

# SECTION 13

# PROCUREMENT

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## NAVAJO COUNTY FISCAL POLICY MANUAL

### 13.1 PURPOSE

- A. This Procurement policy identifies procedures for the acquisition of supplies and services, including construction, research and development, architect-engineer and commercial items. This policy applies to expenditure of public funds irrespective of funding source, including State and Federal assistance monies. Navajo County shall comply with terms and conditions of any grant, gift, bequest, cooperative agreement, or Federal or State guideline.
  
- B. This is a general guide to the supplier selection techniques and level of competition required for procurement and under the Arizona Revised Statutes and are generally based upon the dollar value (threshold) of the estimated or projected dollar amount of the entire procurement.
  
- C.

Type	Dollar Amount	Supplier Selection Method
<b>On Contract</b>	Any Amount	No competition required. May request level of effort costs from several contracted vendors and accept the lowest estimate.
<b>Small Dollar Procurements Informal Solicitations</b>	\$0.01 to \$999.99	Small Dollar Purchase. Competition as is practicable. May use P-Card. Three oral quotes as practical.
	\$1,000 to \$100,000	Three written quotes required. May use P card as payment method
<b>Formal Solicitations</b>	More than \$100,000	Formal Bid Process

### 13.2 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

- A. Unless displaced by the particular provisions of this policy, the principles of law and equity, including the Uniform Commercial Code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake or other applicable laws supplement the provisions of this policy.

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### 13.3 REQUIREMENT OF GOOD FAITH

- A. This Code requires all parties involved in the negotiation, performance, or administration of County contracts to act in good faith.

### 13.4 CONFIDENTIAL INFORMATION

- A. Confidential information shall be designated as follows:
1. If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the Procurement Officer of this fact shall accompany the submission and the information shall be so identified wherever it appears.
  2. The information identified by the person as confidential may not be disclosed until the Procurement Manager makes a written determination.
  3. The Procurement Manager shall review the statement and information and may determine in writing whether the information shall be withheld.
  4. If the Procurement Manager determines to disclose the information, the Procurement Manager shall inform the person in writing of such determination. Determinations are retained by appropriate departments.

### 13.15 AUTHORITY OF THE PROCUREMENT MANAGER

- A. The Navajo County Board of Supervisors as agents of Navajo County designates and assigns authority to the Navajo County Procurement Manager to serve as the Procurement Agent.
1. The Procurement Manager shall prepare issue, revise, maintain and monitor the use of specifications for supplies, services and construction required by the County.
  2. Establish and maintain programs for the inspection, testing and acceptance of materials, services and construction.

### 13.6 AUTHORITY OF THE FINANCE DIRECTOR

- A. The Finance Director shall:
1. Supervise the procurement of all materials, services and construction.
  2. Establish policy for the management of all inventories of materials.

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3. Supervise the sale, trade, or disposal of surplus materials belonging to the County in accordance with A.R.S. §11-251(9).
- B. The Procurement Manager may delegate procurement authority to designees or to any department or official of the County.

### 13.7 SOURCE SELECTION & CONTRACT FORMATION

A. Competitive Sealed Bidding or Competitive Sealed Proposals

1. Invitation for Bids or proposals. An Invitation for Bids shall be issued and shall include specifications, any applicable evaluation criteria, and all contractual terms and conditions specifically applicable to the procurement. Standard contractual terms and conditions may be included within the solicitation document or incorporated by reference.
2. Public Notice. Adequate public notice of the Invitation for Bids shall be given not less than twenty-one (21) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Procurement Manager. The public notice shall state the place, date, and time of bid opening. Notice of the Invitation for Bids shall be posted on the procurement website, and a copy of the invitation for bids shall be available for public inspection.
3. Late Bids. A bid is late if it is received at the location designated in the Invitation for Bids after the time and date set for bid opening. The Clerk of the Board clock is the governing clock. A late bid shall be rejected. A late bid shall not be opened except for, if necessary, identification purposes. Such bids shall be returned to the bidder. Bidders submitting bids that are rejected as late shall be so notified.
4. Bid Opening. 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 such other relevant information as the Procurement Manager deems appropriate, together with the name of each bidder, shall be recorded. In the event no attendees are present for bid opening, the sealed bids shall be opened by the Procurement Department and a "bid" or "no bid" may be recorded on the tabulation sheet. The bid may then be given to the appropriate person for recording. The attendance sheets shall indicate that there were no attendees present. Unless otherwise determined by the Procurement Manager, the bids shall not be open for public inspection until after a contract is awarded. After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law.

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5. Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the Invitations for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the Invitation for Bids.
6. Discussion with Offerors. Discussions may be conducted with responsible offerors.
7. Negotiations with Responsible Offerors and Revisions to Proposals. Negotiations may be conducted with responsible offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.
  - a. Concurrent Negotiations. Negotiations may be conducted concurrently with responsible offerors for the purpose of determining source selection and/or contract award.
8. Exclusive Negotiations. Exclusive negotiations may be conducted with the responsible offeror whose proposal is determined in the selection process to be most advantageous to the County. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the County may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.
9. Evaluation of Proposals
  - a. Selection Committee. The Procurement Manager or designated representative shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.
10. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the department

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prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the County or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- a. The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- b. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Procurement Manager.

### 11. Contract Award

- a. Contract award shall be made by the Procurement Manager, or if above \$100,000.00 by the Board of Supervisors, to the responsible offeror whose proposal is determined in writing to be the most advantageous to the County taking into consideration price and the other evaluation criteria set forth in the request for proposals.
- b. The contract file shall contain the basis on which the award is made.
- c. General. The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids.
- d. Contract Award Based on Best Value. The contract may be awarded on best value analysis provided that the criteria for analysis were included in the Invitation for Bids. The contract shall be awarded by appropriate written notice to the response bidder determined to be the best value to the County and whose bid conforms in all material respects to requirements and criteria set forth in the Invitation for Bids.
- e. Exceeding Available Funds. In the event the low responsive and responsible bid for a construction project exceeds available funds and such bid does not exceed such funds by more than five percent, the Procurement Manager is authorized, when time or

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economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

- f. Public Record. After the County approves a contract execution, the bids shall be available for public inspection.
  - g. Low Tie Bids. If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all of the requirements and criteria set forth in the Invitation for Bids, award may be made by random selection in a manner prescribed by the Procurement Manager.
- B. Sole Source Procurement. A contract may be awarded without competition when the Procurement Manager determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service or construction item. The requesting department shall provide written evidence to support a sole source determination. The Procurement Manager may require that negotiations are conducted as to price, delivery and terms. The Procurement Manager may require the submission of cost or pricing data in connection with an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist.
- C. Emergency Procurements. The Finance Director may make or authorize others to make emergency procurements of materials, services or construction items when there exists a threat to public health, welfare or safety or if a situation exists which makes compliance contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. An emergency procurement shall be limited to those materials, services or construction necessary to satisfy the emergency need. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.
- D. Cancellation of Solicitations
- 1. Cancellation of Solicitation. An invitation for bids, a request for proposals, a request for qualifications or other solicitation may be cancelled, or any or all bids, proposals or statement of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the County. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid, proposal or statement of qualification may be rejected in whole or in part when in the best interests of the County.
  - 2. Prior to Opening

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- a. As used in this Section, "opening" means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals.
  - b. Prior to opening, a solicitation may be cancelled in whole or in part when the Procurement Manager determines in writing that such action is in the County's best interest for reasons including but not limited to: the County no longer requires the materials, services, or construction;
    1. The County no longer can reasonably expect to fund the procurement; or
    2. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
  - c. When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all persons solicited.
  - d. The notice of cancellation shall:
    1. Identify the solicitation;
    2. Briefly explain the reason for cancellation; and
    3. Where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar materials, services or construction.
3. After Opening
- a. After opening but prior to award, all bids, proposals or requests for qualifications may be rejected in whole or in part when the Procurement Manager determines in writing that such action is in the County's best interest for reasons including but not limited to:
    1. The materials, services, or construction being procured are no longer required;
    2. Ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation;
    3. The solicitation did not provide for consideration of all factors of significance to the County;

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4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
5. All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices; or
  - a. There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith. A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals.
  - b. If all bids, proposals, or request for qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.
4. Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

### E. Rejection of Individual Bids, Proposals or Statements of Qualifications

1. A bid or proposal may be rejected if:
  - a. The bidder is determined to be non responsible;
  - b. The bid is nonresponsive;
  - c. The proposed price, unless prohibited, is unreasonable; or
  - d. It is otherwise not advantageous to the County.
2. Reasons for rejection shall be provided to the unsuccessful bidders or offerors.

### F. Responsibility of Bidders and Offerors

1. Factors to be considered in determining if a prospective contractor is responsible include:
  - a. The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
  - b. The proposed contractor's record of performance and integrity;

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- c. Whether the proposed contractor is qualified legally to contract with the County; and
    - d. Whether the proposed contractor supplied all necessary information concerning its responsibility.
  2. The Procurement Manager may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.
  3. Determination of Non-responsibility. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written finding of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of non-responsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made a public record.
  4. Right of Nondisclosure. Confidential information furnished by a bidder, offeror or respondent pursuant to this section shall not be disclosed by the County outside of the department, or using agency, without prior written consent by the bidder, offeror or respondent.
- G. Bid and Contract Security, Material or Service Contracts
  1. The Procurement Manager may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Procurement Manager shall consider the nature of the performance and the need for future protection to the County. The requirement for security must be included in the invitation for bids or request for proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid, statement of qualifications or proposal.
- H. Multi-year Contracts
  1. Unless otherwise provided by law, a contract for materials or services may be entered into for any period of time deemed to be in the best interest of the County, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

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2. Prior to use of a multi-term contract, it shall be determined that:
    - a. Estimated requirements cover the period of the contract and are reasonably firm and continuing;
    - b. The contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in County procurement.
  3. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract may be cancelled by the County and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.
- I. Right to Inspect. The County may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or sub-consultant that is related to the performance of any contract awarded or to be awarded by the County.
- J. Right to Audit Records
1. The County may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in Article VII of this code to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the Procurement Manager.
  2. The County is entitled to audit the books and records of a contractor, consultant or any subcontractor or sub-consultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or sub-consultant for a period of five (5) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Procurement Manager.
- K. Reporting of Anticompetitive Practices. If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Procurement Manager and the

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County Attorney. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Procurement Manager.

### L. Prospective Vendors Lists

1. The Procurement Manager shall maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a County contract.
2. Persons desiring to be included on the prospective vendors list may notify the Procurement Manager or may register with the department in-person. The department may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the County.
3. It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

M. Contract Form and Execution. All contracts entered into under this policy shall be executed in the name of the County by the Procurement Manager or if above \$100,000.00 by the Navajo County Board of Supervisors.

N. Assignment of Rights and Duties - The rights and duties of a County contract are not transferable or otherwise assignable without the written consent of the Procurement Manager.

## 13.8 SPECIFICATIONS

### A. Maximum Practicable Competition

1. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the County's needs and shall not be unduly restrictive.
  - a. To the extent practicable and unless otherwise permitted by this policy, all specifications shall describe the County's requirements in a manner that does not unnecessarily exclude a material, service or construction item.
  - b. Proprietary specifications shall not be used unless the Procurement Manager determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing

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practices or inconvenience of drawing specifications do not justify the use of proprietary specifications.

- B. When practicable, the County shall use accepted commercial specifications and shall procure standard commercial materials.
- C. Brand Name
  - 1. A brand name or equal specification may be used when the Procurement Manager determines that use of brand name or equal specifications is advantageous to the County.
  - 2. A brand name specification may be prepared and utilized only if the Procurement Manager makes a written determination that only the identified brand name item will satisfy the County's needs.

### **13.9 PROCUREMENT OF CONSTRUCTION (A.R.S §Title 41-2578)**

- A. Procurement of Construction. Contracts for construction shall be solicited through a competitive sealed bid process for Procurement of Construction Services, Small Purchases, Sole Source Procurement, Emergency Procurements and Special Procurements in accordance with the requirements of A.R.S. §Title 34 and the Navajo County Procurement Code.
- B. Procurement of Professional Design Services. Contracts for professional design services shall be solicited through a request for qualifications Small Purchases, Sole Source Procurement, Emergency Procurements, Special Procurements, and Direct Selection of Pre-Qualified Technical Registrants (\$250,000.00). All contracts entered into under this section shall be executed in the name of the County by the Procurement Manager or if above \$100,000 by the Navajo County Board of Supervisors in accordance with the requirements of A.R.S. §Title 34 and the Navajo County Procurement Code.
- D. Procurement of Construction Services. Contracts for construction services shall be solicited through a build, design- build, and construction-manager-at-risk or job-order-contracting selection process utilizing a request for qualifications Small Purchases, Sole Source Procurement, Emergency Procurement and Special Procurements process. All contracts entered into under this section shall be executed in the name of the County by the Procurement Manager or if above \$100,000 by the Navajo County Board of Supervisors in accordance with the requirements of A.R.S. §Title 34 and the Navajo County Procurement Code.
- E. Construction by County Employees. A building, structure, addition or alteration of a public facility may be constructed by force account if the cost does not exceed the amount established and adjusted each year in accordance with A.R.S. §34-201.

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### F. Direct Selection of Pre-Qualified Technical Registrants

1. If procurement is by direct selection, a written determination by the County Engineer citing the basis of award and for the selection of the particular technical registrant shall be included in the contract file. The best interests of the County shall be considered in each instance.
2. The Procurement Manager shall maintain a list of technical registrants who are properly licensed with the State of Arizona Board of Technical Registration, that have expressed an interest in performing work for the County and have provided evidence of their professional qualifications for such work. The list may be categorized to reflect the person or firm's primary field of expertise. Persons or firms desiring to be included on the pre-qualified list may notify the Procurement Manager or may register with the Procurement Office in-person.
3. The Procurement Manager will notify each person or firm listed on the register annually of their status. An invitation published in the local publication inviting the updating of their professional qualifications.
4. Firms who have failed to provide satisfactory evidence of qualifications or have performed unsatisfactorily during the past twelve (12) months may be removed from the pre-qualified vendor list.
5. All contracts entered into under this section shall be executed in the name of the County by the Procurement Manager or if above \$100,000 by the Navajo County Board of Supervisors in accordance with the requirements of A.R.S. Title 34 and the Navajo County Procurement Code.

- F. Non-substantial Failure to Comply. The Procurement Manager may determine that noncompliance with any provision of this section is non-substantial and may allow for correction or may waive minor informalities or irregularities.

### 13.10 Contract Clauses

- A. Contract Clauses. All County contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Procurement Manager, after consultation with the County Attorney, may issue clauses appropriate for material, service or construction contracts, addressing among others the following subjects:
1. The unilateral right of the County to order in-writing changes in the work within the scope of the contract;

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2. The unilateral right of the County to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
3. Variations occurring between estimated quantities of work in contract and actual quantities;
4. Defective pricing;
5. Liquidated damages;
6. Specified excuses for delay or nonperformance;
7. Termination of the contract for default;
8. Termination of the contract in whole or in part for the convenience of the County;
9. Suspension of work on a construction project ordered by the County;
10. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract;
11. When the contract is negotiated;
12. When the contractor provides the site or design; or
13. When the parties have otherwise agreed with respect to the risk of differing site conditions.

### B. Price Adjustments.

Adjustments in price resulting from the use of contract clauses shall be computed in one or more of the following ways:

1. The agreement on a fixed price adjustment before commencement of the pertinent performance or as soon as practicable;
2. The modification to the unit prices specified in the contract;
3. The costs attributable to the events or situations under the clauses;
4. In other manner as the contracting parties may mutually agree;

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5. In the absence of agreement by the parties, by a unilateral determination by the County of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the County.

### 13.11 Cost Principles

The Procurement Manager may establish cost principles that will be used to determine the allowable incurred costs for the purpose of reimbursing costs pursuant to written contract provisions that provide for the reimbursement of costs.

#### A. Price Adjusting

1. A contractor may be required to submit cost or pricing data if any adjustment in contract price is requested to the provisions.
2. Written adjustment of pricing may contain any of the following:
  - a. The contract price is based on adequate price competition.
  - b. The contract price is based on established catalogue prices or market prices.
  - c. Contract prices are set by law or regulation.

### 13.12 LEGAL AND CONTRACTUAL REMEDIES

- A. Right to Protest. Any actual or prospective bidder, respondent, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract shall initially protest to the Procurement Officer.
- B. Resolution of Protests. The Procurement Manager issuing the solicitation shall have authority to resolve protests. Appeals from the decisions of the Procurement Manager may be made to the Board of Supervisors.
- C. Filing of a Protest
  1. Content of Protest: The protest shall be in writing and shall include the following information:
    - a. The name, address and telephone number of the protestant;
    - b. The signature of the protestant or its representative;
    - c. Identification of the solicitation or contract number;

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- d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- e. The form of relief requested.

### B. Time for Filing Protests

1. Protests Concerning Improprieties in a Solicitation.
  - a. Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.
2. Protests shall be filed within ten (10) days after issuance of notification of award or issuance of notice of intent to award.
3. The Procurement Manager, without waiving the County's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.
4. The Procurement Manager shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.
5. Stay of Procurements during the Protest. In the event of a timely protest, the County may proceed further with the solicitation or with the award of the contract unless the Procurement Manager makes a written determination that there is a reasonable probability that the protest will be sustained or that the stay of procurement is not contrary to the substantial interests of the County.
6. Confidential Information
  - a. Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law.
  - b. If the protestant believes the protest contains material that should be withheld, a statement advising the Procurement Manager of this fact shall accompany the protest submission in accordance with.
7. Decision by the Procurement Manager

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- a. The Procurement Manager shall issue a written decision within fourteen (14) days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
- b. The Procurement Manager shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method including facsimile or electronically, that provides evidence of receipt.
- c. The time limit for decisions may be extended by the Procurement Manager for a reasonable time not to exceed thirty (30) days. The Procurement Manager shall notify the protestant in writing that the time for the issuance of a decision has been extended, and the date by which a decision will be issued.
- d. If the Procurement Manager fails to issue a decision within the time limits, the protestant may proceed as if the Procurement Manager had issued an adverse decision.

### 8. Remedies

- a. If the Procurement Manager sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award or contract award does not comply with this policy, the manager shall implement an appropriate remedy.
- b. In determining an appropriate remedy, the Procurement Manager shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the County, the urgency of the procurement and the impact of the relief on the using agency's mission.
- c. An appropriate remedy may include one or more of the following:
  - d. Decline to exercise an option to renew under the contract;
  - e. Reject all bids, responses or proposals;
  - f. Terminate the contract;
  - g. Reissue the solicitation;
  - h. Issue a new solicitation;

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- i. Award a contract consistent with the procurement code; or
  - j. Such other relief as is determined necessary to ensure compliance with this policy.
9. Appeals to the Board of Supervisors (BOS)
- a. An appeal from a decision entered or deemed to be entered by the Procurement Manager shall be filed with the Clerk of the BOS within seven days from the date the decision is issued. The appellant shall also file a copy of the appeal with the Procurement Manager.
  - b. Content of Appeal. The appeal shall contain:
    - 1. Content of the protest;
    - 2. A copy of the decision of the Procurement Manager; and
    - 3. The precise factual or legal error in the decision of the Procurement Manager from which an appeal is taken.
10. Notice of Appeal
- a. The Procurement Manager shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings.
  - b. The Procurement Manager shall, upon request, furnish copies of the appeal to those interested parties.
11. Stay of Procurement during Appeal. If an appeal is filed during the procurement and before an award of a contract and the procurement or award of the contract was stayed by the Procurement Manager, the filing of an appeal shall automatically continue the stay unless the Procurement Manager makes a written determination that the procurement or award of the contract without delay is necessary to protect substantial interests of the County.
12. Procurement Manager Report. The Procurement Manager shall file a report on the appeal with the BOS within seven (7) days from the date the appeal is filed. At the same time, the Procurement Manager shall furnish a

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copy of the report to the appellant by certified mail, return receipt requested, and to any interested parties. The report shall contain copies of:

- a. The appeal;
- b. Any other documents that are relevant to the protest; and
- c. A statement by the Procurement Manager setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

### 13. Extension for Filing of Report

- a. The Procurement Manager may request in writing an extension of the time period setting forth the reason for extension.
- b. The BOS's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the report. The BOS shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

### 14. Comments on Report

- a. The appellant shall file comments on the Procurement Manager's report with the BOS within seven(7) days after receipt of the report. Copies of the comments shall be provided by the appellant to the Procurement Manager and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.
- b. The BOS may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period stating the reason an extension is necessary. The BOS's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The BOS shall notify the Procurement Manager of any extension.

### 15. Dismissal before Hearing

- a. The BOS shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

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1. The appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or
  2. The appeal is untimely.
16. Remedies
- a. If the BOS sustains the appeal in whole or part and determines that a solicitation, evaluation process, proposed award, or award does not comply with this Code.
17. Filing of a Contract Claim
- a. Content of Claim: The claim shall be in writing and shall include the following information:
    1. The name, address and telephone number of the claimant;
    2. The signature of the claimant or its representative;
  3. Identification of the solicitation or contract number;
  4. A detailed statement of the legal and factual grounds of the claim including copies of relevant documents; and
  5. The form of relief requested.
18. Resolution of Contract Claims and Controversies. The Procurement Manager administering the contract shall have the authority to settle and resolve contract claims and controversies. Appeals from decisions of the Procurement Manager may be made to the BOS.
19. Procurement Officer's Decision
- a. If a contract claim or controversy cannot be resolved by mutual agreement, the Procurement Manager shall, upon a written request by the contractor for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the Procurement Manager shall review the facts pertinent to the contract claim or controversy and secure any necessary assistance from legal, financial, procurement and other advisors.
  - b. Final Decision. The Procurement Manager shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method including facsimile or electronically, that provides evidence of receipt. The decision shall include:

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1. A description of the controversy;
2. A reference to the pertinent contract provision;
3. A statement of the factual areas of agreement or disagreement;
4. A statement of the Procurement Manager's decision, with supporting rationale;
5. A paragraph substantially as follows:

"This is the final decision of the Procurement Manager. This decision may be appealed to the BOS of the Procurement Department. If you appeal, you must file a written notice of appeal with the BOS within five days from the date you receive this decision."

### 20. Issuance of a Timely Decision

- a. The time limit for decisions may be extended for good cause. The Procurement Manager shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision is anticipated.
- b. If the Procurement Manager fails to issue a decision within sixty (60) days after the request on a claim is filed or within the time prescribed, the contractor may proceed as if the Procurement Manager had issued an adverse decision.

### 21. Appeals to the BOS

- a. An appeal from a final decision of a Procurement Manager on a claim shall be filed with the BOS within five days from the date the decision is received. The appellant shall also file a copy of the appeal with the Procurement Manager.
- b. Content of Appeal. The appeal shall contain a copy of the decision of the Procurement Manager and the basis for the precise factual or legal error in the decision of the Procurement Manager from which an appeal is taken.
- c. The BOS may assign the claim to a hearing, to mediation services or to arbitration.

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22. Controversies Involving County Claims Against a Contractor. All contract claims asserted by the County against a contractor that are not resolved by mutual agreement shall promptly be referred by the Procurement Manager to the BOS for a hearing, mediation, or arbitration.
23. Hearing on appeals of claims decisions shall be conducted by the BOS.
24. Mediation. Contract claims and controversies may be resolved utilizing mediation services if the BOS determines the use of such services is in the best interest of the County.
25. Arbitration. Contract claims and controversies may be resolved utilizing arbitration if the BOS determines the use of arbitration is in the best interest of the County. The claim or controversies shall be in accordance with the current construction industry arbitration rules of the American Arbitration Association or, at the option of the County.
26. Authority to Debar or Suspend. The BOS has the sole authority to debar or suspend a person from participating in County procurements.
27. Initiation of Debarment. Upon receipt of information concerning a possible cause for debarment, the BOS may investigate the possible cause. If the Department Manager has a reasonable basis to believe that a cause for debarment exists, the Procurement Manager may debar a person in accordance with this Code.
28. Debarment or suspension causes shall be limited to:
  - a. Conviction of any person or any affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
  - b. Conviction of any person or any affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty that currently seriously and directly affects responsibility as a County contractor and which conviction arises out of or obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

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- c. Conviction or civil judgment finding a violation by any person or affiliate of any person under state or federal antitrust statutes arising out of the response to a solicitation.
- d. Violations of contract provisions within three (3) years of current debarment action, as set forth below, of a character that is reasonably deemed to be so serious as to justify debarment action:
  - 1. Abandonment of a contract without good cause;
  - 2. Knowingly fails without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - 3. Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

Additionally, any other cause that the BOS reasonably determines to be so serious and compelling as to affect responsibility as a County contractor, including suspension or debarment of such person or any affiliate of such person by another governmental entity for any cause listed in this section.

- 29. Matters Not Proper for Debarment or Suspension - any conviction or judgment dated more than three (3) years prior to the notice of suspension or notice of debarment shall not be a basis for any debarment or suspension of a person or an affiliate of a person
- 30. Period of Debarment
  - a. The period of time for a debarment shall not exceed three (3) years from the date of the debarment determination.
  - b. If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.
- 31. Notice. If the BOS implements debarment, the BOS shall notify the person in writing within seven days by certified mail, return receipt requested, of the debarment action. The person may submit a request in

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writing to the BOS for an administrative hearing within 14 days of issuance of the Procurement Manager's debarment action.

### 32. Notice to Affiliates

- a. If the BOS proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.
- b. The affiliate shall in writing advise the BOS in writing within thirty (30) days of receipt of the notice of a hearing of its intention to appear. Failure to provide written notice of appearance within the thirty-day period shall be a waiver of the right to appear in the hearing.

### E. Imputed Knowledge

1. Improper conduct by a person may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge or approval of, the contractor.
2. The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, or approval of the contractor.

### F. Reinstatement

1. The BOS may at any time after a final decision on debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
2. Any debarred person may request reinstatement by submitting a petition to the BOS supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
3. The BOS may require a hearing on the request for reinstatement.
4. The decision on reinstatement shall be in writing and specify the factors on which it is based.

G. Limited Participation. The BOS may allow a debarred person to participate in County contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the County. The

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determination shall specify the factors on which it is based and define the extent of the limits imposed.

- H. Suspension. The BOS may suspend a person from receiving any award in order to protect the County's interests.
- I. Period and Scope of Suspension. The period of suspension shall not be more than 60 days unless the BOS is informed of compelling reasons to extend the period of suspension.
- J. Suspension Notice, Hearing, Determination and Appeal.
  - 1. The BOS shall notify the person suspended by certified mail, return receipt requested.
  - 2. The notice of suspension shall state:
    - a. The basis for suspension;
    - b. The period, including dates, of the suspension;
    - c. That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered;
    - d. That the person may request a hearing on the suspension if the person files a written request for a hearing with the BOS within seven days after receipt of the notice. Receipt means the earlier of actual receipt or the first attempted delivery by certified mail to the persons last known address.
  - 3. If a suspended party requests a hearing, the BOS may arrange for a hearing.
- K. Master List for Suspension and Debarment.
  - 1. The Procurement Manager shall maintain a Master List of debarments and suspensions.
  - 2. The Master List shall show at a minimum the following information:
    - a. The names and vendor number of those persons whom the County has debarred or suspended.
    - b. The basis of authority for the action.

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- c. The period of debarment or suspension, including the expiration date.
    - d. The name of the debarring or suspending agency, if the County's debarment or suspension is based on debarment or suspension by another governmental agency.
  3. The Master List shall include a separate section listing persons voluntarily excluded from participation in County contracts.
- L. Hearing Procedures.
  1. If a hearing is required or permitted, the BOS shall appoint a hearing officer.
  2. If a hearing is required or permitted, the Hearing Officer shall arrange for a prompt hearing and notify the parties of the time and place of the hearing.
  3. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.
  4. The Hearing Officer may:
    - a. Hold pre-hearing conferences to settle, simplify or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.
    - b. Require parties to state their positions concerning the various issues in the proceeding.
    - c. Require parties to produce for examination those relevant witnesses and documents under their control.
    - d. Rule on motions and other procedural items on matters pending before such officer.
    - e. Regulate the course of the hearing and conduct of participants.
    - f. Establish time limits for submission of motions or memoranda.
    - g. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
      1. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence.

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2. Excluding all testimony of an unresponsive or evasive witness.
  3. Expelling the person from further participation in the hearing.
  - h. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice.
  - i. Administer oaths or affirmations.
  5. A transcribed record of the hearing shall be made available at cost to the requesting party.
- M. Recommendation by the Hearing Officer.
1. The Hearing Officer shall make a recommendation to the BOS based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.
  2. The BOS shall abide by the Hearing Officer's recommendation, provided the recommendation includes the required findings of fact and conclusions of law, or make any other appropriate disposition. If a stay was issued, the Hearing Officer's recommendation shall lift any such stay unless the BOS determines that a continuation of the stay is necessary to protect the substantial interest of the County.
- N. Judicial Review of Protests, Claims or Controversies, Debarments or Suspensions. Any final decision of the Procurement Manager of a protest, claim or controversy, debarment or suspension under this Policy is subject to judicial review by any party to the proceeding. Exhaustion of the procedures set forth in this policy shall be a condition precedent to seeking judicial review and the complaint seeking review shall be filed within thirty 30 days of a final decision by the BOS.
- O. Exclusive Remedy. With exception to a law to the contrary, this Policy shall provide the exclusive procedure for asserting a claim or cause of action against Navajo County arising in relation to any procurement conducted under this policy.

### 13.13 INTERGOVERNMENTAL PROCUREMENT

- A. Agreements entered into shall be limited to the areas of procurement, warehousing or materials management.
- B. Intergovernmental Procurement Agreements Required.

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1. The County is not authorized to participate in cooperative purchasing unless, prior to the solicitation, an Intergovernmental Procurement agreement is executed between the parties. All agreements entered into shall be signed by the Procurement Manager and approved by the Board of Supervisors.
2. Cooperative Purchasing Authorized.
  - a. The County may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an agreement entered into between the participants. Parties under a cooperative purchasing agreement may:
    1. Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.
    2. Cooperatively use materials or services.
    3. Commonly use or share warehousing facilities, capital equipment and other facilities.
    4. Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.
    5. Upon request, make available to other public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

### **13.14 Procurement of Capital Assets**

Counties may record capital assets on the capital assets list as items are received or at fiscal year-end. A separate acquisitions list should be maintained during the year to help support the reconciliation of the previous year's capital assets list to the current year's capital assets list and the reconciliation of capital assets acquisitions to total capital expenditures. Counties may receive federal, state or local grants, contracts or other programs to acquire capital assets. Title to such assets may transfer to the county under the terms of the program agreement. The assets should be capitalized and

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reported in the county's financial statements until the agreement requires their return. Counties should dispose of assets under such programs in accordance with program requirements.