessful proposal with any other vendor's proposal. The Contracts and Procurement Division will attempt to respond to questions and concerns in this debriefing.

## 5 BONDS, INSURANCE & CONTRACTS

### 5.1 TYPES OF CONTRACTS

It is at the Contracts and Procurement Division's discretion to select and create the proper form of agreement that best meets the Departments and County's needs. (i.e., Purchase Order, Service contract, Construction contract etc.).

### 5.2 CONTRACT BONDS

For contracts in excess of \$50,000, a separate Performance Bond, Labor and Materials Payment Bond, and Maintenance Bond or other legally acceptable surety may be required for all construction, labor, and public improvement contracts each in the amount of 100% of the contract price. The contractor shall deliver these bond(s) to the County within fourteen calendar days after receipt of the Notice of Award, or at the same time the contract is executed. If the contractor fails to deliver the required bond(s), the contractor's bid or contract may be rejected or terminated for default. The bond(s) must be submitted on bond form(s) executed by a surety company authorized to do business in the State of Colorado. Performance, Payments and Material, and Maintenance Bonds may be required on contracts less than \$50,000 if the Contracts and Procurement Manager determines it to be in the best interest of El Paso County.

Performance bonds may be waived, and cash accepted, deposited to an escrow account with the County, for a designated period of time if the terms of the surety alternative are acceptable to both parties of the

contract. A percentage of the total amount of the contract defined to cover all costs associated with a performance breach may be an acceptable condition of an alternate surety.

If at any time during the continuance of a contract, a surety on the contractor's bond or bonds becomes irresponsible, the County shall have the right to require additional and sufficient sureties. The contractor shall furnish within ten calendar days after written notice to do so. Such surety bond shall cover the entire contract amount regardless of changes in total contract amount.

### **5.3 LEGAL REVIEW OF BONDS/INSURANCE CERTIFICATES**

All contract bonds or other sureties shall be reviewed for compliance with the contract for legal sufficiency. Deletions or additions to the bond terms by contractors or sureties shall not be permitted.

### **5.4 INSURANCE REQUIREMENTS**

The Contracts and Procurement Manager may require such insurance as may be deemed necessary for the protection of the County or as may be required by the County. When a contract requires contractor insurance, the insurance certificates shall be provided with the contract, including all exceptions and riders attached to the certificate. All insurance requirements will be detailed in each individual solicitation.

### **5.5 WAIVERS**

If it is deemed to be in the County's best interest, the Contracts and Procurement Manager may waive or reduce the dollar amounts of any bonds or insurance, except Worker's Compensation Insurance. However, in the event that the price of any contract for which the Contracts and Procurement Manager has reduced, or waived bonds should reach a value of \$50,000 or more, through change orders or otherwise, then the contractor may be required to provide separate bonds each in the amount of 100% of the new contract price, and additional insurance, as determined by the Contracts and Procurement Manager.

### **5.6 LEGAL REVIEW OF CONTRACTS**

All County contracts in excess of \$150,000, and any other contracts determined necessary by the Contracts and Procurement Manager, shall be reviewed, and approved as legal as to form by the County

Attorney's Office except as may otherwise be provided in these rules or by written agreement between the County Attorney and the Contracts and Procurement Manager. County contracts shall utilize only those contract terms and standard forms, including purchase orders, which have been approved for use by the Contracts and Procurement Manager, unless the County Attorney determines that an alternative term or form should be used.

## **6 CONTRACT ADMINISTRATION**

A County Representative(s) shall be identified on all contracts presented to the BoCC for award. The County Representative is responsible for ensuring that all the scope of work/services and the terms and conditions of the contract are met prior to making payment. Modifications or issues with the contract must be directed by the County Representative who will notify and coordinate with the Contracts and Procurement Division. When necessary, more than one County Representative may be named from different departments/offices (as agreed to by the requesting department/office) in a cooperative effort to manage a project.

## **7 PROCUREMENT RULES WITH FEDERAL FUNDS**

The County will comply with the terms and conditions of the award or grant of federal funds following the Uniform Guidance (2CFR).

### **7.1 REQUIREMENTS**

Contract and solicitation requirements will vary depending on the funding source. The following provisions generally apply to grant reimbursable contracts expenditures, including but not limited to Human Services, FEMA, CDBG and FHWA grants. For compliance, audit, and reporting purposes all requirements must be necessary, reasonable, and allocable costs per CFR §200.403, §200.404 and §200.405.

### **7.2 SUSPENSION AND DEBARMENT [2 CFR §200.212]**

County shall check SAMS website prior to award for verification of suspension and debarment, and true legal name of prospective awardees and all relevant principles.

**7.3 GENERAL PROCUREMENT STANDARDS [2 CFR 200.318 AND 45 CFR 75.327]**

- 7.3.1 The County shall use its own procurement procedures as long as the County's procedures are as strict as the Federal requirements. If the Federal procedures are stricter, the County must use the Federal procedures.
- 7.3.2 The federal requirements in this policy contain standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.
- 7.3.3 The County shall avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- 7.3.4 The County will encourage the use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
- 7.3.5 The County shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- 7.3.6 The County shall maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following:
- rationale for the method of procurement
  - selection of contract type
  - contractor selection or rejection, and,

- the basis for the contract price.

**7.4 COMPETITION [2 CFR 200.319 AND 45 CFR 75.328]**

- 7.4.1 The county must promote full and open competition and shall avoid the following which unfairly restrict competition:
- 7.4.1.1 Placing unreasonable requirements on firms in order for them to qualify to do business;
  - 7.4.1.2 Requiring unnecessary experience and excessive bonding;
  - 7.4.1.3 Noncompetitive pricing practices between firms or between affiliated companies;
  - 7.4.1.4 Noncompetitive contracts to consultants that are on retainer contracts;
  - 7.4.1.5 Organizational conflicts of interest;
  - 7.4.1.6 Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and,
  - 7.4.1.7 Any arbitrary action in the procurement process.
- 7.4.2 The County shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
- 7.4.3 The County shall have written procedures for procurement transactions that ensure all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured and do not include provisions that unfairly restrict competition.

**7.5 PROCUREMENT PROCEDURES [2 CFR 200.320 AND 45 CFR 75.329]**

The County must use one of the procurement procedures: (a) micro-purchases - \$10,000 or less; (b) small purchases (\$50,000 or less); (c) sealed bid; (d) competitive proposal; or (f) noncompetitive proposal – sole source.

**7.6 SOCIOECONOMIC OUTREACH DOCUMENTATION – STEPS TO TAKE [2 CFR 200.321 AND 45 CFR 75.330]**

Affirmative steps shall be taken to assure small and minority businesses, women’s business enterprises, and labor surplus area firms are used in the contracting process when possible. Affirmative steps shall include:

- 7.6.1 Placing qualified small and minority businesses and women’s business enterprises on solicitation lists.
- 7.6.2 Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources.
- 7.6.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises.
- 7.6.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises.
- 7.6.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- 7.6.6 Requiring the prime supplier, if subcontracts are to be let, to take the affirmative steps listed in this section.

**7.7 PROCUREMENT OF RECOVERED MATERIAL [2 CFR 200.322 AND 40 CFR 247]**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

**7.8 CONTRACT COST AND PRICE [2 CFR 200.323 AND 45 CFR 75.332]**

7.8.1 The County must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$250,000) 2 CFR § 200.88.

7.8.2 The County must negotiate profit as a separate element of the price for each contract in which there is no price competition (sole source) and in all cases where cost analysis is performed. Determining profit is based on the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

**7.9 PROCUREMENT REVIEW BY FEDERAL OR STATE AGENCIES [2 CFR 200.324 AND 45 CFR 75.333]**

The County must comply with federal or state agency review of the County's procurement procedures and procurements.

**7.10 BONDING REQUIREMENTS [2 CFR 200.325 AND 45 CFR 75.334]**

If a construction or improvement contract exceeds the Simplified Acquisition Threshold (\$250,000), the County must require a bid guarantee of 5% of the bid price, a performance bond of 100% of the contract price, and a payment bond of 100% of the contract price.

**7.11 CONTRACT PROVISIONS [2 CFR 200.326 AND 45 CFR 75.335]**

All contracts must include the federal contract provisions in 2 CFR 200 Appendix II or 45 CFR 75 Appendix II.

## **APPENDIX A: DEFINITIONS**

Agency - (1) Administrative division of a government. (2) A relationship between two parties by which one, the agent is authorized to perform or transact certain business for the other, the principal; also, the office of the agent.

Agent - A person authorized by another, called a principal, to act for him.

Appropriation – Board of County Commissioners authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Award - The acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a bidder.

Best and Final Offer – For negotiated procurements (RFP), a vendor’s final offer following the conclusion of discussion/negotiations.

Best Value Award - Acquisitions based on criteria such as warranty, service and technical elements of a bid or proposal along with the cost/price element.

Bid – An offer, as a price, whether for payment or acceptance. A tender given specifically to a prospective purchaser upon request, usually in competition with other bidders. Also, an offer by a buyer to a seller, as at an auction.

Bid Bond - An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event that a specific bidder, if his bid is accepted, fails to accept the contract as bid.

Bidder - Any person submitting a competitive bid in response to a solicitation.

Board of County Commissioners (BoCC) - Board of elected officials representing the five (5) districts of El Paso County.

Boiler Plate - Colloquial designation for standard terms and conditions, usually preprinted, incorporated in an Invitation for Bids, Request for Proposals, or a contract or Purchase Order.

Breach of Contract - A failure without legal excuse to perform any promise which forms a whole or part of a contract.

Change Order - A written order directing the contractor to make changes which the changes clause of the contract authorizes the purchaser to order without consent of the contractor.

Code of Ethics - A written set of guidelines within which judgments and considerations of professional ethics and behavior should be made.

Collusive Bidding - The response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding.

Confidential Information - (1) Any information which is available to an employee only because of the employee's status as a public employee and is not a matter of public knowledge or available to the public

on request. (2) Information, such as trade secrets and test data, which may be kept confidential in the purchasing process.

Conflict of Interest - A situation wherein an individual as part of his duties must make a decision or take action that will affect his personal interests.

Consideration - Acts, promises, or things of value exchanged by two parties that validates a contract between them.

Construction Work - The process of building, altering, or repairing a public structure or building, or other improvements to any public real property. It does not include routine operation, routine repair or routine maintenance of existing structures, buildings, or real property. A project usually requiring the professional services of an architect or engineer.

Contract Modifications - A written alteration in specifications, delivery point, rate of delivery, period of performance, price quantity, or other provision of a contract accomplished pursuant to contractual conditions and leaving the general purpose and effect of the contract intact.

Cooperative Purchasing - The combining of requirements of two or more politic entities to obtain the advantages of volume purchases, reduction in administrative expenses, or other public benefits.

Damages - Compensation, usually in money for injury to goods, persons, or property.

Designated Department Liaison – The primary contact in a department or office that handles and coordinates their contract and purchase requirements with the Contracts & Procurement Division. This individual will be required to receive annual training and become certified to receive a Warrant/ authorization that delegate their dollar spending level.

Designee - A duly authorized representative of a person holding a superior position.

Expedite - Effort to assure delivery of goods purchased in accordance with a time schedule, or to accelerate delivery, usually by contact of the purchaser with the vendor.

General Provisions - Governing clauses for all contracts by type of purchase or contract. Clauses devised especially for a given purchase are called special provisions.

Legal Notice - Notice of a proposed purchase as required by law. Depending upon the legal requirement, notice may be satisfied by posting an announcement of the purchase in a public place, notification of the appropriate bidders, from the bidders list, formal advertisement in a newspaper or newspapers, or a combination of these methods.

Liquidated Damages - An amount of money, designated in a solicitation and as part of a contract, to be calculated on a per diem or other basis and paid upon default of a contract.

Lowest Responsible Bidder - Originally, the bidder submitting the lowest initial price and capable of performing the proposed contract. Under modern purchasing concepts, often construed as generally the same as the lowest responsive and responsible bidder" or the bidder who submits the "lowest and best

bid" or the "most advantageous bid, price and other factors considered. "For clarity and accuracy, the recommended provision for determining award is the "responsive and responsible bidder whose bid is most economical for the purpose intended, according to criteria set forth in the solicitation."

Modification - Any formal revision of the terms of contract.

Principal - One who employs an agent; a person who has authorized another to act on his account and subject to his control.

Proposal - An offer made by one party to another as a basis for negotiations for entering into a contract.

Proposal Evaluation Criteria - Factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has made the most advantageous offer.

Proposer - A person submitting a proposal in response to a Request for Proposal. (RFP)

Protest - A complaint about a governmental action or decision brought by a prospective bidder, a bidder, a contractor, or other interested party to the appropriate administrative section with the intention of achieving a remedial result.

Public Policy - That which is deemed by administrators to represent the public interest, or by courts to be general and well settled public opinion relating to the duties of men and government.

Purchase Order - A purchaser's document to formalize a purchase transaction with a vendor. Acceptance of a purchase order constitutes a contract.

Procurement Specialist - An administrator whose job includes reviewing appropriateness of purchase requests, preparing solicitations, obtaining quotations, bid or proposals for purchases, and evaluating responses of bidders and offerors for award of contracts; buyer.

Request for Proposals (RFP) - All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals; the RFP procedure permits negotiation of proposals and prices as distinguished from competitive bidding and an Invitation for Bids.

Request for Quote (RFQ) - All documents, whether attached or incorporated by reference, utilized to solicit price quotes for a product/service requirement in a less formal procedure than the Request for Proposals or Invitation for Bids.

Requisitions - An internal document by which a using agency requests the Contracts and Procurement Division to initiate a purchase order.

Responsible Bidder or Offeror - A person who has the capability in all respects to perform in full the contract requirements, and the integrity and reliability that will assure good faith performance.

Responsive Bidder - A person whose bid conforms in all material respects to, and terms set out by the government in the Invitation for Bids.

Sealed Bid - A bid which has been submitted in a sealed envelope to prevent its contents being revealed or known before the deadline for the submission of all bids; usually required by law or rule on major procurements, to enhance fair competition.

Service Contract - A contract that calls for a contractor's time and effort rather than for a concrete end product. The term as defined here does not include employment agreements or collective bargaining agreements.

Sole Source Procurement - An award for a commodity or service to the only known capable supplier, occasioned by the unique nature of the requirement, the supplier, or market conditions.

Solicitation - The process of notifying prospective bidders or offerors that the jurisdiction wishes to receive bids or proposals for furnishing goods or services. The process may consist of public advertising, mailing Invitations for Bids or Requests for Proposals, posting notices, telephone or telegraph messages or electronic notification to prospective bidders, or all of these.

Specification - A description of what the purchaser seeks to buy and consequently, what a bidder must be responsive to in order to be considered for award of a contract. A specification may be a description of the physical or functional characteristics or the nature of a supply or service. It may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery. A purchase description.

Supplier - An actual or potential contractor; a vendor.

Term Contracting - A technique by which a source of supply is established for a specific period of time. Term contracts characteristically are established through competitive sealed bidding and usually are based on indefinite quantities to be ordered "as needed," although such contracts can specify definite quantities with deliveries extended over the contract period.

Terms and Conditions - A general reference applied to the provisions by which bids or proposals must be submitted, contracts are performed, and which are applicable to most purchase contracts.

Uniform Commercial Code - Uniform statute law adopted by states for consistency and modernity in law governing commercial transactions.

Warrant - A certificate delegating purchasing authority at a specific spending level on behalf of the County.

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