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PURCHASING REGULATIONS
REGULATION 5 – INVITATIONS FOR BIDS

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1 **SCOPE.**

- 1.1 **Applicability.** This regulation applies to the procurement by competitive sealed bid of services, construction, and items of tangible personal property valued at over twenty thousand dollars (\$20,000).
- 1.2 **Exemptions.** This regulation does not apply to the procurement of capital construction projects initiated by the Office of Capital Projects.

2 **EFFECTIVE DATE.** April 3, 2000, unless a later date is cited at the end of a section or paragraph.

3 **DEFINITIONS.** As used in this regulation:

- 3.1 **bid sample** means a specimen of an item offered in a bid furnished to the University by a bidder.
- 3.2 **deadline** means the due date and time specified in the IFB for receipt of bids.
- 3.3 **descriptive literature** means information available in the ordinary course of business that describes the characteristics, construction, and technical or operational specifications of an item.
- 3.4 **identical low bids** means low responsive bids, from responsible bidders, which meet all the requirements of the IFB, and which are identical in price after the statutory preferences in this regulation have been applied.
- 3.5 **invitation for bids.**

13-1-64 Definition; invitation for bids.

“Invitation for bids” means all documents, including those attached or incorporated by reference, utilized for soliciting sealed bids.

- 3.6 **late** means received after the deadline.

3.7 **notice of invitation for bids.**

13-1-70 Definition; notice of invitation for bids.

“Notice of invitation for bids” means a document issued by a procurement officer which contains a brief description of the services, construction or items of tangible personal property to be procured, the location where copies of the invitation for bid may be obtained, the location where bids are to be received, the cost, if any, for copies of plans and specifications, the date and place of the bid opening and such other information as the procurement officer deems necessary.

3.8 **responsible bidder.**

13-1-82 Definition; responsible bidder.

“Responsible bidder” means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.

3.9 **responsive bid.**

13-1-84 Definition; responsive bid.

“Responsive bid” means a bid which conforms in all material respects to the requirements set forth in the invitation for bids. Material respects of a bid include but are not limited to price, quality, quantity, or delivery requirements.

4 **COMPETITIVE SEALED BIDS.**

- 4.1 **Preferred method.** Competitive sealed bidding is the preferred method for the procurement of construction and items of tangible personal property and may also be used for the procurement of services.
- 4.2 **Exceptions to competitive sealed bid requirement.**

<p>13-1-102 Competitive sealed bids required.</p> <p>All procurement shall be achieved by competitive sealed bid pursuant to Sections 13-1-103 through 13-1-110 NMSA 1978, except procurement achieved pursuant to the following section of the Procurement Code:</p> <p>A. Sections 13-1-111 through 13-1-122 NMSA 1978, competitive sealed proposals;</p> <p>B. Section 13-1-125 NMSA 1978, small purchases;</p> <p>C. Section 13-1-126 NMSA 1978, sole source procurement;</p> <p>D. Section 13-1-127 NMSA 1978, emergency procurements;</p> <p>E. Section 13-1-129 NMSA 1978, existing contracts;</p> <p>F. Section 13-1-130 NMSA 1978, purchases from antipoverty program businesses; and</p> <p>G. the Educational Facility Construction Manager At Risk Act.</p>
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- 5 **INVITATIONS FOR BIDS.** An invitation for Bids (IFB) is used to initiate a competitive sealed bid procurement.
- 5.1 **Contents.**

<p>13-1-103 Invitation for bids.</p> <p>A. An invitation for bids shall be issued and shall include the specifications for the services, construction or items of tangible personal property to be procured, all contractual terms and conditions applicable to the procurement, the location where bids are to be received and the date, time and place of the bid opening.</p> <p>B. If the procurement is to be by sealed bid without electronic submission, the invitation for bids shall include the location where bids are to be received and the date, time and place of the bid opening.</p> <p>C. If the procurement is to be by sealed bid with part of all of the bid to be submitted electronically, the invitation for bids shall comply with the requirements of Section 13-1-95.1 NMSA 1978.</p>

- 5.2 **Bid security required for construction bids.**

<p>13-1-146 Requirement for bid security</p> <p>Bid security shall be required of bidders for construction contracts procured by competitive sealed bid when the price is estimated by the procurement officer to exceed twenty-five thousand dollars (\$25,000). Bid security in an amount equal to at least five percent of the amount of the bid shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the state agency or a local public body.</p>
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- 5.3 **Additional requirements.** In addition to the requirements of NMSA 1978 Section 13-1-103, the IFB shall include:
- 5.3.1 the University's standard terms and conditions;

- 5.3.2 the term of the contract and conditions for renewal or extension, if any;
- 5.3.3 instructions to bidders;
- 5.3.4 a notice that the IFB may be canceled and that any or all bids may be rejected in whole or in part when it is in the University's best interest to do so;
- 5.3.5 a notice that reads substantially as follows: "The Procurement Code, NMSA 1978 Sections 13-1-28 through 13-1-199, imposes civil and misdemeanor criminal penalties; in addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.";
- 5.3.6 the UNM Conflict of Interest and Debarment/Suspension Certification Form;
- 5.3.7 all evaluation criteria to be used in determining product acceptability. The IFB may require the submission of bid samples, descriptive literature, technical data, or other material;
- 5.3.8 a statement as to whether multiple or alternate bids are permitted or prohibited. When prohibited, they shall be rejected, provided that if the bidder clearly indicated a base bid, it shall be considered for award as though it were the only bid submitted by the bidder; and
- 5.3.9 a form which the bidder may sign and submit together with all other required submissions. The form shall provide space for the bidder to acknowledge acceptance of the IFB's terms and conditions and receipt of amendments, and to supply tax identification and residential preference numbers. A bidder may submit a reasonable facsimile of the bid form.

5.4 **Incorporation by reference.** The IFB may incorporate documents by reference, provided that the IFB specifies where such documents can be obtained if such documents are not generally known and publicly available.

5.5 **Bidding time.**

- 5.5.1 **For normal procurements.** The Director of Purchasing or his designee shall provide bidders no less than 10 days time from the date notice is published.
- 5.5.2 **For emergency procurements.** In emergency situations the Director of Purchasing or his designee may fax or electronically transmit IFBs to all known potential bidders, may reduce bidding time to the minimum necessary for the preparation of bids, and may accept faxed or electronically transmitted bids.

6 **NOTICE.**

6.1 **Public notice.**

13-1-104 Competitive sealed bids; public notice.

A. The invitation for bids or a notice thereof shall be published not less than ten calendar days prior to the date set forth for the opening of bids. In the case of purchases made by the state purchasing agent, the invitation or notice must be published at least once in at least three newspapers of general circulation in this state; in addition, an invitation or notice may be published electronically in the state purchasing agent's web site that is maintained for that purpose. In the case of purchases made by other central purchasing offices, the invitation or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located. These requirements of publication are in addition to any other procedures which may be adopted by central purchasing offices to notify prospective bidders that bids will be received, including but not limited to publication in a trade journal, if available. If there is no newspaper of general circulation in the area in which the central purchasing office is located, such other notice may be given as is commercially reasonable.

B. Central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than twenty thousand dollars (\$20,000) to those businesses that have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and that have paid any required fees. A central purchasing office may set different registration fees for different categories of services, construction or items of tangible personal property, but such fees shall be related to the actual, direct cost of furnishing copies of the notice or invitation for bids to the prospective bidders. The fees shall be used exclusively for the purpose of furnishing copies of the notice or invitation for bids of proposed procurements to prospective bidders.

C. A central purchasing office may satisfy the requirement of sending copies of a notice or invitation for bids by distributing the documents to prospective bidders through electronic media. Central purchasing offices shall not require that prospective bidders receive a notice or invitation for bids through electronic media.

D. As used in this section, "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to a general contractor for work to be subcontracted pursuant to the construction contract. Central purchasing offices shall make copies of invitations for bids for construction contracts available to prospective bidders. A central purchasing office may require prospective bidders who have requested documents for bid on a construction contract to pay a deposit for a copy of the documents for bid. The deposit shall equal the full cost of reproduction and delivery of the documents for bid. The deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within time limits specified in the documents for bid, which time limits shall be no less than ten calendar days from the date of the bid opening. All forfeited deposits shall be credited to the funds of the applicable central purchasing office.

6.2 **Notice of availability of IFBs.** Notices of availability shall indicate where, when and for how long IFBs may be obtained.

6.3 **Prequalification of bidders.**

13-1-134 Prequalification of bidders.

A business may be prequalified by a central purchasing office as a bidder or offeror for particular types of services, construction or items of tangible personal property. Mailing lists of potential bidders or offerors shall include but shall not be limited to such prequalified businesses.

6.4 **Distribution.** In addition to the statutory publication requirements, the Director of Purchasing or his designee:

- 6.4.1 shall send copies of IFBs, or notices of availability of IFBs, to a sufficient number of bidders, or, in the case of specialized items, to all known bidders, for the purpose of securing competition;
- 6.4.2 shall make a copy of the IFB available for public inspection at the University Purchasing Department;
- 6.4.3 may post IFBs, or notices of availability of IFBs, on the internet; and
- 6.4.4 may publish IFBs, or notices of availability of IFBs, in trade journals.

6.5 **Public availability of bidder list.** Unless the Director of Purchasing determines that it is in the University's best interest to do so, the University Purchasing Department shall not make names and addresses on bidder lists available for public inspection.

7 PRE-BID CONFERENCES AND SITE INSPECTIONS.

7.1 **Procedure.** The Director of Purchasing or his designee:

- 7.1.1 may conduct a pre-bid conference or site inspection to explain the procurement requirements;
- 7.1.2 shall provide notice of a pre-bid conference or site inspection in the IFB or by amendment to the IFB;
- 7.1.3 shall determine whether a pre-bid conference or site inspection is mandatory or voluntary; mandatory pre-bid conferences and site inspections require that all bidders attend;
- 7.1.4 may, upon receipt of a written request from the bidder, waive the mandatory attendance requirement if he determines that the bidder has sufficient previous knowledge to submit a bid meeting all requirements of the IFB;
- 7.1.5 shall schedule the pre-bid conference or site inspection long enough after the IFB has been issued to allow bidders to become familiar with the IFB, but sufficiently before

the deadline to allow bidders to consider the pre-bid conference or site inspection results in preparing their bids.

- 7.1.6 **Amendment required.** Nothing stated at a pre-bid conference or a site inspection shall alter the requirements of the IFB unless the Director of Purchasing or his designee issues an amendment to the IFB.

8 **AMENDMENTS TO INVITATIONS FOR BIDS.**

8.1 **Form.** An amendment to an IFB shall be in writing, shall be identified as an amendment, and shall refer to the portions of the IFB it amends.

8.2 **Use of amendments.** Amendments shall be used to:

- 8.2.1 make changes to the IFB, including but not limited to changes in quantity, purchase descriptions, delivery schedules, and deadlines;
- 8.2.2 correct defects or ambiguities; or
- 8.2.3 furnish to other bidders information given to one bidder if such information will assist other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

8.3 **Distribution.** The Director of Purchasing or his designee shall send amendments to all prospective bidders known to have received the IFB.

8.4 **Timeliness.** The Director of Purchasing or his designee shall distribute amendments sufficiently in advance of the deadline to permit bidders time to consider the amendments in preparing their bids. When this is not possible, the Director of Purchasing or his designee shall extend the deadline in writing in the amendment or, when necessary, extend the deadline by telephone, telegram, fax or electronic transmission and confirm the deadline extension in the amendment.

9 **PRE-DEADLINE MODIFICATION OR WITHDRAWAL OF BIDS.**

9.1 **Correction or withdrawal of bids.**

13-1-106	Competitive sealed bids; correction or withdrawal of bids.
<p>A. A bid containing a mistake discovered before bid opening may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the invitation for bids as the place where bids are to be received. After bid opening, no modification in bid prices or other provisions of bids shall be permitted. A low bidder alleging a material mistake of fact which makes his bid nonresponsive may be permitted to withdraw its bid if:</p> <ul style="list-style-type: none">(1) the mistake is clearly evident on the face of the bid document; or(2) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. <p>B. Any decision by a procurement officer to permit or deny the withdrawal of a bid on the basis of a mistake contained therein shall be supported by a determination setting forth the grounds for the decision.</p>	

9.2 **Disposition of bid security.** If a bid is withdrawn, the bid security, if any, shall be returned to the bidder.

9.3 **Records.** All documents relating to modification or withdrawal of bids shall be made part of the appropriate procurement file.

10 **LATE BIDS, LATE MODIFICATIONS, AND LATE WITHDRAWALS.**

10.1 **Late bids and late modifications.** The Director of Purchasing or his designee shall not consider a late bid or late modification unless:

- 10.1.1 it is received before contract award; and
- 10.1.2 it is the only bid received; or
- 10.1.3 it would have been received on time but for circumstances beyond the control of the bidder. Such circumstances may include weather preventing air delivery companies

from landing at the airport, the action or inaction of University personnel directly serving the procurement, or other similar situations.

10.2 **Late withdrawals.** The Director of Purchasing or his designee:

- 10.2.1 may permit a bidder to withdraw its bid prior to contract award if it is in the University's best interest to do so.
- 10.2.2 shall send a notice to a bidder confirming that the bidder has or has not been permitted to withdraw its bid.

10.3 **Records.** All documents relating to late bids, late modifications, or late withdrawals shall be made part of the appropriate procurement file.

11 **RECEIPT, OPENING, AND RECORDING OF BIDS.**

11.1 **Receipt and acceptance of bids.**

<p>13-1-105 Competitive sealed bids; receipt and acceptance of bids.</p> <p>A. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code...</p>
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11.2 **Receipt.** Upon receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the deadline.

11.3 **Public bid opening.**

<p>13-1-107 Competitive sealed bids; bid opening.</p> <p>Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and each bid item, if appropriate, and such other relevant information as may be specified by the state purchasing agent or a central purchasing office, together with the name of each bidder, shall be recorded, and the record and each bid shall be open to public inspection.</p>

11.4 **Telegraphic bids.** The Director of Purchasing or his designee:

- 11.4.1 shall accept telegraphic, electronically transmitted or faxed bids sent to a third party and delivered by the third party by the deadline, in a sealed envelope, to the location where bids are to be received.
- 11.4.2 Shall not accept telegraphic, electronically transmitted, or faxed bids sent directly to the University Purchasing Department, except as provided in this regulation.

11.5 **No bids received.**

<p>13-1-131 Rejection or cancellation of bids or request for proposals; negotiations.</p> <p>An invitation for bids, a request for proposals or any other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state agency or a local public body. A determination containing the reasons for cancellation shall be made part of the procurement file. If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then new invitations for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are secured, the central purchasing office may purchase the tangible personal property, construction or services in the open market at the best obtainable price.</p>

11.6 **Public inspection of bids.** Bids shall be available for public inspection after opening except that bids received prior to cancellation of an IFB, rejected bids, and the parts of a bid determined to contain confidential information shall not be available for public inspection.

11.7 Requests for nondisclosure of confidential information.

- 11.7.1 A bidder may request that certain parts of its bid containing trade secrets or other proprietary information be kept confidential. The bidder shall identify those parts as confidential, submit them with the bid, but make them readily separable from the non-confidential parts of the bid.
- 11.7.2 The Director of Purchasing or his designee, in consultation with the Office of University Counsel, will examine the bids to determine the validity of any requests for nondisclosure. The Office of University Counsel may discuss the request for nondisclosure with the vendor. If the Office of University Counsel determines that some parts designated by the bidder as confidential should be subject to disclosure, the Director of Purchasing or his designee shall inform the bidder in writing that, unless the bidder withdraws its bid, those parts will be available for public inspection.
- 11.7.3 In no case will prices, makes and models or catalogue numbers of items, or delivery or payment terms be kept confidential.

12 MISTAKES DISCOVERED AFTER OPENING

12.1 Irregularities in bids.

13-1-132	Irregularities in bids or proposals.
<p>The state purchasing agent or a central purchasing office may waive technical irregularities in the form of the bid or proposal of the low bidder or offeror which do not alter the price, quality or quantity of the services, construction or items of tangible personal property bid or offered.</p>	

12.2 Technical irregularities. Technical irregularities include, but are not limited to, the failure of the low bidder to:

- 12.2.1 return the number of signed bids required by the IFB;
- 12.2.2 sign the bid, but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound;
- 12.2.3 acknowledge receipt of an amendment to the IFB, but only if:
 - 12.2.3.1 it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms; or
 - 12.2.3.2 the amendment involved had no effect on price, quality or quantity.

12.3 Correction or withdrawal of bids.

13-1-106	Competitive sealed bids; correction or withdrawal of bids.
<p>A. A bid containing a mistake discovered before bid opening may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the invitation for bids as the place where bids are to be received. After bid opening, no modifications in bid prices or other provisions of bids shall be permitted. A low bidder alleging a material mistake of fact which makes his bid nonresponsive may be permitted to withdraw its bid if:</p> <ul style="list-style-type: none">(1) the mistake is clearly evident on the face of the bid document; or(2) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. <p>B. Any decision by a procurement officer to permit or deny the withdrawal of a bid on the basis of a mistake contained therein shall be supported by a determination setting forth the grounds for the decision.</p>	

12.4 Clarification or confirmation of bid. When the Director of Purchasing or his designee knows or has reason to conclude that a mistake has been made in the low bid, the Director of

Purchasing or his designee should request the low bidder to clarify or confirm the bid in writing.

- 12.5 **Correction of bid where mistake is evident.** A mistake is an unintentional error in a bid made by bidder. Examples of mistakes that may be the result of unintentional error include typographical, transposition, and arithmetical errors. If the Director of Purchasing determines, upon receipt of written clarification of the bid from the bidder, that the mistake was an unintentional error, the Director of Purchasing may correct the mistake. The Director of Purchasing shall prepare a written determination setting forth the grounds for the decision to correct or not correct the bid.

13 **BID EVALUATION AND AWARD.**

13.1 **Evaluation criteria.**

<p>13-1-105 Competitive sealed bids; receipts and acceptance of bids.</p> <p>A. Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code [13-1-28 NMSA 1978]. In addition to the requirement for the prime contractor and subcontractors to be registered as provided in Section 13-4-13.1 NMSA 1978, bids shall be evaluated based on the requirements set forth in the invitation for bids, which requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable, which shall be defined by rule. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. A bid submitted by a prime contractor that was not registered as required by Section 13-4-13.1 NMSA 1978 shall not be considered for award. A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with that section may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor in accordance with Section 13-4-36 NMSA 1978.</p> <p>B. If the lowest responsible bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.</p>
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13.2 **Bid samples and descriptive literature.**

- 13.2.1 The Director of Purchasing or his designee may require, either in the IFB or following the opening of bids, bid samples or descriptive literature when necessary to evaluate required characteristics of the item bid or to determine product acceptability for one or all bidders.
- 13.2.2 Bidders shall furnish bid samples free of expense to the University and shall clearly label each bid sample with the bid number and the bidder's name.
- 13.2.3 Upon request of the bidder and at the bidder's expense, the University shall return samples not destroyed or mutilated in testing.

- 13.3 **Product acceptability.** The Director of Purchasing or his designee may conduct an acceptability evaluation to determine whether a bidder's offering meets the requirements of the IFB, but not to determine which item is superior. Nothing in this regulation shall be deemed to permit the Director of Purchasing or his designee to award a contract to a bidder submitting a higher quality item than required by the IFB unless the bidder is also the lowest bidder. In addition to the factors cited in NMSA 1978 Section 13-1-105, a product acceptability evaluation may include but shall not be limited to:

- 13.3.1 examination of such elements as appearance, finish, taste or feel; or
- 13.3.2 other examinations to determine whether the item conforms to other purchase description requirements.

13.4 “Brand-name or equal” specifications.

13.4.1 Use.

13-1-165 Brand-name specification; use.

A brand-name specification may be used only when the state purchasing agent or a central purchasing office makes a determination that only the identified brand-name item or items will satisfy the needs of the state agency or a local public body.

13.4.2 Competition.

13-1-166 Brand-name specification; competition.

The state purchasing agent or a central purchasing office shall seek to identify sources from which the designated brand-name items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 99 [13-1-126 NMSA 1978] of the Procurement Code.

13.4.3 Required characteristics.

13-1-167 Brand-name or equal specification; required characteristics.

Unless the state purchasing agent or a central purchasing office makes a determination that the essential characteristics of the brand names included in the specification are commonly known in the industry or trade, brand-name or equal specifications shall include a description of the particular design, function or performance characteristics which are required.

13.4.4 Required language.

13-1-168 Brand-name or equal specification; required language.

Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

13.4.5 **Burden of persuasion.** When bidding a “brand-name or equal” specification, the bidder has the burden of persuading the Director of Purchasing or his designee that its product is equal to the brand-name specified in the IFB. The Director of Purchasing or his designee shall determine whether the product is equal to the brand-name specified in the IFB.

13.5 **Criteria affecting bid price.** The Director of Purchasing or his designee may apply reasonable estimates of future use to the following criteria in determining the lowest bidder:

13.5.1 **Prompt payment discounts.** The Director of Purchasing or his designee shall not consider prompt payment discounts in computing the low bid. However, the University will take advantage of prompt payment discounts offered by the successful bidder.

13.5.2 **Trade discounts.** The Director of Purchasing or his designee shall consider trade discounts in computing the low bid. The bidder may show such discounts separately, but shall deduct them when calculating the quoted unit price.

13.5.3 **Quantity discounts.** The Director of Purchasing or his designee shall consider quantity discounts if the bidder has included them in the bid price of an item, but shall not consider quantity discounts when the bidder has set them out separately, unless the IFB so specifies.

- 13.5.4 **Transportation costs.** The Director of Purchasing or his designee may consider transportation costs in computing the low bid. The bidder may include transportation costs in the bid price or may list them as a separate item.
- 13.5.5 **Statutory preferences.** The Director of Purchasing or his designee shall apply the statutory preferences detailed in 5 UPR14 in determining the award.
- 13.5.6 **Total or life cycle costs.** The Director of Purchasing or his designee may determine the award based on total of life cycle costing, if the IFB so provides. In determining the lowest bid for the period during which the item will be used, the Director of Purchasing or his designee may take into account: acquisition price; operation, maintenance, and other expenses of ownership and usage; and resale or residual value.
- 13.5.7 **Energy efficiency.** The Director of Purchasing or his designee may determine the award by computing the acquisition price plus the cost of energy consumed over the projected period of use.

13.6 Responsibility of bidders.

13.6.1 Responsibility.

13-1-133	Responsibility of bidders and offerors.
	If a bidder or offeror who otherwise would have been awarded a contract is found not to be a responsible bidder or offeror, a determination that the bidder or offeror is not a responsible bidder or offeror, setting forth the basis of the finding, shall be prepared by the state purchasing agent or a central purchasing office. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the bidder or offeror is not a responsible bidder or offeror.

13.6.2 **Standards of responsibility.** Before awarding a contract, the Director of Purchasing or his designee must be satisfied that the bidder is responsible. In determining whether a bidder is responsible, the Director of Purchasing or his designee may consider, in addition to the criteria in NMSA 1978 Section 13-1-82 and 13-1-133, whether a bidder has:

- 13.6.2.1 submitted a responsive bid;
- 13.6.2.2 adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services, construction, or items of tangible personal property described in the IFB;
- 13.6.2.3 a satisfactory record of performance;
- 13.6.2.4 a satisfactory record of integrity; and
- 13.6.2.5 qualified legally to contract with the state.

13.6.3 **Ability to meet standards.** When requested by the Director of Purchasing or his designee, a bidder may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting:

- 13.6.3.1 evidence that the bidder possesses such necessary items;
- 13.6.3.2 acceptable plans to subcontract for such necessary items; or
- 13.6.3.3 a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

13.6.4 **Determination of nonresponsibility.** The Director of Purchasing or his designee shall file the written determination of nonresponsibility in the appropriate procurement file and shall also send a copy to the nonresponsible bidder.

13.7 Responsiveness of bids; “all or none” bids. When the term “all or none” is used:

13.7.1 **By the purchaser.** The Director of Purchasing or his designee may require bidders to submit a separate bid on each item listed in the IFB or he may group certain items and require that they be bid as a group or not at all. If the IFB requires such an “all or

none” bid, the Director of Purchasing or his designee shall reject a bid as nonresponsive if a bidder bails to bid the grouped items as a group.

13.7.2 **By the bidder.** If a bidder qualifies a bid, or a portion of a bid, by stating that the bid or portion of a bid is “all or none,” the Director of Purchasing or his designee shall reject the bid, or portion of the bid, as nonresponsive.

13.8 **Bonds; additional requirements.**

<p>13-1-148 Bid and performance bonds; additional requirements.</p> <p>A. Bid and performance bonds or other security may be required for contracts for items of tangible personal property or services as the state purchasing agent or a central purchasing office deems necessary to protect the interests of the state agency or a local public body. Any such bonding requirements shall not be used as a substitute for a determination of the responsibility of a bidder or offeror.</p> <p>B. As to performance and payment bonds for construction contracts, see the requirements of Section 13-4-18 NMSA 1978.</p>

13.9 **Negotiation.**

13.9.1 **Generally prohibited.** Except as provided in NMSA 1978 Section 13-1-105, neither the Director of Purchasing nor his designee may negotiate with any bidder.

13.9.2 **When negotiation permitted.**

<p>13-1-105 Competitive sealed bids; receipt and acceptance of bids.</p> <p>...If the lowest responsible bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest bidder may negotiate with the purchaser for a lower total bid in order to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.</p>

14 **STATUTORY PREFERENCES.**

14.1 **Certification required.**

<p>13-1-22 Resident business and manufacturer certification; application; information.</p> <p>No resident business or resident manufacturer, as those terms are defined in Subsection A of Section 13-1-21 NMSA 1978, shall be given any preference in the awarding of contracts for furnishing materials or services to a state agency, unless the resident business or resident manufacturer shall have qualified with the state purchasing agent as a resident business or resident manufacturer, or both, by making application to the state purchasing agent and receiving from him a certification number...</p>

14.2 **Application of preferences.**

<p>13-1-21 Application of preferences.</p> <p>A. For the purposes of this section:</p> <p>(1) “resident business” means a New Mexico resident business or a New York state business enterprise;</p> <p>(2) “New Mexico resident business” means a business that is authorized to do and is doing business under the laws of this state and:</p> <p>(a) that maintains its principal place of business in the state;</p> <p>(b) has staffed an office and has paid applicable state taxes for two years prior to the awarding of the bid and has five or more employees who are residents of the state; or</p>
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- (c) Is an affiliate of a business that meets the requirements of Subparagraph (a) or (b) of this paragraph. As used in this section, "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity;
 - (3) "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation, that has its principal place of business in New York state;
 - (4) "resident manufacturer" means a person who offers materials grown, produced, processed or manufactured wholly in the state; provided, however that a New York state business enterprise shall be deemed to be a resident manufacturer solely for the purpose of evaluation the New York state business enterprise's bid against the bid of a resident manufacturer that is not a New York state business enterprise;
 - (5) "recycled content goods" means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications; and
 - (6) "virgin content goods" means supplies and materials that are wholly composed of nonrecycled materials or do not meet minimum recycled content standards required by bid specification.
- B. When bids are received only from nonresident businesses and resident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident bidder is made lower than the bid price of the nonresident business when multiplied by a factor of .95.
 - C. When bids are received only from nonresident businesses and resident manufacturers and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of .95.
 - D. When bids are received only from resident businesses and resident manufacturers and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of .95.
 - E. When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of .95.

- F. When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is evaluated as lower than the bid price of the nonresident business when multiplied by a factor of .95. If there is no resident manufacturer eligible for award under this provision, then the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident business is made lower than the bid price of the nonresident business when multiplied by a factor of .95.
- G. When bids are received for virgin content goods only or for recycled content goods only, Subsections B through F of this section shall apply.
- H. When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for virgin content goods, the contract shall be awarded to:
- (1) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price;
 - (2) a resident business offering a bid on recycled content goods of equal quality if:
 - (a) the bid price of no resident manufacturer following application of the preference allowed in Paragraph (1) of this subsection can be made sufficiently low, and
 - (b) the lowest bid price of the resident business when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price; or
 - (3) a nonresident business or nonresident manufacturer offering recycled content goods of equal quality if:
 - (a) the bid price of no resident business of resident manufacturer following application of the preference allowed in Paragraph (1) or (2) of this subsection can be made sufficiently low; and
 - (b) the lowest bid price of a nonresident offering recycled content goods when multiplied by a factor of .95 is made lower than the otherwise low virgin content bid price.
- I. When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for recycled content goods offered by a nonresident business or nonresident manufacturer, the contract shall be awarded to:
- (1) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price; or
 - (2) a resident business offering a bid on recycled content goods of equal quality if:
 - (a) the bid price of no resident manufacturer following application of the preference allowed in Paragraph (1) of this subsection can be made sufficiently low; and
 - (b) the lowest bid price of the resident business when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price offered by a nonresident business or manufacturer.

- J. When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for recycled content goods offered by a resident business, the contract shall be awarded to a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price.
- K. This section shall not apply when the expenditure of federal funds designated for a specific purchase is involved or for any bid price greater than five million dollars (\$5,000,000).
- L. The provisions of this section shall not apply to the purchase of buses from a resident manufacturer or a New Mexico resident business that manufactures buses in New Mexico. It is the purpose of this subsection to:
 - (1) allow any bus manufacturer or business that manufactures buses to compete openly for public procurement contracts in New Mexico without giving preference to a business based on the location of the place of manufacture of the buses;
 - (2) give resident manufacturers and New Mexico resident businesses that manufacture buses an equal opportunity to sell their buses in states that have reciprocal preference laws; and
 - (3) eliminate all different treatment of any kind under New Mexico law and by all political jurisdictions in the state between New Mexico resident businesses and manufacturers that manufacture buses and businesses in other states that manufacture and sell buses.

15 **CANCELLATION OF IFB AND REJECTION OF BIDS.**

15.1 **Criteria for cancellation or rejection.**

13-1-131	Rejection or cancellation of bids or requests for proposals; negotiations.
<p>An invitation for bids, a request for proposals or any other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state agency or a local public body. A determination containing the reasons for cancellation shall be made part of the procurement file. If no bids are received or if all bids received are rejected and if the invitation for bid was for any tangible personal property, construction or service, then new invitations for bids shall be requested. If upon rebidding the tangible personal property, construction or services, the bids received are unacceptable, or if no bids are secured, the central purchasing office may purchase the tangible personal property, construction or services in the open market at the best obtainable price.</p>	

15.2 **Cancellation of IFB prior to deadline.**

15.2.1 **Reasons for cancellation.** Reasons for cancellation include, but are not limited to:

- 15.2.1.1 that the services, construction, or items of tangible personal property are no longer required;
- 15.2.1.2 that the University can no longer reasonably expect to fund the procurement; or that the proposed amendments to the IFB would significantly change the nature of the procurement.

15.2.2 **Notice of cancellation.** The Director of Purchasing or his designee shall send a notice of cancellation to all registered vendors when an IFB is cancelled prior to the deadline.

15.3 Rejection of all bids after opening.

15.3.1 **Reasons for rejection.** Reasons for rejection include, but are not limited to:

- 15.3.1.1 that all of the bids are nonresponsive;
- 15.3.1.2 that the services, construction, or items of tangible personal property are no longer required;
- 15.3.1.3 that the IFB contained ambiguous or inadequate specifications;
- 15.3.1.4 that prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- 15.3.1.5 that all otherwise acceptable bids are at clearly unreasonable prices; or that there is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
- 15.3.1.6 Notice of rejection. The Director of Purchasing or his designee shall send a notice of rejection to all businesses that submitted bids.

15.4 Rejection of individual bids.

15.4.1 **Bid security.**

13-1-147

Bid security; rejection of bids.

- A. When the invitation for bids requires bid security, noncompliance by the bidder requires that the bid be rejected.
- B. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

15.4.2 **Reasons for rejection.** Reasons for rejection include, but are not limited to:

- 15.4.2.1 that bid security was not provided;
- 15.4.2.2 that the bidder is nonresponsive;
- 15.4.2.3 that the bid is nonresponsive; or
- 15.4.2.4 that the services, construction, or items of tangible personal property offered in the bid fail to meet the evaluation criteria set forth in the IFB.

15.4.3 **Notice of rejection.** The Director of Purchasing or his designee shall send the bidder a copy of the written determination of rejection.

15.5 **Retention of bids.** Bids received prior to cancellation of an IFB and rejected bids shall be retained in the appropriate procurement file.

16

AWARD.

16.1 **Competitive sealed bid award.**

13-1-108

Competitive sealed bids; award.

A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or applicable local option tax but that the contracting agency shall be required to pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax shall be shown as a separate amount on each billing or request for payment made under the contract.

16.2 **Low identical bids.**

113-1-110

Competitive sealed bids; identical bids.

When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the state purchasing agent or a central purchasing office may:

- A. award pursuant to the multiple source award provisions of Sections 126 and 127 [13-1-153 and 13-1-154 NMSA 1978] of the Procurement Code;
- B. award to a resident business if the identical low bids are submitted by a resident business and a nonresident business;
- C. award to a resident manufacturer if the identical low bids are submitted by a resident manufacturer and a resident business;
- D. award by lottery to one of the identical low bidders; or
- E. reject all bids and resolicit bids or proposals for the required services, construction or items of tangible personal property.

16.3 **Documentation of award.** Following award, the Director of Purchasing or his designee shall document the basis for determining the successful bidder and file it in the appropriate procurement file.

16.4 **Publicizing awards.** A notice of award is an announcement of the University Purchasing Department's intent to award a contract. The Director of Purchasing or his designee shall send a notice of award to the successful bidder and to all bidders on the bid list who have paid the necessary fees, shall post the notice of award in the Purchasing Department office, and may post the notice of award on the internet.

16.5 **Purchase order required.** The Director of Purchasing or his designee shall send a purchase order to the successful bidder. A contract is not awarded, and the successful bidder is not authorized to begin work, until the Director of Purchasing or his designee has issued a purchase order.

16.6 **Purchase of services or items separately from contract.** The Director of Purchasing or his designee shall determine whether a service or an item of tangible personal property shall be procured pursuant to, or separately from, the contract, even if the service or item of tangible personal property was included in the IFB.

17 **COMPETITIVE SEALED BIDS; MULTI-STEP SEALED BIDDING.**

17.1 **Multi-step sealed bidding.**

13-1-109

Competitive sealed bids; multi-step sealed bidding.

When the state purchasing agent or a central purchasing office makes a determination that it is impractical to initially prepare specifications to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids.

17.2 **General.** Multi-step bidding is a variant of the competitive sealed bidding method. It is a two-phase process consisting of a technical first phase in which bidders submit necessary information or unpriced technical offers to be evaluated by the Director of Purchasing or his designee, and a second phase in which those bidders who submitted technically acceptable offers then submit competitive sealed price bids for consideration. First phase technical offers may take the form of prequalifying contractors prior to submission of a priced bid in

the second phase. The contract shall be awarded to the lowest bidder who submits an acceptable technical offer. If time is a factor, the Director of Purchasing or his designee may require offerors to submit a separate sealed priced bid during the first phase to be opened after the technical evaluation.

- 17.3 **Conditions for use.** The multi-step sealed bidding method may be used when the Director of Purchasing or his designee makes a determination that it is impractical to initially prepare a definitive purchase description which will be suitable to permit an award based on price. Multi-step sealed bidding may this be used when it is considered desirable:

- 17.3.1 to invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;
- 17.3.2 to prequalify bidders;
- 17.3.3 to conduct discussions for the purpose of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;
- 17.3.4 to accomplish the above prior to soliciting priced bids; and
- 17.3.5 to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

- 17.4 **Pre-Bid Conferences.** Pre-bid conferences as contemplated by this regulation may be held by the Director of Purchasing or his designee prior to the submission of unpriced technical offers and/or prior to the submission of priced bids.

17.5 **Procedure for Phase One of Multi-Step Sealed Bidding.**

- 17.5.1 The Director of Purchasing or his designee shall publish notice as provided in this regulation of the invitation for bids, request for qualifications, or other similar request for information, as appropriate. Such solicitation must indicate:
 - 17.5.1.1 that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found to be acceptable in the first phase;
 - 17.5.1.2 whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope; and
 - 17.5.1.3 the criteria to be used in the evaluation of the unpriced technical offers.
- 17.5.2 After the receipt of unpriced technical offers, the Director of Purchasing or his designee may amend the invitation for bid, request for qualifications or other similar request for information. The amendment shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted.
- 17.5.3 The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the invitation for bids, request for qualifications, or other similar request for information. The unpriced technical offers shall be categorized as:
 - 17.5.3.1 acceptable;
 - 17.5.3.2 potentially acceptable, that is, reasonably susceptible of being made acceptable; or

17.5.3.3 unacceptable. The Director of Purchasing or his designee shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

17.5.4 **Discussion of Unpriced Technical Offers.** The Director of Purchasing or his designee may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During the course of such discussions the Director of Purchasing shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information amending its technical offer at any time until the closing date established by the Procurement Officer. Such submission may be made at the request of the Director of Purchasing or his designee or upon the bidder's own initiative. Bidders submitting potentially acceptable technical offers are responsible for providing supplemental information needed to make their offers acceptable.

17.6 Procedure for Phase Two of Multi-Step Sealed Bidding

17.6.1 **Initiation.** The Director of Purchasing or his designee may proceed to Phase Two if in his opinion there are sufficient acceptable unpriced technical offers to assure effective price competition. Upon completion of Phase One, the Director of Purchasing or his designee shall either:

17.6.1.1 open priced bids submitted in Phase One (if priced bids were required to be submitted) from bidders whose unpriced offers were found to be acceptable; or

17.6.1.2 invite each acceptable bidder to submit priced bids if not submitted in Phase One.

17.6.2 **Conduct.** Phase Two shall be conducted as any other competitive sealed bid procurement under this regulation except:

17.6.2.1 as specifically set forth in this multi-step sealed bidding rule; and

17.6.2.2 no public notice need be given of the invitation to submit priced bids because public notice was previously given for Phase One.