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AMENDMENT NUMBER ONE

July 2, 2010

PURCHASING REGULATIONS  
REGULATION 6 – REQUESTS FOR PROPOSALS

Effective May 5, 2010, **Purchasing Regulation 6** is hereby amended to incorporate the following **Section "17.2.5 Basis of Award"**.

**Basis of award.** Contracts solicited under these regulations are to be awarded to the responsible offeror whose proposal represents the best value and is in the University's best interest. The evaluation committee shall prepare a selection recommendation report for the Chief Procurement Officer or his/her designee recommending, in order of preference, at least three firms that are considered to be the most highly qualified. All firms on the most highly qualified selection recommendation report are considered "selected firms" with which the Chief Procurement Officer or his/her designee may negotiate in accordance with this regulation.

The final award decision shall be made by the Chief Procurement Officer or his/her designee. The selection authority will review the recommendations of the evaluation committee and shall, with the advice of appropriate technical and staff representatives, make the final selection from among the selected firms. If the firm selected for award is not the top-ranked selected firm recommended by the evaluation committee, the selection authority shall provide for the contract file a written explanation of the reason for the award preference.

By: \_\_\_\_\_



Bruce Cherrin, Chief Procurement Officer

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**PURCHASING REGULATIONS  
REGULATION 6 -REQUESTS FOR PROPOSALS**

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| <p>1 SCOPE</p> <ul style="list-style-type: none"><li>1.1 Applicability</li><li>1.2 Exemptions</li><li>1.3 Waiver of requirement</li></ul> <p>2 EFFECTIVE DATE</p> <p>3 DEFINITIONS</p> <ul style="list-style-type: none"><li>3.1 deadline</li><li>3.2 descriptive literature</li><li>3.3 late</li><li>3.4 professional services</li><li>3.5 proposal sample</li><li>3.6 request for proposal</li><li>3.7 responsible offeror</li><li>3.8 responsive offer</li></ul> <p>4 COMPETITIVE SEALED PROPOSALS</p> <ul style="list-style-type: none"><li>4.1 Exception to competitive sealed bid requirement</li><li>4.2 When competitive sealed proposals to be used</li><li>4.3 Conditions for use</li><li>4.4 When competitive sealed bidding not practicable</li><li>4.5 When competitive sealed bidding not advantageous</li><li>4.6 Determinations</li></ul> <p>5 REQUEST FOR PROPOSAL</p> <ul style="list-style-type: none"><li>5.1 Contents</li><li>5.2 Additional requirements</li><li>5.3 Incorporation by reference</li><li>5.4 Response time</li></ul> <p>6 NOTICE</p> <ul style="list-style-type: none"><li>6.1 Public Notice</li><li>6.2 Notice of availability of RFPs</li><li>6.3 Prequalification of offerors</li><li>6.4 Distribution</li><li>6.5 Public availability of bidder lists</li><li>6.6 Costs</li></ul> <p>7 PRE-PROPOSAL CONFERENCES AND SITE INSPECTIONS</p> <ul style="list-style-type: none"><li>7.1 Procedure</li><li>7.2 Amendment required</li></ul> <p>8 AMENDMENTS TO INVITATIONS FOR BIDS</p> <ul style="list-style-type: none"><li>8.1 Form</li><li>8.2 Use of amendments</li><li>8.3 Distribution</li><li>8.4 Timeliness</li></ul> <p>9 PRE-DEADLINE MODIFICATION OR WITHDRAWAL OF PROPOSALS</p> <ul style="list-style-type: none"><li>9.1 Correction or withdrawal of proposal</li><li>9.2 Disposition of bid security</li><li>9.3 Records</li></ul> <p>10 LATE PROPOSALS, LATE WITHDRAWALS, AND LATE MODIFICATIONS</p> <ul style="list-style-type: none"><li>10.1 Late proposals and late modifications</li><li>10.2 Late withdrawals</li><li>10.3 Records</li></ul> | <p>11 RECEIPT, OPENING AND RECORDING OF PROPOSALS</p> <ul style="list-style-type: none"><li>11.1 Receipt and acceptance of proposals</li><li>11.2 Receipt</li><li>11.3 Telegraphic proposals</li><li>11.4 Proposal opening</li><li>11.5 No proposals received</li><li>11.6 Request for disclosure of confidential information</li></ul> <p>12 MISTAKES DISCOVERED AFTER OPENING</p> <ul style="list-style-type: none"><li>12.1 Irregularities in proposals</li><li>12.2 Technical irregularities</li><li>12.3 Correction or withdrawal of proposals</li><li>12.4 Clarification or confirmation of proposal</li><li>12.5 Correction of proposal where mistake is evident</li></ul> <p>13 PROPOSAL EVALUATION AND AWARD</p> <ul style="list-style-type: none"><li>13.1 Evaluation factors</li><li>13.2 Relative weight of evaluation factors</li><li>13.3 Proposal samples and descriptive literature</li><li>13.4 Product acceptability</li><li>13.5 Brand-name or equal specifications</li><li>13.6 Criteria affecting proposal price</li><li>13.7 Responsibility of offerors</li><li>13.8 Bonds; additional requirements</li></ul> <p>14 Negotiation</p> <ul style="list-style-type: none"><li>14.1 Best and final offers</li><li>14.2 Competitive negotiations</li></ul> <p>15 CANCELLATION OF RFP AND REJECTION OF PROPOSALS</p> <ul style="list-style-type: none"><li>15.1 Criteria for cancellation or rejection</li><li>15.2 Cancellation of RFP prior to deadline</li><li>15.3 Rejection of all proposals after opening</li><li>15.4 Rejection of individual proposals</li><li>15.5 Retention of proposals</li></ul> <p>16 AWARD</p> <ul style="list-style-type: none"><li>16.1 Competitive sealed proposal award</li><li>16.2 Documentation of award</li><li>16.3 Publicizing awards</li><li>16.4 Purchase order required</li><li>16.5 Purchases made separately from contract</li></ul> <p>17 SERVICES OF ARCHITECTS, ENGINEERS, LANDSCAPE ARCHITECTS, AND SURVEYORS</p> <ul style="list-style-type: none"><li>17.1 RFP required</li><li>17.2 Evaluation committee</li><li>17.3 Evaluation criteria</li><li>17.4 Public information</li><li>17.5 Notice of award</li><li>17.6 Architect rate schedule</li></ul> <p>18 MULTI-STEP BIDDING</p> <ul style="list-style-type: none"><li>18.1 Multi-step bidding</li><li>18.2 Public notice</li></ul> <p>19 REVISION HISTORY</p> |
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- 1 **SCOPE.** This regulation applies to the procurement by competitive sealed proposal of:
  - 1.1 professional services valued at over twenty thousand dollars (\$20,000);
  - 1.2 other services valued at over ten thousand dollars (\$10,000); and
  - 1.3 items of tangible personal property valued at over ten thousand dollars (\$10,000), as permitted in this regulation.
- 2 **EFFECTIVE DATE.** **Month and day**, 2000, unless a later date is cited at the end of a section or paragraph.
- 3 **DEFINITIONS.** As used in this regulation:
  - 3.1 **deadline** means the due date and time specified in the request for proposals for receipt of proposals.
  - 3.2 **descriptive literature** means information available in the ordinary course of business that describes the characteristics, construction, and technical or operational specifications of an item and/or service.
  - 3.3 **late** means received after the deadline.
  - 3.4 **professional services.**

**13-1-76. Definition; professional services.**

"Professional services" means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, construction managers and other persons or businesses providing similar services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office.

- 3.5 **proposal sample** means a specimen of an item offered in a proposal furnished to the University by an offeror.
- 3.6 **request for proposal.**

**13-1-81. Definition; request for proposals.**

"Request for proposals" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

- 3.7 **responsible offeror.**

**13-1-83. Definition; responsible offeror.**

"Responsible offeror" means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

3.8 **responsive offer.**

**13-1-85. Definition; responsive offer.**

"Responsive offer" means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to, price, quality, quantity or delivery requirements.

4 **COMPETITIVE SEALED PROPOSALS.**

4.1 **Exception to competitive sealed bid requirement.**

**13-1-102. Competitive sealed bids required.**

All procurement shall be achieved by competitive sealed bid pursuant to Sections 76 through 83 [13-1-103 to 13-1-110 NMSA 1978] of the Procurement Code, except procurement achieved pursuant to the following sections of the Procurement Code:

A. Sections 84 through 97 [13-1-111 to 13-1-117, 13-1-118 to 13-1-124 NMSA 1978], competitive sealed proposals;

4.2 **When competitive sealed proposals to be used.** Competitive sealed proposals are generally used for the procurement of professional and other services and may be used for the procurement of complex or customized items of tangible personal property.

4.3 **Conditions for use.**

**13-1-111. Competitive sealed proposals; conditions for use.**

When a state agency or a local public body is procuring professional services or a design and build project delivery system, or when the state purchasing agent, a central purchasing office or a designee of either officer makes a determination that the use of competitive sealed bidding for items of tangible personal property or services is either not practicable or not advantageous to the state agency or a local public body, a procurement shall be effected by competitive sealed proposals. Competitive qualifications-based proposals shall be used for procurement of professional services of architects, engineers, landscape architects and surveyors who submit proposals pursuant to Sections 13-1-120 through 13-1-124 NMSA 1978.

4.4 **When competitive sealed bidding not practicable.** "Practicable" has the ordinary dictionary

meaning of “possible to practice or perform” and denotes what may be accomplished or put into practical application. Situations in which competitive sealed bidding is not practicable include but are not limited to when:

- 4.4.1 the contract needs to be other than a fixed-price contract;
- 4.4.2 the Director of Purchasing or his designee may need to conduct oral or written discussion with offerors concerning technical and price aspects of their proposals;
- 4.4.3 the Director of Purchasing or his designee may need to afford offerors the opportunity to revise their proposals, including price;
- 4.4.4 the Director of Purchasing or his designee may need to base the award on a competitive evaluation of differing price, quality, and contractual factors stated in the RFP. Quality factors include technical or professional experience or expertise, relative abilities of offerors to perform, and the content of the technical proposal; and
- 4.4.5 the primary consideration in determining award may not be price.

4.5 **When competitive sealed bidding not advantageous.** “Advantageous” connotes a judgmental assessment of what is in the University’s best interest. Situations in which competitive sealed bidding is not advantageous include but are not limited to when:

- 4.5.1 prior procurements indicate that competitive sealed proposals may result in contracts that are more beneficial for the University;
- 4.5.2 competitive sealed proposals, by affording an opportunity for negotiation, might enhance competition for the procurement;
- 4.5.3 competitive sealed proposals might afford the opportunity to discuss design characteristics with the offerors; or
- 4.5.4 the factors listed in 6 UPR 4.3.2, 4.3.3, and 4.3.4 are desirable, even if not necessary in conducting a procurement.

4.6 **Determinations.**

- 4.6.1 Before a procurement for items of tangible personal property or services may be conducted by competitive sealed proposal, the Director of Purchasing or his designee shall make a written determination that competitive sealed bidding is either not practicable or not advantageous to the University.
- 4.6.2 The Director of Purchasing may make such determinations by category of service, construction or item of tangible personal property. The Director of Purchasing may modify or revoke such determinations at any time and shall review them from time to time for current applicability.

5 **REQUESTS FOR PROPOSALS.** An RFP is used to initiate a competitive sealed proposal procurement.

5.1 **Contents.**

**13-1-112. Competitive sealed proposals; request for proposals.**

A. Competitive sealed proposals, including competitive qualifications-based proposals, shall be solicited through a request for proposals which shall be issued and shall include the specifications for the services or items of tangible personal property to be procured, all contractual terms and conditions applicable to the procurement, the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed.

- 5.2 **Additional requirements.** In addition to the requirements of NMSA 1978 Section 13-1-112, the RFP shall include:
- 5.2.1 the University's standard terms and conditions;
  - 5.2.2 the term of the contract and conditions for renewal or extension, if any;
  - 5.2.3 instructions to offerors;
  - 5.2.4 a notice that the RFP may be canceled and that any or all proposals may be rejected in whole or in part when it is in the University's best interest to do so;
  - 5.2.5 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 for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.";
  - 5.2.6 the UNM Conflict of Interest and Debarment/Suspension Certification Form;
  - 5.2.7 all evaluation factors to be used in determining product acceptability. The RFP may require the submission of samples, descriptive literature, technical data, or other material;
  - 5.2.8 a statement as to whether multiple or alternate offers are permitted or prohibited. When prohibited, they shall be rejected, provided that if the offeror clearly indicates a base offer, it shall be considered for award as though it were the only offer submitted by the offeror;
  - 5.2.9 a statement that the Director of Purchasing may conduct discussions with those offerors who submit proposals reasonably likely to be selected for award, but that proposals may be accepted without such discussions;
  - 5.2.10 a statement about when and how the price element of the proposal should be submitted; and
  - 5.2.11 a form which the offeror shall sign and submit together with all other required submissions. The form shall provide space for the offeror to acknowledge acceptance of the RFP's terms and conditions and receipt of amendments, and to supply tax identification. An offeror may submit a reasonable facsimile of the proposal form.
- 5.3 **Incorporation by reference.** The RFP may incorporate documents by reference, provided that the RFP specifies where such documents can be obtained if such documents are not generally known and publicly available.
- 5.4 **Response time.**
- 5.4.1 **For normal procurements.** The Director of Purchasing or his designee shall provide offerors no less than 10 days' time from the date notice is published.

5.4.2 **For emergency procurements.** In emergency situations the Director of Purchasing or his designee may fax or electronically transmit RFPs to all known potential offerors, may reduce response time to the minimum necessary for the preparation of proposals, and may accept faxed or electronically transmitted proposals.

6 **NOTICE.**

6.1 **Public notice.**

**13-1-113. Competitive sealed proposals; public notice.**

Public notice of the request for proposals shall be given in the same manner as provided in Section 77 [13-1-104 NMSA 1978] of the Procurement Code.

**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 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. The state purchasing agent and all central purchasing offices shall send copies of the notice or invitation for bids involving the expenditure of more than five thousand dollars (\$5,000) to those businesses which have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and which have paid any required fees. The state purchasing agent or 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 procurement to prospective bidders.

C. As used in this subsection "prospective bidders" includes persons considering submission of a bid as a general contractor for the construction contract and persons who may submit bids to the general contractor for work to be subcontracted pursuant to the construction contract. The state purchasing agent and all central purchasing offices shall make copies of invitations for bids for construction contracts available to prospective bidders. The state purchasing agent or 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 the 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 state purchasing agent or central purchasing office, whichever is applicable.

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

6.3 **Prequalification of offerors.**

**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 RFPs, or notices of availability of RFPs, to a sufficient number of offerors, or, in the case of specialized items, to all known offerors, for the purpose of securing competition;

6.4.2 shall make a copy of the RFP available for public inspection at the University Purchasing Department;

6.4.3 may post RFPs, or notices of availability of RFPs, on the Internet; and

6.4.4 may publish RFPs, or notices of availability of RFPs, in trade journals.

6.5 **Public availability of bidder lists.** 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.

6.6 **Costs.** The Director of Purchasing may require payment of a fee or deposit for supplying RFPs.

7 **PRE-PROPOSAL CONFERENCES AND SITE INSPECTIONS.**

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

7.1.1 may conduct a pre-proposal conference or site inspection to explain the procurement requirements;

7.1.2 shall provide notice of a pre-proposal conference or site inspection in the RFP or by amendment to the RFP;

7.1.3 shall determine whether a pre-proposal conference or site inspection is mandatory or voluntary; mandatory pre-proposal conferences and site inspections require that all offerors attend;

7.1.4 may, upon receipt of a written request from the offeror, waive the mandatory attendance requirement if he determines that the offeror has sufficient previous knowledge to submit a proposal meeting all requirements of the RFP;

7.1.5 shall schedule the pre-proposal conference or site inspection long enough after the RFP has been issued to allow bidders to become familiar with the RFP, but sufficiently before the deadline to allow bidders to consider the pre-proposal conference or site inspection results in preparing their proposals.

7.2 **Amendment required.** Nothing stated at a pre-proposal conference or a site inspection shall alter

the requirements of the RFP unless the Director of Purchasing or his designee issues an amendment to the RFP.

## 8 AMENDMENTS TO REQUESTS FOR PROPOSALS.

- 8.1 **Form.** An amendment to an RFP shall be in writing, shall be identified as an amendment, and shall refer to the portions of the RFP it amends.
- 8.2 **Use of amendments.** Amendments shall be used to:
- 8.2.1 make changes to the RFP, 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 offerors information given to one offeror if such information will assist other offerors in submitting proposals or if the lack of such information would prejudice the other offerors.
- 8.3 **Distribution.** The Director of Purchasing or his designee shall send amendments to all prospective offerors known to have received the RFP.
- 8.4 **Timeliness.** The Director of Purchasing or his designee shall distribute amendments sufficiently in advance of the deadline to permit offerors time to consider the amendments in preparing their proposals. 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 PROPOSALS.

- 9.1 **Correction or withdrawal of proposals.** A proposal containing a mistake discovered before proposal opening may be modified or withdrawn by an offeror prior to the time set for proposal opening by delivering written or telegraphic notice to the location designated in the RFP as the place where proposals are to be received.
- 9.2 **Disposition of bid security.** If a proposal is withdrawn, the bid security, if any, shall be returned to the offeror.
- 9.3 **Records.** All documents relating to modification or withdrawal of proposals shall be made part of the appropriate procurement file.

## 10 LATE PROPOSALS, LATE MODIFICATIONS, AND LATE WITHDRAWALS.

- 10.1 **Late proposals and late modifications.** The Director of Purchasing or his designee shall not consider a late proposal or late modification unless:
- 10.1.1 it is received before contract award; and
  - 10.1.2 it is the only proposal received; or
  - 10.1.3 it would have been received on time but for circumstances beyond the control of the offeror. 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 an offeror to withdraw its proposal prior to contract award if it is in the University's best interest to do so.

10.2.2 shall send a notice to an offeror confirming that the offeror has or has not been permitted to withdraw its proposal.

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

## 11 **RECEIPT, OPENING, AND RECORDING OF PROPOSALS.**

11.1 **Receipt and acceptance of proposals.** Proposals shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in the Procurement Code.

11.2 **Receipt.** Upon receipt, each proposal and modification shall be time-stamped but not opened and shall be stored in a secure place until the deadline.

11.3 **Telegraphic proposals.** The Director of Purchasing or his designee:

11.3.1 shall accept telegraphic, electronically transmitted or faxed proposals sent to a third party and delivered by the third party by the deadline, in a sealed envelope, to the location where proposals are to be received.

11.3.2 shall not accept telegraphic, electronically transmitted, or faxed proposals sent directly to the University Purchasing Department, except as provided in this regulation.

11.4 **Proposal opening.**

11.4.1 **Opening.** Proposals shall not be opened publicly and shall not be open to public inspection until after an offeror has been selected for award of a contract.

11.4.2 **Disclosure of proposals.**

**13-1-116. Competitive sealed proposals; disclosure; record.**

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

11.5 **No proposals received.** If no proposals are received, or if all proposals received are rejected, and the RFP was for services, construction or items of tangible personal property, the Director of Purchasing or his designee shall issue a new RFP. If, upon re-solicitation of the services, construction or items of tangible personal property, no proposals are received or the proposals received are unacceptable, the Purchasing Department may purchase the services, construction or items of tangible personal property in the open market at the best obtainable price.

11.6 **Request for nondisclosure of confidential information.**

- 11.6.1 An offeror may request that certain parts of its proposal containing trade secrets or other proprietary information be kept confidential. The offeror shall identify those parts as confidential, submit them with the proposal, but make them readily separable from the nonconfidential portions of the proposal.
- 11.6.2 The Director of Purchasing or his designee, in consultation with the Office of the University Counsel, will examine the proposals to determine the validity of any requests for nondisclosure. If the Office of the University Counsel determines that some parts designated by the offeror as confidential should be subject to disclosure, the Director of Purchasing or his designee shall inform the offeror in writing that, unless the offeror withdraws its proposal, those parts will be available for public inspection.
- 11.6.3 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 proposals.

#### **13-1-132. Irregularities in bids or proposals.**

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.

### 12.2 Technical irregularities. Technical irregularities include, but are not limited to, the failure of the successful offeror to:

- 12.2.1 return the number of signed proposals required by the RFP;
- 12.2.2 sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the low offeror's intent to be bound;
- 12.2.3 acknowledge receipt of an amendment to the RFP, but only if:
  - 12.2.3.1 it is clear from the proposal that the successful offeror 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 proposals.

- 12.3.1 After proposal opening, modifications in prices or other provisions of proposals shall be permitted only as provided in this regulation. An offeror alleging a material mistake of fact which makes his offer nonresponsive may be permitted to withdraw its proposal if:
  - 12.3.1.1 the mistake is clearly evident on the face of the proposal document; or
  - 12.3.1.2 the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
- 12.3.2 Any decision by the Director of Purchasing or his designee to permit or deny the withdrawal of a proposal on the basis of a mistake contained in the proposal shall be

supported by a determination setting forth the grounds for the decision.

12.4 **Clarification or confirmation of proposal.** When the Director of Purchasing or his designee knows or has reason to conclude that a mistake has been made in the successful proposal, the Director of Purchasing or his designee should request the successful offeror to clarify or confirm the proposal in writing.

12.5 **Correction of proposal where mistake is evident.** A mistake is an unintentional error in a proposal made by an offeror. 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 proposal from the offeror, 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 proposal.

### 13 PROPOSAL EVALUATION.

13.1 **Evaluation factors.** Evaluation factors may include but are not limited to:

- 13.1.1 business reputation and references;
- 13.1.2 experience of the offeror;
- 13.1.3 ability of the offeror to meet the University's needs;
- 13.1.4 qualifications of personnel; and
- 13.1.5 price.

13.2 **Relative weight of evaluation factors.**

**13-1-114. Competitive sealed proposals; evaluation factors.**

The request for proposals shall state the relative weight to be given to the factors in evaluating proposals.

13.3 **Proposal samples and descriptive literature.**

- 13.3.1 The Director of Purchasing or his designee may require, either in the RFP or following the opening of proposals, samples or descriptive literature when necessary to evaluate required characteristics of the tangible personal property offered or to determine product acceptability for one or all offerors.
- 13.3.2 Offerors shall furnish samples free of expense to the University and shall clearly label each sample with the proposal number and the offeror's name.
- 13.3.3 Upon request of the offeror and at the offeror's expense, the University shall return samples not destroyed or mutilated in testing.

13.4 **Product acceptability.** The Director of Purchasing or his designee may conduct an acceptability evaluation to determine whether an offeror's proposal meets the requirements of the RFP, 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 an offeror submitting a higher quality item than required by the RFP unless the offeror is also the successful offeror. In addition to the evaluation factors listed in the RFP, a product

acceptability evaluation may include, but shall not be limited to:

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

13.5 **“Brand-name or equal” specifications.**

13.5.1 **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.

13.5.2 **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.

13.5.3 **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 specifications are commonly known in the industry or trade, brand-name or equal specifications shall include a description of the particular design, function or performance characteristics which are required.

13.5.4 **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.

- 13.5.5 **Burden of persuasion.** When the RFP contains a “brand-name or equal” specification, the offeror has the burden of persuading the Director of Purchasing or his designee that the offered product is equal to the brand-name specified in the RFP. The Director of Purchasing or his designee shall determine whether the product is equal to the brand-name specified in the RFP.

- 13.6 **Criteria affecting proposal price.** The Director of Purchasing or his designee may apply reasonable estimates of future use to the following criteria in determining the proposal price:

- 13.6.1 **Prompt payment discounts.** The Director of Purchasing or his designee shall not consider prompt payment discounts in computing the proposal price. However, the University will take advantage of prompt payment discounts offered by the successful offeror.
- 13.6.2 **Trade discounts.** The Director of Purchasing or his designee shall consider trade discounts in computing the proposal price. The proposal may show such discounts separately, but shall deduct them when calculating the quoted unit price.
- 13.6.3 **Quantity discounts.** The Director of Purchasing or his designee shall consider quantity discounts if the offeror has included them in the offered price of an item, but shall not consider quantity discounts when the offeror has set them out separately, unless the RFP so specifies.
- 13.6.4 **Transportation costs.** The Director of Purchasing or his designee shall consider transportation costs in computing the proposal price. The offeror may include transportation costs in the offered price or may list them as a separate item.
- 13.6.5 **Total or life cycle costs.** The Director of Purchasing or his designee may determine the award based on total or life cycle costing, if the RFP so provides. In determining the proposal price 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.
- 13.6.6 **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.

13.7 **Responsibility of offerors.**

13.7.1 **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.

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

- 13.7.2.1 submitted a responsive proposal;
- 13.7.2.2 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 RFP;
- 13.7.2.3 a satisfactory record of performance;
- 13.7.2.4 a satisfactory record of integrity; and
- 13.7.2.5 qualified legally to contract with the state.

- 13.7.3 **Ability to meet standards.** When requested by the Director of Purchasing or his designee, an offeror may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting:
- 13.7.3.1 evidence that the offeror possesses such necessary items;
  - 13.7.3.2 acceptable plans to subcontract for such necessary items; or
  - 13.7.3.3 a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.
- 13.7.4 **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 offeror.

13.8 **Bonds; additional requirements.**

**13-1-148. Bid and performance bonds; additional requirements.**

A. Bid and performance bonds or other security may be required for contracts for items of tangible personal property or services as the 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.

14 **NEGOTIATION.**

14.1 **Best and final offers.**

**13-1-115. Competitive sealed proposals; negotiations.**

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

14.2 **Competitive negotiations.**

- 14.2.1 The Director of Purchasing or his designee may evaluate and accept proposals without discussion or negotiation.
- 14.2.2 The Director of Purchasing or his designee shall evaluate all responsive proposals based on the evaluation factors and relative weights set forth in the RFP.
- 14.2.3 The Director of Purchasing or his designee may hold discussions and competitive negotiations with the offerors whose proposals are most likely to be selected for award to:
- 14.2.3.1 clarify technical or other aspects of the proposals;
  - 14.2.3.2 promote understanding of the University's requirements; and
  - 14.2.3.3 facilitate arriving at a contract that will be most advantageous to the University, taking into consideration the evaluation factors set forth in the RFP.

- 14.2.4 An offeror shall reduce to writing any substantial oral clarification of its proposal.
- 14.2.5 If, during discussions, the Director of Purchasing or his designee determines that there is a need for a substantial clarification or change in the RFP, the RFP shall be reissued.

**15 CANCELLATION OF RFP AND REJECTION OF PROPOSALS.**

**15.1 Criteria for cancellation or rejection.**

**13-1-131. Rejection or cancellation of bids or requests for proposals; negotiations.**

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.....

**15.2 Cancellation of RFP 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
- 15.2.1.3 that proposed amendments to the RFP 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 vendors known to have received the RFP when an RFP is canceled prior to the deadline.

**15.3 Rejection of all proposals 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 proposals 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 RFP 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 proposals are at clearly unreasonable prices; or
- 15.3.1.6 that there is reason to believe that the proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

**15.3.2 Notice of rejection.** The Director of Purchasing or his designee shall send a notice of rejection to all businesses that submitted proposals.

15.4 **Rejection of individual proposals.**

15.4.1 **Bid security.** When the RFP requires bid security, noncompliance by the offeror will result in the proposal being rejected. If an offeror is permitted to withdraw its proposal prior to the opening, no action shall be had against the offeror 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 offeror is nonresponsible;

15.4.2.3 that the proposal is nonresponsive; or

15.4.2.4 that the services, construction, or items of tangible personal property offered in the proposal fail to meet the evaluation criteria set forth in the RFP.

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

15.5 **Retention of proposals.** Proposals received prior to cancellation of an RFP and rejected proposal shall be retained in the appropriate procurement file.

16 **AWARD.**

16.1 **Competitive sealed proposal award.**

**13-1-117. Competitive sealed proposals; award.**

The award shall be made to the responsible offeror or offerors whose proposal is most advantageous to the state agency or a local public body, taking into consideration the evaluation factors set forth in the request for proposals.

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

16.3 **Publicizing awards.** A notice of award is an announcement of the Purchasing Department's intent to award a contract. The Director of Purchasing or his designee shall send a notice of award to the successful offeror and to all offerors who have submitted proposals, shall post the notice of award in the Purchasing Department office, and may post the notice of award on the Internet.

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

16.5 **Purchases made separately from contract.** The Director of Purchasing or his designee shall determine whether services, construction, or items of tangible personal property shall be procured pursuant to, or separately from, the contract, even if the service, construction, or item of tangible personal property was included in the RFP.

17 **SERVICES OF ARCHITECTS, ENGINEERS, LANDSCAPE ARCHITECTS, AND SURVEYORS.**

17.1 **RFP required.** All contracts for the professional services of architects, engineers, landscape architects, and surveyors shall be awarded through an RFP which may be based solely on the qualifications of the offerors.

17.2 **Evaluation committee.**

- 17.2.1 The Purchasing Department shall, in consultation with the using department and the funding entity, if applicable, designate an evaluation committee.
- 17.2.2 The evaluation committee shall evaluate statements of qualifications and performance data submitted by at least three (3) businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project, and their ability to furnish the required services.
- 17.2.3 The evaluation committee shall select, ranked in the order of their qualifications, no fewer than three (3) businesses deemed to be the most highly qualified to perform the required services.
- 17.2.4 If fewer than three (3) businesses have submitted a statement of qualifications for a particular project, the committee may:
  - 17.2.4.1 rank in order of qualifications and submit to the Purchasing Department for award those businesses that have submitted a statement of qualifications; or
  - 17.2.4.2 recommend termination of the selection process and the re-solicitation of the proposed procurement. Any proposal received in response to the terminated solicitation is not public information and shall not be made available to competing offerors.

17.3 **Evaluation criteria.** The RFP shall state the evaluation factors established by the Purchasing Department in conjunction with the using department, which may include:

- 17.3.1 any specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;
- 17.3.2 the capacity and capability of the business to perform the work, including any consultants, their representatives, qualifications and locations, to perform the work, including any specialized services, within the time limitations;
- 17.3.3 the past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;
- 17.3.4 the amount of design work that will be produced by a New Mexico business within this state;
- 17.3.5 the proximity to or familiarity with the area in which the project is located; and
- 17.3.6 the volume of work previously done for the University which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated.

17.4 **Public information. Public information.** The names of all businesses submitting proposals, the names of any businesses selected for interview, and the selection committee's final ranking and evaluation scores for all proposals shall become public information after the Director of Purchasing or his designee has made an award.

17.5 **Notice of award.** Within fifteen days after an award is made, the Director of Purchasing or his designee shall notify in writing all businesses which have not been selected for contract award.

17.6 **Architect rate schedule.** The Director of Purchasing shall establish an architect rate schedule which defines building types and sets the highest permissible rates for each building type or may adopt the state architecture rate schedule.

17.7 **Architectural documents.**

17.7.1 As used in this subsection, documents includes designs, plans, specifications, drawings, notes and other work products of an architect, engineer, landscape architect, or surveyor.

17.7.2 All contracts between the University and an architect, engineer, landscape architect, or surveyor for the construction of new buildings or for the remodeling or renovation of existing buildings shall provide that all documents developed in the performance of the contract are the sole property of the University.

17.7.3 Copies of all documents shall be transmitted to the University Architect in the Department of Facility Planning.

18 **MULTI-STEP SEALED PROPOSALS.**

18.1 **Multi-step sealed proposals.** When the Director of Purchasing or his designee makes a determination that it is impractical to initially prepare specifications to support an award based on price, an RFP may be issued requesting the submission of unpriced proposals to be followed by a request for priced offers from those offerors who appear most likely to be awarded a contract.

18.2 **Public notice.** When multi-step sealed proposals are used, the Director of Purchasing shall publish notice as provided in this regulation of the request for submission of unpriced proposals but shall not be required to publish notice of the RFP issued for the second step.

19 **REVISION HISTORY.**